

Strategies and Techniques for Teaching Academic Success Classes

EDITORIAL ADVISORS

Erwin Chemerinsky

Dean and Distinguished Professor of Law
Raymond Pryke Professor of First Amendment Law
University of California, Irvine School of Law

Richard A. Epstein

Laurence A. Tisch Professor of Law
New York University School of Law
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Senior Lecturer in Law
The University of Chicago

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School

James E. Krier

Earl Warren DeLano Professor of Law
The University of Michigan Law School

Richard K. Neumann, Jr.

Professor of Law
Maurice A. Deane School of Law at Hofstra University

Robert H. Sitkoff

John L. Gray Professor of Law
Harvard Law School

David Alan Sklansky

Professor of Law
Stanford Law School

Strategies and Techniques for Teaching Academic Success Classes

Kris Franklin
Professor of Law
New York Law School

Howard E. Katz
Series Editor
Elon University School of Law



Copyright © 2015 Aspen Publishing. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.AspenPublishing.com.

To contact Customer Service,
e-mail customer.service@aspenpublishing.com,
call 1-800-950-5259, or mail correspondence to:

Aspen Publishing
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-4789-2

About Aspen Publishing

Aspen Publishing is a leading provider of educational content and digital learning solutions to law schools in the U.S. and around the world. Aspen provides best-in-class solutions for legal education through authoritative textbooks, written by renowned authors, and breakthrough products such as Connected eBooks, Connected Quizzing, and PracticePerfect.

The Aspen Casebook Series (famously known among law faculty and students as the “red and black” casebooks) encompasses hundreds of highly regarded textbooks in more than eighty disciplines, from large enrollment courses, such as Torts and Contracts to emerging electives such as Sustainability and the Law of Policing. Study aids such as the *Examples & Explanations* and the *Emanuel Law Outlines* series, both highly popular collections, help law students master complex subject matter.

Major products, programs, and initiatives include:

- **Connected eBooks** are enhanced digital textbooks and study aids that come with a suite of online content and learning tools designed to maximize student success. Designed in collaboration with hundreds of faculty and students, the Connected eBook is a significant leap forward in the legal education learning tools available to students.
- **Connected Quizzing** is an easy-to-use formative assessment tool that tests law students’ understanding and provides timely feedback to improve learning outcomes. Delivered through CasebookConnect.com, the learning platform already used by students to access their Aspen casebooks, Connected Quizzing is simple to implement and integrates seamlessly with law school course curricula.
- **PracticePerfect** is a visually engaging, interactive study aid to explain commonly encountered legal doctrines through easy-to-understand animated videos, illustrative examples, and numerous practice questions. Developed by a team of experts, PracticePerfect is the ideal study companion for today’s law students.
- The **Aspen Learning Library** enables law schools to provide their students with access to the most popular study aids on the market across all of their courses. Available through an annual subscription, the online library consists of study aids in e-book, audio, and video formats with full text search, note-taking, and highlighting capabilities.
- Aspen’s **Digital Bookshelf** is an institutional-level online education bookshelf, consolidating everything students and professors need to ensure success. This program ensures that every student has access to affordable course materials from day one.
- **Leading Edge** is a community centered on thinking differently about legal education and putting those thoughts into actionable strategies. At the core of the program is the Leading Edge Conference, an annual gathering of legal education thought leaders looking to pool ideas and identify promising directions of exploration.

Contents

<i>Acknowledgments</i>	ix
Introduction	1
I. Type of Course	3
A. <i>Timing</i>	3
B. <i>Required Course or Opt-In?</i>	6
C. <i>Subject-Matter Linked or Freestanding?</i>	7
D. <i>Course Objectives</i>	9
E. <i>A Word About Tone</i>	11
II. Materials and Texts	12
A. <i>“How to Study and Learn Law” Manuals</i>	12
B. <i>Law School Exam Skills Books</i>	14
C. <i>Legal Methods Texts</i>	15
D. <i>Additional Reading to Consider</i>	16
1. <i>Specialty Topics Books and Articles</i>	16
2. <i>Problem Books</i>	16
3. <i>The Students’ Own Papers</i>	17
III. Beginning Your Course	17
A. <i>Individual Conferences</i>	18
B. <i>Initial Exercises</i>	19
C. <i>Self-Reflective Questionnaires</i>	20
IV. Teaching Legal Reasoning	20
A. <i>Sequencing Your Teaching</i>	23
B. <i>Central Topics in Learning and Refining Legal Analysis</i>	25
1. <i>Legal Reading Skills</i>	26
2. <i>Case Synthesis</i>	28
3. <i>Thinking Conceptually</i>	31
4. <i>Applying Rules to Facts</i>	33
5. <i>Stating (and Learning) Legal Rules Precisely and Accurately</i>	36
6. <i>Issue Spotting</i>	37

7. Developing Legal Judgment	40
8. Supporting Legal Reasoning: Explanations and Authority	42
9. Crafting Effective Legal Analysis	46
10. Objective Questions	51
11. Developing a Reflective Mindset and Practice	52
V. Academic Skills	55
A. <i>The Attitude of Adult Learning</i>	55
B. <i>Setting Learning Goals</i>	56
C. <i>Study Skills</i>	57
1. Use of Commercial Study Materials	57
2. Note Taking	58
3. Periodic Review	59
4. Outlines	60
D. <i>Alternative Modes of Studying and Learning</i>	61
1. Making Timelines, Charts and Graphics	61
2. Writing Their Own Exam Questions	62
E. <i>Memorization</i>	63
F. <i>Time Management</i>	63
G. <i>Addressing Learning Differences</i>	64
1. Learning Disabilities	66
2. A Note About FERPA	66
3. Test Anxiety	67
H. <i>Stigma and Stereotype Threat</i>	68
VI. Developing Teaching and Learning Exercises	69
VII. Feedback and Grading	71
A. <i>Additive versus Subtractive Grading</i>	72
B. <i>Focus of Comments</i>	73
C. <i>Forms of Feedback</i>	73
D. <i>Scoring Schemes</i>	74
E. <i>Timing</i>	75
VIII. Wrapping up Your Course	75
IX. Conclusion	77

Acknowledgments

I offer my sincere appreciation to Jennifer Carr, Sarah Chinn, Linda Feldman, and Rebecca Flanagan for their tremendous care and valuable suggestions in reviewing drafts of this work, and to Howard Katz for thoughtful editing. Thanks, too, to the many ASP colleagues and students who have shaped my learning and thinking in the field over the years. All omissions or mistakes are, of course, my own.

Strategies and Techniques for Teaching Academic Success Classes

Introduction

Welcome! You are entering an exciting part of our profession. Academic support teaching is among the most challenging and rewarding work you can do as a legal educator.

In recent decades, most law schools have been expanding their academic support programs (ASP). These courses are also frequently called *academic success* or *academic excellence* classes. Although there might be subtle but important differences in the nomenclature your institution adopts, this book treats each of those terms interchangeably, along with the common acronym ASP. Academic support services and academic skills education are usually significant components in evaluating law schools for accreditation, and academic support has become a well-established profession in legal education.

Law schools offer a wide array of services and programming under the heading of academic support. Many schools provide various forms of one-on-one academic counseling, while others might provide structured study groups, supervised either by faculty or upper level teaching fellows. Frequently, schools also offer specific services and courses to help ensure that their graduates are ready to take and pass a rigorous bar exam.

It has become commonplace in recent years, though, to situate explicit academic skills teaching in small or large courses (whether required or optional), which are specifically intended to help students improve their academic work in law school. These sorts of courses are usually designed and led by faculty and senior administrative staff with special expertise in law students' learning.

This book aims specifically to help those newer to designing or teaching this kind of course think through the planning needed to make this kind of class a success. The book is intended to work in tandem with the more general text *Strategies and Techniques of Law School Teaching*, by Howard E. Katz and Kevin Francis O'Neill. It will help you prepare to design and teach an academic skills course as part of your school's curricular offerings.

Constructive academic support teaching requires articulating the building blocks of legal reasoning while being explicit about best practices for studying and learning law. In short, then, this kind of teaching can show your students how to be better learners and thinkers. As an added bonus, leading this kind of course might make *you* more aware of how students learn law, what difficulties they face

along the way, and how you can teach more effectively in any part of the law school curriculum.

One of the biggest difficulties in this field is that there is more variability to academic support classes than is typical of other standard courses in the law school curriculum. There are significant differences in types and purpose of courses, and each is designed to suit particular institutional needs and specific student populations. Are you doing academic support teaching in an orientation or prelaw class? As a supplement to the rest of the curriculum? An integral part of it? For course credit or not? If for credit, is the class graded or pass/fail? Is it connected to specific doctrinal material or with an open agenda? Pitched toward specifically identified students or available for all comers? Each of these considerations will in a significant way shape how you design and frame your course, yet there is such a variety of approaches that it is almost impossible to generalize about how ASP teaching is best delivered or which strategies will work well for which setting.

For that reason, the aim of this volume is not to tell you precisely how to develop or structure your course. Instead, this text will help both newer and more experienced academic support professionals who are beginning to teach these courses to familiarize themselves with important factors in class design. To do so, the book points out issues to consider in some of the choices you will have to make as you develop your course, and reviews core concepts that you might want to fold into your class plans.

The book is intended as a compendium of possible topics your class might touch on, but no one teacher or course is likely to be able to cover all of the topics addressed here. Instead, most academic success teachers will choose a few themes and approaches to concentrate on, and perhaps add in brief overviews or mentions of minor points that might also be useful to their students.

The organization of this book should at least roughly correspond with the order in which you will need to think through your plans for your course. Parts I and II consider what type of class you will be teaching and what sorts of reading or textbooks you might want to rely on. Part III offers ideas on getting your class started. Parts IV and V form the substantive core of this text: They provide a survey of the most commonly addressed topics in academic support teaching, as well as some suggested resources for background reading to supplement your own knowledge of the topics. They also

give examples of the kinds of experiences and exercises that can be employed to teach each subject. Because so much of academic support teaching is exercise-based, Part VI will help you consider the stages in planning and designing your own problems or classroom experiences. Part VII offers suggestions for providing feedback on student work and (if that is part of your curricular design) grading your course. Finally, Part VIII gives suggestions for concluding your class and Part IX leaves you with some parting thoughts as you begin to develop your own course.

I. Type of Course

One common denominator in ASP teaching is a focus on learning by doing. Because the primary objective of these courses is to improve students' legal reasoning, experiential learning in this context usually takes the form of frequent practice in legal reasoning and writing.

When students regularly examine the strengths and weaknesses of writing that they have done, they learn to better comprehend legal doctrine, to anticipate the kinds of questions that can be asked, and to articulate the qualities that make examples of legal analysis more or less effective. Chances are, then, that no matter how your class is designed, it will provide regular opportunities for students to think through legal problems and get critical feedback on their analysis.

But there are many successful models for structuring specific academic support classes, and some of the most important variables are considered in this section. Your school could be adopting (or adapting) one of the models described here or creating its own hybrid. If you are building a program from scratch, it is worth considering the benefits and drawbacks of these various approaches when designing your course. If, instead, you are taking on an ASP class that already has a set structure, you might still want to consider whether there is room to capitalize on the strengths of other models.

A. TIMING

An academic success class can come at almost any point in a student's law school career. Most courses that are aimed at addressing basic legal reasoning and writing skills will meet earlier on, whereas

courses that are intended to firm up the analytical skills needed for bar passage tend to fall within the third year of law school.

The timing of the class is often connected to decisions regarding the targeted audience and whether the class is optional. Common possibilities include the following:

- In the summer before beginning law school (usually these are optional for all students or are required for some conditional admits or incoming students with weaker credentials than their peers)
- Woven into the first semester (may be optional or required; most commonly offered to all students at this point rather than specifically targeted ones)
- Standing alone in the second semester or third semesters (may be required or opt-in, but either way, usually aimed at a specific populations of students based on academic performance to date)

One advantage in starting early is showing students from the very outset how they will need to adjust to learning law. By teaching students how to read and think about cases and statutes in a richer way than they might on their own, you can help them hit the ground running in all of their courses. And by helping beginning law students understand the purposes of Socratic dialogue and other common classroom techniques, you can enable them to become better prepared for their classes, to take notes during classes that will serve them well, and to understand how to review and synthesize after classes in ways that consolidate their learning. Finally, by exposing students early on to exam-style writing and feedback, you can give them a sense of what their objective will be over the course of their legal education.

The hope is that beginning students will come to understand that although legal education requires learning substantial amounts of information and mastering some difficult concepts, the real goal is not simply to accumulate knowledge, but to develop the ability to use that knowledge to solve hypothetical (and eventually real) problems their clients might face. This, in turn, should show students that the study of law is likely to require a substantial reorientation in the ways that they have studied and learned subjects in previous academic settings. Ideally, such comprehension will allow them to establish habits right away that will serve them well throughout their legal education and into their future careers as attorneys.

That ideal is not always met, though. Reams of advice and experience along these lines have been offered to recent generations of law students, but the ubiquity of this information does not prevent them from struggling to adjust to law school learning. It could be that for at least some students, experience with actual law classes is simply necessary for the concepts and approaches that we want to encourage to take hold.

There is also often a problem with transferability of skills: Many students find it difficult to translate and adapt what they learn in one setting or class to another. Students can learn well what is taught in an ASP course yet still not know how to implement those ideas in, say, their torts class. Additionally, some students might need the jolt of dissatisfaction with their own performance to truly understand the need to change learning approaches that worked well for them in the past.

Moreover, in a world of always imperfect and limited resources, your school might decide that it makes sense to focus most of your attention on students whose individual academic performance shows a need for additional assistance. Even for schools that give regular midterm examinations, it is usually impractical to provide additional assistance to students most in need until they have been identified by low performance at the end of their first semester or first year. For these reasons, many schools place students in academic support classes if they perform below certain benchmarks after their first or second semester of law school.

Of course, there is no reason why a school cannot employ more than one strategy to help its students succeed academically. Indeed, a combination of approaches could have the greatest reach and offer the best hope of capturing at least some of what every student needs. In any case, it will be important to adjust your academic support class to the setting and context in which it is offered. Law school summer preparatory ASP classes might cover much of the same content as a course offered to lower achieving third-semester law students, but the manner of presenting information and level of attention to various topics touched on might be very different indeed. Samples of coverage plans for ASP courses of varying lengths and objectives can be found in the appendix to this book.

B. REQUIRED COURSE OR OPT-IN?

An obvious advantage of optional academic support courses is that you will be working with students who genuinely *want* to take the opportunity learn everything they can about how to succeed in law school. This can be a tremendous benefit not only because more motivated students are more likely to work hard, but also because it fosters a positive collective attitude within your class. A productive course atmosphere is likely to work cyclically to generate still more commitment, as students spur one another on to improve their work as much as possible.

Opt-in classes also serve to avoid the stigma often associated with a course that some might see as remedial. No matter how hard you and your school as a whole work to regularize the notion that many students adjust to learning law at different rates, it might be impossible, or at least very difficult, to fully eradicate the negative associations some people will have with ASP. And stigma is not simply an important concern for students' own sense of well-being; it can directly impact actual academic performance. Numerous studies show that expectations affect outcomes—all other factors controlled for, students who are expected to perform well often do, whereas students who are expected to perform poorly often do less well than they might have otherwise.¹

Permitting students to decide for themselves whether they want to enroll in an academic assistance course supports their autonomy (which is itself associated with stronger performance), while making the class seem like a valuable service rather than a corrective measure for poor performance in the past or predicted low performance in the future.

On the other hand, ASP professors observe anecdotally that law students with the greatest needs for academic assistance are often the least likely to seek it. They might be afraid to seek help, or self-reliant and intent on “just working harder,” or ashamed, or unmotivated, or in denial. Whatever their reasons for not seeking help, the problem of not being able to reach these students becomes moot when the academic support course is required.

An additional issue for opt-in ASP courses is whether to allow any interested student to attend or only students in certain targeted groups. Often, some of the most anxious but ultimately high-achieving students are the first to take advantage of any academic success programming.

These students could enrich the dialogue in your classroom and can be valuable assets in any course, but they might also divert attention and resources from other students with greater needs.

Your school will have to decide how to balance the competing concerns around class composition. There will be positives and drawbacks no matter what route you choose. Most important for you, these decisions should affect the tone and pacing of your course. You will, no doubt, want to make your class encouraging yet rigorous, irrespective of how students came into it. But differences in the incoming skills your students possess might affect how you talk to students about the class and their work, as well as the speed with which you move through exercises and concepts.

C. SUBJECT-MATTER LINKED OR FREESTANDING?

It is almost impossible to teach legal reasoning or foundational legal academic skills without using some, well, law. Students need not just to *hear* about legal reasoning but also to *do* it, and they can't practice legal analysis unless they have legal rules to apply to facts. Consequently, even if that is not the primary focus of the teaching, any ASP course will necessarily end up somehow covering or using some legal doctrine. The question then becomes this: Which doctrine?

Some academic support classes will introduce new cases and topics for study and practice. This can be done in a hybrid doctrinal/ASP course (often in a special section of a required course like Contracts or Constitutional Law, or in a separate class that covers important topics connected to the standard curriculum but typically is not required, such as Agency & Partnership, Sales, or Advanced Torts). If you are teaching one of these types of courses you will want to use this text to help you think through the ASP aspects of your class, perhaps consulting with other volumes to guide you through the standard pedagogy in your particular area of law.

The advantage of subject-matter-specific academic support classes is that they can make the course feel more substantive to students, which in turn might help reduce resistance (if the class is required) or stigma. In addition, learning law in the context of working with it leads to richer and deeper comprehension, so this type of hybrid design could be an efficient means of accomplishing several goals at once.

There are potential drawbacks to the ASP + doctrine model, however. One might be the simple temptation for both faculty and students to become immersed in the new material to the exclusion of needed attention to the process of developing skills. Despite concerted efforts to treat both parts of the course as important components, it can often become difficult for the more abstract and hard-to-define skills teaching to feel equally as important and as absorbing to students as understanding the nuances of new legal rules. Also, there remains the difficulty of transfer—will the skills the students learn in a hybrid ASP class be ones they take with them and modify to use in every other legal setting? Making the skills transparent and helping students adapt them to other settings is no easy task.

