LAW SCHOOL SURVIVAL ISSUE -- READ NOW!!!

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Voir Dire

THE LAW SCHOOL PROCESS: 1Ls (and bar takers) need to realize that there is more to it than memorization. Much more.

By Professor Jeff Fleming

To achieve success in law school, one must understand the process of the law school experience. Law school requires more than just the simple task of memorizing the legal rules that shape our society. If law school merely required the ability to memorize rules of law, any first year undergraduate could do it. Law students, particularly those in their first year, must understand that the real challenge of law school comes from the ability to apply those rules to a factual situation that puts the elements of the rules at issue.

The ability to analyze is the pure essence of legal training. It is often referred to as "the ability to think like a lawyer." Analysis is the professional skill that must be developed and nurtured from the first day of law school. Those who devote the majority of their study time to memorizing rules, but spend little time developing the skill of analysis do not fully understand the process of law school.

Learning the rules of law is the first step in law school. This can be achieved in many ways. Casebooks, hornbooks, legal outlines and other sources are readily available for this purpose. Most law students will utilize a combination of these sources to learn the rules of law. However, to truly grasp the meaning of the law requires a thorough understanding of the second step in the legal process; the application of the rules. Without understanding the application of the rules, the ability to recite them is just a hollow gesture.

The ability to analyze can be most effectively developed through the casebook method. The casebook method exposes students to the controversies that confront our courts on a daily basis. These are the controversies that demand careful consideration and resolution through the application of the legal rules.

Cases contain not only the rules of law. More importantly, they contain the facts of the controversy and the rationale that was instrumental in guiding the court to its ultimate decision. The rationale of the case provides the reasons that the court applied the rules to the facts and any public policy considerations raised in the case. Understanding the rationale of the case is the essence of case. The holding is also important because it is the answer to the issue that the court considered.

Analyzing cases requires time, patience and diligence. First, the facts of the case must be read and understood. Students must be able to comprehend the facts. In doing so, they can determine which case facts are relevant and which are irrelevant. Relevant facts are those that are important to the

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19 year-old passes the California bar exam!

[Publisher's Note: Micah Stanley began law school when he was only 14 years-old. He attended a correspondence law school, and passed the nation's toughest bar exam, California's, when he was only 19 years-old.

To me, that fact that Micah was only 19 years-old when he passed is not all that amazing, as I have always maintained that someone with an analytical thought process and the ability to transcribe their process could pass the California bar exam, whether they were 19 or 99. What I do find amazing is this: how many 19 year-olds have the dedication necessary to follow through on a goal that, to many, is virtually insurmountable?

Anyone in law school or anyone preparing for the bar exam should find Micah's story encouraging. By the way, there are two implied messages in this interview: 1) a keen desire, coupled with unwavering dedication and a genuine singleness of purpose, can yield surprising results; 2) do not begin studying for the bar exam 6-8 weeks beforehand.]

Micah Stanley passed the CA Bar Exam at age 19.

Law Student Journal (LSJ): You passed the California bar exam at age 19! How does that feel?

Micah Stanley (MS): Absolutely fantastic! The bar exam was a major stepping stone – something I had been thinking about and working toward for over four years. After finishing almost all of my law school studies, which I had done mostly through distance in Minnesota, I went to California and studied there for four months before the exam. Those last four months were the toughest. The exam itself was almost anti-climactic – it was very structured. During each part of the exam, I tried not to think about the past or future; I only focused on the question that was in front of me. There were some surprises that threatened to throw me off balance, but I was prepared.

After the exam, it took a few hours for me to realize that I had done everything exactly right – just as I had been told, just as I had planned. I knew that I had done the best I could. Within two weeks, I was back in Minnesota and working on my book. Almost three months later, when the exam results were two weeks away, I couldn't focus on work. I knew, since before I started law school, that I would take the bar exam as many times as necessary to pass, so the pressure of having the next six or seven months of my life hanging in the balance made it hard to think about anything else.

When I finally accessed the results online, I was alone in my room – I didn't want my family looking over my shoulder. I said a quick prayer, spent over 10 minutes waiting for the information to be posted, and at last learned I had passed. That was it. I shuddered, thanked God, let it sink in for a few seconds, double-checked the website to be sure I wasn't mistaken, and then told my family. My mom immediately called my dad, who was on a flight home. She left a message. I was so thrilled; I started calling lots of people to let them hear the good news! When my dad didn't call after several minutes, I called him. He had gotten the message from my mom – and was in tears. He was so overwhelmed with joy, he could barely talk.

The bar exam was my goal. Now, it's finished. The best part of all this is that I can move on with my life and pursue my future!

LSJ: What was the motivation

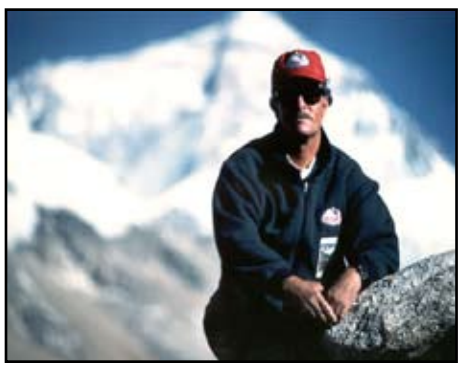
Please see 19 Year, page 9

This Issue:

Paul Pfau talks about the bar's new subject matter and why candidates who know the law, still fail the California bar exam.

Law Student Journal (LSJ): *First, a little bit about the new subject matter having been added. Many students are saying "Oh, no! Three new subjects!" Is that really the case? Three new, full subjects?*

Paul Pfau: Well, the three new subjects that were just added are not entirely three full subjects. Part of the subject matter enhances some of the subjects that are presently on the bar exam. For Evidence, you now also need to know California Evidence. There are many similarities between the two. But there are some areas that are a little different. For example, in the area of privileges, there are typically many more areas in California than as is generally the case under the Federal Rules of Evidence (FRE). And there are some other differences. But it isn't an overly tremendous burden in order to learn the differences



involving the new California subject matter.

With respect to Civil Procedure, like Evidence, you need to now know the federal rules and the new California rules. Once again, there are many similarities. For example, you need to know subject matter jurisdiction, personal jurisdiction, and so forth. But those rules will vary from the federal to the California jurisdiction. The same overview, however, in terms of how Civil Procedure is organized, is generally the same. If you think about Civil Procedure as a subject that impacts the prosecution of a civil case, beginning with what court to bring the case to, jurisdiction, what law to apply, choice of law, pretrial, trial, appellate, and final judgment issues, you can organize both the federal rules and California rules around those basic themes. Then, just know the variations on those themes as they relate to both the federal and California rules.

The only subject where new information, or where completely new subject matter is required, is the area of Business Associations, where, now, one needs not only to know Corporations, but also Agency

Please see STILL FAIL, page 9

CASE BRIEFING & NOTE TAKING: 2-4 Line Case Briefing (and no more than 1/2 page of notes per class hour)

By Wentworth Miller

If you are a 1L (a first year law student), you are likely reading this during a break from briefing cases. Across America, over 40,000 new law students at over 200 law schools (!!) are busy writing or typing the facts (synopsis thereof), procedure, issue(s), rule(s), holding(s), and rationale (policy, custom, reasoning underpinning the law and holding) for each case assigned for upcoming classes.

You were instructed to do so by your professors. Possibly you were shown how. Some few professors even require initially that briefs be turned in. They want to make sure that everyone is on the same page in terms of laying a foundation for that dreaded first year rite of passage -- the Socratic give and take that many law professors engage in. You know, that's where the professor introduces discussion of a case by calling on someone to provide the information contained in a brief. Some professors require that the victim stand up for this recitation (!!).

It is supposed that by briefing law cases and discussing them in class students will learn to be lawyers. It has been so for over 75 years, since the "case method" of instruction popularized by Dean Christopher Langdell of Harvard Law School supplanted more traditional lecture approaches.

Problem is, it doesn't work. If the objective of law schools is to train lawyers (what else could or should it be?!), law schools across America -- virtually all of them! -- largely fail in their mission. And conventional case briefing is a primary culprit.

How do I know this? Where do I come off making such a sweeping condemnation of one of America's great institutions? As we say in the law, "Where's the evidence?"

Well, first off, briefing cases as described above is what my classmates and I did thirty years ago at Yale Law School. Every evening, at least initially in my law school career, I endeavored to pull the required briefing information from each case and set it down on paper in preparation for class. However, as the professor quickly moved into "what if" conjecturing about the case, positing new fact scenarios, etc., my brief didn't seem to be of much use in following the discussion. I became confused, then bored. But at least I had my brief. I was "prepared." I took copious notes -- about three pages per class hour (perhaps four pages today if using a laptop) --, and I supposed I would make sense of it all later. Which, of course, I never did.

