

# FORGING AN ANALYTICAL MIND: THE LAW SCHOOL CLASSROOM EXPERIENCE\*

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## I. A NEW ENVIRONMENT

As you sit in the classroom, you realize that it looks so much like the ordinary classrooms of your undergraduate days. Yet, if you expect to excel in this deceptively familiar environment, you must quickly understand what will occur here and how it is designed to forge your intellectual skills.

As the class hour proceeds, your initial reaction to the discussion will be about the teaching method: "It was primarily questions without answers or structured lecture!" As the meeting ends, you are dismayed by your notetaking: "There are fragments of some cases, bits of law, I think, but nothing seems to fit into any obvious organization." You soon realize that, in your own time, using tools other than the course book, you will have to find answers to "the questions" and common-law rules or statutes for the gaps in your notes. Welcome to the Socratic dialogue method of teaching, the most extraordinary feature of law school education. But simply identifying a teaching technique does not bring you closer to understanding its ramifications.

To attempt to convey this understanding, I start by reviewing the predominant form of undergraduate education. I then contrast this experience with what does (and does not) occur in law school. Next, I identify the goals of the classroom and discuss how these goals are achieved through the respective roles of the law professor and student and through available instructional materials. Finally, I suggest what this new learning experience can mean to you, the student.

I emphasize that what you are about to read seeks to describe what should be the singularly most important event in your intel-

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lectual life: a multi-year experience that will awaken and develop new mental capabilities, stimulate observational skills, and hone your reading precision. If you apply yourself and work with the process and not against it, you will begin your life-long evolution as a legally educated professional. Think about it! Never again will you have so much time to devote to your own self-improvement and preparation for your lifetime career. You have the ability to succeed in this self-improvement process, as evidenced in part by the ambition and motivation that contributed to your admission to law school. Have faith that your high achieving life before law school is the prelude to applying your energy and intelligence to mastering a new way of learning, reading, and problem solving. Your task is to channel those drives so that you will attain two rewards from your efforts: rewards of intellectual achievement (law review, moot court, class rank) and rewards of a successful professional life. Those of us in legal education want you to succeed. But you must work with us.

Before beginning, I offer two words of caution. The scope of this Essay is limited to the central stream of public and private institutional experiences in the context of the first year of law school. No attempt has been made to make statements that are applicable to *every* student or to all law schools. This Essay also realizes that imperfect humans will fall short as they attempt to apply these ideally optimistic prescriptions for conduct in a new learning environment. But you should strive and never give up striving to meet these high aspirational standards. You will understand why when you have absorbed the content of this Essay.

#### A. The College Mind-Set

Many law teachers have been forced to conclude, unhappily, that college education leaves the law school applicant generally unprepared for the rigors of the law program. What we see is that for many entering law students, college was a place where success essentially meant earning A or B grades; studying often consisted of memorizing lecture notes, quotations, and general trends and movements in theories, philosophies, or events (possibly in “cram” fashion, only hours or days before an examination); and demonstrating one's knowledge generally involved restating (or regurgitating) what one had read and heard in class, but usually did not involve problem solving or analytical reasoning.

In college, you typically received feedback and reinforcement on your study practices through multiple examinations, graded reports, and conversations with the professor throughout the semester (or quarter). Although usually helpful, these events did not particularly assist in making you self-reliant or primarily responsible for your own education. Nor were you trained to be especially self-critical in striving to make your work better. (One example is the widespread impatience of students with the task of rewriting and editing reports or papers into a condition of excellence.) And you may have been subtly indoctrinated that educational success is testing success regardless of the quality of your educational experience and regardless of the values of the education in preparing you for a productive, intellectual, and vocational life.

If you have gone beyond college to graduate school, you are probably confident that you have mastered the demands that lead to professional status, and you expect law school will not be significantly different. Such expectations are faulty, however. For in spite of your prior experiences, you will find law school provides a markedly different kind of learning encounter.

### B. What the Law School Classroom Is Not

Many professional school experiences — medicine and dentistry, for example — involve a form of skills training often simulating actual practice. Law school, however, does not — in the first year, at least — teach “the law” or train the student for actual practice.<sup>1</sup> It attempts, rather, to develop critical intellectual capabilities. Minds are trained here, trained for complex thinking, not for repetitive functionary tasks. The law classroom is not like the college classroom where one typically read, absorbed, and regurgitated facts or theories to justify

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1. Certain first-year students wonder why they are not being taught “the law” for the “one” answer to each problem. See Peter F. Lake, *When Fear Knocks: The Myths and Realities of Law School*, 29 STETSON L. REV. 1015, 1021–25 (2000) (correcting the half-truth about what law professors teach). They are impatient with too many issues that lead to unclear alternative analyses. Surely, they think, lawyers do not function in the way we are forcing them to function. Some students wish to learn about “forms” and documents as part of their class work. These misunderstandings about the law school experience have fostered much of the content of this Essay.

The essays in this Symposium attempt to provide an answer to what should be achieved in law school. My own summary would include training of the mind for critical reasoning abilities (first year), substantive law and policy understanding (second year), and clinical, client skills, and elective course concentrations (third year).

class presence and give an overall impression of your awareness of the subject. What occurs in your first year's education is far less tangible than in other disciplines.