Other academic support classes focus on exercises developed specifically for that class alone. The advantage here is that the exercises can be drawn from entirely new material or can review or amplify topics touched on in courses the students have already taken. Often, courses with this design will alternate between the two. Because there is no set body of material that must be covered, you will have the freedom to move effortlessly from, say, a warranty issue to a question of criminal law. It is easy to see how covering a broad range of subject areas could help with the transfer of knowledge problem. It might also provide an opportunity to talk with students about how different legal doctrines genuinely differ—that is, about why we might approach that criminal law question quite differently from the way a lawyer should come at a warranty question sounding either in contract law or tort law.

A possible downside to this sort of freestanding design, however, is the simple fact that for each new topic covered, the students (and not entirely incidentally, you) will have to learn new material. Most law professors report that class time is always at a premium, and the class time devoted to studying (or reviewing) law is time that cannot be spent learning or practicing analytic or academic skills.

Another model for ASP courses, then, attempts to avoid those disadvantages by coordinating with one or more doctrinal courses that students are taking concurrently. This allows the academic success class to skip over review and teaching of the concepts, giving students an opportunity to review and consolidate their knowledge of key subjects.

Keep in mind that this type of course works best when there is close collaboration with the other professor(s). Collaboration is most

likely rewarding and productive, but it could also be time-consuming and demanding for all professors involved. It will be crucial to ensure that the academic support work in such a course or set of courses is not ancillary or subordinate to the doctrinal material. If it is perceived to be, then there is a real danger that students will not engage with the work or will not understand it to be as serious and substantive as the doctrinal material. And if not all students in the doctrinal course(s) are enrolled in the ASP class, there could be real or at least perceived institutional concerns about whether the students in the academic enrichment course gain an unfair advantage over their classmates.

In short, then, there is no single model for an ASP course design that has emerged as a universally agreed-on best practice for all law schools. You or your faculty as a whole will have to determine what design fits best within your curriculum, with your students' needs at the forefront. Whatever model you choose, you should be aware of its strengths and benefits, and will need to work to minimize the effects of any disadvantages.

D. COURSE OBJECTIVES

No matter the design of your particular course, there are themes that are common to just about every ASP class. In early 2000, a publication by the Law School Admissions Council articulated eight theoretical principles of a successful academic assistance program:²

1. Begin where students begin.
2. Give consistent and explicit instruction on what they are learning.
3. Provide several examples of different ways to process and learn information.
4. Encourage students to be aware of their own process and help them translate their logic to fit within "legal reasoning logic."
5. Repeat concepts and processes to offer numerous opportunities for students to practice their newly acquired skills.
6. Give regular feedback on their progress.

7. Match expectations with where students are in the learning progression.
8. Build learning in sequence.

The academic support field might have grown and changed immeasurably since these principles were initially articulated, but the core needs for acclimatizing our students to learning law have not. If anything, these principles have become more broadly incorporated into law teaching in general, and they will still form the basis of your ASP teaching.

But what “concepts and processes” will you be teaching, and do they differ from those in any other foundational law course? Many of the more specific skills and ideas you will probably want to cover are detailed in Parts III and IV of this book. To start with a wider overview, though, it is pretty inevitable that you will want to focus at least some of your attention on getting students to identify legal issues, approach legal analysis methodically, learn and apply rules with precision, consider problems from all sides, and explain their reasoning thoroughly.

Most academic skills courses try to work on multiple levels simultaneously. Ideally, you would want your students to learn both how to think more deeply about legal questions and how to present their thinking more effectively. Academic support professors often spend a significant amount of time talking to students about the structures of a legal argument, and perhaps explicitly addressing exam-writing techniques. Your course will likely review preparatory skills such as case reading, taking effective notes in class, and so forth. You’ll teach synthesis, and will try to help students understand how to fit together minority and majority approaches to particular questions, conflicting parts of legal rules, lines of cases, and shifts over time in judicial interpretation or application.

Most challengingly, you will strive to show students how to think harder and more conceptually about law (seeing forests not just trees, understanding how law and policy are intertwined, and grasping both the determinacy and indeterminacy of legal rules). This conceptual part tends to be the hardest but most satisfying aspect of ASP teaching, because with gains in that, students’ academic performance can improve dramatically. But the more rudimentary skills (organizing written analysis, time management, etc.) will also be important to

cover because with practice in these areas, virtually all students can see at least some improvement in their work.

E. A WORD ABOUT TONE

At their heart, academic support classes are intended to break down and explain the processes of legal reasoning, offer students practice and feedback in written legal analysis, and provide a close examination of the skills needed for excellent work in law school and in the legal profession. Your class should be rigorous and, to the extent possible, it should feel personalized. In other words, regardless of how or why students come into the course, it should maintain high standards, presume that if students work hard enough and try to improve all of them can perform at the level expected, and set specific goals for improvement for each student.

Because of the subject matter, and because of students' likely sensitivities about their own work (especially, but not only, if your class is required for some or all of your students based on low performance or lower incoming predictors), it is crucial that students not feel that you are talking down to them. Often, then, the style of successful ASP teachers is to act as if in the normal course of business you expect excellent work from all of your students, that you will settle for no less, and that together you will try to identify with them what they need for achievement in law school and the legal profession. When they are working well, many academic support classes develop a sort of workshop feel, with a "we're in it together" camaraderie that can do a great deal to help students develop a positive attitude about their own aptitude for learning law, and about the course itself.

At the same time, it is crucial to make it clear that improvements are the students' to make. You can serve only as backstop and guide toward successfully learning and applying law. There will always be a few students who would like to shift responsibility for their progress onto you, your class, or your school. As empathetic and encouraging as you might feel toward your students, it is a classic mistake not to challenge a negative attitude whenever you see glimmers of it. Find ways to state firmly yet supportively that the students themselves must decide that they want to learn to do excellent work and to apply themselves to the task. Any pessimism or defensiveness

expressed by even a few students could affect the atmosphere of your entire class, which is a disservice to the other students.

Ultimately, your course will not work for students unless both you and they are clear that law students are adults, and they are responsible for their own learning. On the other hand, this also means that they, not we, will deserve the credit when they succeed.

II. Materials and Texts

Just as with any other course in law school, one of the earliest and most foundational decisions you will need to make about your ASP class is what required reading to assign. If your course covers a particular academic subject then naturally you will need to choose materials covering that topic. Even for this kind of embedded academic support course, though, you will likely want to supplement your subject-matter reading with materials focusing specifically on academic skills. For a stand-alone course you will almost certainly want a body of background reading to assign your students.

Unlike classes with specific legal doctrine to cover, however, there is little standardization in what kinds of reading to use to support your ASP teaching. Depending on your goals for the class and how you see the reading fitting into your course, you might want to choose material from one or more of the categories covered next.

A. "HOW TO STUDY AND LEARN LAW" MANUALS

There are seemingly dozens of books on the market targeted to incoming or beginning law students that aim to help them become acclimated to learning in law school, and additional guides are released regularly. A more complete list of such texts can be found in the bibliography, but some of the more frequently referenced books include Ann L. Ijima, *The Law Student's Pocket Mentor: From Surviving to Thriving* (2007); Herbert N. Ramo, *Succeeding in Law School* (2d ed. 2010); and Ruta K. Stropus and Charlotte D. Taylor, *Bridging the Gap Between College and Law School: Strategies for Success* (3d ed. 2014).

Most of these are trade paperbacks. This has the advantage of making them comparatively inexpensive, which is an important

consideration. The possible disadvantage of some of these volumes as course textbooks is that they might have the feel of material intended to be absorbed quickly, and only as a supplement to the kinds of reading usually assigned in law classes. In other words, they might not feel quite ‘serious’ enough to be a foundational text in an actual law school class, since this is not generally the purpose for which they were designed.

If your course is offered as a preorientation or introductory class, or is not a required or graded part of your curriculum, an informal feel to the assigned reading could be valuable. At the very least it could be neutral, and the supportive tone and “quick read” feel of these texts might be helpful indeed. Moreover, if you intend to use one of these books primarily as a supplement to assigned cases, statutes, or other texts for your course, the reader-friendliness of these works might not be a drawback to adopting any of them as helpful additions to your course.

But if your class is required, graded, or both, the very accessibility of these books might, if they were used as the course’s primary text, suggest to some students and observers that the class is somehow less legitimate or rigorous than their other classes (not that it should, only that it might). Think about the culture of your school and the role of your course in your institution’s curricular design to determine whether this is a concern for you. This is not to say that every softcover book marketed to give beginning law students help in their studies will feel unserious, however. Some take a very rigorous and research-based approach to what it means for law students to learn, reason, and write expertly. The advantage in tone for these texts might be quite apparent.

What might be subtler in considering these texts will be the degree to which you will have to commit to exploring such texts’ exercises and examples to gain the full benefit of their depth and value. If you are eager to use these books’ exercises in teaching your course (which, really, is no different from choosing a casebook based on its having cases and problems that you would want to teach), this will be an advantage. But if you have other exercises or materials in mind, think carefully about whether the messages in the book under consideration are too bound up in their own context, or whether they can easily stand on their own.

B. LAW SCHOOL EXAM SKILLS BOOKS

There are also an increasing number of books on the market that are explicitly intended to teach the analytical skills students need to produce well-crafted reasoning on law school exam hypotheticals. Again, additional examples are included in the bibliography, but the most commonly used in academic courses include Richard Michael Fischl and Jeremy Paul, *Getting to Maybe: How to Excel on Law School Exams* (1999); Barry Friedman and John C. P. Goldberg, *Open Book: Succeeding on Exams from the First Day of Law School* (2011); and Suzanne Darrow-Kleinhaus, *Mastering the Law School Exam* (2007).

Most of these are quite substantive. They seek to break down and explain the processes that lawyers and law students use to raise and evaluate possibilities when considering a legal problem. No matter what their tone, they cannot (or at least, should not) be dismissed by students or skeptical observers as simply “self-help” manuals for law students. Depending on the design of your course, these might be appropriate texts as foundational reading. I usually use one of these texts as the basic reading in my own credit-granting academic skills classes.

One difficulty with these books is that no matter how well constructed they are, for some law students the information in them does not really gain traction until after the students have spent significant time learning legal rules and attempting to apply them. Frequently, professors (and upper division law students) might review these books and conclude that they unhide the ball and will tell everyone what they need to know to succeed academically. Yet many struggling law students will report having looked over these books at the outset of law school. Somehow, then, their messages didn’t really sink in for these students.

This is not an argument against using these texts—more explicit information about what beginning law students should do and why can only be helpful. But it does suggest that for at least some students these books are most useful after they have completed one or more semesters of law school. And these books cannot do the job alone. They must be taught amid reinforcing experiences, exercises, and feedback that will drive their points home.

C. LEGAL METHODS TEXTS

Even if they are not billed as traditional legal methods courses, some academic support classes use textbooks from the legal methods field to structure their courses. Most traditional legal academic publishers offer one or more Legal Methods casebooks. The most commonly used one on the market is probably Jane Carol Ginsburg, *Legal Methods* (4th ed. 2014), but it is by no means the only text available in this category.

An advantage of these books is they look and feel like more traditional law texts, which might increase student or institutional buy-in, and enhance the feeling of “regularness” for your course. Moreover, these volumes tend to include a number of cases and statutes that were assembled specifically to illustrate various strains of legal reasoning, as well as progressions of cases showing the development of common law over time. In that way they might provide exactly the backdrop you need to talk with students about how to read and synthesize case law. They will also include problems that can form the basis of class conversations and exercises.

The very substantiveness of these casebooks can create difficulties, however. You are likely to want to teach the cases and doctrine thoroughly as part of using them in your academic support teaching. This might be helpful, but it takes significant time away from the more direct academic skills teaching you likely want to be doing. It also runs the risk of simply replicating the kinds of teaching that students are, hopefully, getting in all of their introductory law classes. The timing and credits allocated to your course could determine whether these are trade-offs worth making.

Finally, it is important to remember that Legal Methods casebooks, like all traditional legal textbooks, are likely to be quite expensive. If your course is a substantial component of your institution’s curriculum, cost might not be a concern that should drive your choices in class materials. If your class is more supplemental in nature, however, having an expensive casebook could be a significant consideration. Some students might come to resent buying the book if only small sections of it are used. Worse yet, some students might choose not to buy it, and will simply skim through a book that they share with a friend or read only in the library. This is exactly the kind of nonengagement with reading material that you want students to

avoid in all of their classes, so it would not do to have them develop bad habits in your own class.

D. ADDITIONAL READING TO CONSIDER

1. Specialty Topics Books and Articles

There are some strong resources available for just about any topic you might want to focus on in your course, but it is worth paying special attention to ones that cover perennially important issues in ASP. Books and articles addressing how law students can improve their reading skills (discussed at greater length later), offering unique insight for law students dealing with learning differences or disabilities or considering the ways that personality types might lend themselves to distinct approaches to learning and studying (covered later), have proven especially helpful for many academic support instructors. You will need to decide whether these materials are more useful for your own information and background or should be assigned reading for students as well.

2. Problem Books

Increasingly, there are workbooks or practice exercises that can be used to teach reasoning from simple or complex statutes, or from individual or synthesized cases. In most cases, these books are not created specifically for ASP courses, but instead overlap with texts aimed at legal writing and reasoning classes. See, for example, Cassandra L. Hill and Katherine T. Vukadin, *Legal Analysis: 100 Exercises for Mastery* (2012); or Robin Wellford Slocum, *Legal Reasoning, Writing, and Other Lawyering Skills* (3d ed. 2011).

These texts offer tested problems with identifiable degrees of difficulty, usually based on carefully selected bodies of law, so that you can teach the legal material and then work through the problems with your students. Such texts usually provide sample answers in the books themselves or in separate teachers' manuals. These texts might not be needed, or might be too generic, for an academic support class that is linked to specific subject matter. But if your class is freestanding, it might be worth considering adopting one of these manuals.

3. The Students' Own Papers

Some of the most important reading students can ever be assigned is to actually review their own papers. It is usually tempting for students simply to look at any scores they receive on graded work, or to flip through and review only the faculty commentary on the page. Instead, students should be told that they must first critically read their own responses and decide what they think its strengths and weaknesses are. If they look carefully at what they have written, they will gain practice in evaluating written legal analysis, and the feedback they get on their papers will have far more value. I explicitly spell this out on my syllabus as a crucial part of the assigned reading for my classes.

III. Beginning Your Course

First impressions matter in every class, but in the first meeting with an ASP class it is particularly crucial to create a positive climate. You want to students to buy into the notion that your course will teach them valuable skills, but that much will be expected of them both in your class and throughout their academic life in law school.

If students are required to take your course, or some are placed there based on their performance or their incoming academic predictors, your opening might be especially daunting. These students have not done as well in law school as they or those around them would have hoped, or perhaps they are expected to be academically at risk. They are not going to be happy about that. And if the news about their place in the class is quite fresh they could be feeling shocked, upset, and sometimes angry. It is possible, then, that some of your students will not come into the class with the best of attitudes. To develop a good working environment it will therefore be important to set the right tone for the class in the very first meeting.

If there is some degree of mandatoriness or any stigma attached to being enrolled in your course, it will help to acknowledge the students' feelings but not to dwell on them. It will be important to convey to the students that your course is not a "dumbed-down" version of law school, but rather a serious and demanding class that could actually benefit a wide variety of law students. The fact that your school might have chosen to devote considerable resources to these

particular students, then, is ultimately something that they can take pride in. Your institution must believe in them, and expect that with hard work and some dedicated faculty assistance they are capable of producing strong legal analysis. (You might consider inviting senior administrators or former students to make some of these points.)

A short pep talk will not immediately solve all potential problems, but any existing student tensions will often dissipate surprisingly quickly if you say something along the preceding lines and then get to work quickly, genuinely adopting the corresponding attitude (“Many ASP students can excel, my job is to show them how, and their job is to keep working to reach high standards”). In short, make it clear that although you empathize with the students’ discomfort, you intend quickly to move on to the tasks at hand.

If your course is offered to all, rather than just to specifically targeted students, the concerns will be different. Still, just because it focuses on thinking skills rather than on bodies of legal knowledge, there is almost always some degree to which academic support classes might feel less “real” to students than their other classes. This effect will be more powerful if your class is ungraded, pass/fail, out of sequence or covered for only part of the semester, or earns very little credit compared to standard doctrinal or clinical and professional classes at your school.

For whatever reason, then, there is something about the focus or feel of academic support teaching that can make it feel ancillary and easy for some students to dismiss. And just like any class you teach, you might not be able to win over every one of your students. But, again, focus on the task at hand and approach the work with a businesslike tone and an absolute expectation of respect and professionalism from your students. Most will follow that lead and perform accordingly.

A. INDIVIDUAL CONFERENCES

You might want to schedule short individual meetings with each ASP student at the outset of the course or very early on in your time with them. Many ASP professors will establish a set time in their syllabus and perhaps move one or more classes in their first few weeks to arrange for these meetings. If it is possible for you to do this at

the beginning of your course it will be great way to get to know your students and to work with them to set goals for their own learning.

Student–teacher conferences work best when there is some text to provide structure for the conversation. I often precede my meetings with a diagnostic assignment in an early class, and then read and mark these up in preparation for the meetings. Alternatively, you might assign the students to do some reflection on previous work product from your own or another class and bring that to the meeting. You could also include a questionnaire on their study methodologies and academic strengths as discussed later.

B. INITIAL EXERCISES

An important goal of your course will likely be spelling out the steps of legal reasoning and the effective practice of law study, so make sure that the beginning segments of your class parse these out and move methodically among each of these discrete skills. This is much more helpful to students than lumping them all together. A recommended sequence is discussed in more detail later.

To get a sense of where your students are at the outset, you might choose to begin with some sort of exam-style diagnostic test to get a better sense of your students' individual and collective strengths and weaknesses. You can use an exercise from your textbook, or you might choose to develop your own or to draw them from materials students are using in other classes.

The most important part of beginning your class will be to build in, layer by layer, each of the lessons you want students to master regarding their work and their analysis. Develop a common language for effective legal reasoning so that you and your students can shorthand it when you return to the concept throughout the semester. Expect that you will absolutely have to do so: If legal analysis were self-evident and easy to master there would be little need for ASP teaching at all. But because we are working with complex ideas and challenging skills, you will want to teach recursively—assuming that each time you touch again on an already-covered topic, the students will gain a greater depth of understanding and have a bigger picture into which to fit it.

C. SELF-REFLECTIVE QUESTIONNAIRES

A lot of ASP teachers have students fill out a questionnaire about their own study habits and strengths and weaknesses. These kinds of surveys can give you a great deal of individual and collective data about your students. They could also be a subtle means of creating (or reinforcing) norms and expectations for law study in your school.