Like most law students, I remained confused and "behind the curve" as the term progressed. I amassed a mountain of notes in each class that proved largely useless when it was time to prepare for all-important final exams. (I had the Hobson's choice most law student's face of -- finally -- nailing down so-called "black letter" legal principles, or wading through all those cold notes.)

I ultimately learned to be and think "as a lawyer," not by dint of classes conducted by my esteemed professors, but as a result of experience in mock trial and moot court, as a result of experience in summer and legal clerkships, and mostly as a result of experience actually practicing law. (The same way Abraham Lincoln and Clarence Darrow, both skilled lawyers, learned their trade!)

Ask any lawyer. He/she will tell you he learned to be a lawyer not in law school, but by practicing law. It may even be that law school instruction is something to be overcome if success is to be had on a bar exam and in legal practice.

I also know all this because I have been intimately involved with well over 100,000 law students from virtually all the 200+ law schools during 25 years conducting Wentworth Miller's Legal Essay Exam Writing System ("LEEWS"). I've instructed not only a good percentage of the nation's lawyers, but many current law professors. (Regrettably, owing to peer pressure and convenience, most of these professor-protégés seem to have fallen into the lockstep routine of advocating conventional case briefing and blah, blahing in front of confused and bored classes.)

Like most law students, and as I did, you will soon jettison the elaborate, page-long briefing regime. It's simply too much work to keep up with. What you'll do is "book brief." That's where facts are highlighted in one color (yellow?), issue(s) in another (green?), holding(s) in another, and rule(s) in yet another color. In addition notes are scribbled in the margins. Were one to suspend, Spiderman like, from the ceiling of a first year law classroom four weeks into term, the color pattern below would be dazzling!

Unfortunately, while more manageable, book briefing is no more effective in preparing students for class, for exams, or for practicing law.

So what should you be doing? In a nutshell, briefing cases in 2-4 lines, taking no more than a half page of notes per class hour, doing a lot more THINKING about the law and its application, and a whole lot less busywork scribbling.

My program, live in 25 cities or equally effective audio CD version, is comprehensive -- an A to Z on how to prepare for and write the rare law school "A" exam. You can read about us, get a lot of useful free advice, check out our nationwide schedule of live, one-day programs for this fall at our website -- www.leews.com. However, what I'd like to focus on here is the 2-4 line case brief (and as a corollary, 1/2 page of notes per class hour). This is merely a byproduct of our instruction, kind of a bonus. But no matter. Most students consider it a major benefit.

Several years ago I was invited to instruct the exam writing segment of one of those one-week, pre-law simulations of law school that costs over $1,000 to attend. I was flattered and requested they send me their material to review. I quickly decided that what they offered wasn't anything new. Indeed, while helpful, their entire program was rendered largely obsolete by what I had to offer. As I said to the principal of this outfit, "If I give my program at the end of the week, they'll wonder why they had to bother with what you instructed the previous four days."

What particularly leapt out at me was the elaborate, page-long case briefing scheme they planned to teach students. It was the same old same old. Nothing seems to change in the hidebound world of law school instruction.

Of course, what I've been saying should strike you as controversial. In fact it's heresy. Nearly every law professor wants you to brief cases in preparation for class. Nearly every one, should he or she deign to offer instruction on the subject, will advise a version of the briefing described above. So if you show a professor this article, that professor will likely dismiss what I have to say out of hand.

This is where a little faith is required. Naturally you want to repose your confi-

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San Diego
- Saturday, September 15, 2007 : Noon - 6:00 pm
- Sunday, September 16, 2007 : Noon - 6:00 pm
- All sessions will be given **LIVE** at California Western School of Law, 350 Cedar Street, San Diego. Room 2B.

Orange County #1
- Saturday, September 29, 2007 : 9:00 am - 4:00 pm
- Sunday, September 30, 2007 : 9:00 am - 4:00 pm
- All sessions will be given **LIVE** at Hope International University, 2500 E. Nutwood Avenue at Commonwealth, Fullerton (across from California State University, Fullerton). Second Floor, Room 205.

Los Angeles
- Saturday, October 6, 2007 : 9:00 am-4:00 pm
- Sunday, October 7, 2007 : 9:00 am-4:00 pm
- All sessions will be given **LIVE** at the Crowne Plaza Hotel, Los Angeles International Airport, 5985 Century Boulevard, Los Angeles. Salon A.

Ventura
- Saturday, October 13, 2007 : Noon - 6:00 pm
- Sunday, October 14, 2007 : Noon - 6:00 pm
- All sessions will be given at Ventura College of Law, 4475 Market Street, Ventura. Room 9. **DVD PRESENTATION.**

Orange County #2
- Saturday, October 20, 2007 : Noon - 6:00 pm
- Sunday, October 21, 2007 : Noon - 6:00 pm
- All sessions will be given **LIVE** (*Lecturer*: Attorney John Couch) at Hope International University, 2500 E. Nutwood Avenue at Titan, Fullerton (across from California State University, Fullerton). Room 215A.

"On a cost-benefit basis, Jeff Fleming's examsmanship course is the best one available. If you follow through, especially with practice exams and use his method, you have a high a high probability of ending up in the top end of the fixed curve that virtually all law schools use."

~Atticus Falcon,
author of *Planet Law School*, December 2006

San Francisco
- Saturday, October 20, 2007 : 9:00 am - 4:00 pm
- Sunday, October 21, 2007 : 9:00 am - 4:00 pm
- All sessions will be given **LIVE** (*Lecturer*: Attorney Mara Feiger and Attorney Guy Chism) at the Embassy Suites Hotel, 150 Anza Blvd, Burlingame. Marin Room.

Riverside
- Saturday, November 3, 2007 : Noon - 6:00 pm
- Sunday, November 4, 2007 : Noon - 6:00 pm
- All sessions will be given at California Southern School of Law, 3775 Elizabeth Street, Riverside. Room 2. **DVD PRESENTATION.**

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Jeff A. Fleming

Attorney at Law ✦ Former Law Professor

Jeff Fleming is a licensed California attorney and former law professor with 25 years of teaching experience. He has been a legal education consultant to various California law schools and has devoted his legal career to developing legal preparatory seminars designed to aid law students, Baby Bar and Bar candidates to improve their knowledge of the substantive law and develop their exam writing skills. He participated in the calibration session conducted by the California Bar Examiners when grading the California Bar Examination, which has given him unique insight into the particular problems that most law students face.

Mr. Fleming has lectured for pre-law prep seminars and is the creator of the Exam Solution,® a CD series that aids law students with their exam preparation. His Legal Examination Writing Workshop is the longest running Workshop of its kind in California. His Baby Bar Review seminar, founded in 1981, is considered to be the most successful on the market. In addition, he has founded and lectured for his Long Term, Short Term, and Ultimate Bar Review, and is proficient in fourteen areas of substantive law. He is the publisher of the Performance Exam Solution and the two-volume series of Multistate Examination Workbooks. Mr. Fleming has authored the four-book series of Examination Writing Workbooks. All of these publications are available in legal bookstores throughout the U.S.

Mr. Fleming has determined that the major problem for most law students is weak analytical skills. Most students can learn the law, but the application of law is their stumbling block under exam conditions. Mr. Fleming has structured all of his programs to include both substantive law and legal analysis training. This provides the combination necessary to develop a better prepared and more skillful law student, Baby Bar and Bar candidate. His courses and written materials have made it possible for thousands of law students to improve their grades and ultimately pass the California Baby Bar Examination and California Bar Examination.

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THE ART & SCIENCE OF EXAM WRITING: An Interview with Wentworth Miller, LEEWS founder, (& father of Golden Globe nominee, Wentworth Miller, star of the FOX series, Prison Break)

Law Student Journal (LSJ): *Mr. Miller, as the founder of LEEWS, one of the nation's best law school exam-writing courses, we'd like to ask you a few questions about bar exam writing vs. law school exam writing. First, in general, is there a significant difference between the two? If so, what are the differences? If not, what are the similarities?*

Wentworth Miller (WM): I tell my students that lawyers are nitpicky, more nitpicky than law professors. I want them to learn to be nitpicky, which will amuse their professors. So forgive me, as a onetime practicing lawyer, if I nitpick as a preface to your queries.