Nor is law school like college or high school where you were given multiple "tests" during the course of a semester. You will not have opportunities to receive testing feedback. As a first-year student you will not know how you are doing academically until the final course examination grades are released after the semester ends.

In reference to these final examinations, be aware that they are designed to reflect and measure your memory, analytical capabilities, logical thinking, and writing skill. You should develop such abilities through appellate case analysis, problem resolution, and classroom dialogue, not by a preview of the actual exam. And reexamination or supplemental reports submitted after the final examination are rarely utilized, if ever.

Law school is not a series of lectures that, if simply memorized and repeated, will reward one with high grades; nor is there time in class to cover an entire subject. Class time provides insufficient opportunity to touch every point that is relevant. The subjects are too vast; so a law professor must be selective. As a result, important aspects of the subject must be learned on one's own time and through one's own efforts. Thus, to succeed, one must be inquisitive, self-motivated, self-directed, and fearless in exploring library resources.

Finally, the law school class hour is not an event that, if stoically endured, assures top grades. Nor is the hour a time during which well-organized notes can be taken, studied, and ultimately returned verbatim on the exam. Both class attendance and note taking are important, but they are only two parts of your total learning effort.

In summary, the law school classroom is not an indoctrination chamber where a static body of prescriptive and proscriptive rules are drilled into your head. It is something different, something very special.<sup>2</sup> To understand what the law school classroom *is*, we must

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2. For other readings of particular interest to students on the law school experience, see ANN M. BURKHART & ROBERT A. STEIN, *HOW TO STUDY LAW AND TAKE LAW EXAMS IN A NUTSHELL* (1996) (see particularly pages 50–52 on the case method and pages 120–26 on the Socratic method); JOHN DELANEY, *HOW TO BRIEF A CASE* (1987) (here the author works through cases, from simple to complex, with exercises and explanations for student self-study); LINDA L. EDWARDS, *PRACTICAL CASE ANALYSIS* (1996) (chapters 1, 4–6, and 9 are particularly relevant); STEVEN J. FRANK, *LEARNING THE LAW: SUCCESS IN LAW SCHOOL AND BEYOND* (1992) (see chapters 2–4 and 6); KENNY HEGLAND,

first identify certain goals.

## II. GOALS IN THE CLASSROOM

What is the function of the law school classroom? How does it form an integral part of your education? How is it used, and for what purposes?<sup>3</sup>

There are at least six educational goals that are generally espoused by professors and that shape the events in the classroom. The goals may depend in part on a law school's perception of its particular mission.<sup>4</sup> For those schools whose graduates primarily go into active law practice, as opposed to the policy positions in government and teaching, the professor's classroom methods involve his or her striving to develop in each student:

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INTRODUCTION TO THE STUDY AND PRACTICE OF LAW IN A NUTSHELL (2d ed. 1995) (see pages 7–111 for applicability to this article); HELENE SHAPO & MARSHALL SHAPO, LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS (1996) (for psychological tips for the study of law, see chapter 15. Case briefing is covered in chapters 2 and 3; legal reasoning in chapter 6); Phillip E. Areeda, *The Socratic Method (SM)*, 109 HARV. L. REV. 911 (1996); Leslie Childs, *A Law Student's Criticism of the Case Method*, 5 LEGAL REFERENCES Q. 119 (1985) (in which I was reminded of a similar situation which occurred in my law school's library where a practicing attorney did not know how to proceed to find the resources for a most basic research question); Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885 (1991) (in which the goals of the Socratic method are discussed from pages 885 to 892); Burnele V. Powell, *A Defense of the Socratic Method: An Interview with Martin B. Louis*, 73 N.C. L. REV. 957 (1995); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991); see also Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978); Anthony D'Amato, *The Decline and Fall of Law Teaching in the Age of Student Consumerism*, 37 J. LEGAL EDUC. 461 (1987) (exposing the qualitative differences between teaching and learning); Peter W. Gross, *On Law School Training in Analytic Skill*, 25 J. LEGAL EDUC. 261 (1973); Charles D. Kelso, *Teaching Teachers: A Reminiscence of the 1971 AALS Law Teachers Clinic and A Tribute to Harry W. Jones*, 24 J. LEGAL EDUC. 606 (1972); Howard L. Oleck, *Adversary Method of Law Teaching, Summarized*, 27 J. LEGAL EDUC. 86 (1975); Howard L. Oleck, *Thirteen Years of the Adversary Method*, 13 J. LEGAL EDUC. 83 (1960); Howard L. Oleck, *The "Adversary Method" of Law Teaching*, 5 J. LEGAL EDUC. 104 (1952); Michael J. Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10 (1968); James B. Taylor, *Law School Stress and the "Deformation Professionnelle,"* 27 J. LEGAL EDUC. 251 (1975); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968).

3. See Lake, *supra* note 1, at 1038–39 (exploding the myth that little is accomplished in the classroom).

4. See Harry W. Jones, *Local Law Schools vs. National Law Schools: A Comparison of Concepts, Functions, and Opportunities*, 10 J. LEGAL EDUC. 281 (1958).