For example, including a question asking students how much they reviewed and consolidated what they were learning over the course of the semester reinforces the idea that this is an expected and central part of the process. Similarly, asking which materials students consulted in addition to assigned texts might help normalize conversation about when commercial supplements are and are not valuable, rather than leaving their use to be something hidden and treated like a “cheat” that only students are aware of.

Students are usually surprisingly honest on these sorts of questionnaires. Having them report on such questions as their class preparation practices (if they have already been in law school for a while) is a useful way to start a conversation about their study techniques, learning styles, and overall effort. When you give your students a chance to describe their own work habits you also make space for them to be self-critical. This could neatly avoid putting you in the position of having to tell them what they have been doing is insufficient or somehow wrong.

Students might also inadvertently reveal a great deal not just by what they say, but what they leave out. That is, the student who reports attending only about 85% of classes the prior semester and then leaves out any explanation in a follow-up question asking “If your attendance was low, why?” is telling you something important about what she believes is expected in law school. If 85% class attendance was sufficient in her undergraduate experience, she might believe that she is meeting the current standards expected in law school. Finding this out would provide a good entrée for you to help her understand that those expectations now need adjustment.

IV. Teaching Legal Reasoning

ASP pedagogy is devoted to teaching students how to learn and apply rules of law to facts and to use good judgment to predict or

advocate for legal conclusions. But if we were only to sprinkle in some specific doctrinal content, that might also be a fair description of the goal of the entire first-year curriculum in law schools. Yet somehow, traditional law teaching has not worked equally well for all students.

There is widespread consensus that many students who might be capable of becoming successful attorneys nonetheless struggle academically in law school, or at least adjust more slowly than their peers to the expectations and methodologies of legal education. For these students (or arguably, for all students) we need to zoom in more directly on explaining the steps in legal analysis, and help them practice some of the most crucial and perpetually challenging aspects of legal reasoning. This, in turn, requires breaking down the steps that experienced lawyers might use automatically or perhaps only somewhat consciously. Our job is to make those moves visible to students, while guiding them toward making thoughtful decisions for every one of those steps. Because much of this thinking has become intuitive for expert learners and teachers of law, this is indeed a demanding task.

Consider some of the common advice that law professors dole out in an effort to help our students:

1. Carefully read every case.
2. Pull out the salient points from your reading and don't focus on minutiae.
3. Parse each statute and paraphrase it to make sure you understand it.
4. Use precise language from the rule.
5. Synthesize the cases, don't just report on them.
6. Apply the rules to facts.
7. Use only material (legally relevant) facts.
8. Don't make up facts.
9. Compare principles and reasoning, not superficial similarities in facts.
10. Explain and support your reasoning.
11. Don't be conclusory.

12. Consider all sides of an argument.
13. Use good judgment to arrive at a prediction or conclusion.
14. Follow IRAC or one of its analogues to organize legal analysis.
15. Legal reasoning requires engaged thinking about a problem; no formula can substitute.

It might be easy for most law teachers and experienced lawyers to nod along with such sage advice, and immediately consider what other nuggets we ourselves might wish to add.

On closer examination, though, how many of those suggestions might appear contradictory, or at least puzzling, to the legal novice? When they are given a criminal law fact pattern and told to consider the problem as if they were junior lawyers in the district attorney's office, should students "consider all sides of the argument" or just ask themselves what crimes the DA might charge each possible defendant with? We know that they should do both—write in role, but anticipate and analyze defense counsel's likely response even while advocating for the charges their side might want to file—but do the students know that? Why should they? It certainly is not self-evident or automatic.

Similarly, what do we want students to retain from each of the cases that they read? It is almost axiomatic to want them to be able to pull from the case the most common briefing components: the jurisdiction and date, the procedural posture, the facts, what statute or precedent the court is applying, the court's ruling and justification, and so forth. But just because we want them to be able to discern and identify that material, will they need to know it after that day's class discussion has passed? For most standard law school courses (with the probable exception of Constitutional Law) the answer is usually no: Very few of the cases they read are leading ones that remain essential to consider to understand a particular body of law. Far more of the cases assigned to beginning law students (indeed in some subjects, perhaps all of them) simply serve as useful examples with which to illustrate certain rules or concepts. Any number of other cases might well be substituted and teach the law equally well.

But if that's true, then the details of specific cases the students have read are far less important than the principles they stand for. Presumably, then, those particulars could be safely forgotten after they have served their purpose for the assigned class: helping the reader sort

through what might or might not be material to the issue before the court. And yet the case itself could become important again if the student were later (say, on an exam question) asked a question regarding facts that were arguably comparable, or that were superficially similar but might be meaningfully distinguished and should lead to a logically contrary result. The student would then be expected to meaningfully compare the material facts in the cases in considering the reasoning underlying the court's holding.

So is the student expected to focus more on the cases themselves, or on the ideas that they represent? The answer, of course, is "both" and "it depends." Is it any wonder that anxious law students eager to work on what they believe will help them the most can emerge confused about what, precisely, that might be? Having some empathy for the very difficult project of understanding what we mean when we talk about legal analysis will make it far easier to reach and teach your students, and for them to comprehend the lessons you will construct.

A. SEQUENCING YOUR TEACHING

Because academic support teaching is all about making explicit each step in the enterprise of learning and applying law, it stands to reason that much of your course might focus on articulating and practicing the pieces that you will ultimately want your students to put together. There are no simple ways to do this, of course, but it will help a great deal to pay careful attention to making the examples and exercises used in your course build in complexity over time.

There could be other ways to structure your lessons, but one possibility would be to do the following:

1. Have your students begin by working with a single rule drawn from an ordinance or statute. You might ask them to break the rule down into pieces or even to diagram it, aiming for a deep comprehension of what the rule actually means.
2. Ask students to apply that rule to a set of unambiguous facts that would lead to a fairly definitive conclusion, explaining carefully why that conclusion is a logical result.
3. Add in case law interpreting the initial rule. Understand how that case law complicates the rule. Students can then return

to the initial descriptions or diagrams of the simple rule and expand on them to include the new information.

4. Begin looking for what kinds of questions the now-interpreted rule settles, and what remains ambiguous. Students might work to generate sets of facts that the rule clearly resolves, as well as ones that might be less easy to predict.
5. Learn to address ambiguity by categorization. That is, look at an unclear situation (a bad guy goes inside a homeless woman's cardboard shelter looking for something to steal) and construct arguments explaining why a set of facts does or does not fit within a specific legal category—say, a burglary (which requires breaking and entry into a “dwelling” with an intent to commit a crime therein).
6. Include multiple sources of law, such as cases that interpret aspects of the rule differently, or seem to apply them with diverging outcomes. Students must further refine what they have learned about the rule so far.

Opening with a unit that progresses through these steps might or might not be appropriate for your course. Naturally this will depend on what kind of class you are teaching, what legal doctrine it incorporates, or where it falls in the course of your students' legal education. Even if this is not the specific plan you will adopt, it will be helpful no matter where you begin to label each of these individual logical steps for your students, and to help them see why each individual task is more demanding than the last.

Identifying and describing each move in legal reasoning will make your lessons feel more straightforward to your students. And staging them to scaffold in new concepts on top of just-mastered ones will make the work seem more understandable and accessible. This is important, because you want your lessons to be ones that students can absorb without your having to oversimplify your messages, or imply that law is somehow less complicated than it actually is.

For examples of ways to sequence your course overall, see the models laid out in this book's appendix.

B. CENTRAL TOPICS IN LEARNING AND REFINING LEGAL ANALYSIS

As the list in the beginning of this section only begins to illustrate, there is a wide array of concepts that law professors pack in when we tell students to “learn law” or to “analyze a fact pattern.” Over time, you will likely develop a sense of what issues you need to focus attention on for your particular students. You will also probably develop many of your own exercises that are tailored to your specific students and your institution’s particular curriculum. To get you started, however, this section of the book lays out some of the most common (and perennially difficult) topics covered in ASP courses.

Within each topic, this book provides an overview of common concerns, as well as some suggestions of how the topics are commonly taught. Specific class exercises that you might wish to try are detailed. You might want to consider and adapt these in whatever ways will suit the unique challenges of your particular course. Whether or not you choose to use any of the exercises included here, however, you will probably want to find some way to touch on many of these topics (or ensure that they are sufficiently covered elsewhere in your school’s curriculum). They are the big ones that academic support educators, and all law teachers, really, struggle with year after year.

One note about learning in teams: Many of the exercises included in this section assume that students will work in pairs or in larger groups. As a rule, law students tend to resist working in groups, and some are skeptical about peer learning and teaching in general. But if we want to encourage engaged dialogue about legal reasoning, there is simply no better method than having students work through concepts or tasks together while discussing their thinking with one another. Often, too, small group work is the most efficient means of ensuring that all students have the opportunity to actively work on a project in a larger class. Students who are reluctant to participate (or conversely, tend to dominate) might need more structure or supervision to ensure that their partnerships work effectively. But teamwork is an increasingly important professional skill for lawyers, and can be a vital way to promote active learning. It is well worth the investment of time to teach students a bit about how to work effectively in groups. If you are looking for additional guidance on forming or managing teams of students in your class, some suggestions can be found in Sophie Sparrow, *Team-Based Learning: An Overview*.³

Much of commentary in this part, and this book overall, emphasizes helping students prepare for law school exams. Primarily that is because helping students to succeed academically is a central goal (and often the *raison d'être*) in most ASP courses. It is also one of the most important motivators for most law students who might have spent a lifetime aiming for good grades. But stressing law school testing could potentially have the troubling circularity of “teaching to the test,” or of emphasizing exam skills over professional ones. If you become concerned about this in your own teaching, it might help to remember that there are reasons why the typical law school exam is an issue-spotting hypothetical—they are essentially mini versions of potentially real client problems. That is, the analytical skills needed for success on law school exams are precisely the same ones that are important in practice. These might not be all of the skills and clinical expertise successful attorneys will need, then, but for the purposes of teaching legal reasoning, they are usually comfortably congruent.

1. Legal Reading Skills

Legal opinions require a very different set of reading skills than most law students have exercised before. Most prelaw, orientation, or first-semester academic support courses will include some attention to teaching students what to look for as they read assigned cases. By the time they get to their second semester, law students will have read hundreds of cases, so by then they (and we) can assume that they know how to do so. We take for granted that college graduates will have strong general reading comprehension abilities, and will simply have to become familiar enough with the structure of legal cases that they can learn to adapt to the genre.

But there is an important body of research suggesting that novices and experts do approach case reading quite differently. The most significant differences seem to be that expert readers look at cases purposefully and critically.⁴ That is, when we (expert law teachers and lawyers) read, we automatically seek to determine how a case fits in with what we are learning about an area of law. We continually question a decision's reasoning and rhetorical choices as we proceed through the text. In short, we read to figure out what the case means, not just what it says.

However, this approach is not at all obvious or automatic for law students. A 2007 empirical study comparing reading strategies

of high- and low-performing law students found significant differences in the ways that even these comparative beginners read legal opinions.⁵ Struggling law students tend to read in ways that are more linear, are more directly searching for case narratives, and are less critical of what they see. High-performing law students read cases more diagnostically and recursively, skip around frequently to assess both the cases and their understanding of them, and are far more likely to “argue” with the case’s reasoning as they proceed.

Some law school academic support programs delve into this topic in depth. They essentially teach students step-by-step how they should approach their reading assignments. Most of these programs rely on a workbook by Ruth Ann McKinney, *Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert* (2d ed. 2012). There is a great deal of useful background information to be gleaned from this text and other similar resources. Time is at a premium in every class, however, and you might find it difficult to find the time to do this text justice and cover the many other topics you want to include in your course. In that case you might choose to use some sections of the book as a springboard and then assign other parts of the text for students to work through on their own.

Even if most of us do not have time to develop the topic as completely as we might like, it is increasingly apparent that ASP classes need to pay substantial attention to the way our students read and comprehend the material they are being taught. Even after a semester or two of law school, many students still do not understand that their required courses are far more about learning how (and why) the law in a given area works and how to apply it than simply about accumulating knowledge of material. In other words, students might believe they are learning the law of contracts, rather than how lawyers think about the law governing contracts. Consequently, they persist in trying to read cases solely to glean information, rather than as examples of the way that lawyers reason—to be examined thoughtfully by judges, advocates, legal scholars, and law students such as themselves. It remains a revelation to many students that this is what their professors expect of them when they read.

Moreover, even if students are reading cases (and to a lesser extent, statutes) solely to discern rules of law, you might find that your students are not always able to successfully pull the rules of law from primary sources and then describe them accurately. This makes sense, because doing so requires a fairly high order of thinking; inevitably

rules of common law are developed in one factual setting and might have somewhat different boundaries when applied to a different one. Thus reading comprehension in law is actually a far more complex and contextualized skill than it might have been in many other subjects that your students have studied before attending law school.

For some students, learning to brief cases exacerbates the problem because the students absorb the wrong message from the project. Instead of treating their case briefs as reference guides to begin the real process of thinking about the meaning and limits of the case's reasoning, they might treat the case briefs as an endpoint—believing that if they have good case briefs they have accomplished all that must be done with the material. They do not then go on to examine how an accretion of cases relate to one another, are individually fact-bound, and so forth. (And this can be further complicated by the fact that far too many students rely on briefs prepared by friends or prior students, or on commercially prepared case briefs, some of which are specifically marketed and sold for each of the most popular case-books in basic subjects.)

You might find it helpful to talk about having solid “reading notes” in any form rather than heavily emphasizing formal case briefs. Changing nomenclature is certainly not sufficient to resolve students' confusion around the issue, though.

Given this background, it seems especially imperative to address reading strategies and reading skills in academic success classes. You might choose to do this by showing students some of the research on ways experts read law. An alternative is to have students compare their reading notes or case briefs to one another's or to notes taken by teaching assistants or faculty members, and deconstructing these “expert” approaches. Finally, consider assigning a case or article to read aloud together, taking turns reading and commenting on short passages as the basis for a group discussion about what lawyers see and think as they read, and why.

2. Case Synthesis

Learning to synthesize case law on an assigned topic is usually an important part of first-year legal writing and lawyering programs. It might seem, then, that you will not need to devote significant attention to this in an academic support class. Right?

It bears repeating that one of the biggest difficulties many law students face, and one of the most important concepts in academic skills teaching, is learning transfer. Even when students master a particular concept or set of skills in one context, they often struggle to apply it to another. Either they fail to recognize that what they learned earlier could be useful in another setting or they might apply what they have learned too literally, not fully understanding which parts need to be adapted. Helping students see how their legal writing and practices courses do and don't directly relate to their work in other courses could go a long way toward assisting the students in getting the most out of each class.

Case synthesis is one way in which doctrinal courses might emphasize very different skills from writing courses. Introductory law classes tend to survey the general topics in an area of law, teaching the rules and exceptions that form the basic building blocks of the subject. Legal writing projects, on the other hand, often drill down much deeper into smaller and more nuanced subrules. They ask students to reconcile legal authorities pulling in different directions or advocate for a particular interpretation of the law that will benefit their client's position. In a torts class, for example, a professor might cover the intentional tort of false imprisonment and expect students to learn the elements, and to understand that people cannot capture or restrict one another without social penalty. A legal writing project on the same topic would be far more likely to focus on a narrower question regarding one of the elements. That is, it might provide a series of cases that explored the precise meaning of "consent" if, for example, an accused shoplifter feels coerced into remaining in a back room with store security.

This distinction matters because many law students might not then understand that the skills they learn in synthesizing those false imprisonment cases could still be useful in their torts class, but will have to be deployed somewhat differently. Students might not need to describe case law in the same detail when dealing with well-settled principles of black-letter law, so the techniques of written analysis might be different in their assigned legal writing briefs and their torts exam. But the idea that disparate cases must be reconciled or distinguished to arrive at a coherent legal principle remains.

Legal synthesis is a challenging skill to master, and for that reason alone, might be a topic that bears repeating in most first-year courses. But in your academic support class you can do more than

simply revisit the skill—you can provide the context that will help your students bridge the distance between synthesis in their skills classes and synthesis in their doctrinal courses.

Exercise

Markup Review. To begin this conversation, have students mark up a set of assigned cases. That is, have them make margin notes indicating where in the case the material facts, procedural posture, reasoning, and so on can be found, highlighting crucial passages, commenting on the steps in the court's logic, and so forth. This project works especially well when you have given the students a packet of cases that interpret the same legal point but pull in somewhat different directions.

Ask the students to bring their marked-up copies of the cases to class to compare and discuss, along with any other notes they would ordinarily create when reviewing the material. Bring your own markup as well. Rather than directly reviewing the students' notes, though, begin from the end point. That is, use the cases together to analyze a new set of facts. Give the students a hypothetical and ask the class what they could draw from the cases they've read that will help answer the question. Are the notes they prepared helpful or not? Why? And are their notes similar to yours, or did you approach the task somewhat differently? If yours differed, why was that?

This kind of conversation usually serves to remind students that individual cases and briefs are not what they will be tested on at the end of the semester. If they have been through one or two sets of law school exams, they should already know this, but many law students still tend not to know what to do with the fact that they must read cases for every class, yet are tested on their ability to apply the collection of rules arising from those cases to novel facts.

Talk about this dichotomy and show that reading and understanding individual cases is only the entry point toward seeing how they build into a cohesive (or not) set of ideas, and applying those ideas to facts. Remind your students that this means "doing all of the reading" is only a part of their work each week. They must also set aside time to review and synthesize the material, with an eye specifically aimed toward applying the body of cases to facts and exam hypotheticals by the end of the semester. Essentially, this is a distilled and preliminary version of what we mean by "outlining" a course

or topic, but it is important to remember that most beginning law students do not know this.

To show students what we mean by synthesizing discrete cases into a broader (and more refined) conceptual framework, many academic support professors draw from examples based not on judicial opinions but instead on a series of similar but differing objects. Common examples include types of vehicles,⁶ fruits and vegetables,⁷ or paintings.⁸ Removing the rule synthesis project to a less familiar setting and then relating their insights back to law seems to help students gain a richer understanding of the thinking processes involved in synthesizing disparate ideas into a broader conception of a series of decisions.

3. Thinking Conceptually

Once they read and understand the assigned material for each of their classes, law students must then put the pieces together and understand more broadly how the individual topics studied in a course relate to one another. This is a something of a chicken-and-egg project, however, because the more the students understand about how the subject works, the easier it is to figure out how to fit the pieces together.