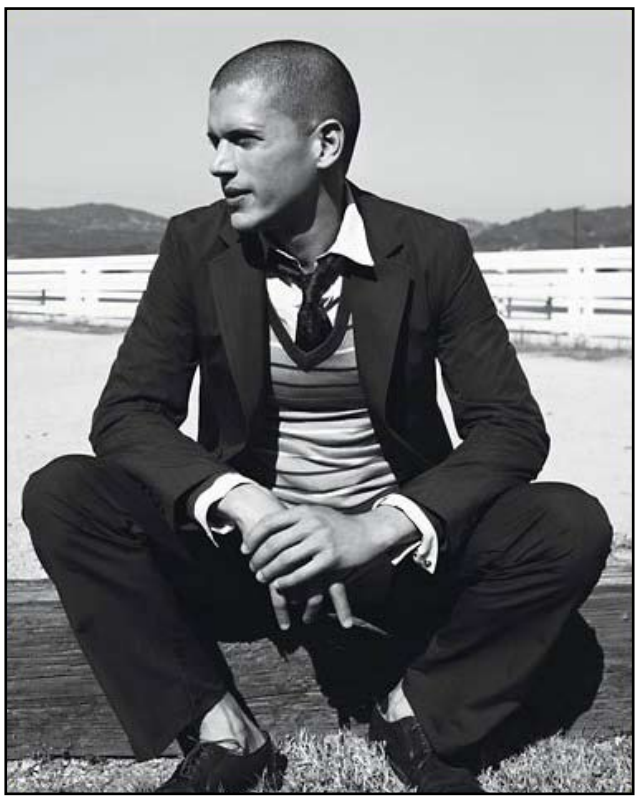
Frankly, I never think of LEEWS as "one of the best." As far as I'm concerned, and most of the well over 100,000 law students I've instructed over the years, I suspect, and Planet Law School, there's LEEWS, and then there's the same 'ol, same 'ol IRAC-plus-helpful-hints that everyone else instructs, that's been out there for decades and, while helpful given the ignorance an entering law student brings to the problem of law exam writing and preparation, has never assisted more than handful write "A" exams.

Respecting writing bar hypothetical-type essays versus law school, overall they are similar exercises. There are fact patterns -- so-called "hypotheticals," as they are made-up or imaginary scenarios. The examinee is expected to know the law necessary to resolve issues -- legal problems requiring resolution. Then apply that law in an analytic process to predict a legal outcome.

However, there are important differences.

On the bar, the examinee must draw from many legal areas of knowledge, generally more than twenty -- corporations law, bankruptcy, wills and estates, property, domestic relations, etc. On a law school exam, of course, only the subject matter of the single course will be tested.

Very, very rarely, two chummy law professors who instruct the same section of students in first year at a given school might give a joint exam. Say torts/contracts. Then a student would have to draw from at two areas of knowledge. But that is highly unusual.



Wentworth Miller's son is a TV star!

Bar exam fact patterns often are pastiches of facts lifted from leading cases that introduce recent developments in law somewhat unique to the state. Law school hypos are more the product of a professor's imagination, although often they have their basis in actual events. Thus, we've had Lewinsky and Enron hypotheticals.

LSJ: *Those must have been fun!*

WM: Hunh! I don't think law exams are fun for most students, however savory the fact pattern. But the exams ARE a game. And games can be fun, if you know the rules and have the skills to play well.

LSJ: *Interesting.*

WM: The only thing more problematic about a bar exam essay is that you may be required to bring several areas of legal knowledge to bear on a single, usually lengthy fact pattern, versus just one on the entire law school exam.

For example, on a bar exam you might have to draw from agency, property, contracts, and possibly some other legal discipline while addressing a single exercise. However, the separate legal areas will typically be separated out in distinct numbered questions at the end, and will appear in separate paragraphs in the hypothetical. So really it's not that big a problem. It's just different areas of legal knowledge tested separately under the tent of one fact pattern.

Beyond this there are several differences between bar and law school essay exercises. In every aspect they redound to the benefit of the examinee. The bar essay is a much more predictable exercise.

First, bar examiners are serious. No attempts at familiarity with the examinee. None of the ha, ha character names in the hypos, like "Imagine Miss Manners had occasion to tell Mr. Rude ..." You're not going to get quirky silly questions like, "Imagine you're a giraffe who just learned tort law." Bar examiners understand that passing the bar is serious business and treat the examinee accordingly.

LSJ: *Yes, I can remember many an essay with funny names. Many a quirky instruction.*

WM: Not that taking a law school exam isn't also serious business. But law professors often adopt a posture of familiarity. Probably to mitigate the circumstance that the exam is befuddling to their students.

A bar exercise is never going to call for the so-called "policy analysis" aspects that some few law professors want to see. Far fewer professors, I may note, than the policy-oriented tenor of so many law classrooms would suggest. The bar examiner isn't interested in what the examinee thinks the law of California should or could be.

The questions that follow bar hypotheticals tend to be more straightforward than the many variations that may spring from the mischievous minds of law professors. You might get something open-ended like "Discuss the legal issues raised in the foregoing fact pattern." But law students are familiar with this kind of question.

Generally on the bar, you'll see a more pointed query like "Who should prevail?," "How should the motion be decided?" You won't get something cryptic and paralyzing like "Draft a set of jury instructions to guide deliberations respecting the foregoing facts." You won't even get something like

Please see ART, page 5

ART continued

"Compare the holding in the case of X versus that in case Y." You certainly won't get anything like the following question posed by a professor at Duke in wills and estates that constituted an entire two-hour exam -- "The words 'if not, then' in the context of the Rule Against Perpetuities. ... What do you have to say about that?" Pretty crazy. Addressing it requires kind of a graduate level understanding of LEEWS.

LSJ: *I'd say! I wouldn't want to tackle that one.*

WM: The bar exam is conclusion-oriented, but analysis still must control, especially in California. Facts in essays are straightforward. If you know the law of the state, particularly recent decisions of the highest court, analysis should proceed in a relatively straightforward manner to a right or wrong answer. Bar examiners will typically test knowledge of important developments in recent state cases, as they don't want someone who prepared for the Arizona bar to be able to waltz in and handle an exercise on the California bar.

This contrasts with law school where professors want arguments on both sides of issues, facts tend to be somewhat ambiguous, policy aspects can enter in, and the outcome can go one way or the other depending upon emphasis, much as two learned appeals courts can reach contrary outcomes on the same law and facts.

Law students, however, should know that although their professors typically say, "There is no correct answer," they likely have a preferred outcome in mind. Professors are unlikely to develop a model response without coming to some conclusion, at least a notion. They naturally think that their analysis is correct, so their outcome or notion is favored.

Whether on a law school or bar exam, much as a lawyer in a courtroom is loathe to venture an emphatic position that might conflict with the view of the judge he or she is before, unless absolutely sure of her position, a bar or law school examinee should avoid being emphatic as to the conclusion.

The lawyer in a courtroom will tend to waffle. He'll say, "If it please the court, ..." "May I humbly submit, ..." So in stating a conclusion, law school or bar, the examinee is best advised to waffle. She should preface the conclusion with such lawyerlike preambles as, "It would seem, ..." "On balance, ..." "In all probability, ..."

Nothing is lost. You still have a conclusion. But in law school in particular you mitigate any bias the professor may have respecting the "correct" answer.

This having been noted, invariably on a bar exam the examiner wants the conclusion stated at the outset. The "C" of IRAC moves to the top. The conclusion on a bar exam counts. It gets a checkmark. It is indicative of whether the examinee's analysis is on target.

Often law professors want the conclusion stated at the outset, which contradicts their insistence that "the conclusion is unimportant." I think they just recall the format mandated when they took the bar exam. It may have been the first time they ever got formal instruction on how to present an exam response. It certainly was for me.

However, the conclusion should not be stated prior to completing analysis. The examinee may have a conclusion in mind after mentally thinking through the problem, but that conclusion should now be set aside. The best thinking occurs while writing out the analysis. Bar exams are still written, I believe, while the majority of law exams are typed.

You should always type if that is an option, as you can type much faster than you write. However, many law students opt to write. I think if you aren't sure what you're doing, you don't like the clarity of typing.

Having completed the analysis, come back and plug in the conclusion, which may have changed. Literally leave several spaces blank, introduce the discussion, which is the analysis, then come back and plug in the conclusion at the beginning.

On law schools exams, unless expressly instructed otherwise, the conclusion goes at the end, reflecting its unimportance.

If you enter the conclusion at the end, not only are you unlikely to prejudge the analysis, which in turn tends to lead to conclusory statements, but you are less likely to overstate the conclusion by interjecting aspects that are properly part of the analysis. Indeed, you can now simply point the examiner to that aspect of the analysis that you deem key or dispositive.

This is another way to mitigate bias, should your conclusion differ from what the examiner deems to be the correct answer. The examiner thinks, "I disagree with your conclusion, but I see you focused on the proper aspect of analysis." Since there IS a correct answer on the bar, this is more important in law school when the examiner wants the conclusion at the outset.

LSJ: *Wow! You've surely given this a lot of thought. From my estimation and based on my experience, you're right on target. I passed the bar on my first attempt, some thanks to having attended your program many years ago, you may recall. But this would have helped. I'm surprised you don't do a bar exam version of LEEWS.*

WM: I gained the initial insights that led to the development of LEEWS while doing some bar tutoring for the Bar Association of the City of New York. Minority law graduates getting ready for the essay portion of the New York bar. And I've retained some interest. From time to time law graduates do LEEWS for the bar. Gives them a whole new perspective and renewed confidence. But my focus has remained on law school, particularly first year.

