

# ACCORD

PHOENIX LAW REVIEW ONLINE

---

VOLUME 1

FALL 2011

NUMBER 1



PHOENIX  
SCHOOL OF LAW

Published by  
Phoenix School of Law  
Phoenix, Arizona 85004

Published by *Accord, Phoenix Law Review Online*, Phoenix School of Law,  
1 North Central Avenue, Phoenix, Arizona 85004.

*Accord, Phoenix Law Review Online* welcomes the submission of manuscripts on any legal topic and from all members of the legal community. Submissions can be made via ExpressO at <http://law.bepress.com/expresso>, via e-mail to [Accord@phoenixlaw.edu](mailto:Accord@phoenixlaw.edu), or via postal service to:

Submissions Editor  
*Accord, Phoenix Law Review Online*  
Phoenix School of Law  
1 North Central Avenue  
Phoenix, Arizona 85004

We regret that manuscripts cannot be returned. All submissions should conform to the rules of citation contained in the most recent edition of *The Bluebook: A Uniform System of Citations*, published by the Harvard Law Review Association.

*Accord, Phoenix Law Review Online* is published on a rolling basis by the Phoenix School of Law. Subscription rates to our sister journal, *Phoenix Law Review*, are \$50.00 per year for United States addresses and \$64.00 per year for addresses in other countries. Subscriptions are renewed automatically unless notice to cancel is received. Subscriptions may be discontinued only at the expiration of the current volume. Direct all communications to the Administrative Editor at the address given above.

Copyright © 2011 by *Accord, Phoenix Law Review Online* on all articles, comments, and notes, unless otherwise expressly indicated. *Accord, Phoenix Law Review Online* grants permission for copies of articles, comments, and notes on which it holds a copyright to be made and used by nonprofit educational institutions, provided that the author and *Accord, Phoenix Law Review Online* are identified and proper notice is affixed to each copy. All other rights reserved.

Copyright © 2011 by *Accord, Phoenix Law Review Online*.

---

Cite as:  
Citation forthcoming.

**PHOENIX LAW REVIEW ORDER FORM**

MAIL

PHOENIX LAW REVIEW  
Attn: Administrative Editor  
1 N. Central Ave.  
Phoenix, Arizona 85004

FAX

PHOENIX LAW REVIEW  
Attn: Administrative Editor  
(602) 682-6865 (voice)  
(602) 682-6999 (fax)

E-mail: PhoenixLawReview@phoenixlaw.edu

Quantity

**Please place my order for:**

- \_\_\_\_\_ Subscription(s) to the *Phoenix Law Review* at \$50.00 per subscription for U.S. addresses.
- \_\_\_\_\_ Subscription(s) to the *Phoenix Law Review* at \$64.00 per subscription for non-U.S. addresses.
- \_\_\_\_\_ Single (previously published) issues at \$25.00 each. Current or new subscribers may order single issues at \$20.00 per book. Please include volume \_\_\_\_\_ and number \_\_\_\_\_.
- \_\_\_\_\_ Payment enclosed      \_\_\_\_\_ Bill me

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm/Institution

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

State

Zip

Signature \_\_\_\_\_ Tel. (\_\_\_\_\_) \_\_\_\_\_

E-mail \_\_\_\_\_

# ACCORD, PHOENIX LAW REVIEW ONLINE

*Copyright © 2011 Accord, Phoenix Law Review Online*

## CONTENTS

### ARTICLES FROM PRACTITIONERS

TO BE OR NOT TO BE . . . A LAWYER; IT'S ELEMENTARY! . . . . .	<i>Michael A. Mogill</i>	5
IF YOU THINK LAW SCHOOLS TEACH STUDENTS TO <i>THINK LIKE A LAWYER</i> . . . THINK AGAIN! . . . . .	<i>Douglas K. Rush</i>	27
INTERVIEWING THE DOMESTIC VIOLENCE SURVIVOR: INCORPORATING INTERDISCIPLINARY LAWYERING SKILLS IN THE 1L CURRICULUM . . . . .	<i>Sara R. Benson</i>	47