Learning law functions, then, is a kind of hermeneutic circle, one in which the whole can only be understood by referencing the component parts, but whose constitutive parts are best comprehended by reference to the whole. As described by Martin Heidegger, hermeneutics can make learning daunting to the uninitiated because there seems to be no point of entry. You have to absorb everything all at one time or you don't really grasp anything at all. But numerous scholars of interpretation, and Heidegger himself, concede that although initial comprehension might be challenging, it is not impossible: It is simply true that it must be treated as preliminary, and that genuine understanding grows deeper over time as global comprehension sheds more light on individual details, and they, in turn, enrich the student's understanding of the whole.

Thus, the more the students work to pull the concepts together rather than treating them as discrete topics, the better understanding of the underlying themes and tensions in the law they are likely to develop. And paradoxically, the richer understanding they will have of the individual legal rules as well.

Synthesizing larger chunks of material is one of the most important tasks in first-year classes, yet the exigencies of day-in, day-out classroom teaching tend to ensure that in most courses, connections among broad themes in the course are covered only occasionally, or sometimes only in passing. The result is that law professors often leave the important work of putting material together and discerning what the course is about (or really, the body of law), to students working alone outside of class.

This is not necessarily a criticism of legal pedagogy: On the contrary, this approach might be entirely appropriate for adult learners. Certainly many first-year professors work hard in their classes to connect each day's classes to prior material, and some devote significant time to review and course synthesis. Still, many beginning law students do not understand quite how important it is to pull the concepts of their classes together. Ironically, more troubled students often stop taking notes in class when this sort of course synthesis begins, treating it as somehow less valuable than discussion covering individual assigned cases.

Of course it is generally not our job in academic support classes to actually to do the work of synthesizing course material for students, but it is absolutely within our purview to show them how crucial this is, and to give them tools to do it.

A common way to begin this work is to talk with students about how to organize their course outlines. Left on their own, most beginning law students will default to putting together their case briefs and class notes in the order in which the material was covered, and perhaps adding in some excerpts restating the black-letter law drawn from other sources such as treatises or commercial outlines.

This doesn't help students understand how the material actually works, though. As an example, take contract law. Contracts casebooks and classes may begin with any number of topics; they often cover contract damages or consideration doctrines as a way of introducing the meaning and purpose of contract law before delving into further details. But would anyone really approach an actual contracts problem that way (or on an exam, a hypothetical one)? Rarely if ever. Contracts problems work in a logical and predictable order: (1) Was a contract formed? (2) If not, are there any equitable means of enforcing promises made? (3) If there is a contract what does it mean? (4) Was there a breach to one or more of its terms? (5) What remedies will the nonbreaching party seek and why? (6) Will

the breaching party have any defenses? Logically, then, regardless of what topic their class started with, students might want to organize the contract principles they have studied into some sort of working flowchart that follows similar broad outlines, as this is how law students, and lawyers, will attack a new fact pattern.

Every subject works differently, though. The organizational strategies that work for Contracts class probably wouldn't suit a Criminal Law class, for example. Helping students see that criminal law material might be better outlined by beginning with the criminal code they are studying, and using cases, hypotheticals, and commentary to annotate various sections, will not only enable them to review criminal law, but could help them better understand criminal law itself.

Remind students, too, that if they are struggling to see how topics in a course are connected, often the best source of information is their course syllabus. What units does the professor group the material into and why? What does this say about how the topics interconnect? If a particular class has no syllabus, or the syllabus is not constructed in a way that helps students think more conceptually about the material, often the organization of their textbook's table of contents can serve the same purpose.

Think carefully about when and how you want to cover this material in your course. Note that this book links thinking conceptually about classes with the project of outlining them to review for exams. Honestly, that's because this is the hook that students find most immediate and compelling, and that draws them toward wanting to get an overview of their classes. But that practicality does not mean that the subject of conceptual thinking in law is really only about reviewing and studying. It is far more important than that, and it is a topic you will want to cover well before the end of a semester. Indeed, it is a topic that you might want to cover early and often, turning to again as the accretion of material in a course gives more opportunities for students to develop a richer and deeper understanding of what a particular body of law is actually about and how it works.

4. Applying Rules to Facts

Applying rules of law to facts, or depending on how you look at it, comparing facts to various legal rules, is the heart of what law professors mean when we say "legal analysis." At its most mechanical,

legal analysis can be seen as simply linking a legal rule to material facts with “because” clauses.

The rules-to-facts module is the unvarying component in pretty much every acronym ever devised for describing or teaching legal reasoning: IRAC (issue, rule, application, conclusion), CREAC (conclusion, rule, explanation, application, conclusion), TRAF₁F₂C (thesis, rule, application to facts for one side, then facts for the other, conclusion), and so forth all contain the common core of an “R” that gets “A’d” to some set of facts. Most ASP teachers and law professors in general would say that application of rules is a constant source of confusion for students and remains one of the most difficult skills to teach.

So if this is the foundation of all legal reasoning, and an important part of what law professors believe is taught in all first-year classes, why is that it that the process remains a challenge for so many law students? Perhaps because the devil really is in the details. Applying rules to facts might feel ineffable because it requires a series of nuanced tasks to be performed seamlessly. The rule(s) to be used must be stated precisely. Where they are subject to interpretation, the writer must choose between broader or narrower formulations of the rule and be prepared to defend and support that characterization of the law. Material facts must be chosen with care, and immaterial facts disregarded. Inferences must be justified. And the connection among law, fact, and conclusion must be carefully developed and explained. Really, then, each part of the process deserves special attention. Thus each part is, in fact, addressed in this book in more detail later.

Exercises

In essence, almost all of your ASP teaching likely touches in some respects on the skill of applying rules to facts, so it can be hard to distill this into a few short lessons or exercises. To get students started, however, it might be helpful to have them work first with short fact patterns based on a single area of law, and to create a template to make the analytical steps more visible.

Rule/Fact/Conclusion Chart. Pick a straightforward rule of law to examine in depth. Give students both the rule and a fact pattern that raises issues it covers. This exercise can be done with a fairly ambiguous fact pattern, but is often best as an early introductory exercise to work with facts that, when the rule is applied, will pretty clearly lead to a predictable outcome.

In one column on a page or chart, have students list each element or factor from the rule (or if you prefer, you might provide that information on your chart so that the students' attention remains on application rather than recall of the rules). In the next column, have the students identify facts from the fact pattern that relate to the element or factor in the previous cell. In a final column, have them write a phrase or sentence explaining the connection between the two.

Once the chart is filled out, individually or by groups of students, compare them to ensure that everyone is on the same page and that no point needs further consideration or explanation. You can then work together with your whole class to show that the chart easily becomes a completed essay simply by changing the structure into prose; the necessary pieces are already there.

Two-Sided Worksheet. Create a structure for students' analysis of a fact pattern you have given them by building a worksheet for them to complete. Open with the legal issue to be decided, such as "Did Martha commit a robbery?" Fill in the robbery definition or rule that the students have used in their criminal law class. Then break the rule into elements, and for each element create a proposition that the students must complete from each side's perspective; for example, "The prosecution will argue that Martha intended to permanently deprive Jorge of the bicycle because" and "Defense counsel will respond that there was no intended permanent deprivation because"

Notice that this project, and the preceding exercise, do not actually supply any of the steps needed in reasoning through the fact pattern. Nevertheless, an organizational plan that divides the process into discrete and manageable pieces usually spurs students to craft more thoughtful explanations than they might in unstructured writing, and to avoid omitting any necessary portion of the analysis. Of course even when students successfully complete a small application assignment such as the ones described here you will still need to help them adapt their newfound skills to larger multi-issue problems and to assignments that they have to structure themselves. Many law students struggle to transfer these lessons on a larger scale, so no matter how carefully designed your introductory exercises are, it is likely that you will have to revisit this topic frequently over the duration of your course.

5. Stating (and Learning) Legal Rules Precisely and Accurately

Because one of the most common problems we see with beginning law students is their tendency to focus too much on memorizing rules rather than on learning to apply them effectively in a variety of factual settings, it would make sense at the very least for these students to have solid mastery over the material, yet often they do not. Frequently, students are able to recite the gist of the rules but falter when it comes to describing them exactly or stating them precisely enough to work with. There are probably at least two sources of this problem, and addressing each might pull in different directions.

a. Attention to meaning and specificity in language.

Many students do not know when to be exact when discussing law and when to interpret or paraphrase. Some law teachers encourage students to describe legal reasoning in their own language to help them understand the concepts (and indeed, this is useful as a self-test for comprehension). All professors emphasize that law is a profession of interpretation. But such messages might then mislead some students into believing that they need only be “close enough” when describing the law, which isn’t true at all.

Of course lawyers need exact language, and usually direct quotations, when working with statutes. But they also need strict attention to the nuances of language when working with common law doctrine. For example, calling a battery “physical contact” is simply not the same as describing it as the more commonly invoked legal formulation of “an unwanted touching.” Worse still, in many instances (but crucially, not in all of them) both phrases will lead to the same result. This lulls students using fuzzy language into believing that they have the rules down pat. For more marginal facts, however, or those emphasizing additional concepts like whether consent is implied or not, different phrasing could result in diverging analysis. Overall then, law students need to learn that wording matters very much in our profession, and attention to detail and meaning of language is crucial.

b. Legal rules are developed in factual context.

When working with common law many students struggle to understand how much of a developed rule is specific to a particular case and how much is more generalizable. Some students have a hard time discerning the core of rules that will apply no matter what the

factual circumstances. And some of the more disillusioned students will cynically conclude that there is no such thing as a hard and fast rule, and law is simply “whatever the judge says it is.” Helping these students find and correctly articulate basic legal rules is crucial, even while you are also showing them how rules can be expanded or narrowed through legal argument and subsequent judicial holdings.

Much of the work of reinforcing exact legal rules should (and does) take place in the students’ doctrinal classes. Indeed it can be hard for academic skills faculty to be certain where students are straying if we do not know precisely how the rules are presented in a cooperating course. Nonetheless we can address the general issue of learning rules precisely, and we are able to pay careful attention to how students state the rules they are working with when writing practice answers. Draw your students’ attention to places where their language or understanding of the rules is muddled and imperfect, even if it is not exactly wrong.

Perhaps counterintuitively, one approach to working on mastery of exact legal rules is to practice with objective testing. Multiple-choice or other objective questions are becoming more commonplace in law school classrooms and exams, but even when that is not a testing method used frequently in your institution, multiple-choice questions can be excellent cross-training to hone precision. Well-designed objective questions will often include a wrong response designed to catch students who almost, but not quite, understand the rule. Many law students also do not understand that objective questions usually require similar analytic skills to those needed for essays. This will be an important point when students are confronted with multiple-choice questioning in classes or on the bar exam.

6. Issue Spotting

Classic law school exams are often called “issue spotters” for the simple reason that their narratives try to squeeze together many, many different topics covered in the course. Such questions require students to marshal their knowledge of the doctrine to ferret out the legal questions, sort through them carefully to determine which are most important or difficult, and address all of them while giving proportionately more or less attention as the matters warrant.

Described that way, issue spotting sounds like the advanced skill it actually is. Many struggling law students do not treat it as a very

complex task, though. Instead they will conflate spotting issues in a fact pattern with identifying legal topics, even though these are not at all the same skill.

By way of explanation, imagine a torts question in which one person's actions cause a bookcase to topple onto another person who is harmed by the falling objects. Many weaker law students understand that depending on whether the bookcase was made to fall accidentally or on purpose, they must either discuss the intentional tort of battery (and perhaps in passing, assault) or negligence. These, they conclude, are the "issues" they must address. (As a side note, it is also challenging for many students to recognize that if it is not precisely clear how or why the bookcase came to fall, they must consider both legal theories and explain the circumstances in which each might arise under the given facts.)

A law professor, however, is likely to see negligence and battery as merely the receptacles into which many distinct legal issues, or perhaps what are more appropriately deemed subissues, are poured. That is, if the person who knocked over the bookcase was an unsupervised child, can she be held liable for an intentional tort? Can her caregiver be liable vicariously or directly? Was it negligent for the bookshelf not to have been secured to the wall? Does the answer to that last question change if there are small children living in the house and the Academy of Pediatrics recommends tethers on large cabinetry as part of routine childproofing?

Students who content themselves with having "spotted the issues" when they recognize the need to address negligence or the correct intentional tort are likely to miss these nuances. They are subsequently frustrated to realize that they might have written extensively on the "correct" topic, but that as far as the grader was concerned, they failed to really see, assess, or address what was truly at stake.

To help students find issues within the broad topics they see, academic support teachers must craft exercises that will push students to look more closely for them.

Exercises

Make It Smaller. Put students in groups to work together finding issues from a common fact pattern. Ideally, choose an example that is short but nonetheless dense with larger questions and many subissues. Give the groups a set amount of time to identify as many

issues as they can find, then have the class work together to compare. If the teams work well, this will result in the class collectively having found at least all of the general themes or categories of legal issues to be covered. Now send the groups back to work to try to break down each topic into specific legal issues. Remind students that things that could seem well settled to one party might easily be disputed by the other, so they must consider each party's position to find every possible issue worth discussing. Encourage groups to keep going when they think they've found everything; chances are if they keep trying to make each issue smaller and more focused, they will find still more issues to analyze. When they are done, once again have groups compare. Did each group find everything? If so, great, but if not, discuss the process that some groups used to define issues that other teams glided over or compressed with other questions.

Questions Only. Find or draft a short exam-style question based on material that you know your students are familiar with. Break students up into teams and tell them that instead of asking them to provide an answer for the fact pattern, you will instead award a prize (e.g., some candy, a bonus point or two on their next test, your praise and general goodwill) to the group that can generate the greatest number of questions, answers known or not, that a thoughtful lawyer should ask and consider when analyzing these facts. It helps to have them list their responses on flip charts, electronic documents projected from the podium, or in another format that will enable everyone to see one another's lists.

Once the students are done, go through and score each group's response. Disallow irrelevant, repetitive, or poorly phrased or ill-conceived questions, and give a point for each question remaining. Let your class discuss, and if needed, vote in this scoring process. Feel free to offer or withhold your own opinion, or to suggest fractional points or partial credit to resolve disagreements. Eventually your class is likely to develop a sort of common-law set of rules for scoring the entries. Take your time on this part of the exercise: The scoring discussions are really a far more important part of the exercise than the initial brainstorming.

As you proceed with the scoring, teams are likely to debate the credit they and others are awarded. Some will note that others have listed questions to which the answer was obvious, or have posed ineffectively worded questions. Others will point out that some teams have compounded inquiries and received one point for thoughts that other

groups have split up, earning them multiple points. Good-natured complaining on these issues is exactly what you want. It allows you to draw attention to the fact that even obvious and easily resolved questions must be raised in legal analysis, and the answers to them need to be explained and supported. Moreover, compounding questions that should each be examined and answered individually is a common error of beginning writers in law.

This exercise is quite useful for getting students to see the hidden parts of their reasoning that they commonly skip over or take for granted when they write. It can also illustrate a frequent ASP aphorism: Often the hardest and most interesting work lawyers do is learning to ask good questions. For lawyers, asking good questions can be far more important and challenging than answering them, especially in a world that often does not have absolute answers to begin with.

7. Developing Legal Judgment

Law school is designed to prepare students for the skills they will need as counselors-at-law. In other words, law school prepares students to become professionals whom clients can rely on to provide valuable advice and to help resolve some of the thorniest problems in their lives. Most law school tests are simulations of cartoonishly compounded real-life practice: “A client walks into your office with _____ going on, what should you do?”

Beginning students might need to be reminded of this to help them understand why law school exams are frequently tests of their legal judgment, not just of their legal knowledge. This can be an important insight for the many students whose focus on learning the rules and processes of the law sometimes paradoxically leads them to stop thinking about what they’re doing. Somehow they come to believe that they aren’t supposed to.

As an example, picture a group of students who have been learning in their Property class how to reason through the elements of possession to determine ownership of a wild animal. They might have considered what happens when a rancher tames a stray dog or a wolf, or have talked about what happens if a lonely man begins feeding the cats in his neighborhood. Yet these same students could still need to be reminded to use common sense to understand why they should omit that analysis when considering a new problem involv-

ing a woman who legally purchased a domesticated parrot from a shop. Ownership of a domesticated parrot lawfully purchased is well settled, and it warrants no real consideration except saying so. The “who possesses a wild animal” analysis might eventually be needed again if the parrot were to escape and be found by someone else, but it is not especially apt in the problem assigned. Students who understand the law will generally realize this if they stop to think about it, of course. That is why it is astonishing how frequently they will not do so.

A common tool used by ASP educators to help students recognize the need for exercising legal judgment and to begin showing them how to do so is Bloom’s Taxonomy. The taxonomy is a hierarchical classification of learning objectives first developed in the 1950s by a committee chaired by Benjamin Bloom. The original taxonomy has been significantly analyzed, debated, and revised by educators over many years, and emphasis on its extensive history and research is probably not helpful. Because the taxonomy posits a hierarchy of thinking skills that start with basic acquisition of knowledge and move through increasingly complex modes of critical thinking, it could be an invaluable tool for describing higher orders of thinking.

A number of academic support classes teach the basics of the taxonomy, and many employ a specific reference tool called the *Quick Flip Questions for the Revised Bloom’s Taxonomy* as part of their materials for the course.⁹ The chart lists six increasingly sophisticated levels of thinking: Remembering, Understanding, Applying, Analyzing, Evaluating and Creating. Most helpfully it then provides examples of the kinds of questions each level considers. Even though the tool is not designed precisely for the study of law, most of the questions are easily translated into samples of the kinds of inquiries lawyers and law students might use at each level of reasoning.

To adapt the taxonomy to law, I often group the original six levels into three areas:

1. Remembering and understanding.
2. Applying and analyzing.
3. Evaluating and creating.

Using these groupings, it is easy to point out to students how much of their time should be spent on the lowest levels of thinking: comprehending the material. You can then suggest that almost

all of their grades will depend instead on how effectively they cover the middle levels: applying and analyzing (which in a legal context might be essentially indistinguishable). Finally, you might want to explain to your students that to excel on law school exams they will likely have to spend at least a little time on the fifth level: evaluating the material. Mention, too, that the most inventive problem-solving work they will encounter in actual legal practice, or in some more advanced clinical or skills-oriented law classes, is likely to demand Bloom's sixth level, creating. Because traditional law school exams tend to look backward toward material already learned rather than devising new ways to resolve problems, they rarely demand this skill, however.