LSJ: *Any thoughts on the low pass rate on California's Attorney Examination, which was 28% the last bar, and which features nothing but writing? If you think the low pass-rate is motivated by market protection, due to 207,000 California attorneys, what, then, in the face of such state bar motivation, can an attorney candidate do to improve their bar-exam writing skills? Additionally, why do you think an attorney's writing skills, all of whom presumably practiced law for 5 years in another jurisdiction, are poor by California bar exam standards?*

WM: I think market protection is definitely a likely factor. I suspect California attorneys would also have a low pass rate if required to take this exam. So the out-of-state attorney's writing skills are not necessarily "poor" by California standards. It's just that the bar -- excuse the pun -- in terms of what is expected is probably set somewhat higher than it is for the bar exam right out of law school, and writing skills haven't improved by dint of being out in practice.

I think lawyers in practice have likely gotten better at analysis, which isn't instructed very well in law school. Normally you learn the nitpicky lawyer thinking only when you get out in practice and go up against other lawyers who are thinking very closely about the law and facts on the other side. You're also challenged in your thinking by senior attorneys, if you are fortunate enough to be in a firm, and also by judges.

But how well you present on paper? ... There you would need the criticism of an able senior attorney to make much progress.

I think it is generally accepted that most lawyers don't write well. They didn't learn it in law school. They don't learn it in the hastily patched together briefs and other legal papers lawyers submit in practice. Often lawyers merely fill in the blanks in writings prepared by others that are kept on file.

LSJ: *So how did you develop expertise in writing? Or were you always good at it?*

WM: I was pretty good coming out of college in the sense of being a "good writer," although I remember my first exercise in freshman English at Yale being returned to me with the notation in red at the top, "This is half a paper!"

Whoa! That was a shock to a seventeen year old who had been a top student at Los Angeles High School.

LSJ: *You're an Angeleno?! Didn't know that.*

WM: Sort of. Came out from the east with my family at age 13, then went back for college and stayed. But those are formative years. Having been a UCLA fan in high school, I rooted against the Trojans in the recent championship game. If you grow up in LA, you're either a UCLA or USC fan.

Anyway, I humbly submitted my half paper to one of my roommate's who had gone to Choate. Elite prep school in Connecticut. He's still a good friend, and he happily tore apart my paper. Then, as a junior, I had the benefit of getting critiqued by Robert Penn Warren, the well known and now deceased author. And by senior year, I was writing a novel under the tutelage of none other than the even more famous author, John Hersey, who was a master of one of the Yale residential colleges.

LSJ: *Wow! Heavy hitters. That sounds wonderful. Did you finish the novel?*

WM: (Laughs.) No, never, ... and I won't. But I have what I wrote. Strictly sophomoric effort.

LSJ: *What was it about?*

WM: (Chuckles.) Never mind. Some things are best left behind.

LSJ: *Okay. So clearly you had a lot of writing instruction and experience prior to going to law school. Yale, also, if I'm not mistaken.*

WM: Yes, Yale again. Guess I didn't mind the lousy weather in New Haven. But legal writing is different. It's a myth that "good writers" do well in law school.

I think most important I had the benefit of over two years writing appellate briefs in the appellate division of the Brooklyn District attorney's office. That's where they stick a Yale grad. Initially I received significant oversight and did a lot of revising. My writing samples helped me make the unusual jump from a local DA office to the higher echelon US Attorney's office.

LSJ: *Where was that?*

WM: Eastern district of New York, civil division. Includes Brooklyn, Long Island, Queens, Staten Island, and possibly Weschester County. It's been many years. Southern district may have Westchester County, but mostly just Manhattan.

But let's get back to your question. I think you wanted to know what can be done to improve attorneys' writing.

LSJ: *Exactly.*

WM: Well. I suppose whoever reads this isn't really interested in my personal history. Although I'm always happy to talk about myself.

Respecting what can be done about attorneys' writing -- I don't think a lot is necessary where this California bar exam is concerned. The format I instruct for law students also applies to the bar. It should also serve a practicing attorney.

Open with a statement, a preamble of relevant law, just like you see in judicial opinions, ... proceed to relevant analysis. Roughly one paragraph per issue.

I think the thing I do different is I've developed this format called "ugly but effective" that enables students to greatly tighten up the loosely structured rambling that characterizes most writing. It's pretty unique and effective. I say it makes a good writer better, and a poor writer good enough.

LSJ: *I like that last sentence. While your course is undoubtedly popular among law students, we were wondering whether an attorney candidate can benefit from your course. But I guess you've answered that.*

WM: There'd be a lot in my program not relevant to an attorney. They wouldn't be interested in 2-4 line briefing and how to take no more than a half page of notes per class hour. Maybe two hours of irrelevant stuff. But how to break down fact patterns to reveal relevant issues, how to present analysis concisely. That would help. Presumably they would pick up my instruction on analysis faster.

I've thought of doing a program for attorneys. We would process actual cases via the LEEWS method.

LSJ: *Why haven't you?*

WM: Not ambitious enough, I guess.

LSJ: *You mentioned 2-4 line case briefing. That also sounds interesting. Kind of radical. Perhaps a topic for another day. Actually, we ran that Miller article a while back.*

WM: Cuts to the heart of what's wrong in law school instruction. Requires skill at analysis, which most law students never acquire.

LSJ: *You can answer, "I'd rather not answer," but do you have any thoughts about Stanford's ex-law school Dean who failed to pass the last California bar exam?*

WM: I'm never afraid to answer. I don't plan to run for anything. Although I knew George Bush somewhat in college. Met his dad, too. W was a year ahead of me. I was certainly smarter and more capable than him then. And I was surely more productive and competent in the years from college to 40. So when it comes to running the Free World, ... But maybe we shouldn't go there.

LSJ: *Hm-m. Yes. But maybe another time. But how about the Stanford dean? Any thoughts?*

WM: I don't know him, or her. Don't know anything about him/her not passing the bar. Sounds embarrassing. Pretty awful to have to subject oneself to a bar exam like a recent law graduate after you've been the dean of Stanford's law school.

I'm tempted to say that goes to show that Stanford is overrated. (Laughs.) But that would be unkind, right?

Let's just say that passing a bar exam, although requiring reasonable intelligence, mostly is about taking it seriously, having reasonable skill at exam writing, and humbly putting in the time and sweat to master a lot of black letter law that will fly out of your head as soon as you finish the exam.

I'm sure the good dean was smart enough, but perhaps not humble enough. Probably didn't put in the requisite sweat and time preparing.

Bet he/she will pass the next time.

LSJ: *One more question, a personal one if you don't mind. Your first name is Wentworth. Pretty unusual. There's an actor, Wentworth Miller, the lead in a new series on FOX, Prison Break. He's up for a Golden Globe. Also, I think he was in The Human Stain. Any relation?*

WM: So glad you asked! Always looking to slip that little aspect in.

Wentworth Miller is my son. I'm Wentworth, Jr. He's the third. My father, same name of course, passed away many years ago, unfortunately.

I'm very proud of "Went," as both he and I are normally known. My entire family, and it's a big one, is very excited. We'll be glued to the tube January 16th.

Of course he isn't quite as handsome as the dad. (Chuckles.) But he's very talented. I'm thinking I may be able to retire before long if things continue to progress.

Anyone reading this, ... Be sure to catch Prison Break when it returns on FOX in late March. Great show, if somewhat violent.

LSJ: *Pretty cool, Mr. Wentworth Miller. Pretty cool, indeed. I think our readers will find this interview both edifying and interesting. One of our journal's best!*

To find out more about Mr. Miller and his course, visit www.LEEWS.com. Prison Break can be seen on FOX.

From a previous issue of the Law Student Journal.

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Jeff Fleming says,

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Jeff Fleming is a licensed California attorney and former law professor with 25 years of teaching experience. He has been a legal education consultant to various California law schools and has devoted his legal career to developing legal preparatory seminars designed to aid law students, Baby Bar and Bar candidates to improve their knowledge of the substantive law and develop their exam writing skills. He participated in the calibration session conducted by the California Bar Examiners when grading the California Bar Examination, which has given him unique insight into the particular problems that most law students face.

Mr. Fleming has lectured for pre-law prep seminars and is the creator of the Exam Solution,® a CD series that aids law students with their exam preparation. His Legal Examination Writing Workshop is the longest running Workshop of its kind in California. His Baby Bar Review seminar, founded in 1981, is considered to be the most successful on the market. In addition, he has founded and lectured for his Long Term, Short Term, and Ultimate Bar Review, and is proficient in fourteen areas of substantive law. He is the publisher of the Performance Exam Solution and the two-volume series of Multistate Examination Workbooks. Mr. Fleming has authored the four-book series of Examination Writing Workbooks. All of these publications are available in legal bookstores throughout the U.S.