---

# ACCORD, PHOENIX LAW REVIEW ONLINE

---

VOLUME 1

FALL 2011

NUMBER 1

---

## EXECUTIVE BOARD

### EXECUTIVE EDITOR

TUFIK Y. SHAYEB

### MANAGING EDITOR

JASMINE C. GONZALEZ

### SENIOR ARTICLES EDITOR

JENNIFER K. HANSON

### SENIOR TECHNICAL EDITOR

COURTNEY M. SULLIVAN

### STAFF EDITORS

VINCENT J. BAUTISTA  
DANA M. BOXMEYER  
SHANNA FODNES  
HEIDI M. HAGGERTY  
ABDOUKADIR E. JAITEH

ERIC K. KNOBLOCH  
GREGORY J. LARSON  
JASON E. LEE  
PAUL A. LIBERATORE  
MELISSA A. LÓPEZ  
CHARLOTTE J. McDERMOTT

MATTHEW C. McELHINEY  
HEATHER M. NGURE  
TANIA E. ROCCO  
MITCHELL A. VASIN  
ELIZABETH E. WILSON

### TECHNOLOGY EDITOR

ADAM J. ROUSE

### FACULTY ADVISORS

LORI ROBACK MILLER  
KEITH SWISHER

### LEGAL RESEARCH ADVISORS

EDWARD M. "TED" McCLURE  
TIMOTHY SAFFLES



---

## PHOENIX SCHOOL OF LAW

---

### FACULTY

Shirley Mays, B.A., J.D., Dean and Professor of Law  
Hon. Penny Willrich (Ret.), B.A., J.D., M.S., Associate Dean for Academic Affairs and Professor of Law  
Placido Gomez, B.A., M.A., J.D., LL.M., Associate Dean of Faculty Research and Development and Professor of Law  
Ann E. Woodley, B.A., J.D., Associate Dean of Teaching and Learning and Professor of Law  
Keith Swisher, B.S., J.D., LL.M., Associate Dean of Faculty Development and Assistant Professor of Law  
Maria L. Bahr, B.A., J.D., Assistant Professor of Law  
Francine Banner, B.A., J.D., Ph.D., Assistant Professor of Law  
Lisa Bliss, J.D., Assistant Professor of Law  
McKay Cunningham, B.A., J.D., Assistant Professor of Law  
Jeff Danzig, B.A., J.D., Assistant Professor of Law  
Suzanne Dohrer, B.A., J.D., Visiting Professor of Law  
Stacey Dowdell, B.A., J.D., Assistant Professor of Law  
Sandra Durant, B.A., J.D., Assistant Professor of Law  
Daniel J. Dye, B.S., J.D., Assistant Professor of Law  
Mitchell Fleischmann, B.S., J.D., Coordinator of Lawyering Process Program and Assistant Professor of Law  
Brigham Fordham, B.A., J.D., Assistant Professor of Law  
Hon. Stephen A. Gerst (Ret.), B.A., J.D., Associate Professor of Law and Program Director of General Practice Skills  
Steven Gonzales, B.A., J.D., Associate Professor of Law and Director of Experiential Learning  
Mary Dolores Guerra, B.A., J.D., Assistant Professor of Law  
Kara K. Hatfield, B.A., J.D., Assistant Professor of Law  
Ilya A. Iussa, B.A., J.D., Assistant Professor of Law  
Jalila Jefferson-Bullock, B.A., J.D., Assistant Professor of Law  
Joshua Kanassatega, J.D., Assistant Professor of Law  
Diana Lopez-Jones, B.A., J.D., Assistant Professor of Law  
Nancy Millar, B.S., J.D., Assistant Professor of Law  
Lori Roback Miller, B.A., J.D., LL.M., Assistant Professor of Law  
Warren Miller, B.A., J.D. Assistant Professor of Law  
Michael P. O'Connor, B.A., J.D., Associate Professor of Law  
Claudine Pease-Wingenter, B.A., J.D., LL.M., Assistant Professor of Law  
Tom Raine, B.A., J.D., Assistant Professor of Law  
Christine Ritland, B.A., J.D., Assistant Professor of Law  
Celia Rumann, B.A., J.D., Associate Professor of Law  
Marren Sanders, B.A., J.D., LL.M., S.J.D., Assistant Professor of Law  
Shandrea Solomon, B.A., J.D., Associate Professor of Law  
Glenys Spence, B.A., J.D., Assistant Professor of Law  
Jennifer E. Spreng, B.A., J.D., Assistant Professor of Law  
Siera Russell, J.D., M.Ed., Assistant Professor of Law  
Riaz Tejani, J.D., Ph.D., Assistant Professor of Law  
Jalae Ulicki, B.S., J.D., Assistant Professor of Law



---

## PHOENIX SCHOOL OF LAW

---

### ADJUNCT FACULTY

Thomas P. Alongi, B.A., J.D., Adjunct Professor  
Jocquese Blackwell, B.S., J.D., Adjunct Professor  
Barbara M. Burke, B.A., J.D., Adjunct Professor  
Joseph William Davids, B.A., J.D., LL.M., Adjunct Professor  
Diane Drain, B.A., J.D., Adjunct Professor  
James A. Fassold, B.A., M.A., J.D., Adjunct Professor  
Ann Hobart, B.A., M.A.T., J.D., Ph.D., Adjunct Professor  
Mark E. House, B.S.B.A., J.D., Adjunct Professor  
Hon. Michael D. Jones, B.A., J.D., Adjunct Professor  
Alan C. Kuffner, B.S., J.D., CPA, Adjunct Professor  
Kelly LoCascio, B.A., J.D., Adjunct Professor  
Hon. Michael R. McVey, B.S., J.D., Adjunct Professor  
Hon. Wendy Morton, J.D., Adjunct Professor  
Gregory Navazo, B.A., J.D., Adjunct Professor  
Doug Passon, B.A., J.D., Adjunct Professor  
Afshan Peimani, B.A., M.P.H., J.D., Adjunct Professor  
Reid Pixler, B.A., J.D., Adjunct Professor  
Brian Quarles, B.A., J.D., Adjunct Professor  
Kristine Reich, B.A., J.D., Adjunct Professor  
David Rose, B.A., J.D., Adjunct Professor  
Maria Salapska, B.A., M.A., J.D., Adjunct Professor  
Monika Sud-Devaraj, B.A., J.D., Adjunct Professor  
Raya Tahan, B.A., J.D., Adjunct Professor  
Nina Targovnik, J.D., M.S., M.Ed., Adjunct Professor  
Richard Trujillo, J.D., Adjunct Professor  
LeBertha Umbreit, B.A., J.D., Adjunct Professor  
Hon. Chris Whitten, B.A., J.D., Adjunct Professor  
Monique Wilhite, B.A., J.D., Adjunct Professor