The chart becomes most helpful when students are asked to use it to assess their own or other students' work. Using the sample questions for each level, students can review papers to decide what proportion of an essay is spent at approximately which levels and what is the highest level reached. Many students will quickly identify papers that are stuck primarily in the lower realms of comprehending and mastering the material. The class could then be pressed to generate ways to aim higher, or to devote more attention to the more analytical levels. The sample questions in the chart can also serve as useful prompts to help students generate additional points that the paper might have addressed.

8. Supporting Legal Reasoning: Explanations and Authority

Many ASP students have poor explanation skills. They know what points they want to cover, but they do not slow down to spell out each logical step of their reasoning. This leads them to skip over or skim through important issues and often makes their writing conclusory. It will always be important for you to focus on helping students build well-developed explanations of legal reasoning when you are marking their papers, but the topic is sufficiently important that you are likely to want to explore it in class lessons as well.

It might help to point out why explanations are so important to lawyers. All of law, even transactional legal work, tends to take place in the shadow of an adversarial system (think here about lawyers drafting a contract—both parties' attorneys should be imagining what might go wrong with the deal, and working out clauses that will either prevent future problems or position their clients favorably

should they nonetheless arise). What this means in practice is that every lawyer must pay attention to any possible way in which someone on the other side of a dispute might seek to refute his or her points. Students can learn to write more completely if they imagine some gremlin looking to challenge every phrase or point unless it is utterly incontrovertible.

So how should lawyers and law students write things that are unassailable? The first step is citing authority wherever possible. Presumably, your school's version of legal research and writing, legal practice, or lawyering skills will teach students how to find and properly cite cases, statutes, regulations, and secondary legal authority. But learning to use legal authority well is a complicated project indeed, and might well be considered a responsibility of all law professors in all subjects.

In their doctrinal course assignments and exams, though, your students might not be expected to cite to specific cases or statutory provision. They could be taking closed-book tests, and even in open-book formats their professors might not want them to take up time or space in hunting down correct citations so long as the students can invoke and use the correct studied material.

But citation is only one part of making writing persuasive and complete, and it will not suffice on its own. Imagine the civil procedure student tackling a complex problem involving an alleged contractual breach between parties in different states who writes on a test that the case may be heard in federal court under diversity jurisdiction, but will apply the substantive law of one of the states. The student following that observation with a simple "See *Erie R.R. Co. v. Tompkins*," reference might be mechanically correct, but in the eyes of the hapless Civil Procedure professor who spent weeks on the topic, is nonetheless destined for a disappointing grade. Law is interpretive, so unless the cited authority fully, unequivocally, and definitively covers any question a reader might have about the student or lawyer's assertion, this bald citation is unlikely to suffice.

Instead, the professor will be looking for the student to explain the Erie doctrine, possibly to consider how and why it developed, and then to clarify what it does and does not determine for the given set of facts. Citations and explanations work together to support assertions. And although on many law school exams the cites themselves may be omitted (with the presumption that the technical work of filling them in is something students can practice elsewhere and

is not a central part of their learning in most classes), to thoroughly analyze the problem, no steps of the explanation of why this authority governs, what it means, how it does and does not compare to the current facts, and what is and is not settled as a result, can be left out.

Teaching students to spell out their reasoning is one of the hardest and most important projects of academic skills instruction. Keep in mind that most students will not measurably improve their explanation skills until they can learn to recognize when a proffered argument is incomplete or skips over steps. Many ASP exercises, therefore, are geared toward helping students identify incompletely developed propositions.

Exercises

Coding an Essay. Bring a collection of different colored pens or highlighters to class and hand students copies of one of their own writing exercises, or have them swap papers with a partner. Ask each student to go through the essay and highlight in one color every phrase or sentence that identifies an issue to be analyzed. Statements of rules or principles of law go in another color. Application of the rules to the fact pattern and explanations of legal analysis go in a third color, and a fourth color is reserved for conclusions.

Now ask the students to survey the papers visually. Are there any parts of the paper not colored in? If so, chances are these are extraneous comments that aren't meaningfully moving the analysis forward. Do the colors progress in a logical order (i.e., with rules of law first articulated and then applied to facts, etc.)? Most important, of the parts that are colored in, how much of the paper falls within the "analysis and explanation" shade? It should probably be at least 65% of the paper, and could easily be up to 80%. If not, the paper is likely underdeveloped even when and where it is correct in its conclusions.

Instructions Please. To illustrate the problem of incomplete explanations, try giving your class a pop quiz in which you allow students a very short time (90 seconds or 2 minutes is usually enough) to write out the directions for some commonplace activity such as tying a shoe, making a peanut butter and jelly sandwich, or taking a cell phone photo and sending it to a friend. When the class is finished, take out props that will allow you to enact the students' directions. Call on a student to read out loud what he or she wrote, and as the instructions are being read, follow them exactly. That is, if instructions say to spread peanut butter but do not specify opening the jar

first, attempt to do so through the lid. If you are not told to use a knife, use your finger. Students will quickly see the incompleteness and absurdity of their own directions.

Given a chance to repeat the exercise, almost all students will do a better job the second time around. Use this experience to make the point that lawyers must picture how the willfully ignorant reader (which they should assume a legal audience will always be) might take their legal arguments. Remind students to visualize each step of their logic and describe it so fully that each piece flows completely and inevitably into the next, just as they have done this second time around.

Why/Because. A straightforward way to have your students practice writing more complete explanations is to choose a statement in some analysis they have drafted and ask why it is true. When an explanation is given, ask “why” again. And again. Keep going until you think you have arrived at the most internal layer that can be reached. Point out that all of these “whys” should already be anticipated and included in any written or oral legal analysis.

Ask students to practice by writing whole paragraphs explaining the points you have just covered, with the additional requirement that each and every sentence must include the word *because*. What results will not be elegant prose, but it just might be the best developed reasoning your students have yet produced. At the conclusion of the exercise the class can work together to revise one of their paragraphs so as to keep the explanations intact but vary the sentence structure and render it less formulaic and more readable. This shows students both how to draft complete thoughts and how to present those thoughts well.

Explanation Bee. Hand out a short fact pattern covering material students are familiar with and give them some time to outline responses either alone or in pairs. Next, tell everyone that you will have a spelling-bee-style “explanation bee” to practice carefully analyzing the problem.

Appoint a few students as judges to come to the front of the room while everyone else stands up. Ask each student to offer a supportable legal conclusion that can be justified from the facts that they have considered (e.g., “Albert has a prescriptive easement to enter Black-acre”). Then go around the room giving each student an opportunity to offer one statement supporting or explaining that conclusion.

If the judges accept the statement as well constructed and adding something new to the collective analysis of the problem, the student remains standing and stays in the game. If not, the student sits down (or another variation to keep all students involved is to have those who go “out” form a partnership with another player who remains in the game). Help the student judges decide which statements are acceptable and why, if needed. When most or all but one of the students are out, declare them the winners and offer some small prize.

Usually you can get all the way around your classroom room two or three times on the same point before needing a new legal proposition for the students to analyze. Point out to your class what good things students thought of to further support their points when the pressure was on them to get ready for their turns. Ask whether everyone would have written all of these things when analyzing the fact pattern without the game (they will probably acknowledge that they wouldn’t have). So now, how can they push themselves to come up with more careful explanations just like this every time that they write?

9. Crafting Effective Legal Analysis

One of the most immediate ways to improve students’ academic performance is to help them improve the structure of what they write. Difficulties in law school frequently stem from deeper problems in learning the material or working with legal concepts, and these are also some of the most challenging problems to address. Many students can improve significantly in those areas, of course, but in the meantime just about all of them will benefit from being taught to craft tighter, more focused, and more effectively organized responses.

Legal analysis must be well structured on both the macro and micro level. On the more granular (micro) level, help your students see that every paragraph they write should have a thesis sentence. Although lawyers reason both inductively and deductively, we tend to lead with our conclusions and then fill in to explain and support them. You might want to be explicit with your students about the fact that this reverses the conventions they might have become accustomed to in collegiate writing. Other academic fields tend to lay out and consider all evidence with the goal of demonstrating a particular point at the end, which is not the case for most legal writing.

Moreover, every issue analyzed should include the basic building blocks: a rule of law, which is applied to specific facts, supporting a possible conclusion. This IRACesque format, together with the most common variants, is ubiquitous simply because it has to be—legal reasoning pretty much always incorporates these components, and pretty much always in that order. ASP professors know that their students’ analysis will be immeasurably better if they can somehow be taught to include these components in all of their thinking, speaking, and writing.

Yet a classic issue-spotter exam could have dozens of topics and subtopics, each of which must be analyzed. This is also why it will be important early on to disabuse students of the notion that they can “IRAC their exams.” They might write exam responses with a series of mini-IRACs for each issue found, but unless the test has only one legal question, IRAC alone will not structure their answer. Reasoning through each issue effectively, but then organizing the analysis of the various issues haphazardly, is still not optimal.

For any legal question, grouping topics in a thoughtful way will make the analysis more succinct. And more than efficiency, good overall (macro) organization frequently makes for stronger reasoning overall. Grouping together topics that are similar, or materially distinguishable, almost forces the writer to explain why and how the topics are related or dissimilar. Structure signals meaning to the reader, and meaning creates a structure for the writer.

Exercises

10-Minute Drills. Discuss ways to efficiently but thoroughly prepare and outline exam answers, and then practice with a series of short fact patterns. Note, though, that it might be helpful to avoid using the word *outline*. For many students this conjures up images of formal divisions—“you aren’t allowed to have an ‘A’ unless you also have a ‘B’ section,” and so forth. Many students who report that they “don’t do outlines” say when pressed that this is part of what they are avoiding. To sidestep these concerns for my own classes, I often call prewriting preparatory work “planning” rather than “outlining.”

For each practice set, give the students 10 to 12 minutes to read the question and start planning an answer. Many professors would agree that this is not enough time to fully prepare to draft an essay, yet it is longer than most students will typically spend. Run through

several of these drills in sequence, considering each time what the students wrote down and whether or not it was helpful.

Students who struggle in preparing to write their essays will usually fall into one of two camps: those who write almost nothing before they begin (unless coerced), and those who tend to write all of the stream-of-consciousness information they can possibly generate before feeling ready to write. Neither of these approaches is especially helpful, of course. Although they seem opposite, they might both come from similar confusion about what would be effective in actually planning out an effective written analysis of a given fact pattern.

Help students who typically do very little written planning to identify things they can do quickly to better organize their thoughts. Encourage them not to worry too much about formal outlining techniques. Instead you want them to focus on what they need to make their writing sharper before they start, even as you acknowledge that they will still probably begin writing soon and will continue to develop their ideas while they are writing. Help the students who tend to write everything down learn to avoid the common trap of spending prep time mostly rewriting those things they already know best (say, copying verbatim the elements of a criminal offense). Remind students that their goal is to use planning time to work through their thoughts about the problem at hand, as well as their organizational plan for the essay they will write.

Encourage students to adapt to their own style a core method for approaching all of their exam essays. That is to say, encourage those who write no notes to start doing so but to keep them terse, and those who write more to keep at it but in a more effective and efficient way. Many texts about exam writing technique suggest that all students spend 20 minutes or so planning out each essay they write. Getting students to go entirely against their default impulses might work for a time, but they are likely to revert to old habits when under the pressure of a high-stakes exam. It seems to make more sense, then, to show them ways to shift their current styles somewhat rather than to press for a complete alteration.

A common plan that students might adapt could include the following:

1. **Read** the fact pattern to spot all issues to be covered (thoughts can be written down, highlighted on test paper, etc.).

2. **Reread** to double check.
3. **Assess** the compiled issues to determine which are central to answering the call of the question and which are side points, and also to determine which issues have a fairly clear “answer” on the given facts or could or should lead to multiple legitimate conclusions. Triage the issues to be covered: Good responses spend as much time as possible developing the analysis of the most central and most debatable questions, and therefore must resolve the smaller and “easier” points as quickly as possible.
4. **Chunk** the issues together when they use common facts or raise similar questions of law, regardless of where they come up chronologically in the fact pattern.
5. Keeping these points in mind, devise an **organizational plan** for the essay.
6. **Write.**

Organization and Sections. Law professors often respond favorably, or at the very least, neutrally, to exam essays that are divided into labeled sections and subsections. For some reason, however, this is news to most students. If you frequently share papers to critique in class, try including one that is subdivided and ask students whether it was the first paper they chose to read. Usually it is, which suggests that most people are drawn to work that appears at a glance to be organized and reader-friendly.

More important than grader response, though, is the effect that sectioning exam answers can have on the drafter. Writing in smaller units helps students concentrate and remain clear about what they are trying to say where. Crucially, when they decide beforehand what sections will be included, students tend to better plan out the overall response. This makes their papers stronger throughout. Section or topic headings also help identify the key topics to be covered so the students don’t lose sight of what they are writing, while eliminating the need for awkward transitions that often bog down a first draft (which, essentially, is what a timed exam answer is).

If you encourage students to section their papers it will be important to take some time to discuss what sorts of divisions are most effective. Many students long for some kind of universal template into which they can slot all of their answers. It is important to

remind them that because fact patterns (and subjects) differ, their organization should always be driven by the actual analysis they will be presenting.

A significant caveat: Many students are initially inclined to divide their papers by grouping all of one side's arguments together, and then placing all of the opposing arguments in another section. This is rarely a good idea. It often leads to mushing together issues that really need to be analyzed separately. And the best legal arguments often have opposing views "talking" to one another, while thoroughly developing the best arguments for each side (i.e., not ping-ponging between sides that simply disagree with each other with no real analysis of why). An organizational plan that doesn't permit back-and-forth reasoning on important points tends to flatten and oversimplify the analysis. Help your students consider other approaches to subdividing their ideas.

Openings. Students learn in writing courses how to prepare formal openings in traditional law office memos and briefs, but they routinely get confused about how to begin exam essays.

Commonly, they feel that they must write elaborate summaries of their arguments or they recap the given fact pattern. Encourage them to break that habit right away by showing grading schemes that award no credit simply for giving back to the professor what she herself has given to the students. Alternatively, students might give no introductory setup, and simply leap directly into the middle of their analysis, which, to be fair, might often be justifiable. Because on most law school exams they will not get credit for summarizing their analysis or subsequently repeating it, nor for nakedly restating the fact pattern, it could sometimes be a smart choice just to dive right in to the analysis of the problem. For these reasons it is probably advisable to encourage students to write shorter introductions for exam essays than they would be inclined to use for more capacious and less time-pressured writing. Yet they must still accurately reflect the call of the question before proceeding to answer it.

Practice in crafting effective opening paragraphs can help address these problems, and is also indirectly a good way to force students to think about how they will structure their essays as a whole. There are many good ways to do so and probably no one approach will work for all exams.

Exercise

Try having your students experiment with an “in order to” formula. That is, have everyone draft a sentence incorporating phrasing from the call of the question (usually found in the opening or concluding instructions in a typical fact pattern) and expanding more explicitly on what needs to be considered to resolve that question. For example, “*In order to* know **whether Jin was negligent** we will have to consider whether she had a duty to Marion that she breached, and whether that actually and proximately caused Marion’s injuries,” or, “*In order to* determine what remedies might Nancy have against Gerald a court will first have to decide whether the two had formed a legal contract,” or, “*In order to* determine **what crime Amy may have committed**, we will have to know what she intended to happen when she hit Bruce.” (Assume that the language in bold was lifted directly from the question posed.)

These sorts of statements help students succinctly break down the logical steps they must reason through, and essentially form guideposts for the subsequent paragraphs of their analysis. For students writing fast and under pressure, creating this sort of direction for themselves might be miraculous. Once your students get the hang of crafting “in order to” statements, try varying them. Use broader or more narrow statements depending on the scope of the overall question, include careful follow-ups to the statements, and try not to feel beholden to the exact “in order to” language. The essential goals of articulating what must be considered to answer the ultimate legal question and then proceeding piece-by-piece to do so need not change.

10. Objective Questions

There are many available guides for answering objective questions in law. If your school uses objective questions frequently, or if your course is focused not just on academic performance in law school but also on bar passage, you will want to spend significant time helping students learn how to read, understand, and respond to these types of questions. Even if not, you might find these kinds of questions valuable for getting a quick assessment of what your students have learned and where they are struggling.

The most important point to make about objective questions in law school is that the analytical process does not really change. In

multiple-choice questions, for example, the stem or call of the question will still expect the student to apply specific rules to specific given facts and predict or eliminate possible outcomes. The real difference in objective questioning is there will always be some concrete correct answer to the problem—even if the correct answer is simply that “none of the given options are right,” or that “more information is needed to answer this question.”

In theory, then, students should be able to move easily back and forth between testing methods like essays, short answers, and multiple-choice questions. In practice, though, it is rarely that simple. The focus of each type of question is different: Some are broader and some more specific. The narrower the question, the more detail and precision are usually required. For this reason it might be helpful to switch up among your assessment techniques, both to familiarize students with the differing methodologies and to push them to isolate the different intellectual muscles needed for each.

11. Developing a Reflective Mindset and Practice

ASP professors frequently tell students that learning to examine legal analysis critically, and to recognize what works and what doesn't, is the most important skill they need to develop if they want to improve their performance. Law students cannot produce stronger work if they are not able to distinguish between more and less effective discussions of the same idea. This is the core of what researchers in learning call the self-regulated learning cycle, which essentially boils down to this: Plan, then do, then reflect, to improve performance when the cycle repeats. (For a more complete discussion of the way this learning cycle plays out in legal education see Chapters 2 and 8 in Michael Hunter Schwartz's *Expert Learning for Lawyers* [2d ed. 2008]. Some ASP professors discuss or assign these chapters as a way of helping students understand why thoughtful critique is such an important part of their learning in law school.)

The notion that learning how to learn law well is of primary importance to beginning law students is hardly restricted to academic support teaching. In many ways it can be seen as the fundamental concept on which all of legal education rests—we see ourselves as law schools, not “laws” school, because we believe that law is ever-changing, and the goal of legal education is not to achieve mastery of all current rules, but to learn the processes of lawyers'

work while gaining an overview of the most common or important subjects.

Given all of this, an important part of your academic support course will likely be helping students to develop these self-reflective skills and to recognize that these should be lifelong learning habits that will help them throughout their careers. Reviewing their own papers, as well as providing thoughtful evaluation of other students' work, can help them articulate the properties of sound legal reasoning, which, in turn, ensure that it becomes ever more internalized. This, then, is foundational teaching in most ASP courses and is a skill that in my own academic skills courses we practice repeatedly throughout the semester.