Mr. Fleming has determined that the major problem for most law students is weak analytical skills. Most students can learn the law, but the application of law is their stumbling block under exam conditions. Mr. Fleming has structured all of his programs to include both substantive law and legal analysis training. This provides the combination necessary to develop a better prepared and more skillful law student, Baby Bar and Bar candidate. His courses and written materials have made it possible for thousands of law students to improve their grades and ultimately pass the California Baby Bar Examination and California Bar Examination.

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TAKE A DEEP BREATH: Test-taking Anxiety

PUBLISHER'S NOTE: All of us react differently to stressful situations. Some of us cower under the demands of stress, while some of us act as if life is a continual walk in the park. Some of us seek the help of herbs, while some of us seek the help of prescription drugs. Some of us do yoga, while some of us to do things a bit more illicit. In any event, there is no escaping stress; but how we handle stress can make all the difference in the world, our world. While at The Law Bookstore, in Anaheim, I picked up a 3 ½ -page flyer titled, Test Anxiety.....Helping Grads Get Over the Bar. A pop psychologist, at best, I decided to share the flyer, in pertinent part, with all California law students. For additional information and test-taking techniques, you can purchase No More Test Anxiety, which comes in book and audio-CD form, from The Law Bookstore by calling 1 (800) 810-0120 or by logging onto www.thelawbookstore.com.

"So, it is time for you to take the bar exam (or your final exams), the final hurdle to becoming a licensed attorney in the State of California (or moving on with your law studies). And, you are anxious. You are afraid you will blow it. What is this anxiety and how do you deal with it?

Anxiety is defined as the mental, emotional and physical reactions experienced when an individual anticipates that something dangerous or humiliating is about to occur. The individual fears losing control, and a loss over one's immediate world can make virtually anyone anxious.

The anxious reaction, however, is not based in reality. The truth is, anxiety is the anticipation of disaster, the fantasy of what may happen. It is a very powerful fantasy, and the student comes to believe that in spite of supreme effort, failure will be the end result.

Expecting to do badly on a test as important as the BAR brings real fears of failure that starts a chain reaction. Along with excessive worry and elevated stress come the jitters, panic, sweaty palms and clouded thinking that inevitably accompanies test anxiety. The student begins to feel more and more out of control. Loss of control generates greater worry and even more negative emotional reactions.

TWO PARTS OF TEST-ANXIETY

Research strongly suggests that test anxiety is comprised of two components, worry and emotionality. The emotional part is expressed via physical reactions while the worry part is cognitive. Emotional responses can include:

*Muscular tension (tight shoulder and neck muscles)
*Headaches and/or backaches (Usually the lower back)
*Butterflies in the stomach, or that unyielding lump of dark despair
*Sweaty palms or forehead
*Restricted breathing
*Any other stress reactions unique to the individual

The emotional component increases as test-time draws near, reaches its height when the test begins, and is replaced by a sense of relief once the test is over.

Excessive worry is considered the primary cause and chief sustainer of test anxiety. The greater the worry, the stronger the emotional arousal. Increased emotional arousal generates even more worry and fear, and so on. The cognitive part includes:

*Impaired short-term memory
*Difficulty thinking, focusing and concentrating
*Irrational concerns about the ability to perform
*Negative self-images
*Diminished self confidence and poor self-esteem

Remember anxiety is a reaction to anticipated risk. Now, for the exception to the rule. Research has shown that a little anxiety is a good thing. It sharpens thinking and generates energy. The key is to have only a little, because with too much anxiety, performance goes rapidly down hill.

Regaining Control . . .

The first step in overcoming the plague of too much test anxiety is learning to relax. Interestingly enough, the one physical activity almost everyone takes for granted is actually the foundation for virtually all relaxation and stress reducing techniques. That activity is breathing. And, as the reader has probably already guesses, correct breathing is the quickest way to relax the muscles and minimize anxious feelings. The process works for just about any situation that generates excess anxiety.

A Simple Breathing Exercise . . .

The following exercise takes no more tan five minutes. The exercise should be done in a quiet place, making sure there will be no interruptions.

Step 1: Sit in a comfortable position with head supported and feet flat on the floor. Close your eyes and focus only on your breathing.

Step 2: Now imagine that for the brief time you are doing the exercise, you have only one lung instead of the normal compliment of two. This lung shaped like a large oval cylinder and extends from your neck to your waist. The cylinder is divided into three parts: top, middle, and bottom.

Step 3: Inhale fully, and fill the cylinder-lung completely. First fill the cylinder at the bottom, then the middle, and lastly the top. Relax your stomach muscles as you breathe in deeply. Allow your rib cage to fully expand.

Step 4: As you take that full, deep breath, allow your stomach muscles to rise. You may notice your shoulders move slightly upward and forward as the cylinder-lung is filled to the top.

Step 5: Hold the full breath for a long moment, and then exhale completely in the reverse order.

First, empty the top of the cylinder lung, then the middle, and lastly the bottom. Please notice how this feels, and how your chest seems to close as air leaves the middle. You may also notice your stomach muscles dropping as you expel the last of the air from the bottom of the cylinder.

Step 6: After a series of two to four deep breaths just breathe naturally and easily. Use only your stomach muscles to move air in and out of your lungs. Breathing should be effortless and done in exactly the same way that an infant breathes, using only your stomach muscles. You may already notice a clam feeling spreading through your mind and body.

Step 7: The exercise becomes more effective with use, so Step 7 is to practice, practice, and practice. No practice, no skill.

In Conclusion . . .

If you ask yourself what it takes to pass the bar exam (or your final exam), you'll probably answer something like, "knowing the information." Actually, that's only part of the answer. Most students fail to realize that tests actually measure two very different factors. One is certainly your knowledge about the subject. The other is what you know about taking tests (i.e., applying your legal knowledge to a factual scenario so that you can solve the legal problem).

Here's one sure-fire way of insuring success on the multi-state portion of the bar. First, answer all the questions you absolutely know. Then answer the questions that take a bit more effort. Lastly, guess at the questions that you have no idea about, the ones that "seemed to be from outer space" because they don't seem to relate to anything you remember reading or hearing.

The rationale for using this method is very simple. Every question you know and answer raises self-confidence and the inner belief that you can and will succeed. To make it even easier, make an "X" next to questions when you feel only a little more effort is needed to arrive at the answer. Make an "O" next to those you simply don't know at all. Answer all the "X" questions on the second pass through the bar. Guess at all questions marked with an "O". Once you're done guessing, don't change your answers.

Here is a closing thought to help put test-taking into a more realistic perspective. No individual test is the determining factor of an individual's future success(es).

From a previous issue of the Law Student Journal.

THE ROLE OF ANALYSIS: Your midterms, your final exams and the bar exam are not testing how much law you know. A photographic memory is of little, if any, help.

By Steve Liosi, Esq.

[Publisher's Note: In addition to publishing this newspaper and dabbling in the practice of law on rare occasion, I have provided a tutorial program for numerous California bar exam candidates since 1994. In my travels, so to speak, I have encountered a variety of law students, some bordering on genius, some bordering on lunacy. All, though, have one obvious denominator in common: they will either pass or fail the California bar exam. Why some pass and others fail is not as glaring as one might think. High LSAT types fail. Low L-SAT types pass. Emotionally stable individuals fail. Emotionally compromised individuals pass. All "passers", however, have one thing in common. So do all "failers".]

Early on in my career of helping people pass the California Bar Exam, I was often stunned by how unknowledgeable certain candidates were about the law school and bar exam process. And some of these people came from stellar law schools: Stanford, UC Davis, UCLA, USC, and Chapman. Some even had LSAT scores off the charts: 170+. Yet, they were having great difficulty passing the nation's toughest bar: California's. One candidate in particular, who came from an ABA law school located in New York, didn't understand the tort concept of substantial certainty as to intentional torts. An ABA grad couldn't articulate a One-L concept!?! "Something was rotten in Denmark." But what?

Eventually, I learned something alarming: many students do not fully engage the law school process (see Professor Fleming's front-page article), even though close to $100,000, in many instances, is being spent on tuition. I have heard some interesting dialogue through the years. This, from a USC repeater grad: "I never studied in law school. I'd open commercial outlines 2-3 weeks before finals. Memorize exam approaches. Sometimes get a B, but usually I got Cs." All of this was said with a hint of cockiness, as if scoring Cs with little study was something to be proud about. "Well," I said to myself, "you're paying the price now." Another student was "victimized by circumstances," he maintained. "In law school, I had a wife, 3 kids, and worked 60 hours a week. I never opened a book. I had to listen to tapes whenever I was in the car, which was often because I was a T-ball dad." "Well," I said to myself, "you created the circumstances." (Another student [yours truly] said, "Oh, I had the time to study, but I just didn't."* "Well," I said to myself as I entered my third year, "you'd better have the time to study now.")