## DEDICATION

It gives me great pleasure to dedicate this inaugural issue of *Accord*, the on-line journal of Phoenix School of Law. *Accord* was the brainchild of the Executive Board of the *Phoenix Law Review* and is the culmination of the hard work and dedication of the *Phoenix Law Review* staff. The students, faculty, and administration of Phoenix School of Law proudly offer *Accord* as our latest contribution to the legal community.

The creation and publication of *Accord* dovetails nicely with our law school and our mission to be the benchmark of excellence in higher education for the 21st century. Our focus on student outcomes has served us well—Phoenix School of Law has the number one bar pass rate in the state and our placement rates are above the national averages. We are developing a Center of Excellence that incorporates social entrepreneurship into a model that creates opportunities for our students to be agents of social change. Our goal is to become a Regional Center of Excellence committed to a student-centered educational model that prepares students comprehensively for modern legal practice.

We are further committed to serving the under-served through providing the opportunity to obtain a high quality education to talented persons who might not otherwise be able to go to law school. The versatile nature of an online journal provides the ability to serve on law review to part-time, evening, and non-traditional students. This commitment also includes immersing our students in a culture that encourages providing service, both legal and otherwise, to individuals and entities that have historically been under-served by the legal profession. *Accord's* online format provides access to a scholarly discussion of timely legal issues to the community at large. Publishing an on-line journal will help us to remain on the cutting edge of the law and the legal academy.

Congratulations to all who were involved in the production of this inaugural issue of *Accord*. This is a major accomplishment for our students and the authors in this issue. You make Phoenix School of Law very, very proud.

Dean Shirley L. Mays



## FOREWORD

It is with immense pride, excitement, and joy that we present the inaugural issue of *Accord, Phoenix Law Review Online*. This issue is the culmination of many thousands of hours of work by both authors and law review volunteers who took a chance on a new, innovative legal journal. Without these learned authors investing their trust in our dedicated staff, there would be no *Accord*.

As a tribute to our school, the inaugural issue of *Accord* examines approaches to legal education that challenge the traditional law school model. Professor Michael A. Mogill discusses childhood perceptions of lawyers, and early motivations for becoming an attorney. Professor Mogill reaffirms a romantic view of being an attorney, from the eyes of a young child. Next, Professor Douglas K. Rush argues that law schools do not impart the “think like a lawyer” skills that successful practitioners develop over years of practicing law. Rather, Professor Rush contends that students who enroll in law school already possess those skills, and are self-fulfilling prophecies. Lastly, Professor Sara R. Benson advocates that first-year legal writing courses should incorporate hypothetical interviews with domestic violence survivors. Professor Benson argues that these interviews would develop students’ counseling skills and expose them to real-world client interactions.

The *Accord* staff strives to remain on the cutting-edge of legal scholarship, both in content and form. It is no coincidence that *Accord*’s inaugural issue establishes new territory in legal education theory, while carrying the imprimatur of our school, which redefines legal education in practice. We now invite you to enjoy *Accord*, and encourage you check back with us frequently.

Jason R. Holmes, Editor in Chief, *Phoenix Law Review*

Jasmine C. Gonzalez, Managing Editor, *Accord, Phoenix Law Review Online*



## TO BE OR NOT TO BE . . . A LAWYER; IT'S ELEMENTARY!

Michael A. Mogill\*

*The request caught me somewhat off guard. I had previously addressed college, high school, and middle school students on various career days, wearing either my hat as a lawyer or a professor. But I had never made a presentation to elementary school students; I always assumed they were too young for such serious lessons. Yet, here was the counselor from the school where my wife teaches asking me to inform third through fifth graders, ranging from ages eight to twelve, of the merits of being a lawyer. I was advised that I would not be alone on that day; others would provide information about careers as a butcher, musician, technology manager, finance manager, business person, soldier, physician, sales representative, crime scene investigator, photographer, entertainer, home improvement worker, and jewelry maker. Having previously raised two elementary schoolers and having the possible advantage (or disadvantage) of the insights my wife has shared on the academic lives of fourth graders, I decided to give it a try.*