Exercises

Paper Workshops. Bring one or more examples of student papers (or if too long, excerpts), to have students critique in class. Even struggling students are often quite incisive and articulate when evaluating what works and what does not in the given papers. Their insights can therefore be invaluable to help the other students understand the fundamentals of written analysis, but also to reinforce their own clear thinking.

At the beginning of your course, it might be particularly helpful to choose examples that have stronger structure but less depth to their thinking, juxtaposed with papers with richer reasoning but weaker writing. This can generate a conversation about the importance of presenting ideas well. For example, most students who have seen essay responses neatly divided into chunks or sections—not necessarily those that mechanically follow the parts of IRAC, but ones that genuinely think through the problem and chunk the analysis logically—will never write essays the same way again. Varying structures and strengths in papers your class considers will also provide a context for you to explain that there is no magic formula for writing an excellent exam answer, and no amount of careful drafting can change a poorly reasoned response into an ideal answer.

Alternatively, many professors simply choose papers essentially at random (of course after ensuring that they would likely fall toward the middle of the pack, and are not going to be the absolute best or worst in the class). Students might have a richer discussion of the work if they genuinely believe the selections are arbitrary, attending

more to their own reactions rather than searching for some hidden agenda behind the choice of samples.

Some professors have students critique papers without the names of the writers attached, whereas others make public the author of each paper. Anonymity obviously puts those students less on the spot. If you do use anonymous papers it is probably helpful to let your class know that the student authors are welcome to identify themselves if they would like. One advantage of having identified authors, though, is that it can make other students less harsh in the way they state their thoughts about the work. Additionally, it sometimes helps foster an atmosphere in which it is assumed that anyone's writing can be discussed critically but fairly, and that everyone in the class must be open to the experience. If you are not certain which of these decisions is best for your class, you might do your first paper workshop anonymously, but show students how to do so with respect and consideration. Make it clear, then, that you plan to include names on the papers the next time you review samples in class.

Group Paper Critiques. In addition to individual meetings and classroom paper critiques, in my own ASP classes I occasionally arrange meetings with three or four students at a time to review their comments on their own and other group members' papers. One advantage of meeting in small groups is that it almost instantaneously signals that the students will work collaboratively with you to look at their papers in a team. Because it can be hard in individual conferences to move away from the feeling that all conversation is preliminary until you the teacher give the *real* critique of the work, group workshops help change that top-down atmosphere and its implicit expectations.

Before group conferences, give students a brief but specific preparation assignment. It should be one that requires some form of written notes to ensure that students will be well prepared for the meetings. If you are worried about students' ability to give good advice to one another, it might be useful to have the assignment focus more on asking group members to describe the papers they are considering rather than on evaluating them.

When you meet with students, let them lead the discussion of what they see in the papers. Try as much as possible to step back and ask good questions as a way to contribute to the conversation. Give your own comments on the papers (together with any assessments of the students' work in the critique itself) at the end of the meeting rather

than beforehand. Comment not only on the quality of the papers but on the quality of insights students offer one another, so that the tacit message becomes: “If you can see this stuff in his or her work, then you’re halfway there. Now how do we get you to apply these ideas to your own papers?”

Many students report finding group meetings enormously productive, often much more than they expected. If yours do, you might choose to remind them that nothing precludes them from doing this kind of peer critique regularly on their own. An important function of study groups could be to routinely have each member write a quick response to a practice question in one of their classes and then to exchange comments with one another.

V. Academic Skills

A. THE ATTITUDE OF ADULT LEARNING

Law school is training to enter a profession. Whether they are coming straight from college or are older and have some professional experience, your students have to approach their legal studies as if they were the beginning points for their legal careers rather than an ending of their educational lives. For many, this means making a fairly radical adjustment to taking ownership over their own learning. If they do not master a concept or skill, it is they (and their clients) who will suffer. They should begin to realize that as adult professionals, they will have to take on work not because someone else has assigned them to, but rather because they themselves recognize that it is important. This is actually a big attitude shift from the mindset of many young people who have spent most of their lives as students, who were doing work only because it was required.

You can do a lot to help your students succeed in law school if you simply make them understand that they will be expected to teach the law to themselves. Their classes are simply there to prod them to think more deeply and critically about what they are already learning.

B. SETTING LEARNING GOALS

Ask most students what they want to accomplish in their study of law and they will likely respond with some sort of achievement goal: “I want to do better than I did last semester,” “I won’t be satisfied unless I get at least a 3.3 grade point average,” or maybe “I plan to be in the top 25% of the class.” It is often said that setting personal goals is one way to ensure that we will attain our objectives, so this sort of planning should help, right?

The problem is that these sorts of performance goals do not actually work that well. People who don’t reach their target tend to feel defeated, and those who do can grow complacent. Behavioral studies suggest that far more effective than performance goals are mastery goals. There is solid research suggesting that students who set mastery goals perform significantly better than those who don’t.¹⁰

Mastery goals are less focused on specific outcomes (“I want to get an A in criminal law”) and more concerned with specific processes (“I am going to keep working with these cases until I can explain the *mens rea* requirement in my own words”). Help your students understand why they should set and keep their own mastery goals for their studying, and give them guidelines that the research says will make their goals most successful:

- Goals should be specific and observable.
- Goals should be fairly immediate or short term.
- Goals should push students, but not unreasonably or unobtainably.

So a goal of being able to create a chart of different ways to calculate contract damages by Friday is very helpful for learning. A goal of being able to understand contract law better than the contracts professor is less so.

Goals might not always be successfully met, of course. Attention must be paid to revising them and keeping them well-tailored to a student’s current abilities and schedule, but knowing that an objective is still not met tells the student exactly what needs more attention and focus, which itself is useful in structuring further work.

Help your students understand that having and meeting their own mastery goals does not necessarily mean doing more work. In fact, some research suggests that it could actually lead to spending less time studying. It does ensure that studying is directed and outcome-focused, which makes it more productive overall.

C. STUDY SKILLS

Many beginning students struggle to find the best ways to study and learn in law school. Study skills are intertwined with substantive learning, so it will likely be very important in your course to show students how to approach their studying. If you help them maximize their ability to get what they need from the material, they will become better prepared to apply it in real life or time-pressured test conditions.

Some of the study skills topics routinely covered in ASP are given next.

1. Use of Commercial Study Materials

There is certainly very widespread agreement that law students learn best when they create their own case briefs, class notes, and outlines. Naturally you will want to remind your students that commercial resources are generic, and are therefore unlike to adopt the precise language or pitch needed for their particular classes. And occasionally, they are even out of date or incorrect. Yet that does not necessarily mean that commercial aids do not have their place. More important for your teaching, adopting an air of uniform condemnation could make it harder for you to find out what your students are actually referencing and for what purposes.

You will probably find it helpful to guide your students into thinking carefully about which aids to buy or use, if any. Students should probably know to turn to commercially prepared resources to consolidate and check their own summaries of their material, rather than as primary sources of understanding law. And students are best advised to check with their individual professors about which study guides might be especially useful, or notably misleading, for their particular courses. But the black-letter summaries of doctrine found in many commercial supplements might also be valuable means of learning about a topic that the students continue to find confusing even after class prep and discussion. Volumes with multiple practice questions and sample answers could be useful tools for students to gain valuable practice applying the material they are learning.

2. Note Taking

Have students bring in class notes from a particular day in a particular course. Ask the students what the material was about, and what they were supposed to get out of the day's class. Next, invite them to imagine how this material might be included in an exam. Talk about how the usual class discussion does and often does not relate directly to this goal. Together, formulate some ideas about how students could best take notes on such a conversation. From there, brainstorm a variety of ways that students might helpfully take notes in that class.

A few law professors provide "note-taking scaffolds" for their classes. These are simply raw outlines with topics indicated, and space for students to insert their own notes. Some research suggests that even when they contain no substantive information, these sorts of structured forms make for more lasting and better developed understanding of the material filled in than would taking notes on a blank page.

Of course, most law professors do not provide such guided worksheets for their courses, but there is no reason students cannot create them themselves as they read, brief, and prepare for each class. In fact, many academic support professors urge students to create prestructured outlines of key points in the assigned reading before each class, but to treat them as provisional. Students are then advised to leave significant space for additional in-class commentary, and to cross out or supplement any points that the class conversation reveals were inaccurate or incomplete. This sort of revision, editing, and annotation leads to better organized and more reflective commentary, which helps students reach a deeper comprehension of the material.

In talking about note taking, consider also how various courses might differ from one another. Students tend to want to assume that the differences they see in their classes are due solely to the unique idiosyncrasies of their professors, frequently commenting to one another about what each professor "likes." A very useful objective in your discussion about differences in note-taking methods from class to class might be helping students begin to see where differences in their classes may instead be due to distinctions in the body of law itself. The more students understand why the styles in their classes might be variable, the closer they get to a big-picture comprehension of the material in each course.

Finally, a comment about laptops in the classroom. There is a fair amount of evidence suggesting that people do not learn and retain information as well when they take notes on laptops as they do when they write by hand. This seems to be not only because it is easy to veer off into distraction when sitting behind a computer, but also because laptops lend themselves to fast writing and transcription. Thus they inhibit the kinds of condensation and judiciousness required when handwriting. Frustratingly, this effect has been shown to remain constant even when students are informed about the problem.¹¹ It seems that the temptation to try to capture every word in the classroom rather than to think carefully about them is simply very hard to resist.

Some professors, in ASP or in other subjects, therefore ban laptops in their classes, but this remains an uncommon and fairly controversial decision. Even if laptops are prohibited in one class it is unlikely to be true in all of them, so you will probably still want to talk with your students about how to take notes well. Whether they handwrite or type, it seems that the available data suggest that correcting and commenting on preclass prep as a form of note taking promotes good integration and retention of ideas. Help your students find methods that treat preclass notes, in-class notes, and postclass review as parts of an ongoing examination of the topics covered, to distill them into material the student needs and can work from.

3. Periodic Review

No matter how good their notes become, students should not rely solely on what was written down in class to encapsulate what they need to have learned. Waiting until the end of the semester to prepare course outlines is too late if their goal is to sort through the information they are taking in as the semester progresses. Students need a plan for regular review of each of their courses.

Many do not know that, however. Or they might mean to get to it but fail to do so as they become overwhelmed by the day-to-day requirements of their classes. Emphasize the purpose of law classes—to talk over and consider the parameters and applications of the rules they are learning—to help students see why this sort of review is as important as (arguably even *more* important than) their everyday class preparation. Help your students develop specific targets and

plans for regular review (After each class? At the close of each day? Weekly? At the end of each unit in each course?).

4. Outlines

Outlines in this context are student-created study guides that consolidate material and thinking for a particular course over its duration. This is not to be confused with the process of “outlining” as preparatory to drafting written legal analysis, as discussed earlier.

It is not surprising that most beginning law students report feeling a little bewildered about how to outline their courses. They are given a wide variety of advice about how to do this, and much of it is contradictory. Even with respect to just timing, sometimes students are told that they should be outlining all throughout the course, and other times that they need to get their feet wet first and gain a broader conceptual overview before beginning to consolidate their learning by outlining.

One useful approach to teaching outlining starts by working backward from the end product. I will often give students a “pop quiz” hypothetical question and ask them if using their outline to answer the question would actually help produce a higher scoring answer. Often, the answer is no. This exercise tends to dramatize the point that course outlines are intended to be valuable *working* documents, not simply mini-hornbooks. Exhaustive tomes summarizing cases and class discussions might be fine to start with, but are ultimately not as helpful as short summaries of established doctrine, coupled with notes and questions about murkier areas of the law or areas where there are competing strains of thought.

Some academic support professors will themselves teach a specific methodology for condensing class material into workable outlines. There are many resources in the literature for doing so. Still others of us encourage students to develop their own outlining systems, but to adhere to basic recommendations and guidelines. Almost all material on outlining suggests that at the end of the process the student should be able to distill the core information into some sort of short and workable reference summarizing the key issues covered in the course.

No matter how you decide to talk about the topic, remind students that the point of outlining is the process itself, not the product. No one will be grading their outlines, only the analysis that the outlines help them produce when faced with a new fact pattern. Even

on open-book exams, they will rarely have enough time to consult the outlines they have prepared except in the most cursory way. The entire goal of outlining a course, therefore, is to prepare them to provide sound legal reasoning on a particular subject when taking a final exam, so anything that moves them in the right direction is worthwhile, and anything that doesn't, isn't.

D. ALTERNATIVE MODES OF STUDYING AND LEARNING

ASP educators tend to experiment constantly with trying different approaches to mastery of legal concepts and legal analysis than the students might use on their own. The more tools we have available, the easier it is to find ones that work for individual students or groups.

1. Making Timelines, Charts, and Graphics

Law students sometimes have a hard time knowing what to do with the interconnected web of important ideas in their subjects. Some people absolutely hate working with visual representations of concepts, whereas for others it can be a revelation. Thus, even though it might not work for everyone, it might be a good idea to have all of your students at least try using graphics in their studies at least for one project. You can give an explicit recommendation that those who find it a helpful means of consolidating their learning to continue (really, this is simply outlining in another format, and it might help your students to make that explicit), and those who don't need not use the method again. Note, too, that some subjects (e.g., evidence or civil procedure) might more readily lend themselves to chart or graphic forms than others.

For one class, you might try placing one or more hypotheticals on the board and having the students work together to build a diagram illustrating a way to approach the answer. This will help showcase the software in case any of your students want to try it out themselves. It could also generate useful discussion about how ideas fit together in a particular course or in law in general, as well as ways to summarize legal studies other than the classic course outline.

Although of course there are more advanced options for users familiar with them, Word or another word processing program (or even pen and paper) should suffice for students who want to generate

a basic timeline or table. For more elaborate graphic needs there is diagramming or mapping software, which permits users to construct images and complex flowcharts to illustrate relationships among various topics or reasoning steps. Commonly used flowcharting programs include Vizio or Rationale, but new software tools are regularly introduced or updated. Try searching online for “mind-mapping software free” to find recent and popular editions. (Note that programs available for a fee often have a free trial period, but students should be aware that diagrams and models created during that period can be printed out and retained, but although they might not remain available electronically after the trial expires.)

2. Writing Their Own Exam Questions

Crafting fact patterns based on material studied in a course can be an excellent way for students to see how issues can be layered within hypotheticals. For a class exercise, start with a specific subject from one of their courses and ask your class to generate a list of issues and subtopics that they examined when they studied the topic. Write a list of their suggestions on the board. Assign students individually or in groups to outline and then draft fact patterns that raise as many of these issues as possible. Encourage the groups to make some issues prominent and important, while others are more hidden or end up being less dispositive. Post the resulting questions on your class web course, or bring them into a subsequent class, to have students outline answers to each. Critique the fact patterns for their complexity, subtlety, and difficulty.

Students tend to enjoy this experience very much, but it is frequently disheartening to faculty to find that many are not very good at it. Even though many students work very hard to craft elaborate (and often funny) narratives, it is extremely common for their sample test questions to include only one main issue at a time, or to include only fairly simple legal issues rather than ones that are more challenging. If this happens in your course, try putting the best of the students' questions next to sample questions written by faculty and having the class analyze the similarities and differences they see between the two. This might help them see how much more sophisticated and complex we expect them to be, which in turn will help students better understand what they will need to do to master their subjects and prepare for their final exams.

E. MEMORIZATION

Usually, the most important message about memorization in most academic success teaching is to stop doing so much of it. Students who come to you with a thousand flash cards that they are using to drill the concepts in their Constitutional Law class are often implicitly telling you that they are in trouble. They are using study methods that have worked for them in the past, and have not yet grasped that learning in law school is not about accreting tidbits of information, but rather about developing ways to use what information they have to solve new problems. This flash card student is training for the wrong sport.

But that does not mean that memorization is entirely irrelevant to the student of law. There is a large body of law that your graduates will have to memorize to succeed on the bar exam, of course. Even before that, there will be some basics they cannot escape knowing: the elements of the torts, crimes, and other rules they have studied; theories of punishment; what the most important rules of civil procedure require (even if they will be allowed to consult the text of the rules on a test, they will need to know what to look for); defenses to contract breach; and so forth.

Remind your students that memorization is always easier when concepts are fully understood, and when information is divided into manageable portions. This means that organization and distillation should always come before memorization. And of course, the memorization techniques that have worked in other contexts are still valuable: Mnemonics, review and rehearsal, and visual imagery can all be important triggers for memory. They should just be deployed sparingly and not become a primary focus of study.

F. TIME MANAGEMENT

Law students have many demands on their time, including, for most beginning students, a far more challenging and intensive study regimen than most have faced in other academic settings. Students frequently report having difficulty prioritizing their activities and managing their time well.

Many students find it helpful to plan out a weekly schedule, or to keep track of how they actually spend time over the course of a week. Many academic skills teachers provide attorney billing sheets for this purpose. The assignment encourages students to undertake a

planning or recording exercise for one week. The students can then use their adherence to their own plans, or their recording of how much time they actually spent on various activities, to reassess how best to schedule their time in the future.¹²

Some students also report great success using free scheduling apps.¹³ These applications include timers and access locks to force users into working without interruption for set time periods before taking a break to open other files, check e-mail, and so on. For students who are used to electronic multitasking, this can help them focus more intently on individual tasks. It might even be a radical change in the way they approach their work.

Exercise

To open a discussion with your students about how they structure their time, try the classic “rocks” exercise: Show a glass jar filled to the top with rocks (you might bring an actual jar or vase, or just use images on slides) then ask your students whether it is “full.” Next, ask what will happen if you pour in some small pebbles that squeeze into the spaces between the larger stones. Now is the jar full? Follow with sand, and then water. Full yet?

When asked what the point of this little thought experiment might be, most students will volunteer something along the lines of this: “Even when you think you’re full, you can always fit a little more in.” That is when it is helpful to suggest that the better lesson might be “You can’t pack all of these disparate things into the jar unless you put the biggest rocks in first.” So what are their big rocks? Aside from study, they probably include sleep, exercise and recreation, family and friends, religion or community involvement, and (whether the students know to include it or not) regular review and consolidation of what they have learned. That means they will always need to set aside time for these larger commitments and fit the smaller ones in around them.

G. ADDRESSING LEARNING DIFFERENCES

Most students come to law school these days having heard at least a little bit about learning styles. Learning styles theory grows out of theories of multiple intelligences, and the concept that there are many ways of taking in and processing information.¹⁴

Evidence on whether law professors should adopt multiple modalities of teaching to hit differing learning styles is mixed, but there is little question that most do not. Your students might report that the traditional read, listen, and write approach does not work well for them, and they could be right. It is worth reminding them, though, that these are not only the primary modes of thinking and learning in law school, they also remain the chief means of working and communicating in the legal profession. Regardless of their learning preferences, then, all law students will have to find ways to translate what works best for them into the most commonly deployed methods in the profession, and vice versa.