The obvious denominator in common? Virtually all repeat candidates don't do what all law students should do: treat law school as if you are studying for the California bar exam. Make your own outlines by utilizing a commercial outline as nothing more than a template. Learning the law from a commercial outline solely, can be hazardous to your academic health. (Most, but not all, commercial outlines are either too short, and teach nothing, or too long, and waste your time with unnecessary minutiae.)

Now, if you're entering your last year of law school and now realize you haven't appropriately engaged the law school process thus far, not all is lost: I used my entire last year of law school to prepare for the California bar exam, which, thankfully, I passed on my first attempt. (*Re: years 1 and 2: "I had the time to study, but I just didn't.") I'm not suggesting all 1Ls and 2Ls follow my lead–in fact, do not! But, I am telling all 3Ls, who wasted their time as 1Ls and 2Ls, to start preparing for the February 2008 California Bar Exam . . . *NOW!*

What exactly do I mean by "prepare"? To me, memorization has very little to do with "preparation". Unlike undergrad, where the exams were mainly regurgitative in nature (i.e., memorize and regurgitate all that you memorized), the bar exam (and law school midterms and finals, for that matter) are asking you to problem solve. And it is very important that this is realized as early as possible. If you think law school and the bar exam is all about knowing the law, then you will not properly prepare for the task before you. You will spend countless and futile hours lost in memorizing when you should be doing whatever is necessary to perfect your analytical and *problem solving* skills.

To see what I mean, let's work through the following Torts mini fact pattern, thinking out loud:

On a cloudy, gloomy day, John, wearing gum-soled shoes, slowly snuck up behind Mary without making a sound, and hit her on the back of her neck. After doing so, John, a mean-looking man, just stood there.

Did John commit a Battery? Of course he did.

Was the touching "intentional"? "No facts indicate that John's striking was other than an intentional, volitional act." Not much thought on this element.

Was the touching "harmful"? "Of course it was!" Are you sure about that? Do we know how hard John hit Mary? If we don't know for sure, then we cannot conclude with certainty that the touching of Mary was harmful. Perhaps John did not hit Mary with very much force. Or, maybe he hit her with all of his might. But since we do not know for certain how hard John hit Mary, our analysis would have to be bifurcated: i.e., "If John hit Mary with all of his might, the touching of Mary was certainly harmful. If, however, John hit Mary with very little force, then the touching of Mary was not necessarily harmful.")

That said, was the touching at least "offensive"? Few people would want to be hit from behind, don't you agree? Most people would find such an act offensive. On this fact, it does not matter how hard John hit Mary. All that matters is whether a reasonable person would find the touching offensive. Most unconsented touchings are offensive, no matter the force or lack thereof. If a man ever so slightly and purposefully grazed a woman's breast, it would certainly be offensive if unconsented, yes? Therefore, "John's touching of Mary, if not harmful, was likely offensive since most people do not want to be hit from behind without their consent."

Was the touching "without consent"? "Since John slowly snuck up behind Mary, we can reasonably infer that he did not have Mary's consent to hit her."

Was the touching "without privilege"? "Lastly, no facts indicate that John's striking of Mary was in self-defense, especially since John slowly snuck up behind Mary. Even if Mary had been the initial aggressor, John's privilege had passed since he struck Mary from behind in a deliberate and surprising fashion, which indicates that Mary, at that moment in time, did not pose a threat to John. Therefore, John should be found liable for Battery."

This is how you would need to think your way through the above Torts mini fact pattern in order to write a superior response. Knowing the rule statement for Battery would not help you with the required thought process. Nor would having all of the requisite elements memorized.

Let's continue.

Did John commit an Assault? No! Are you sure about that? Well, you're probably thinking Mary couldn't have seen John's menacing shadow approach her – it was a cloudy day after all, right? Mary couldn't have heard John sneak up behind her – John didn't make a sound, and he was wearing gum-soled shoes, right? Therefore, you are probably thinking, no way could Mary have been placed in apprehension of an imminent battery, right?

Actually, not necessarily.

Visualize the mini fact pattern in your mind like a movie.

Think "reasonable inference".

Do not create facts, but make a "reasonable inference" to find an assault.

Would it be reasonable to assume that Mary turned around to look at who had just hit her? Would most people turn around if someone had just hit them from behind? Yes, they would.

So, then, if John, a mean-looking man was still standing there after having hit Mary from behind, would it be reasonable to assume that Mary, at that very moment, after turning around, was placed in apprehension of an imminent battery (i.e., placed in apprehension of being hit again, especially since John was so mean-looking)? Yes, it would certainly be reasonable to make such an inference.

Keep in mind, there is a significant difference between making a "reasonable inference" and "creating facts". An example of creating facts: "Since Mary went home and had nightmares that required psychiatric care, John should be found liable for Intentional Infliction of Emotional Distress." What?!?! Where did those facts come from?

The moral of this quiz and article? Legal knowledge, in and of itself, has little to do with the ability to think analytically and write analytically. If you place the emphasis on memorization, rather than skill optimization, you will be certain to struggle with both law school and the bar exam.

Steve Liosi, Esq. is the Program Director of Barperfect, a tutorial review company that has been helping law students and bar candidates since 1994. For m ore information about Barperfect, visit www.barperfect.com.

STILL FAIL continued

& Partnership. However, many of those concepts will probably be familiar to students in other areas, such as respondeat superior, vicarious liability, and so forth. So, yes, there are "three new subject areas" -- with quotes around it, but all of it can be easily digestible depending on your approach to learning and understanding both the similarities and the differences.

LSJ: *Will the new subject matter impact pass rates?*

Paul Pfau: Well, my comment, at best, will probably be anecdotal. There is some evidence that when the bar adds new subject matter, the bar pass rates for the initial administration may at least be the same, if not a little better. So, in that regard, it can offer an opportunity to students who take the time to integrate the new subject matter with the current subject matter. Other than that, the new subject matter implicitly will affect pass rates if students don't learn it. So, it is important to begin to integrate that into the preparation process as soon as reasonably possible. But, once again, the subject matter does not create an unreasonable burden, given the similarity to the subject matter that is presently required on the exam. Keeping in mind, however, that part of an applicant's grade is impacted by their competition through the "scaling process" – the new subjects can add an opportunity for those applicants who emphasize them in their preparation.

LSJ: *The end of November is when bar results publish again. To me, many students are foolishly waiting for that day to start studying again. Any thoughts?*

Paul Pfau: Well, the culture of the bar preparation process, rightly or wrongly, generally causes students who are awaiting results to begin studying once the results come out for those students who are unsuccessful. And part of that is understandable in terms of the tremendous amount of work that students undertake in getting ready for a bar and the need for some rest. From a logical standpoint, though, it is very prudent to start studying again as soon as possible. For example, if there is a month left until results, the student, even at a light-duty standpoint, should begin to recalibrate their substantive understanding and memory of subjects and begin to learn some of the new subject matter, so, that in the event they take the test again, they can have a running start. You don't have to give it the same intensity necessarily that you will in the weeks after bar results, but, if you can begin to integrate it on a casual, or even gentle basis, before hand, it can work to enhance one's skills in getting ready for the examination, and certainly won't do any harm if you pass the bar and you go off to practice.

LSJ: *Any wisdom for students who do not see their name on the pass list? Simply studying more and memorizing more rarely is the cure next time around. Unfortunately, that is what many students do, however.*

Paul Pfau: Well, first, my empathy to all of those who are unsuccessful. There is a tremendous amount of work involved in getting ready for the bar, and often in life we don't get what we want right when we want it. But, the prize will always go to those who are persistent in pursuing this great goal of passing the California bar exam.

In getting ready for the next bar exam, it is always important to try to learn from those lessons from a preceding exam in terms of how one might have prepared and performed on the test. And, whatever the course of action a student takes to get ready for the next bar, it is important to remember that you are getting ready for a bar that requires very precise skills to be able to solve a problem under timed conditions. That is the essence of the California bar exam, and that is what makes it one of the most difficult in the nation.

And, so often going back to emphasizing a review of the substantive law, while it can put one in a comfort zone in terms of thinking that maybe they didn't know enough law and that significantly more than anything else contributed to not passing, learning the other skills that will compliment one's substantive understanding and memory are as, if not more, also important. Learning how to organize better, learning how to write under timed conditions, learning how to see issues as they have a tendency to cluster, and learning how to organize a performance test, learning how to select the best answer a little bit better on the multistate. There are very definitive skills that can be added to one's substantive knowledge, which will tend to get one more precisely prepared and ready for the bar given its nature as a timed test. However one goes about it, all bar candidates should try to add those skills to their test-taking regimen. And, all the best. It's easy to empathize, having worked at this for many years, on success the next time around, however that occurs. *Paul Pfau, a Los Angeles Deputy District Attorney, has been helping both law students and bar candidates for over 30 years. To learn more about Paul's course, Cal Bar Tutorial Review, visit www.cbtronline.com or call 1(800) 348-2401 or 1(800) 783-6168.*

19 YEAR continued

to start law school at age 14?