### CONTENTS

I. INTRODUCTION .....	5	
II. THE LESSON PLAN .....	7	R
III. THE DIALOGUE .....	8	R
IV. THE UNGRADED "EXAM" .....	9	R
V. TO BE OR NOT TO BE? .....	12	R

### I. INTRODUCTION

Once upon a time, or so it would seem, I gravitated from the practice of law to the teaching of law. I have long thought that my choice was a positive

---

\* Professor of Law, The Dickinson School of Law of the Pennsylvania State University; B.S., University of Illinois, Champaign-Urbana; J.D., Northeastern University School of Law; LL.M., Temple University School of Law. The author wishes to thank his wife, Marla, for sharing her insights on the minds of fourth graders, the ever-enthusiastic third through fifth grade students at Hamilton Elementary School in Carlisle, Pennsylvania who contributed to his thoughts through sharing their views on becoming a lawyer, and to Lisa Woltz and Sherry Miller for preparing this manuscript.

one in that I was not running from the law,<sup>1</sup> but moving towards a different and hopefully more rewarding use of my education. However, I continue to be struck by the seemingly low regard that many entering academia have for the actual practice of law.<sup>2</sup> Although I hear most of my colleagues revel in their enjoyment of academic life, faculty meetings notwithstanding, I have instead reflected not so much on why I went into teaching,<sup>3</sup> but why I became a lawyer in the first place. It is, after all, future lawyers whom we are educating, and their motivations may help guide us in providing not only for their needs, but also for the needs of their future clients.

My own decision to become a lawyer was guided by the times in which I grew up. The 1960s and early 1970s were a turbulent time in our nation's history, one that appealed to my sense of idealism and community service. From my perspective, lawyers appeared to be involved in many facets of society, wielding power to improve the lives of those with few resources and those who were ill equipped to contend with power structures, whether those structures took the form of government institutions or private actors. I viewed the law as a helping profession, dedicated to serving those in need. I cannot say that I dwelled on the image of the lawyer as statesman, a virtuous public servant devoted to the public good or seen as the pillar of the community.<sup>4</sup> Yet, I did ponder the concept of the lawyer as champion of the people and causes, a paragon of virtue and rectitude and indeed the very conscience of the community.<sup>5</sup>

Admittedly, my undergraduate concentration in the social sciences did not offer any realistic direction other than graduate school. Law seemed the best manner in which to apply my idealism and desire to assist others. Moreover, it assuredly gave me three more years of study to determine what to do when I grew up. Still, when I made that decision, I did so without considering whether I had the requisite skills. I was also largely ignorant of the multitude of tasks that lawyers perform. Nor did I have the foresight to idealize the lawyer as a "gentleman" or "lady" who exhibited characteristics of charisma, elegance,

---

<sup>1</sup> See generally DEBORAH ARRON, *RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION* (Decision Books 2004).

<sup>2</sup> See Michael Asimow, *Popular Perceptions of Lawyers-Reasons for the Decline in Public Perception of Lawyers*, <http://law.jrank.org/pages/18751/Lawyers-Popular-Perceptions.html> (last visited Sept. 5, 2011) ("In 1973, 24% of the public had confidence in law firm leadership. . . [t]he figure plunged to 7% in 1997, far below all other major institutions. . .").

<sup>3</sup> See generally R. Michael Cassidy, *Why I Teach*, 55 J. LEGAL EDUC. 381 (2005) (conveying a newly tenured faculty member's reflections).

<sup>4</sup> See WALTER BENNETT, *THE LAWYERS MYTH: REVIVING IDEALS IN THE LEGAL PROFESSION* 29-30, 33 (The University of Chicago Press 2001).

<sup>5</sup> *Id.* at 36, 38-39 (bringing the image of Atticus Finch to mind).

social grace, courage, and honor.<sup>6</sup> Moreover, my ultimate goal of being a public interest attorney left me blind to the economics of being a lawyer. My motivation clearly did not express the multitude of reasons that others have chosen to go to law school.<sup>7</sup>

## II. THE LESSON PLAN

Having reflected on my own career path, I recalled that I had never considered vocational choices when I was in elementary school, let alone in middle school, or even seriously in high school. How was I then to interest these elementary school students in the path toward becoming a lawyer? The elementary school counselor provided some guidance by sharing questions for presenters to pose and answer for the students.<sup>8</sup> While these were certainly intended to be useful, I realized that the teacher in me was always more comfortable in engaging students in a dialogue, rather than providing information by way of a lecture. Therefore, I decided to expound on her inquiries by preparing a questionnaire of my own.<sup>9</sup> In order to keep it simple, I decided to request that the students provide me with their own ideas about lawyers by asking them to complete the following sentences:

- 1) I want to be a lawyer because. . .
- 2) The things that lawyers do are. . .
- 3) I would be a good lawyer because I am. . .