However, this is not to suggest that students should not incorporate other forms of learning into their studies. Some law students take to heart the notion that law study is different from other learning and abandon methods that have worked well for them in the past. There is no real need to do so. Using multiple methods for learning can actually help generate a richer understanding of complex material. If it works for them, law students can, and should, continue to develop charts or other visual cues, listen to music as they review, move around the room as they study, speak aloud as a means of reviewing material or developing a more sophisticated understanding of it, and so forth. The more ownership they take over their modes of learning, the more effective they are likely to be.

To help students gain a richer understanding of their own thinking and learning processes, some ASP professors use or refer students to *Juris Types: Learning Law Through Self-Understanding* by Martha M. Peters and Don Peters (2007). Based on Myers–Briggs typology, this book posits that the legal profession is, and should be, populated by many different kinds of lawyers and learners, but the more law students understand themselves and their learning methods, the more effectively they can capitalize on their strengths and develop any areas of difficulty or weakness. Myers–Briggs testing has been questioned for forcing dichotomies on human variances that might be more complicatedly interwoven (e.g., people might combine characteristics that could be deemed introverted or extraverted rather than falling squarely within one category or the other) and for lacking strong retesting reliability. But many students are familiar with Myers–Briggs testing or are interested in its theories of personality types, and might find these scales a useful way to think about what challenges them and works well for them as they learn.

Beyond varieties of learning preferences, though, some students present specific concerns that could affect their academic work.

1. Learning Disabilities

Some law students present diagnosed learning disabilities and will receive accommodations in law school or on the bar examination. Some of these students with disabilities might keep the details private (and it is absolutely their right to do so), in which case the issue might not come up in their dealings with you. Others choose to discuss them openly, and they might seek your help in tailoring their academic work to meet their own needs.

Fairly frequently, however, students might not have realized that they had a learning disability until coming to law school. Bright and motivated students often have adapted to their disabilities until they find themselves in the sort of academic environment that demands far more of them than has been required before.

Other students might have had diagnoses of disabilities that were accommodated in prior educational settings but are not now being addressed. This can happen either because the students did not have the paperwork needed to seek accommodations in law school, or (not uncommonly) because they decided that law school marked the beginning of a professional life in which they did not want to seek special accommodation. If the latter is the case, that's obviously up to them, but it might be useful to point out that the "speeded" nature of law school test-taking can uniquely stress certain processing disabilities in ways that far exaggerate the problems they might encounter in a real-world workplace setting.

Unless you have specialized training in the field, you will likely feel that you are not qualified to tell students how to handle their disabilities or to diagnose any that have not been previously identified.¹⁵ What you can do, however, is neutrally remind students that disabilities do not have to be barriers to success in the legal profession, and that students who can excel with accommodation are certainly entitled to use it when properly documented.

2. A Note About FERPA

Many academic support professors, administrators, and other faculty members will have questions about how to address students' disabilities or other matters pertaining to their academic performance

without violating the Family Educational Rights and Privacy Act (FERPA).¹⁶ Regardless of the legal restrictions, of course, it is important to be cautious about unnecessarily violating students' privacy. However, because within your institution there might be good reasons for at least some information to be available to more than one school official to meet the student's educational needs, FERPA requires fewer restrictions in accessing important information than many suppose. It places no limitations on information not contained in what it deems "educational records."

If you have questions about how, if at all, FERPA protections might proscribe your work with students at your school, consult some of the material advising academic support professionals how to act in compliance with the law.¹⁷

3. Test Anxiety

Apprehension and worry will get in anyone's way when taking high-stakes exams. For a subset of students, however, the problem goes beyond ordinary stress and becomes a powerful physiological response that absolutely interferes with reasoning and substantially reduces performance.

One strategy that has been shown to be very helpful in overcoming pronounced test anxiety is prewriting.¹⁸ Test-takers are encouraged to spend 10 to 15 minutes writing out their thoughts before taking an exam, and thereby channel their fears and expectations. The instructions can be general and the topics left up to the writer, or can be more directed to encourage students to try to identify the greatest sources of their anxiety: Do they feel stymied by the law, worried about how to organize a good essay, or what? Prewriting apparently helps "offload" negative thinking and has been shown have a pronounced effect on concentration and success under actual exam conditions for those who suffer from serious text-taking anxiety.

Based on this research you might try experimenting with asking *all* of your students to try this exercise before beginning a particular test or graded exercise. Have everyone write freely for 10 minutes, and afterward explain the research on test anxiety. Tell students who believe that they experience significant test anxiety to consider whether the procedure helped them feel calmer during the test. If so, encourage them to continue doing this before they sit down to do graded or high-stakes work. (The many students who loathe doing

this sort of reflective journal writing need not do so again.) For those it helps, being asked to try out this prewriting technique once could be the push they need to continue using it for all of their law school tests or the bar exam.

H. STIGMA AND STEREOTYPE THREAT

Stigma is real. It can undermine confidence and motivation. If your ASP class is in any way targeted to specific students rather than a whole class (whether based on incoming predictors of their performance or their actual grades) you are going to have to address the stigma that students are likely to feel when participating in your course.

This is not to criticize the choice of offering ASP classes only to students who might have difficulties. There are many good reasons to focus academic success teaching on those who need it most, or who are not gaining from their other classes the skills and confidence they must develop. The simple fact is that no matter how careful you and your school are, it is likely impossible to separate out students in need of additional assistance without making those students (and their peers) feel that this training marks them as somehow remedial.

You probably cannot make this sense of stigma disappear entirely, but there might be things you can do to lessen it. Ironically, to a point at least, larger ASP classes help: The more students who are enrolled in academic skills, classes the more students are being stigmatized, but the weaker the actual stigma. Some form of voluntariness in enrolling in the course might also help (especially if your school requires some students to take your course based on their prior performance).

Beyond the mechanics of who is in your class, though, are the ways you approach your students. As was discussed earlier, being matter-of-fact, warm, and encouraging, but ready to tell students plainly what is good in their work and what still needs improvement, will go a long way toward showing them that you respect their intelligence and ability to learn. Law students generally, but especially students in ASP courses, are acutely conscious of anything that smacks of condescension. It will be important to sound confident that most of your academic support students are capable of producing excellent legal work if they turn their attention to concepts or approaches that

they have not yet mastered. Even more, it will be important to actually believe that this is true.

Be aware, too, that for some of the students in your class, stereotype threat might also overlay the stigma that they feel in working with an academic support program. The work of Claude Steele and others who have studied stereotype threat shows that it has the profound and robust effect of lowering the performance of test-takers who are expected to perform poorly by virtue of their membership in certain demographics and categories. Usually these categories correspond with groups expected to underperform along traditionally derogated lines of race, class, or gender, but the effect could be found even among dominant group members if they somehow become stigmatized (which, arguably, being identified as low-performing and placed in ASP might itself accomplish).

Further research has shown that the threat effect can be diminished, even virtually eliminated, when educators gave critical feedback but at the same time effectively conveyed both that standards were set very high, and that there was good reason to believe that the student could meet them.¹⁹ Described that way, this sounds like a good recipe for successfully teaching all students. Aim to present your course, and your commentary on your students' work, in a similarly rigorous but inspiring light.

VI. Developing Teaching and Learning Exercises

What most distinguishes academic skills teaching from doctrinal or clinical education is its emphasis on hands-on exercises and reflective feedback. This probably means that you are going to need a number of exercises to use as you progress through your course. Some might be drawn directly from whatever textbook or readings you assign, and some are described, or at least sketched out, in this book. Inevitably, though, you will want to create some of your own.

If you have gained valuable experience in exercise design prior to teaching an academic support course, have at it! If you are new to this project, though, it might help to envision the process of creating teaching modules as progressing through a series of logical steps:

1. Identify a specific and narrow issue or topic for the exercise to address.

2. Consider *why* students struggle with this point.
3. Based on your working theory of the difficulty your students face, create some kind of experience students can engage in (individually or in groups) that would essentially compel them, if they followed your directions, to overcome that difficulty and produce the desired results on a small scale.
4. Create opportunity for students to reflect on what they are doing and why.
5. Connect the students' work on the exercises to the larger goal of using the newly developed skill when crafting legal analysis in other contexts.

And perhaps this should always be added as a last step:

1. When you see how students (and perhaps colleagues) respond to your exercises, revise and refine as needed.

The key and challenging part to this model, of course, is step 3: creating an opportunity for students to fluidly do exactly what, for whatever reason, they struggle to do in other settings. Creating an experience that accomplishes this is no simple task, but the more focused you are on a particular narrow point, and the clearer you are about why it is difficult for students, the easier it will be to design opportunities for them to produce something positive in your exercise.

All this is to say, then, that the more specific you are about what you need students to learn, the easier it is to develop an exercise that will help them learn it. This requires articulating each constitutive part of the learning or studying processes that you want your students to adopt. To get you started, a by-no-means-complete list of things that ASP educators regularly tell students, yet find that they have a hard time with, might include these points:

- Locating a court's reasoning in a particular case
- Making the analogy between precedent and a new fact pattern
- Restating rules both broadly and narrowly
- Understanding factors versus elements
- Distinguishing facts from inferences
- Knowing how cases relate to each other
- Explaining why a case is relevant to a particular set of facts
- Synthesizing a rule from related cases

- Using policy to explain why a court might lean toward a particular available option
- Reading problems and hypothetical questions carefully
- Identifying legally relevant facts
- Spotting the main issues posed by a legal problem
- Identifying subissues
- Analyzing facts rather than just reciting them
- Addressing logical inferences from given facts without making up new facts
- Explaining reasoning and avoiding conclusory statements
- Answering the question asked, not the one the student *wants* to have been asked
- Including and refuting counterarguments
- Writing to communicate ²⁰

Of course, this list is not exhaustive, and each professor is likely to characterize or phrase these issues somewhat differently. The details here matter less than the point: If you unpack each part of what you want your students to do, and approach each skill independently and only later in conjunction with others, your students will find it easier to follow your instruction and learn how to improve their work. An ASP course could be very successful if it simply included exercises isolating and then combining each of these steps.

Consider, too, varying what you ask students to produce each time they practice and refine their legal reasoning. Most commonly you might want them to analyze hypothetical fact patterns. Changing that up to incorporate oral presentations, outlines, visual representations of responses, or rewriting earlier work with consideration of whatever new points you are emphasizing could go a long way toward keeping your classroom vibrant. Like athletes who are cross-training, engaging your students in different ways helps build overall strength and consolidate mastery.

VII. Feedback and Grading

All teachers have their own methods of commenting on student work, and there is no single agreed-on way to do so in academic support courses. There are, however, some general principles of giving

critical feedback to adult learners that you should consider when devising your own commenting and grading plan.

A. ADDITIVE VERSUS SUBTRACTIVE GRADING

If you talk with your students about any of their tests or grades you will frequently hear them say that a professor “took points off” for something that they missed or addressed incorrectly. They seem to believe that in law school courses they all begin with an A (or a score of 100), and for each error they make they move down. We are in a profession of argument and interpretation rather than of right answers and accumulated tidbits of information, however, so this is simply not how law school works (or the law either). Consequently, it tends not to be how law professors and bar examiners grade.

Instead we tend to evaluate a student’s written analysis by adding credit wherever they have found and considered a legal issue or offered well-constructed legal analysis. Your students will have a better understanding of their task if you explain how law school exams are usually graded. To model that, you might want to adopt an additive evaluative scheme yourself. Your ASP course has a very different purpose from most other classes in law school, however, so your grading should focus far more on the students’ methods of reasoning than just the substance of their legal analysis.

One way to do that is to create a common grading rubric that lists all of the steps we want students to go through when analyzing a fact pattern. You might focus on just ticking off whether students have accomplished the various entries on your list, or instead include some combination of both objective and evaluative measures for the more important ones.

Another approach is to place some specified mark on a paper each and every time that any element of legal analysis is satisfied. If you use this method, students can quickly scan their own papers and note where the marks are bunched together (indicating a dense and probably effective section of the writing), and where there are sections not accumulating any marks (hence any credit) at all. This is a good way to indicate visually which parts of an essay are successful and which parts are incorrect or simply unhelpful.

B. FOCUS OF COMMENTS

The primary skill we are trying to teach students is the ability to construct and evaluate written legal analysis. It is therefore at least as helpful for students to see commentary about what is working in their papers as it is to get feedback on what isn't. Sometimes, much of what the students are doing well is only semiconscious, so the more that you can identify and explain it, the more that they can try to replicate it in subsequent projects. Try to strike a reasonable balance between identifying things that work and areas for improvement in each paper or project. Note, too, that simply indicating that something is "good" in student work is not the same as articulating what it is accomplishing and why it succeeds.

It is also important for us to remember that comments and feedback are means of teaching, not editing. Our goal is not to tell students how to perfect each document they have worked on, but instead to use each one as an example that they can learn from so that they will improve their work in the future. For each paper, then, rather than marking all possible points and inundating the student with information, try to choose one or just of couple of primary themes to address. That does not mean you cannot note smaller mechanical problems or other issues, but these probably shouldn't distract from attention to your chosen concerns.

If you have multiple projects that you will give comments on, you might also choose for one of those papers only to pay attention to one particular diagnosis or concern in your feedback for that paper. Don't mislead students into believing that nothing else in the paper needs revision, but give commentary just on the specific concern you want to address, and indicate that when this issue has been improved you and the student can turn your attention to other concerns.

C. FORMS OF FEEDBACK

Individualized written comments are what most academic support educators aim to provide most of the time if they possibly can. They are probably the benchmark for giving feedback on written work, whether handwritten or typed as comments inserted into the students' electronic submissions. One advantage of using typed comments is the ability to create some that are standardized, or are specialized for a particular test but have text that might be reusable

from student to student. Writing the same notes to many students can be tedious, yet we frequently see common problems that have to be addressed for each student.

Written comments are not the only way to respond even to written work. A bit of variety in forms of commentary can also help keep students engaged, reach them differently, and help alleviate the pressure on faculty as the sets of papers accumulate. You might want to hold meetings more than once in the semester so that you and a student or group of students can orally review a paper together. (Group conferences were described in greater detail earlier.) Alternatively, you could pair students and assign them to prepare critiques of their own and another student's paper as a homework assignment. You might post one or more papers, anonymously or not, on your course web site and dissect them together with your students. You can also record individualized audio feedback on papers (software is available to allow you to easily insert click-on electronic audio comments, or to create whole electronic files of your recordings to transmit to students), or you might create podcasts covering common problems encountered by many students in your class.

D. SCORING SCHEMES

You might want to experiment with different ways to assess and score assignments in your class. No matter what your plan, though, one crucial decision will be whether to give letter grades or numbers on interim assignments, and if so, according to what system. To get students to focus on improving their performance, rather than on hitting specific grade benchmarks, many academic support professors avoid giving scores that easily map onto their school's usual grading scheme.

Of course, even if you make that decision your students will want to know how they are doing. You, too, will probably want to give them at least some general sense of what the numbers on a particular assignment might mean (perhaps what the high score in the class was, whether you think that high score is roughly equivalent to an A or a B, or maybe what the class average was). Even if you choose to avoid assigning exact letter or number grades, you will still want to give an honest and clear assessment of the students' work. ASP professors do not want to be so negative as to impair their students'

motivation or sense of self-worth, but neither do we want to convey an artificially inflated sense of their performance. It is imperative that your students believe they can succeed, but they must also be clear about when they have not yet precisely done so.

E. TIMING

Research on feedback suggests that timeliness matters. Prompt assessment is far more effective at helping students learn and improve than more elaborate commentary given later on.²¹ It will be crucial that, regardless of whether assignments count for a grade or not, you turn assignments in your course around quickly.

It might be helpful to give yourself an outside deadline for providing grades or comments on work in your class—perhaps for shorter projects no more than about 10 days or so after the assignments are completed. This means devising plans for giving comments that will allow you to be as thorough, but also as efficient, as possible. Remember, too, that throughout your course you can reinforce the sense of regular assessment by providing some forms of instantaneous feedback (e.g., “Did I get the answer right on this multiple-choice question?”).

VIII. Wrapping up Your Course

There is no reason why you have to do anything different at the end of your class than at any other point in the course, but at the very least you will want to use your last class or two to consider what the students have learned. Engage your class in a discussion of the purpose of various experiences or exercises from earlier in the course, ask them to orally present or write something geared to a friend who is just entering law school to tell him or her how to do their very best, or find other creative ways to revisit and reinforce the lessons you have included.

Many teachers of academic support classes want to finish with some sort of culminating experience. If you do choose some sort of concluding exercise, you would ideally like to end on a positive note. Try to create an experience that somehow puts your students in a

position to connect the dots of topics you have covered throughout the semester and reflect on what they have learned.

Exercises

Exit Conferences. Some ASP professors arrange a series of individual conferences near, but not exactly at, the end of the course. The meetings explore each student's progress, note areas to keep working on as the semester ends and the exam period begins, allay building anxieties about how students are doing overall, and make plans for how the students can best approach the next set of examinations and the classes to follow.

Projects. Students can be assigned individually or in small teams to prepare oral presentations for their classmates. Project teams might be asked to choose a topic that they and their classmates find especially difficult and to provide new ways of understanding and applying this material. That is, they could essentially teach it to one another, providing examples or exercises to help lead their classmates to a better comprehension of the doctrine. Alternatively, student teams might read expert commentary on study skills topics and present what they have learned to their classmates for further discussion.

Anyone who has experience watching student presentations will concede that they can be risky. At their best they are engaging and fun, and might provide a terrific opportunity to generate student-led conversation and ownership over material in ways that lecture or even faculty-led discussion do not. But poor presentations are difficult for everyone to sit through, waste valuable class time, and make other students restless and resentful.

Student presentations tend to be better prepared and more carefully considered when they include a short written component or a required planning session with you beforehand. If you plan to use student presentations, be very specific about what you expect, and score the presentations as an incentive for excellent preparation. Feel free to be strategic: It never hurts to try to schedule one or more of the groups that you expect to do a particularly lively and well-conceived job to be among the first groups to present.