MS: I decided when I was 11 years-old that I wanted to become an attorney. From there, it took around three years to finish everything that I needed as prerequisites to starting law school. I finished my high school education, earned my paralegal diploma, and took some necessary college-

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PROCESS continued

outcome of the case. These are the facts that the court considered pivotal when analyzing how the case should be decided. Irrelevant facts are those that provide background information which may be helpful to fully understanding the facts of the matter but are not significant to the outcome of the case. Students must be able to differentiate between relevant and irrelevant facts when analyzing a case. This skill is developed only through practice. To expect otherwise is sheer folly.

Once the facts of a case are understood, students must be able to identify the rules of law that the court applied to that situation. Consistent application of the rules of law is the cornerstone that provides continuity to our legal system. Courts must look to previous decisions of other courts for guidance in their own decision making. The court's interpretation of facts and policy considerations in the primary case, when compared to facts and policy considerations of other cases, provides a basis for the legal arguments supporting the case decision. This is why the case rationale is so important. It provides the reason that the court decided as it did. A student who finds the rule of the case but does not grasp the rationale of the case does not understand what is important.

Law students should expect to spend an average of seven hours study time per week for each class taken in their first year. As time goes on and students become more proficient in the process of law school study, this suggested study time will decrease.

It is often said that everyone is presumed to know the law. This adage also applies to law school students. This is why it is important to stay ahead of the class assignments. Law school students should not rely on their law school professors to teach them the rules of law. Law school professors presume that students can learn the rules law on their own. Law school professors are more interested in using class time to mold minds in the process of legal analysis, to demonstrate the application of the rules, and to discuss the rationale behind the case method.

Class time is intended for the development of legal analysis skills. Therefore, students must learn the rules of law before class so that class time can be used for the intended purpose of reinforcing or clarifying issues and arguments that arise through the application of the rules learned outside of class. Class time provides the forum in which students can practice their legal analysis skills. Case analysis and careful consideration of hypotheticals posed by the professors in class are the means to develop analytical skills. Students who come to class expecting to develop their legal arguments rather than expecting a simple presentation of legal rules are the ones who understand the process of law school and legal training.

Preparation for final examinations is a similar process. The first step, learning the rules of law, is the easy part of law school. The second step, the development of analytical skills, is the more difficult and more important step. To perform well on examinations, students must incorporate the second step of the law school process into their study program. Students who spend the majority of their study time memorizing the rules, at the expense of developing their analytical skills, rarely receive the result that they desire. For example, most students can memorize the rules related to certain contracts that are required to be in writing by the Statute of Frauds. However, if a student misses an agreement made on "the telephone" a fact that raises an application of the Statute of Frauds on a final examination, it really doesn't matter how much he or she actually knows about the Statute of Frauds and its rule. If the issue and analysis do not appear in the blue book, the student receives no credit despite the fact that he can recite the memorized rule in the law school hallways.

The ability to effectively analyze is developed in many ways. It is developed through the casebook method. It is developed through study groups. It is developed and then reinforced through a regular review of past examinations given on law school finals or Bar examinations. Examinations come in the forms of essay hypotheticals and multistate questions. Reviewing past examinations is important to the law school process because it allows students to review multiple fact patterns that raise the issues and arguments that were similarly raised by the cases presented in class. Reviewing past examinations is valuable because, unlike cases presented in the casebook, past examinations do not contain the rules and rationale that are incorporated in the case materials. Past examinations contain only the facts from which students must be able to identify the issues, determine the appropriate rules and then demonstrate the appropriate rationale in argument. Reviewing these testing devices will tell the student what he really knows or where he must spend more time studying.

The final step in the law school process is the ability to demonstrate the process of analysis through legal writing under timed conditions. The ability to convey thoughts in a concise and analytical manner is the end result of learning the rules, developing legal reasoning skills through the casebook method and then using those skills in the context of examinations. As with the first two steps, this skill is learned and perfected only through practice. This is the law school process.

Professor Fleming is the founder of Fleming's Fundamentals of Law (FFOL). For more information about FFOL, which has been a California fixture for nearly 30 years, visit www.lawprepare.com.

From a previous issue of the Law Student Journal.

CASE continued

dence in the wisdom of your revered law professors. You're excited to be starting law school. Professors initially loom almost godlike. Surely they would not steer you wrong. Surely they know more than some guy hawking the sort of study aid that most law professors decry.

Well, hold on. I HAVE been at this much longer than most of your professors. Recall my "evidence" above. Please hear me out. Judge for yourself whether what I have to say makes sense.

What does a 2-4 line case brief look like? How can it equate to, even be superior to a page-long conventional brief? 1-3 lines will be a precise statement of legal tool(s) -- rules, principles -- introduced by the case. As this law is often presented in fragmentary fashion in cases (because not all parts of the rule/principle will be relevant to the issue[s] of the case), your construction of a complete statement of law will normally require reference to a commercial outline (Gilbert's, Emmanuels, Legal Lines, etc.). You should have one of these next to you as you read the case. (Hint: Try to find a used copy, as well as used textbooks. If you know someone who took a bar exam, his/her bar review materials will also present concise and complete statements of "black letter law.")

One line, ten words or so, will be a synopsis of the facts of the case -- e.g., "Used auto sale. Offer held open two weeks later." (Oops! Got a little "holding" in there.)

That's it! Just enough facts to trigger your recollection of the case, and the law introduced by the case. No procedure, issue, holding, rationale (the underlying WHY of the case).

How is this possible? What if you're called on? How are you going to remember the facts, issue, holding, ... all the stuff the professor wants you to recite?

First things first. Understand that class

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19 YEAR continued

level exams. August of 2002 was the earliest opportunity I had to enroll, and nobody saw any reason to postpone.

LSJ: Did you enjoy the law school experience?

MS: I really did enjoy it – at least most of it. The interesting thing about going through a distance-learning law school is that you have to control your own schedule. You have to know where to find resources, when assignments are due, and how to prepare for exams. Further, nobody's looking over your shoulder to make sure you're doing what you're supposed to be doing. This system of self-reliance requires a lot of discipline and commitment, so the first year was a real stretching experience for me. After I got through the Baby Bar, I developed my routine. Life as a full-time student became normal. It didn't hurt that I had an interest in almost everything I was studying – so, much of the learning was enjoyable.

LSJ: Did you enjoy studying for the bar exam?

MS: I suppose I shouldn't have enjoyed studying for the bar exam. Without a doubt, it was the most difficult four months I have ever been through. I pushed myself harder during that time than I ever had before. Nevertheless, I loved it. I was enrolled in Fleming's Ultimate Bar Tutorial, so I had a very structured, formulaic system to follow during my study time. The constant encouragement of professors and other students around me was always a great motivator.

From the beginning of the dedicated "bar study," the bar exam was less than four months away. I had been working toward it for over four years, and now I was down to four months. That was cause for joy. The knowledge that I was so close to completing this marathon of law school was part of what made me enjoy studying for the exam.

LSJ: Why do you feel you were successful on the bar exam?

MS: Simple: I did what I was told to do. In the Fleming's program, I always felt like I knew exactly what I should be doing. One of the biggest surprises I encountered as I moved through the course was that some of the other students (there were only 20 or so in the original group) seemed to take a casual approach to their study. I decided before I got to California that I was going to do the work necessary to pass. I was serious about passing and preparing for the exam was the only goal in my mind.

Second, and just as important: I kept my mind right. I saw people practically decide they were going to fail as early as three months out. No matter what problems I encountered or challenges I faced, I stayed focused on the preparation. I let the result take care of itself.

LSJ: Any advice for candidates that are getting ready to take the bar exam for the first time?

MS: The two elements that matter more than anything else in preparing for an exam like this are commitment to doing what is necessary and staying focused. Choose a course that has a plan and a program in place.

Don't let the pressure get to you. I am a Christian and I could sense God helping me and encouraging me when I was down. When I felt overwhelmed or discouraged, I prayed and said, "Lord, I'm going to do the best I can. The result is in Your hand." Anybody who takes on something this monumental has to have an outlet for the pressure and anxiety that builds as the exam draws near. For me, the mind game was probably the most important element in preparing for the bar exam.

LSJ: What would you say to someone who keeps failing the bar exam?

MS: If you keep failing the exam, something needs to change. Maybe you need to put more effort into your preparation. Perhaps you're allowing the pressure to get to you, either during your preparation during the exam itself.

When I found out I had to retake the Baby Bar, the first thing I did was figure out why I hadn't passed the first time. So, take inventory. Objectively look at your preparation and ask yourself what you could be doing differently. Finally, don't be afraid to ask for help. Whatever is keeping you from passing the bar exam, you have to identify it and fix the problem.