- (1) A knowledge of the substantive law of the course subject;
- (2) An understanding of the legal process and public policy aspects of the subject, for example, how the law develops, how issues are adjudicated, and the roles of the judges, juries, and lawyers;
- (3) An ability to recognize and develop legal issues inherent in the subject's difficulties;
- (4) Analytical reasoning skills;
- (5) An ability to effectively communicate all of the above; and
- (6) An assumption of responsibility for one's own education.

#### A. A Knowledge of the Substantive Law and an Understanding of Legal Process

As you read and analyze the results of our adversarial system of justice, you will often find “truths” on both sides of legal questions. You will be studying not just one law or “the” law. Rather, you will be trying to understand an ever-changing body of laws, principles, and underlying public policies. This nonrigid, amorphous aspect of law study is a source of disillusionment for many. “Where is ‘the law’?” they ask. But the reality is that there is no single rule or answer for every problem. The law is often uncertain and confused. Thus, there is not one truth, but only the results of an adversarial system of many truths applied to one set of facts. There are, moreover, multiple rules, often in conflict, and complex ambiguities over terms, intentions, and applications.

You will be expected to study and analyze the judicial decisions of the past as a method of avoiding a blind, formalistic application of precedents to the future. You will be expected to repress the college-induced, rote-memory application of concepts and facts. You will, instead, be expected to use your memory of common-law rules and statutes as applied to the new facts as the way to developing your thinking to appreciate the arguments on all sides of each problem. In this process, you have many aids to help you.

##### *1. Books and Materials*

To assist you in attaining these goals, your study materials will not consist of a single textbook, as often is true in college. Rather, you will have to consult casebooks, treatises, hornbooks, restatements, law reviews, problem sets, and photocopied new works (cases, statutes,

articles, and problems assembled by the professor). In short, you will have to rely upon the law library to supplement your assigned readings or daily assignments.

How extensively you should use these materials will largely depend upon your own level of inquisitiveness. Although a professor will suggest weekly reading assignments in a course syllabus, some have no explicit program laid out. Each student is expected to pursue a self-motivated course of study and self-teaching. Look for suggestions in your readings, and in comments by the professor. The study of the law is mainly up to you!

Aids and guideposts to this study are found throughout your books and materials. Recognizing them will lighten your first year's burden. Casebooks, treatises, and hornbooks are outlined under chapter and subchapter titles. The titles help you categorize and organize your notes and summaries. The reprinted cases contain citations to other cases and texts that, if read, may help explain the subject being explored. Footnotes in the cases will give you similar guidance. The author's notes and questions, which are found preceding and following the cases and reading excerpts, usually contain valuable hints about the critical issues or problems in the subject. Many students ignore these hints, causing themselves needless waste of study time. You should discipline yourself to focus upon those questions and notes in conjunction with your analysis of the "principal" cases. In this way you aid the author's efforts in sharpening your perceptions about the significance of the materials.

## 2. Cases

Law school teaching materials primarily consist of appellate court decisions, not textbooks of "rules." Some students graduate without ever fully understanding why this case method is our primary teaching tool.<sup>5</sup> You should realize that, since today's "law" is the accumulation of court interpretations of prior disputes, applied to slightly different problems, these reprinted, edited decisions of the

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5. The goals, theories, and practices behind the case method have been extensively explored, such as in works cited in *supra* note 2. Of particular note, see June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011 (1989); Edmund M. Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379 (1952); Gene R. Shreve, *Two Cheers for the Case Method*, 30 N.Y.L. SCH. L. REV. 601 (1985).

past are important tools for understanding how the law has evolved. Cases also demonstrate the law's creative ability to adapt to changing times and problems.

We often read "old" cases because they are instructive of the legal process and present well-written classic examples of rule-fact-analysis. Such opinions are never easy to find within the late twentieth century judicial system. Now there are more appeals and less time for judges and their law clerks to rewrite, edit, and perfect their decisions. The older, more carefully drafted opinions can be excellent classroom study tools; they may supply the substance from which the student draws the issues, learns the rules, perceives the processes, and develops analytical skills. You should take your time with these cases. As you ponder their legal reasoning, practice challenging their rulings. Look for their weaknesses and logical fallacies. Be alert to the limits of their problem-solving usefulness. Think in terms of the next logical factual conflict and how the past rules may shape a new rule. This is what professors mean by the phrase "mind stretching."

### *3. Class Hours*

During class time, some part of the day's discussions, questions, answers, and lectures will try to pinpoint "the law" of the moment. But, in view of the other goals listed above, you must realize that it is impossible in the short time available for a three-credit-hour course, which meets approximately forty-five times (fifty minutes each) in one semester, to do more than highlight some parts of the course while deeply probing others. You must learn many of the legal principles outside of class. In short, class time is precious.