The questionnaire allowed each student to complete each sentence with three responses, with space left over for other reasons. The student would not have to put his name on the survey; however, I wanted to know the student's gender and grade, in order to determine if responses would be affected by those categories. The information provided became the empirical basis in evaluating the reasons these students were considering while deciding whether to be or not

---

<sup>6</sup> *Id.* at 46, 48, 60-67 (Still, fortunately, I did not perceive that negative image of the lawyer commonly perceived as a shyster or trickster).

<sup>7</sup> RAYMOND L. WOODCOCK, TAKE THE BAR AND BEAT ME at 39-40 (Career Press 1991) (citing FRANCES ZAHN ZERMANS & VICTOR G. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION 28 (Chicago: ABF 1981)). One study in which more than 500 Chicago attorneys indicated why they went to law school lists the following (note that multiple answers could be selected): Interest in law school (48%), wanted to practice law (40%), good background for other occupational goals (32%), prestige of the profession (28%), influence of family (23%), prospects of above-average income (19%), opportunity to be helpful to others and/or useful to society (18%), uncertainty about future plans (16%), opportunity to work with people rather than things (10%), stable secure future expected (9%), relative freedom from supervision by others (9%), influence of friend or teacher (9%), like to argue and debate (6%), opportunity to have an influence on the settlement of legal questions (4%), and wanted to postpone military service (4%).

<sup>8</sup> See Appendix A.

<sup>9</sup> See Appendix B.



to be a lawyer, which remains a question considered and reconsidered by the practicing lawyers and law students of each generation.

My presentations were to last for twenty minutes each. The students had already signed up in advance with the opportunity to choose three of the thirteen career panelists. The sessions were mixed in gender and in grade. I saw ten separate groups over the course of the day, with the number of students ranging from two to ten. Thankfully, each group shared an enthusiasm for entering into the discussion and an eagerness to contribute their thoughts.

### III. THE DIALOGUE

I began by asking each group if they had ever seen any TV programs or movies, or read any books about lawyers; everyone raised a hand. Next, I distributed my questionnaire to the students and provided them with five minutes of quiet time to complete the sentences based upon their impressions of lawyers, either from what they had already learned from those sources, or from personal experience. I stated that only I would see their responses, and they could not look at another student's paper, or copy from each other. However, I did allow them to keep the questionnaire until the end of the session, in case they formulated additional ideas from our dialogue.

To get the conversation started, I asked the students what word was contained within the word "lawyer." The immediate response (at least from those paying attention, thus, making this a somewhat similar experience to a law school class) was "law." Next, I inquired as to what the word "law" meant. This question received varied responses about the rules one has to follow, both at home and in school, with the students sharing examples and the consequences of violating the law in one of those venues.

"And just how do lawyers play a role in all this?" I queried. To answer this question, I split each group in half (yes, even the group of two, who were both quite chatty), and I had them play a role in a case involving a five-year-old who had been sued for intentionally injuring someone by pulling a chair out from under her as she sat down.<sup>10</sup> I did not instruct the students on the intricacies of the law of intent; instead, I asked them to take the side I assigned and to provide the reasons for either the injured person to recover, or the five-year-old to be found not liable. I only called on a student when his hand was raised, and I only allowed one student to talk at a time; in addition, I gave each side the opportunity to respond to the other side's arguments. The students were

---

<sup>10</sup> Some may recognize this as the fact pattern from *Garrett v. Dailey*, 279 P.2d 1091, 1094 (Wash. 1955), in which the court held that a five-year-old child could be held liable for a battery if he had the intent, by way of acting with the purpose or substantial certainty to cause a harmful or offensive contact on another.

animated, and the arguments were creative, addressing the age at which a child should be found personally responsible for the harm he causes. Many students relied on their own life experiences in trying to define a standard for culpability. Following the exercise, we reviewed the role-play and the students commented on what they saw their job to be, which they soon realized was that they were indeed playing the role of a lawyer.

As the discussion continued, I shared the tools of the trade with the class; I showed them my briefcase, legal pad, business card, and both the law book and case reporter, which contained the actual decision of the case they had just argued. I also revealed to them how they could find the law in state codes, showing them examples of state laws that mandated what subjects their teachers were required to teach in elementary school, and how many days of instruction were required to be offered to them every school year.

Next, I asked the students if lawyers could assist any of the other career presenters with their occupations. They suggested that a lawyer could help the photographer if her pictures were stolen, defend the physician if he was taken to court, make sure that the entertainer got a good deal (e.g., a favorable contract) for performing, and use the information provided by the crime scene investigator. Before concluding, I answered the other questions the school counselor had prepared, and finished by stating that regardless of the occupation the student might decide to pursue, it was important to understand the need for life-long learning in order to do that job well, and the need to act both dependably and responsibly in one's job. Finally, I collected the questionnaires as the students left for their next session.