LSJ: Finally, why didn't you follow the crowd and take bar/bri? What was your thought process when choosing a bar review course?

MS: I used several different study aids and review courses through law school, including bar/bri and Fleming's course reviews. When it came time to prepare for the bar exam, I decided to take Fleming's Ultimate Bar Tutorial because I was familiar with his course reviews, I had used his program to get through the Baby Bar, and the idea of having a small group where I could have personal tutoring and help in problem areas was very appealing. As I gathered more information and went through the phone interview, I began to realize just how dedicated Professor Fleming was to the success of all his students.

I knew my preparation through law school was good, but now I needed someone who could teach me how to pass the bar exam. Success on the bar exam doesn't necessarily follow from knowledge of the black letter law, in and of itself.

LSJ: Agreed. Too many people think that the California bar exam is a legal-knowledge exam. Actually, it is a problem-solving exam. Thank you for your time, Micah. The best of luck in love and life!

CASE continued

recitation usually doesn't count a whit toward your grade (whatever the professor says to the contrary). You don't want to be "unprepared," because that will annoy or anger the professor, who will then make an example of you, possibly even order you to leave the room. However, normally it will take two or more "unprepareds" before a mark is put next to your name with possible consequences for your grade. By and large class participation is a non factor, grade-wise, because across the board in law school grading is anonymous or blind. (Anonymous grading protects professors against charges of bias, and also protects you!)

Besides, if you can manage a 2-4 line brief, you will never be unprepared.

The reason is that the rest of the information is IN YOUR HEAD!

If you understand that the purpose of a case, the reason it is included in your assigned reading, is to introduce one or more legal precepts, and that on the exam you will be expected to apply those precepts, "lawyerlike," to a set of facts you've never seen before (much as a lawyer would apply relevant law to the facts of a case he/she is presented with), then you bring a proper perspective to your reading of the case. It's not about rote memorization of facts, procedure, etc. It's about learning how to apply law to facts in lawyerlike (or judge-like) fashion, with the case serving as an exemplar of such application in just one set of circumstances -- facts that you will never, ever see again(!!).

The professor wants you prepared in the sense of knowing facts, etc. But this is but a necessary foundation to the primary classroom exercise of exploring how the law was applied, how a slight change in the facts might produce a different outcome, and (here's where law students get truly mystified) possibly an exploration of how societal, philosophical, sociological, and other factors (so-called "policy" aspects) might dictate a change in the law itself. This latter exploration is a favorite with law professors, particularly at so-called top law schools.

The problem is that the professor has yet to instruct HOW, exactly, lawyers think about and apply the law to facts. Because briefing, per se, and the blah blah in class doesn't get that job done. The idea is that by reviewing what happened in appellate judicial opinions -- lawyer arguments, judicial reasoning --, you'll learn to think "as a lawyer." But this is like trying to learn to ride a horse or drive a car without actually doing it. It doesn't translate.

Well, admittedly, a few seem to catch on. However, the bored and confused looks of most students, the mediocre performance of over eighty percent of law students on final exams (most of them smart, diligent, and with "A" averages in college), prove that the case method isn't getting the job done.

The problem is that law students, coming predominantly from the theoretical, academic world, are not disabused of their habit of sloppy, spiraling intellectualizing by reading and briefing cases. Indeed, they are abetted in such fuzzy thinking by the professor's own bent toward philosophizing and "policy thinking." (In most instances your professor isn't truly a lawyer. Perhaps clerked a couple years in a firm and for a judge, but probably handled very few cases as lead attorney, and certainly never tried a case.) Indeed, the words "lawyer" and "attorney" are almost never heard in law school classrooms.

Until you learn to "analyze as a lawyer," you can't really learn the law properly. You try to memorize a principle, or the parts of it you encounter in a case. Possibly you can state the rule. But you can't apply it to new facts in the nitpicking, element-by-element way a lawyer would. (You aren't even aware that this is what is expected on the exam.) You scarcely understand what happened in the assigned case. Moreover, you're expecting the professor to clear things up for you, to sum things up, to say, "The law is ...," so you can write it down, and they never do. PROFESSORS DON'T SEE IT AS THEIR JOB TO TEACH YOU BLACK LETTER LAW!

The net result is that law students busy themselves briefing cases in the conventional sense, but with very few exceptions take their preparation to the crucial next level needed to exhibit mastery on exams -- having grasped what happened in the assigned case, having distilled the complete black letter legal precepts introduced, begin to change the facts of the case to think, "What would happen if ...." Begin to make up new fact scenarios (hypotheticals) prior to class, and think about the application of the law in those new instances. This is the kind of thinking needed, if you are to follow and benefit from class discussion, and if you are to exhibit lawyerly skill on exams.

Isn't that what your professor does in class -- change the facts, introduce new scenarios? And you can't follow the discussion, because you don't know the law well enough. You've had enough trouble trying to figure out what happened in the assigned case.

Imagine if you had learned to think in the nitpicking way lawyers do. (It's something akin to how mathematicians and hard scientists think, versus English and history majors, possibly a clue to why science majors tend to do better on law exams than others). Imagine if you understood that the law is essentially a tool to be applied on behalf of achieving client goals, and you knew how to do this.

Your focus in picking up a case would be, "What's the (legal) tool introduced here?" "How was it applied?" "The determination of what aspects were problematic (raising 'issues!')?" "Changing what facts would alter the outcome?" "Let's see if I can think of any scenarios that might call such law into question?"

If you were doing this kind of thinking, rather than the busywork of constructing a conventional brief, consider what would result. As a byproduct of such close, applicational thinking, the facts of the assigned case would be pretty locked into your brain. As would the issue, holding, and rationale. A mere ten-word synopsis of the facts would serve to trigger this information in your brain -- certainly through the next day when you attended class. As for the procedural aspects of the case -- what court was appealed from and to, etc. Who cares(?!?), unless it's a course on procedure. Has no relevance to the all-important final exam.

Now you would indeed be prepared for class. Law, facts, issue, etc. securely locked IN YOUR HEAD, you could attend profitably to the professor's forays into changing facts, offering new scenarios. Much of what comes out of the mouths of fellow students would be elemental and redundant. You wouldn't have to write it down. (Is there really more than 20 minutes of useful discussion in a 50 minute class? But which 20 minutes? Your knowledge and continual focus on what counts -- exams! -- would enable you to judge.)

You would pay attention to important things like the professor's biases and preferences. Since you know the black letter law -- cold! --, you would know if the professor changed the law(!!), say, quibbling with how a particular element should be interpreted -- e.g., emotional injury in the tort of intentional infliction of emotional distress. This would be a likely topic on the final exam.

Indeed, your focus throughout would be -- properly! -- on the final exam. What law will I be responsible for? What is the professor interested in? Need to get a citation for that article the professor mentioned.

If you have grasped and practiced what we at LEEWS instruct, you won't sit in class scribbling copious notes. Get rid of that laptop! It only encourages more note taking!

Rather, you'll spend much of the time nodding thoughtfully, mentally confirming what you've already been thinking about. The 2-4 line brief would be in the left margin of your notepad. Next to it you would jot an occasional note -- e.g., professor feels "more than a peppercorn" means ... (in the sense of what constitutes "consideration" in the making of a contract). MORE THINKING, LESS SCRIBBLING!

The problem, of course, is learning to "think as a lawyer," so as to be able to shift from a theoretical bent and approach to reading cases, to a practical, (client's) goal-oriented approach to viewing and working with the law as a tool to be applied to facts. Until you make this transition, you can't manage 2-4 line briefing, 1/2 pages of notes per class hour, and 10-30 page course outlining.

Sorry! We must apologize for teasing you. Unfortunately, no one and nothing else approaches the instruction on lawyerlike thinking we offer at LEEWS (as well as how to break down "hypotheticals" to reveal issues, how to present analysis in concise paragraphs, etc.). There are no shortcuts.

But perhaps, hopefully, I have opened your eyes somewhat, given you a tantalizing vision of what could be. Law school and law school classes CAN be more comprehensible, interesting, and instructive. Law exams can be more manageable. Any lawyer will tell you that the practice of law is a lot more fun than law school. Why?

Because hands-on use and application of law as a tool to help clients achieve objectives (get money; avoid paying money; obtain property with clear title; stop a competitor from stealing trade secrets; stay out of jail; etc.) is intellectually satisfying and emotionally fulfilling (and pays some bills!).

In conclusion, I hope I've piqued your curiosity and shed a little useful light on the situation. Probably you have cases to brief. Better get on with it!

But while you're briefing, know that you could be doing a whole lot better job of it in only 2-4 lines.

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Look for the LEEWs ad in our September and October issues. Los Angeles and San Francisco dates will be listed.

From a previous issue of the Law Student Journal.

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