#### *B. An Ability to Recognize and Formulate Legal Issues*

A lawyer must be able to extract from a client's factual problem a roadmap of resolvable legal issues. Simply memorizing "rules" will not enable you to do this. For example, even if you remember case decisions in a selected topical area, these rarely provide "the" solution to a client's problem because few, if any, of these cases will ever exactly match your client's situation. Each new client represents an evolved problem from a society with ever-changing needs. A lawyer will be expected to have the mental discipline and intellectual ability to work through new problems and create the basis for resolving the dispute. To do this, you must be able to see a conflict's multifaceted

aspects, define key issues, find older cases to develop arguments designed to lead to a solution, and then be able to communicate those arguments to a resistant opposing attorney or a judge who is unfamiliar with your case law.

It is in the classroom that law schools are charged with developing the mental rigor by which today's law students are able to gain skills to formulate the legal resolutions for tomorrow's problems. In the classroom, the law professor typically will explore problems that are slightly different from the readings assigned for that day's class. Class may start with a reminder of the general content of the day's reading. The professor will then ask individual students questions that will be based upon a new hypothetical set of facts. Students must answer these posed questions by applying the case law precedents from the assignments. You should expect to find this process challenging and, at times, embarrassingly difficult.

Requiring that students spot and formulate issues and respond to questions posed by the professor in the Socratic method — the method used by Professor Kingsfield in *The Paper Chase*<sup>6</sup> — is the traditional approach. It is demanding, frustrating, but capable of being mastered.<sup>7</sup> Characterized by the sequential development of questions, each new response produced by this method leads to a new question or new legal issue. In this give-and-take fashion, the professor helps you explore many aspects of each case or problem presented. The discussions may move rapidly; you must stay alert to the shifts and flow of the questions. There will be moments for thinking, but little time for the writing of organized notes — that will occur after class. Learn quickly to appreciate how this Socratic dialogue, when conducted with skill, helps develop your methodologies and sensitivities for seeing beyond the obvious.

Legal issue recognition and analysis is stimulated by other classroom methods, which are constantly being analyzed, criticized,

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6. (Twentieth Century Fox 1973) (motion picture). This film depicts the dynamics in a Harvard Law School classroom tyrannically manipulated by an old-fashioned, cynical, weathered veteran of student-teacher conflicts. The reality about classroom techniques used at Harvard was the subject of a 1997 survey-study. It presents an interesting cross-section of diverse classroom teaching techniques which neutralizes the exaggerated image a non-law student might perceive from the film. See Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999).

7. See William Epstein, *The Classical Tradition of Dialectics and American Legal Education*, 31 J. LEGAL EDUC. 399 (1981).

and refined.<sup>8</sup> The lecture method of subject coverage, for example, may contain examples of formulated issues. You should try to identify the bases for such issues, grasp their salient features, and incorporate them into your thinking process. You may find ways of forming issues from the statements of law and policy presented. Try turning the statements into questions. Finally, read the cases after the lecture to locate explicit and implicit issue statements.

The adversary system of classroom case coverage, created by Professor Howard L. Oleck, is another proven method for developing one's ability to formulate relevant issues.<sup>9</sup> Without going into its mechanics, you should realize that to argue one side of a legal dispute, you must know the arguments to be presented by the other side. You must, therefore, have defined and explored all the issues and arguments suggested by a hypothetical. Understand that practice in identifying and formulating legal issues contributes to a keen mental analytic ability.

### C. Analytical Reasoning Skills

Reasoning skills, the hallmark of the legally developed mind, distinguish the legal professional from other professionals.<sup>10</sup> Unfortunately, these skills are difficult to acquire. Moreover, they are often neglected by college educators. It is this "difficulty" that dictates the emphasis of your first year when you are expected to acquire and demonstrate reasoning proficiency. (Is it any wonder that certain students become discouraged, feel let down by their prior education, or become embittered toward law school?)

Varying degrees of logic, intuition, and persuasiveness make up

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8. See Cynthia G. Hawkins-León, *The Socratic Method — Problem Method Dichotomy: The Debate over Teaching Method Continues*, 1998 B.Y.U. EDUC. & L.J. 1 (where the author revises the Socratic method into a problem method); Andrew J. Pirie, *Objectives in Legal Education: The Case for Systematic Instructional Design*, 37 J. LEGAL EDUC. 576 (1987) (presenting a broad exploration of educational responses to varied subject matter and pedagogical concerns); James Eagar, Comment, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1996–1997) (exploring learning objectives and methods).

9. See articles by Oleck cited in *supra* note 2; see also James J. Brown, *The Provocateur*, 27 STETSON L. REV. 345, 346–47 (1997) (Oleck's Adversary Method is presented by one who actually experienced its impact).

10. See Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57 (1992) (in which law school curriculum and classroom objectives are related to the need for teaching lawyering skills).

a person's reasoning skill. In the classroom, we attempt to enhance these abilities by focusing upon disputes — either from an assigned case or a hypothetical one. Once a student has formulated and logically organized the issues, cited relevant precedents for each, he or she is expected to apply the facts to rules in a soundly reasoned manner that answers each issue. We expect to hear a logical explanation about *why* these rules apply, and *why* the answers proposed are supported by the law. We may even expect a justification of the analysis in light of economic, social, and political considerations. Achieving this kind of reasoned applicability and justification of legal doctrine is one of the primary intellectual challenges of the law school classroom. It forms a portion of the interactive dialogue that provides your professor and classmates with a periodic review of your intellectual progress.