#### IV. THE UNGRADED "EXAM"

The time for each session and the day itself sped by all too quickly (though possibly not from the students' perspective). That night I reviewed the responses to my questionnaire.<sup>11</sup> Curiously, the comments did not differ markedly by either gender or age. The students stated that *I want to be a lawyer because*<sup>12</sup> (multiple responses indicated by asterisks):

---

<sup>11</sup> See *infra* Appendix C (containing the replies, as presented, by gender overall and then by gender for each specific grade).

<sup>12</sup> See *infra* Appendix C (For a further discussion of survey results, please see Appendix C).

I want to help people*	It seems good to be a lawyer
I can make (a lot of) money*	It helps you in your life
I like to solve problems*	They have an important job
I like to argue*	My dad thinks that I would be a
It's fun*	good one
I want to defend people*	I want to protect my friends
I like to talk*	You keep people out of trouble
I can keep people out of jail*	I love lawyers [!]
You can dress nicely*	I don't want people to be abused
I want to learn and know all the	My grandpa is a lawyer
laws*	I am very good at stating facts
I can wear a suit*	I may get to be on TV
I like to read*	I just want to be one
I want to make people be nice*	I could be famous
You get to sue people*	I may work for someone famous
I want to go to court*	I can take notes
It's cool to do	I like to research
It's interesting	I'll probably like it
They get to do a lot of things	I can carry a briefcase
I am good with people	It will be an opportunity

These responses indicate that these children were somewhat altruistic. This is evidenced by their desire to help and defend people, to keep people out of jail, and to protect their friends. Moreover, these students had the impression that it seemed good to be a lawyer, to make people behave well, and to stop abuse. In addition, a lawyer was seen as having an interesting and important job, which benefits one in her own life. As the students noted, lawyers research, learn, and know the law, get to go to court, and serve as problem solvers by helping, questioning or suing people. Furthermore, the work of a lawyer appeared enjoyable, which the students characterized as fun and cool to do and allowing one to dress nicely, carry a briefcase, and use her people skills, while making use of one's skill in talking, arguing, and reading. Perhaps not surprisingly, these children also were interested in seeking other rewards, as shown by the desire to make money, be famous or help famous people, and be on television. In all fairness, and by way of contrast, two students responded that they did not want to be a lawyer.

The responses to the second statement indicated that *the things that lawyers do are*<sup>13</sup> (again, multiple responses are indicated by asterisks):

---

<sup>13</sup> See *infra* Appendix C. (For a further discussion of survey results, please see Appendix C).

2011]

## TO BE OR NOT TO BE . . . A LAWYER

11

Help people*	Get paid*
Make money for people*	Talk*
Help people in court*	Argue*
Defend/protect people*	Tell what happened*
Keep people out of jail*	Fight
Sue people*	Yell
Read*	Question people
Help people solve problems*	Make people happy again
Solve problems/cases*	Take notes
Get people out of trouble*	Research things
Help prove person is guilty*	Take lots of cases
Decide who goes to jail*	Correct judges
Help people follow the law*	Bam on a hammer
Help famous people*	Act nicely
Give information*	Act responsibly

These replies were consistent with the reasons given for wanting to be a lawyer: an altruistic sense combined with a view of the lawyer's job as being interesting and enjoyable.<sup>14</sup> Lawyers were seen as helping people and making money for them, defending and protecting people, and enabling people to follow the law and stay out of jail.<sup>15</sup> The responses noted that lawyers serve in assisting people to get out of trouble and make them happy again. These comments also indicate the interesting nature of the lawyer's job, as the students noted that the lawyer solves problems, questions and sues people, helps famous people, and has a job involving reading and research. Moreover, while there was clearly the suggestion of the possible external reward in getting paid, the enjoyable nature of the job was reflected in the students' views that lawyers get to act nicely and responsibly, while being allowed to talk and argue.

The third statement required some self-reflection, as the students indicated that *I would be a good lawyer because I am*<sup>16</sup> (again, multiple responses are indicated by asterisks):

<sup>14</sup> Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 875-76 (1999) (discussing the high levels of depression experienced by a student while going through law school).

<sup>15</sup> MODEL RULES OF PROF'L CONDUCT R. 6.1 (2007) (showing that the profession wants to promote this belief that lawyers are to help people).

<sup>16</sup> See *infra* Appendix C. (For a further discussion of survey results, please see Appendix C).

Good at helping*	A good worker
Good at arguing*	Ready
Kind*	Serious about jobs
Smart*	Happy with people
A good person*	Willing to fight for people's rights
Honest*	A good problem solver
Responsible*	Caring
Ready to help people*	Good at researching things
Nice*	Interested in learning
Respectful*	Just
Good at defending people*	Good with computers
Good with money*	Talented
Reasonable*	Knowledgeable
Persistent*	Going to be rich
Good at convincing people*	A good speaker
A good listener*	Going to college
Good at reading*	Good at seeing things
Trustworthy*	Stubborn
Always on time*	Loud
Good at following the rules*	Dependable

These responses indicate that these students were motivated in possibly becoming lawyers because of their feelings toward altruism, along with their perception that lawyers have an interesting and enjoyable job. In providing introspection as to why they would be good lawyers, the students indicated many altruistic qualities, including helpfulness, kindness and niceness, honesty, responsibility, reasonability, dependability, punctuality, trustworthiness, being caring, just and fair, and respectfulness. Moreover, the students also displayed a sense of intellectual qualities which may help them to be good lawyers, including being smart, knowledgeable, skilled in listening, reading, and writing, good at problem solving and seeing things, and proficient in arguing and convincing. The students' positive reflections of themselves as good and talented people in answering this inquiry, along with their perception of the many personal and intellectual qualities they associate with being a lawyer, further underscores how many viewed the job of a lawyer as being interesting and enjoyable.