Rewrites. A common tactic in ASP classes is to allow or require students to rewrite earlier work to see how it might be improved after getting written feedback and incorporating what has been learned throughout the semester. You might have the students do this as a homework assignment, an optional extra credit project, or even as a

timed exercise under exam conditions. If you do so, it might also be helpful to have students submit a short self-reflective statement about how they approached the rewrite, what they did differently, and so on. This triggers the benefits of self-reflection in the learning cycle, as discussed in more detail earlier.

Summative Assessment Project. You could develop a more elaborate final assessment project that pulls together your lessons. One way to do this is to ask students to write an essay on some final question, and then assign a second essay critically evaluating what was drafted. An especially effective technique might be giving students an example of their early work in the course and asking them to compare it to a more recent draft. Whether or not there is substantial improvement in the later paper, evaluating the two essays side by side provides students an opportunity to review and demonstrate what they have learned in your course by describing what they see in both papers.

IX. Conclusion

Academic support teaching poses many challenges. It could be said that the demands of teaching ASP are not actually different from those involved in other sorts of law school courses. They do place a uniquely exaggerated emphasis on being methodical in your course design, articulate about intellectual processes that are hard to separate and define, and being nurturing and positive with your students while remaining sharply critical about what they need to do to produce ever-stronger work.

Most people teaching these sorts of classes find that they spend far more time designing lessons, planning exercises, grading, and talking one-on-one with students than they would for other kinds of law school classes. That is also what makes them so invigorating to teach. If you can be effective with your students, you will go a long way toward helping learn more effectively in every class they take. They will then become more thoughtful, self-reflective, and skilled attorneys than they would have been without you.

What could possibly be more exciting for law teachers than that?

Selected Bibliography

LAW SCHOOL INTRODUCTION MANUALS (AIMED PRIMARILY AT ENTERING OR FIRST-SEMESTER LAW STUDENTS)

Paul Bergman, Patrick Goodman, & Thomas Holm, *Cracking the Case Method: Legal Analysis for Law School Success* (2012).

Leah M. Christensen, “One L of a Year”: *How to Maximize Your Success in Law School* (2012).

Lazer Emanuel, *Strategies & Tactics for the First Year Law Student* (2010).

Ann L. Ijima, *The Law Student’s Pocket Mentor: From Surviving to Thriving* (2007).

Andrew J. McClurg, *1L of a Ride: A Well-Traveled Professor’s Roadmap to Success in the First Year of Law School* (2013).

Patricia Grande Montana, *Navigating Law School’s Waters: A Guide to Success* (2014).

Albert J. Moore & David A. Binder, *Demystifying the First Year of Law School: A Guide to the 1L Experience* (2010).

Chad Noreuil, *The Zen of Law School Success* (2011).

Shana Connell Noyes & Henry S. Noyes, *Acing Your First Year of Law School: The Ten Steps to Success You Won’t Learn in Class* (2d ed. 2008).

Austen L. Parrish & Christina C. Knolton, *Hard-Nosed Advice from a Cranky Law Professor: How to Succeed in Law School* (2010).

Herbert N. Ramy, *Succeeding in Law School* (2d ed. 2010).

Nancy B. Rapoport & Jeffrey D. Van Niel, *Law School Survival Manual* (2010).

Helene Shapo & Marshall Shapo, *Law School Without Fear: Strategies for Success* (3d ed. 2009).

Ruta K. Stropus & Charlotte D. Taylor, *Bridging the Gap Between College and Law School: Strategies for Success* (3d ed. 2014).

Dennis J. Tonsing, *1000 Days to the Bar but the Practice of Law Begins Now* (2d ed. 2010).

EXAM SKILLS BOOKS (FOCUSING SPECIFICALLY ON
ACADEMIC TESTS IN LAW SCHOOL)

Charles Calleros, *Law School Exams: Preparing and Writing to Win* (2d ed. 2013).

Suzanne Darrow-Kleinhaus, *Mastering the Law School Exam* (2007).

John C. Dernbach, *Writing Essay Exams to Succeed (Not Just to Survive)* (4th ed. 2014).

Michael Fischl & Jeremy Paul, *Getting to Maybe: How to Excel on Law School Exams* (1999).

Barry Friedman & John C. P. Goldberg, *Open Book: Succeeding on Exams from the First Day of Law School* (2011).

Alex Schimel, *Law School Exams: A Guide to Better Grades* (2012).

Charles H. Whitebread, *The Eight Secrets of Top Exam Performance in Law School* (2007).

“COURSE IN A BOX” TEXTS (THESE TEXTS OFTEN INCLUDE SELF-CONTAINED
EXERCISES THAT BUILD ON ONE ANOTHER. THEY MAY BE SUITED FOR USE IN A
STAND-ALONE ORIENTATION OR “INTRODUCTION TO LAW STUDY” CLASS)

Tracey E. George & Suzanna Sherry, *What Every Law Student Really Needs to Know: An Introduction to the Study of Law* (2009).

John Humbach, *Whose Monet? An Introduction to the American Legal System* (2007).

Mickael Makdisi & John Makdisi, *Introduction to the Study of Law: Cases and Materials* (3d ed. 2008).

Carolyn J. Nygren, *Starting Off Right in Law School* (2d ed. 2011).

David S. Romantz & Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skill* (2d ed. 2009)

Michael Hunter Schwartz, *Expert Learning for Law Students* (2d ed. 2008).

Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (2012).

Peter T. Wendel, *Deconstructing Legal Analysis: A 1L Primer* (2009).

SPECIAL TOPICS (THESE BOOKS COVER SPECIFIC ISSUES IMPORTANT IN ASP
WORK, OR ARE DEVOTED TO USING ACADEMIC SUCCESS TECHNIQUES WITHIN
SPECIFIC CONTEXTS OR COURSES)

Cassandra L. Hill & Katherine T. Vukadin, *Legal Analysis: 100 Exercises for Mastery: Practice for Every Law Student* (2012).

Ruth Ann McKinney, *Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert* (2d ed. 2012).

David Nadvorney & Deborah Zalesne, *Teaching to Every Student: Explicitly Integrating Skills and Theory Into the Contracts Class* (2013).

Carolyn Nygren & Howard Katz, *Starting Off Right in Torts* (2d ed. 2012).

Carolyn Nygren & Howard Katz, *Starting Off Right in Contracts* (2d ed. 2014).

Michael Hunter Schwartz, *Expert Learning for Law Students* (2d ed. 2008).

Appendix: Sample Course Sequences

INTENSIVE SUMMER ASP OR ORIENTATION PROGRAM

DAY 1: Introduce common law, case reading, and Socratic method. Assign one to three cases for students to read and discuss (possibly with a portion of the discussion conducted in Socratic dialogue so that students can see what it means to review cases using that method). Talk about study skills in law school, including outlining and time management. Spend time examining ways to take notes in a Socratic class, and work on preparing a note-taking scaffold to use for the next class session.

DAY 2: Introduce case briefing. Have students work in teams either to prepare briefs for assigned cases or to review and critique briefs that they have done for homework. Consider how individual cases do (and do not) relate to the objectives of a course and to the likely final exam. Review a sample exam question on the topic the students are studying, and discuss the knowledge and skills needed for success on such a test and if the hypothetical were a real client. Talk about case reading skills and the fact that good lawyers and law students read cases critically and “talk back” to the text as they go.

DAY 3: Work on conceptualization and synthesis. Taking all cases and statutes (if any) read so far, begin to describe the rules both as narrowly and as broadly as the law will allow. Consider which party would want to frame the law narrowly and why, and which would want it to be interpreted broadly. What is the common core of the rule(s) that both sides will agree on, and where will they differ? How will each side support its contention regarding what the law is (which just so happens to be an interpretation that benefits its position)? What arguments are such a stretch that a lawyer might risk credibility in trying to put them forward? Begin consolidating, reviewing, and outlining material covered so far.

DAY 4: Intensive work applying rules to facts. Start with just one rule or one case, and a factual scenario that leads essentially to one conclusion when

that rule is applied. Have students individually or in pairs write out the rule application in this scenario, and then compare and critique their responses as a group. Move to applying the rule to increasingly more ambiguous facts, showing the students that as they proceed along that continuum their analytical process will remain the same, but they will need to consider and give increasing weight to alternative interpretations. When they have had sufficient practice with these skills, move to following the same trajectory with a more complicated synthesized rule taken from the material you have been studying. Show students that they must now consider both alternative interpretations of the law's reach, as well as alternative views of how it applies to given facts.

DAY 5: Consolidate and review, then practice. Work collectively on issue-spotting in a sample problem, then have students prepare complete yet succinct explanations for each of the issues identified. Discuss what makes some of their explanations more successful (and higher scoring). Remind students of the importance of periodic review and connect this to course outlining, showing various approaches to effective outlining of the material you've covered. Give students time to complete their outlines for your course, then try a practice exam and give individual feedback, as well as class discussion reviewing and scoring selected segments of student responses.

SEVEN-WEEK FIRST SEMESTER SUPPLEMENTARY ASP COURSE

WEEK 1: *Preparing for class: Reading and briefing cases effectively.* What does it mean to read cases well? What will make you feel well-prepared when you go into class, and why is that not the same thing as being able to answer every one of the professor's questions? How do high-performing students read and take notes on their cases? Learn the importance of questions, problems, and comments in your casebook, and how to use them to prepare for each class. Draw exercises and plans from Part IV of this book.

WEEK 2: *Taking notes.* Why is the professor asking the kinds of questions posed in a typical Socratic class? Which questions and comments are tangents and which are important? How does this relate to what students will need to know and do at the end of the semester? Develop note-taking techniques, and encourage students to prepare some sort of note-taking scaffold before class to organize their notes as the discussion progresses.

WEEK 3: *What is legal analysis?* Practice applying rules to facts and explaining/supporting reasoning. Start with simple rules and unambiguous facts, then progress toward ambiguous facts and more complex rules. Use exercises and ideas from Part IV.

WEEK 4: *Synthesis and review.* Most classes should have completed their first unit or two, so now is the time to begin pulling it together by reviewing the basic principles studied and considering how they fit together. Are any common themes developing in the course? Is there some sort of common methodology? What information will *not* be important going forward, and what will? What kinds of facts would generate answers that should legitimately have more than one possible conclusion? (These are the kinds of scenarios that would make good test questions!) Why is the law the way it is? That is, what policy rationales support the current rules, and what does that tell us about how to predict what a court might do in a “hard” or ambiguous case? Refer to Part IV.

WEEK 5: *Outlining.* Experiment with different means of consolidating course material, including graphs, flowcharts, or traditional text. Compare students’ efforts to sample problems to see whether the outlines are genuinely helpful in breaking down and analyzing a given problem. If so, why, and if not, what would make them more useful? Discuss the fact that different outline methodologies might work better for different students, but also that some approaches work better for certain subjects. See Part V for additional ideas on teaching outlining and other study skills.

WEEK 6: *Issue spotting and organization.* Review sample exam-style questions and practice unpacking the legal issues. Try any of the issue spotting exercises described in Part IV. Alternatively, have students write exam problems and then work together to identify issues. Once all topics have been identified, consider how a well-crafted and efficient answer might be organized. For examples of exercises see Part IV.

WEEK 7: *Explanations.* Remind students that chances are how well they do on law school exams will have far more to do with how effectively they explain their reasoning than it will with how much law they know (especially because most other students will know roughly the same amount). Practice developing thorough and sophisticated explanations of legal reasoning, using any of the exercises in Part IV.

FULL-SEMESTER ASP COURSE (USUALLY PROVIDED TO SECOND- OR THIRD-SEMESTER LAW STUDENTS)

WEEK 1: *Introduction to the course.* Review the class structure and goals, have students complete self-reflective questionnaire (Part III), and do diagnostic problems to form basis of individual meeting. Set the tone for the class and empower students to become responsible for their own learning (Parts I and V).

WEEK 2: *Individual meetings/conferences with each student* (Part III). Discuss approaches to study and overall study skills with each student (Part V).

WEEK 3: *Consider the interpretive and contingent nature of law*. Read a foundational case (e.g., one found in most contracts, torts, property law, or other first-year casebooks) and work to identify material facts in the case. Then rewrite the narrative to support a conclusion opposite to the one the court reached (Part IV). Additionally, talk about class preparation overall (Part V).

WEEK 4: *Reading critically*. Practice critical reading of cases and statutes, and consider the difference between expert and novice readers of law (Part IV). Also consider note-taking strategies and how they might differ in different classes (Part V).

WEEK 5: *Diagram a legal rule*. Break it down into constitutive parts and seek deep comprehension of what the rule actually means. Then practice applying it first to unambiguous facts and then to more ambiguous ones (Part IV). Cover time management strategies as well (Part V).

WEEK 6: *Synthesis*. What does it mean when rules and cases build up? How do they fit together, and how do lawyers arrive at a synthesized notion of the law go (Part IV)? Introduce the role of memorization in law study, and discuss what is important to learn by rote and what is not (Part V).

WEEK 7: *Developing explanations*. Practice explaining and supporting applications of legal rules to facts (Part IV).

WEEK 8: *Issue spotting*. Finding legal issues in fact patterns (Part IV).

WEEK 9: *Structuring analysis*. Focus on macro- and micro-organization of legal reasoning (Part IV). Have class experiment with prewriting to address exam anxiety (Part V).

WEEK 10: *Conceptualizing and organizing material*. Outline, chart, or somehow consolidate material for one or more of the courses students are taking and consider what that broad overview says about how the material works and can best be put together for review (Parts IV and V).

WEEK 11: *Group conferences*. Organize small teams of students to review one another's papers and provide descriptions or feedback to their classmates (Part IV).

WEEK 12: *Revise earlier work*. Based on either last week's group conferences or the sum of what the course has covered so far, students should go back and rewrite an earlier project (Part IV). In class, practice applying principles learned to multiple-choice questions to see where analytical skills are similar and different, and to test detailed mastery of the material (Part IV).

WEEK 13: *Review and consolidate.* Pull together the messages of the course as a whole. Assign a new topic or collection of cases to read carefully, synthesize, outline, and prepare for the final class project.

WEEK 14: *Final exam and reflective essay.* Write an exam-style essay on material learned in the previous week, then write a reflective essay. Consider what was successful in the student's just-completed response (Part VIII).

Endnotes

- 1 Barbara Glesner-Fines, *The Impact of Expectations on Teaching and Learning*, 38 GONZ. L. REV. 89 (2003). For a useful summary and bibliography of research in the area, see Brian A. Jacob, Tamara Wilder, *Educational Expectations and Attainment*, NAT'L BUREAU OF ECON. RESEARCH, Working Paper No. 15683, available at <http://www.nber.org/papers/w15683>. For an older but still valuable summary of educational research on expectations and outcomes, see Thomas L. Good, *Two Decades of Research on Teacher Expectations: Findings and Future Directions*, 38 J. OF TEACHER EDU. 32 (1987).
- 2 Law School Admissions Council, *A PRACTICAL GUIDE FOR ACADEMIC ASSISTANCE PROGRAMS* (Alex M. Johnson, Jr., et al., eds. 2000).
- 3 16 L. TCHR. 1 (2010). For a more thorough introduction in group-based teaching and learning, see *TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS* (Larry K. Michaelsen, Arletta Bauman Knight, & L. Dee Fink, eds., 2002).
- 4 Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407 (1987).
- 5 Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603 (2007).
- 6 For an examination of the classic Fuller/Hart "No vehicles in the park" analysis that many professors turn into an exercise in interpretation, see H. L. A. Hart, *Positivism and the Separation of Laws and Morals*, 71 HARV. L. REV. 593 (1958), and Lon Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).
- 7 Many versions of exercises using fruits and vegetables to teach comparison and distinction are floating around. For a thorough discussion of one such exercise see Charles Calleros, *LAW SCHOOL EXAMS: PREPARING AND WRITING TO WIN*, 38–41 (2007).
- 8 Kris Franklin, *Theory Saved My Life*, 599 N.Y. CITY L. REV. 613–21 (2005).
- 9 Available from Edupress at a cost of about \$4.75 or so. See http://edupress.com/edupress/search/quickflips/Quick-Flip-Questions-for-the-Revised-Bloomrsquot-Taxonomy-EP729-c_129316/.

- 10 See generally, Carol S. Dweck, *Self-Theories: Their Role in Motivation, Personality, and Development*, 1 *ESSAYS IN SOC. PSYCH.* 1–9 (2000).
- 11 Pam A. Mueller and Daniel M. Oppenheimer, *The Pen Is Mightier than the Keyboard: Advantages Over Laptop Note Taking*, 25 *PSYCH. SCIENCE* 1159 (2014).
- 12 A good discussion of this sort of exercise, as well as sample billing sheets, can be found in Dennis Tonsing’s *1000 DAYS TO THE BAR BUT THE PRACTICE OF LAW BEGINS NOW* (2d ed. 2010).
- 13 One option is the program Pomodoro®, which can be found at <http://www.pomodoroapp.com/downloads/>.
- 14 See, e.g., Howard Gardner, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (2011; 1st ed. 1983). But see Aida M. Alaka, *Learning Styles: What Difference Do the Differences Make?*, 5 *CHARLESTON L. REV.* 133 (2011) (noting that educational psychologists question whether learning styles are fixed or fluid, and that many are skeptical about whether teaching differently to accommodate presumed distinctions in learning styles leads to increased comprehension or retention).
- 15 For additional background, see Leah M. Christensen, *LEARNING OUTSIDE THE BOX: A HANDBOOK FOR LAW STUDENTS WHO LEARN DIFFERENTLY* (2011).
- 16 34 C.F.R. pt. 99 (2009).
- 17 Louis N. Schulze, Jr., *Balancing Law Student Privacy Interests and Progressive Pedagogy: Dispelling the Myth that FERPA Prohibits Cutting-Edge Academic Support Methodologies*, 19 *WIDENER L.J.* 215 (2009).
- 18 Gerardo Ramirez and Sian L. Beilock, *Writing About Testing Worries Boosts Exam Performance*, 331 *SCIENCE* 211 (2011).
- 19 See Geoffrey L. Cohen, Claude M. Steele, and Lee D. Ross, *The Mentor’s Dilemma: Providing Critical Feedback Across the Racial Divide*, 25 *PERSONALITY AND SOC. PSYCH. BULLETIN* 1302 (1999).
- 20 An earlier version of this list was developed with Professor Rory Bahadur for a joint presentation.
- 21 For this reason, prompt feedback is considered one of the seven “principles for good practice in undergraduate education.” Barbara Walvoord and Virginia Johnson Anderson, *EFFECTIVE GRADING: A TOOL FOR LEARNING AND ASSESSMENT IN COLLEGE*, 4 (2009).