Unfortunately, because this kind of learning is difficult, classroom dialogue is at times frustrating both for students and for the professor. Nonetheless, you must recognize that reasoning skill can be learned and developed. It will require your constant attention. Moreover, you cannot expect to “master” this challenge in three years of law school; certainly don't expect to develop a high degree of reasoning skill through “crash” study. You can expect, however, that your skill will be slowly nurtured through diligent attention and participation in the classroom discussions, in study groups and in your legal writings.

Before entering class, properly prepare by studying, briefing, mentally organizing, and outlining the assigned materials. Analyze each case, in depth. This involves more than a simple reading; more than notes in the book's margins; it involves a written condensation of important elements. Legal issues must be stated; not only the court's issue but those raised from cited precedents in the decision. Rules, in summary form, need to be written to help with memorization and to be a basis for integrating key facts of your analysis. Each logical rule-fact analysis paragraph will answer one of your issues. In fact, this effort enables you to intellectually understand whether the decision is a sound one. Regardless of your conclusion, these elements should constitute your written case summaries or briefs.<sup>11</sup> On the weekend, distill these briefs into your course outlines. These efforts, routinely followed, will help prepare you to extract the most from class

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11. See Lake, *supra* note 1, at 1039–40 (discussing the myth surrounding case briefing).

dialogue and to prepare for examinations.

#### D. Effective Communication

Communicating one's knowledge, reasoning, and problem-solving skills is the means by which legal objectives are achieved. Thus, communicating effectively in legal English<sup>12</sup> must be your goal in every class. This is one reason why the lecture method is not used predominantly in the first year. During classes, you and your colleagues will have opportunities to orally express yourselves, and to demonstrate your analytic and communicative abilities.<sup>13</sup> These times provide a learning experience even for students who are not called on, as they should vicariously participate in the discussions. Your oral expressions should reflect your study preparation and should be responsive to the problems posed. Your statements will often be used as springboards for follow-up questions. The questioning may push you to the frontiers of your preparation and reasoning abilities. Some students feel a terrible sense of inadequacy and then stress when so challenged. But do not become disheartened to the point of missing law school's mind-developing reality. Each month you can improve so that there should come a time when in responding to each subsequently propounded question, your answers will build like a pyramid to a lawyer-like resolution of a problem.

Legal reasoning skills, to be effective, must be shaped into a format that can best be reduced to structural logic. In such a structural context, personal opinions have little value. (Your historical knowledge regarding policies that underlie various legal rules and principles, on the other hand, may be relevant in class when such matters are being discussed.) You will be expected to integrate, through your issues, the applicable rules of law with the facts of the problem to reach your conclusion. Prior "reasoned" decisions provide cumulative analyses that are preferable to personal opinions and unsupported conclusions.

The reasoning processes that you must learn are tested during

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12. See *id.* at 1020–21 (explaining why legal English is unlike the English used in other contexts).

13. See John M. Rogers, *Class Participation: Random Calling and Anonymous Grading*, 47 J. LEGAL EDUC. 73 (1997) (presenting the learning goals of active participation in the ongoing classroom dialogue). For a humorous analysis of a classroom's most talkative students, see Lake, *supra* note 1, at 1042–43.

law school classes. The classroom is one place where you “practice” your reasoned oral communication.<sup>14</sup> Consider the responses to your reasoning as a primary barometer for measuring your progress. Deficiencies should become apparent in the professor's substantive questioning or reply. To maximize the learning potential of the classroom experience, you must prepare for each class to the best of your ability. Then, in class, welcome being called upon, volunteering whenever possible; shrugging off group pressure not to follow a minimal norm.

#### E. Responsibility for Self-Learning

In a quality legal educational environment, you will be treated as an adult; one who fully recognizes the duty and responsibility for your own education.<sup>15</sup> No longer can you expect to be spoon-fed. No longer can you expect to be directed and guided. No longer should you expect to blame others for your weaknesses or failures. Adults aspiring to achieve professional status must quickly realize that a classroom guides and challenges, quite actively, in its give-and-take. The real learning occurs during your private quests for answers to confusing questions and conflicts. You learn best when you have to work for it. If you don't achieve, you have no one to blame but yourself.

### III. ROLE OF THE STUDENT

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14. Although I urge you to read Professor Hiller's essay, *How Not to Write Answers to Law School Examinations*, 29 STETSON L. REV. 1181 (2000), a few comments are appropriate here. Writing a final exam will require your best communicative skills. Normally, you will be expected to formulate all of the factually relevant issues in each problem in a manner similar to the way it was done in class. As to each issue, you will be expected to respond with the appropriate rule or rules, integrate the relevant facts, and expound in a logical, analytic fashion an argument leading to a sound conclusion. Since law school courses unlike college courses lack periodic testing, it is suggested that you adopt the regimen of practice test writing under timed conditions. Find questions in casebooks and student-edition treatises. Share your answers with your study group. Rewrite based on their suggestions. Practice writing plus periodic oral responses in class will help you develop the communicative skills needed for success in law school.