#### V. TO BE OR NOT TO BE?

What can we learn from these elementary school students? As I reflect back on that career day in elementary school, I cannot help but be struck by the enthusiasm of these children as they readily joined the dialogue, in addition to

2011]

*TO BE OR NOT TO BE . . . A LAWYER*

13

the commonly expressed sentiment of wanting to help others and to solve problems. Will they be or not be lawyers? Furthermore, will they too question their choices? While I would like to gaze into that proverbial crystal ball to determine how many of them will actually pursue a legal career or someday employ a lawyer to help them in whatever career they do choose, for now I must be satisfied with taking the lessons I learned that day back into my law school classroom.

Over my years of teaching, I have discovered that those newly immersed in the law have a refreshing eagerness to contribute and to use their passion to assist others by solving problems, thereby contributing to the social welfare of society. It remains incumbent on us as teachers to fan those flames and encourage the sense of altruism reflected in my elementary school survey in our own students, while revealing how the legal profession can be interesting and enjoyable. Additionally, we should not forget that our students are not limited to only doing well, but that they also can do good. Thus, the lesson is elementary: Our graduates can use their passion to better serve the law and the society in which they will practice—reflecting that they too were glad that they fulfilled their desire to become lawyers.

## APPENDIX A

**Hamilton Career Day  
Questions for Presenters**

(Please address these questions in your presentation.)

1. How did you come to this career?
  - Was this a life-long dream?
  - A family tradition?
  - Did you “accidentally” fall into this career?
  - How long have you been in this career?
2. What kind of education is required for this job?
  - College
  - Trade/Technical training
3. What are some details of your job?
  - What are the ‘fun’ things of your job?
  - What are the things you must do just because it is part of the job?
  - What is the most unpleasant part of your job?
4. How are math and reading skills important to your career on a daily basis?
5. What type of changes have taken place in your career since you began working at this job? How do you keep up with these changes?
6. What organizational skills are required to do your job well?
  - The importance of following a schedule?
  - The need to document activities?
7. What other information is really important to understanding your job?
  - What type of personality is needed?
  - Do you have to like to work alone or with groups of people?

2011]

*TO BE OR NOT TO BE . . . A LAWYER*

15

APPENDIX B

**I WANT TO BE A LAWYER BECAUSE:**

1)

2)

3)

Other reasons:

**THE THINGS THAT LAWYERS DO ARE:**

1)

2)

3)

Other things:

**I WOULD BE A GOOD LAWYER BECAUSE I AM:**

1)

2)

3)

Other reasons:

**NAME (OPTIONAL):**

**GENDER:**

**GRADE:**



**Appendix C****THIRD GRADE****GIRLS (4)**

*I want to be a lawyer because*

It's cool to do  
It's interesting  
They get to do a lot of things  
It's fun being a lawyer  
To help people  
I am good with people  
It seems good to be a lawyer  
It helps you in your life  
I like to solve problems  
I like to talk

*These are things that lawyers do*

Help people (2)  
Help people follow the law  
Make money for famous people  
You have to go to law school  
Help people in court  
Help people solve problems  
Help people when they need something

*I would be a good lawyer because I am*

Good at helping  
Good worker  
Am serious about jobs  
Like to help  
Good person  
I'm happy with people

**BOYS (7)**

*I want to be a lawyer because*

They decide if someone's guilty  
To keep people from going to jail  
To defend people  
It's fun  
To help people (2)  
They have an important job  
To make people be nice  
To make people do good things  
My Dad thinks I would be a good one  
So I can protect my friends

*These are things that lawyers do*

Help people (4)  
They go to court with people  
They help famous people  
They give people jobs  
They defend people  
They decide if someone's guilty

*I would be a good lawyer because I am*

Good at defending people  
Good at arguing  
I'm good with money  
I don't lie  
Good person  
Reasonable  
I obey the law  
Honest  
Persistent

2011]

TO BE OR NOT TO BE . . . A LAWYER

17

**FOURTH GRADE****GIRLS (4)***I want to be a lawyer because*

It looks like fun (3)  
They get to rule to people  
You get to solve cases (2)  
You make a lot of money (4)  
I like making money  
It's a very helpful job (4)  
You can talk  
You dress nicely (2) (wear "cute clothes")  
You help people  
You get to sue people  
You keep people out of trouble  
I get to defend people  
I like reading  
I love lawyers  
Don't want people to be abused  
I want to help the innocent  
I like arguing  
My grandpa is a lawyer  
I am very good at stating facts  
I may get to be on TV  
I just want to be one