15. Unlike college, most law schools do not provide counselors to listen to your real or imagined problems. A generally insufficient number of deans struggle to coordinate the demanding activities of too many students, so they cannot devote much attention to non-adult behavior or difficulties of transition caused by student inexperience. College graduate law students are expected to enter with and build their personal self-reliance.

To understand your role in the classroom, take note of your colleagues; they are among the most fascinating and mentally challenging graduates of America's colleges. These students significantly help shape your experience. You should become familiar with their personalities and character traits; note especially those who exhibit a competitive drive. These students will begin to play a part in your intellectual development, especially as they rise to become the pace setters. These people, talented and highly motivated, will perform at a high level. They will cause you to try harder, to do as well or to top them.

“Self-motivated!” “Self-starting!” These words go a long way in describing better students. They are self-directed, able to define a goal, and able to follow its course.<sup>16</sup> Study habits of self-directed students typically were developed before or during college. Such students need not be told that an overwhelming portion of one's time should be devoted to study and that a personal self-discipline has to be maintained.<sup>17</sup> That discipline will be necessary to resist the social weekend syndrome (a hang-over from college) to find time to grasp the importance of the confusing materials assigned for study. Time pressures and the casebook materials may not be totally mastered in the first year, even by the best students. At least these individuals know that preparation of briefs, outlines, and review materials in advance of class leads to eventual success. They will know, also, that their study methods will have to be varied to fit the subject matter and a professor's classroom method.

You should not be surprised to see such individuals rise to the challenge of law school, develop new study strengths, and exceed most other students in sheer effort and consequent good results. Even if good results initially elude such a person, a rethinking of efforts and a “mid-course correction” typically occur. For example, lecture notes may need reorganizing, a better supplemental hornbook found, and

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16. These qualities are most commonly seen in students who are not afraid to follow their own intellect for study and analysis, regardless of insufficient instructions or the availability of someone else's prepared outlines. Usually a student who entered law school without peer or parental pressures will not wait for bad grades to be motivated into exerting maximum personal efforts. It is this self-motivated, self-taught individual who maintains self-confidence regardless of the adversity inherent in a difficult legal subject.

17. We try to teach you to be self-sufficient, to be able to solve dilemmas on your own by self-educating when necessary. Practice is like that. Your clients' problems will not come to you with a neat set of instructions.

cases reanalyzed with greater depth. Nor should you be surprised to hear the lament of those who do not achieve satisfactory results. This is the “heat” of the law school kitchen, which sharpens some individuals more than others. You have the opportunity at the commencement of law school to excel. Go for it!

It should be evident by now that there is a role that legal education expects each student to fulfill: one based upon self-motivating traits. You will be expected to read and fully analyze assigned cases, expected, in most classes, to absorb the treatise or Restatement of Law chapter applicable to the assigned topic, and expected to study whatever is necessary for you to understand the classroom discussions. Your role will entail an absorption of the fundamentals on your own that will then enable you to benefit from the fast-paced, mind-stretching efforts of the good classroom professor. In this process, the successful law student will learn to pace his efforts and budget his time efficiently.

One's intellectual curiosity and natural inquisitiveness are also important for success. If the undergraduate college has done its job effectively, you will have developed these traits. The demands of a lawyer's life are varied, and little that is actually studied in school sufficiently covers the problems that one is hired to resolve.<sup>18</sup> Therefore, the quality of one's perceptiveness and curiosity contribute to success in practice.

But even more is involved. A lawyer must always be vigilant to protect liberty, human values, morals, ethics, and individual rights. Most personal dilemmas involve these matters. Consequently, notions of morality, ethics, philosophy, and history will be discussed in the law school classroom.

Fulfilling this classroom role is up to you. Develop a positive, can-do attitude. Recognize the challenge and set your goals. One trait in particular is crucial for success — the trait of self-competitiveness. Develop your awareness and ability to be self-improving.<sup>19</sup> Strive to be

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18. As a professor and lawyer, I must be satisfied that, although you never studied a subject, such as securities law, you would not be stymied by a problem involving it. I want to be confident that you possess the mental acuity to ask the right legal questions, to find the appropriate texts, and to analyze your problem to the best answer for your client.

19. Improvement can and will occur if you pursue the following method of study and preparation: (1) Don't just read the cases and treatises — read for the purpose of dissecting, challenging, and restructuring the subject into forms you can understand and

as good as you can be.

#### IV. ROLE OF THE PROFESSOR<sup>20</sup>

If most students acted in the ideally described ways above, enormous strides could be made in every law school classroom. Subjects would be analyzed to a depth sufficient to satisfy the most demanding academician. Indeed, when law school teaching techniques succeed, they work beautifully. Unfortunately, there are forces at play that prevent these described methods from achieving their optimum effect.

These factors include, first, the way a student reacts to the startling difference between college and law school — the student may not recognize that law school is not an extension of his preceding educational experiences — and second, the lack of uniformity among professors, either in teaching methods or in classroom expectations. Either may result in student confusion that will stymie the learning process. Moreover, a student's perception of a professor's attitude toward him or her — for example, as just an unknowing neophyte or

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discuss; (2) brief the cases fully — leave open spaces into which you can write both sides of issues and analyses during class discussions; (3) prepare subject outlines (this is easier in a study group); (4) answer the casebook questions found after the case readings; (5) talk about the ambiguities in the above materials — seek to sharpen your understanding, especially about that which is not definitively settled; and (6) mentally create real life examples to which your legal knowledge can be applied.

You will understand the professor's comments and questions if you have prepared in these suggested ways because he or she begins class discussions with the explicit or implicit assumption that you have defined the terms, sorted the facts, created issues, and developed an overview of the specific topic. Class-time questions and comments will, while ignoring the obvious, dwell upon only the critical facets, the complex relationships, and the subtle difficulties. If you have not prepared before entering class, you should not expect to understand much that occurs. You will not get the maximum mental development from that hour.

Finally, I suggest that improvement in one's problem-solving and reasoning abilities is much like pyramid building. You must continually extend your powers to move up to the next plateau.

20. The professor's role in developing the strengths discussed in this Essay were expertly reaffirmed in the *In Memoriam: A Tribute to Professor Calvin Arnold Kuenzel*, 28 STETSON L. REV. 965 (1999). Of particular note, see Bruce Jacob, *Calvin A. Kuenzel, A Teacher's Teacher and Stetson Legend*, *id.* at 975; William L. Prosser, *Lighthouse No Good [Reprint]*, *id.* at 1017; Michael I. Swygert, *Calvin Arnold Kuenzel: Master Teacher*, *id.* at 1001.

an indistinguishable face in a large room — may create anguish in that student. This may develop into love-hate reactions. Another feeling, of being let down by one's high school and college education for not providing the tools to cope with these new circumstances, might arise. The student may turn these naturally growing anxieties against the professor and the school. Unfortunately, such reactions work against the ideal functioning of the teaching techniques previously described.<sup>21</sup>

There are other elements at work as well. Even in a post-graduate institution there is no uniform level of excellence in the books, the teachers, or the courses. But feel assured that the more you study human nature, the more you come to recognize that such diversity in quality is a fact of life in and out of the school. Be assured, moreover, that excellence can be achieved in spite of the human and institutional imperfections.

A good professor will recognize these forces in operation and will actively adopt techniques and practices to try to overcome them and to “reach” you. For example, some professors will occasionally resort to story telling to make their points. Their hypothetical fact patterns are often memorable, in part because they are amusing. You will soon realize that you are the object of unsettling influences that are inherent in a law professor's function of guiding and nurturing your development. To achieve this function the professor must engage in simultaneous roles.

One role is to turn questions back to you without an answer — only another question — a question related to the original question. A question about an aspect you never thought about. An answer to which you are expected to find and analyze. Because self-reliance is the hallmark of the legally trained mind, the professor adopts roles and uses methods to encourage you to develop such a quality. This means that you should not expect the professor to spend class time on obvious materials you can learn for yourself. Many professors will

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21. Stress and dysfunctional emotional reactions to law school are matters of concern to our profession. See Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524 (1998) (exploring the causes and possible solutions to student emotional distress during law school); Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLIAMETTE L. REV. 593 (1996) (reporting findings on the major concerns of students. Time pressures rated high on their responses.); James B. Taylor, *Law School Stress and the “Déformation Professionnelle,”* 27 J. LEGAL EDUC. 251 (1975).

rarely answer your questions completely because the “encyclopedia” role, one closer to the college model, is not generally acceptable. What is acceptable is a conduct that causes you to explore your own thinking. We do this through questions that are not simple, obvious, or readily answerable in class. Many of us want you to go back to unravel the puzzle of analysis on your own. The more you are compelled to think through a reasoned answer, the better your “in class” responses will become.

Coaching is another role of the professor. Through the classroom methods noted earlier, you are given multiple chances to practice your analytical skills. It is the professor-coach who starts you on the basics of issue formulation and assists your logical steps toward more sophisticated, multiple-issue, rule-fact analysis. Criticism will be given when you fall below a benchmark of acceptable performance. The coach measures your performances, not as a friend who might temper her remarks, but candidly as a professional who likely will wish to maintain a deliberate distance between self and the students. The professor-coach realizes through experience that this method is the only way to cause most students to try harder to reach higher levels of performance.

The professor must play an additional role — that of a piano tuner — adjusting the levels of classroom tension and relaxation. Just the right amount helps students to be receptive by enhancing their concentration. Too much or too little of these factors, however, adversely affects the learning environment. Classroom dynamics may differ greatly all semester, as a professor is continually adjusting between competing factors. For example, the tension level must be adjusted when informing a student of an inadequate response. Given in the right manner — right for the moment, for that student, and for that subject — the respondent will not become discouraged but will try to do better on a subsequent occasion. A mature professor recognizes that being criticized in class will be a new experience for most.

On another level, “common wisdom” passed from “experienced” second- and third-year students may have to be combatted.<sup>22</sup> Upperclass “wisdom,” in many cases, is largely untrue because it is based upon misunderstandings about legal education's purposes and

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22. See Lake, *supra* note 1, at 1017 (discussing the myth that those who are “upperclassmen” know the truths about law school).

methods. A good law teacher must counteract such dysfunctional educational “wisdom” while recognizing, in so doing in the classroom, that he or she may raise all students' anxiety levels.

In short, the classroom professor must spot when a slightly higher level of tension is needed as well as when a lower level is advisable to aid the learning process. The professor attempts these adjustments depending on the circumstances, and through his or her understanding of human nature. Thus, he or she will demand that a student be better prepared for class, require the student to go back and reanalyze a missed issue, or praise a student for an excellent presentation.

### V. *IMPACT AND CONSEQUENCES*

One possible reaction of your exposure to the law school classroom, or at least to certain professors, and one experienced by many students in schools all over the country, is a combined sense of insecurity, apprehension, and inadequacy. The experience may be perceived as a frontal assault — an unexpected one — upon the student's sense of self-worth. For most, law school is a new and frustrating experience. And, since you receive little feedback as you progress from week to week, uneasiness, anxiety, and stress will develop. Expect it.<sup>23</sup> Moreover, a natural human reaction to this anguishing experience is a feeling of total inadequacy.<sup>24</sup> You might even ask yourself from time to time whether you made the right choice in choosing law over business or education. You should expect to feel a dislike for some aspects of legal education. Fortunately, for most students, these feelings rise and fall several times, eventually to be replaced by a psychology of recognizing and adapting to the need for improving their knowledge and skills. About the time job-searching consumes one's efforts, you will understand this transformation.

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23. A word of advice about your colleagues' expectations: Many will not realize or appreciate what is going on around them; they may soon criticize what they do not understand. Don't let that faze you; help them if you can after you have brought your own human reactions under control. Your self-discipline will put the love-hate reactions into proper perspective, thereby enabling you to concentrate your mental stamina on learning.

24. I suggest the following as means for minimizing these reactions: Be prepared to accept the need to give up most nights and weekends to intense study; be prepared for the sobering reality that grade inflation has not occurred in law school; be prepared for the struggle to find answers to the professors' questions; and realize now that no one can adequately forewarn you about these realities.

In summary, the student's and professor's respective classroom roles contain conflicting elements. At times they may be adversarial in fact and in practice. If the professor's goals are directed toward development of the students' analytic and communicative skills, a level of resistance will arise if the students have not developed the traits of self-reliance and competitiveness. To overstate the point in order to make it, the professor heads down the road of learning for the sake of learning, while the student's attention is riveted upon finding billboards that, hopefully, will announce testing tips and advice on obtaining high grades.<sup>25</sup>

Regardless, don't become disheartened. Instead, realize the opportunity you have to learn. The classroom is a place to be used to your advantage,<sup>26</sup> to develop critical lawyering skills,<sup>27</sup> and to explore the intellectual riches of the law.

Let the law school classroom experience stretch your mind. You can and will grow within it. The more practice you get in solving problems, the more confident you will become in your law school undertakings. You will have learned to appreciate the law's uncertainties, to observe its shifting trends, and to grasp opportunities for helping clients and for setting new precedents. Thus, in the transition from new law student to professional lawyer, a spark of interest will have been kindled — an interest in always seeking new knowledge, in improving skills, and studying human nature. Such interests will elevate your lifelong experiences. For to pursue professional excellence

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25. See Lake, *supra* note 1, at 1030–32 (discussing the commonly-held myths about grades).

26. You should train yourself to recognize the clues about issue formulation and logical analysis which can be discovered within the classroom give-and-take. Learn to be prepared so that you might be able to respond to the not-so-obvious question. Learn to think ahead to alert yourself to weaknesses or fallacies in cases and policies — they are fertile areas for intellectual discussion. Your knowledge and advance preparation will make you ready for attaining excellence.

27. You should maintain a reasonable balance in your efforts at study, physical exercise, and social activities. Economize your time. Learn how to increase your reading speed; distill into case digests only that which is critical; share outlines with your study group and friends. Make time for sports or exercise, movies and parties. Your attitude and psychological outlook will benefit; you will benefit.

You should realize that there are going to be marked differences in the abilities of your class colleagues. You and your classmates will begin to excel in certain ways. Those verbally skilled, who respond easily in class, may not do as well in written expression. You should identify your strengths, capitalize on them, and then work at eliminating your weaknesses. Use the classroom for finding the way toward your own achievements.

— both as you study and later practice law — is to strive continually for self-improvement.

I have tried to share with you a little of the truth and the wonder of the law school classroom experience, an experience summed up by the words of an eighteenth century British schoolmaster, as quoted by Dean Monrad G. Paulsen, in an address delivered to the law faculty of the University of Virginia:

At school you are not engaged so much in acquiring knowledge as in making mental efforts under criticism. You go to a great school not so much for knowledge as for arts or habits; for the art of expression, for the art of entering quickly into another person's thoughts; for the art of assuming at a moment's notice a new intellectual position, for the habit of submitting to censure and refutation, for the art of indicating assent or dissent in graduated terms, for the habit of regarding minute points of accuracy, for the art of working out what is possible in a given time, for taste, for discrimination, for mental courage and mental soberness.<sup>28</sup>

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28. SYLLABUS, Sept. 1982, at 2, col. 3.