*These are things that lawyers do*

They solve cases/problems (3)  
They give information (2)  
Get paid (2)  
They make people happy again  
Sue people (2)  
Keep people out of jail (3)  
Protect people  
Send people to jail  
Help people (2)  
Decide who goes to jail  
Read  
Make money for people

**BOYS (10)***I want to be a lawyer because*

I like to argue  
To work for someone famous  
I like to solve stuff  
You make a lot of money  
I like money (3)  
I like to talk  
You can talk  
You dress nicely  
To help with problems  
I get to go to court  
I could be famous  
I can defend my client  
I like reading

*These are things that lawyers do*

Tell what happened  
Act responsibly  
Get money  
Give people money  
Sue people if something is wrong (2)  
Protect people from jail (2)  
Tell if client is innocent  
Help prove person is guilty  
Help people with problems (4)  
Keep bad people in jail and good people out  
Read (2)

**GIRLS CONT.**

Defend people (3)  
Get people out of trouble  
Go to court  
Talk  
Be nice  
Argue (2)  
Correct judges  
Bam on a hammer  
Help clients (2)  
Question people  
Get to the bottom of stuff  
Fight  
Yell

*I would be a good lawyer because I am*

Good problem solver  
I follow the rules  
I like to argue  
Kind (2)  
I argue a lot  
Good at helping people (5)  
Smart (2)  
Reasonable  
Talented  
Like to defend people  
Nice  
Good  
Good at arguing  
Going to be rich  
Love reading  
I want to be in a courtroom  
Good speaker  
Going to college  
Like to defend people

**BOYS CONT.**

Help people make money  
Go to court to defend people with crime (2)  
Help someone who broke the law  
Help people with trials

*I would be a good lawyer because I am*

I see things  
I listen  
Stubborn  
Kind  
I argue a lot with my sisters  
Good at helping (3)  
Smart  
Respectful  
I know the law  
Nice  
Honest  
Loud  
Good with money  
Good at reading

2011]

TO BE OR NOT TO BE . . . A LAWYER

19

**FIFTH GRADE****GIRLS (9)***I want to be a lawyer because*

Get to argue (2)  
Support/help people (5)  
To know all the laws  
Like to go to court  
To solve crimes  
To take notes  
I am good at arguing  
To get money  
To solve problems  
Like to research and things  
I'll probably like it  
I use every little bit to try to win  
my argument  
To prove people innocent  
It's probably fun  
To carry a briefcase  
It will be an opportunity

*These are things that lawyers do*

Get lots of money  
Support client in court  
Help people in need (6)  
Go to court  
Read  
Read a lot of books about justice  
Help people follow the law  
Get people out of trouble  
Talk to people  
Take lots of cases  
Carry cases around  
Sue to get money  
Take notes  
Research things

**BOYS (7)***I want to be a lawyer because*

To learn about laws  
To help people (2)  
You can wear a suit  
To support laws  
To solve cases  
To help people win  
I am good at arguing

*These are things that lawyers do*

Make lots of money  
Help people in court  
Help people  
Go to court  
Read  
Help people  
Solve problems  
Make big choices

**GIRLS CONT.**

*I would be a good lawyer because I am*

Never give up  
Ready to help people (3)  
Ready to argue  
Very kind  
Love to fight for people's rights  
Responsible (3)  
Trustworthy  
Good at arguing  
A good person  
Caring  
Good at researching things  
Good at interested in learning  
Just  
Would listen to everyone's opinion  
Good with computers  
Very smart  
Respectful of the law  
Helpful  
Ready  
A truthful person

**BOYS CONT.**

*I would be a good lawyer because I am*

Dependable  
Respectful  
Always on time (2)  
Kind  
Get good grades in school  
Responsible (2)  
Trustworthy  
Good at convincing people  
A good person  
A nice person

**UNMARKED (5)**

*I want to be a lawyer because*

I could make a lot of money (2)  
I would get paid for helping people  
I could get rewarded  
I can sue people  
I can help people with problems  
I could wear a suit  
I can keep people out of jail

*These are things that lawyers do*

Sue people  
Help people

2011]

TO BE OR NOT TO BE . . . A LAWYER

21

*I want to be a lawyer because* [categorized generally by comments of being “enjoyable,” “altruistic,” or “interesting”]:

**THIRD GRADE GIRLS**

It's enjoyable  
Cool  
Fun  
Like to talk  
It's altruistic  
Helpful  
Solve problems  
Good with people  
It's interesting  
Get to do a lot of things  
Seems good  
Helps in your life

**FOURTH GRADE GIRLS**

It's enjoyable  
Fun  
Get on TV  
Make money  
Dress nicely  
Like to talk/argue  
It's altruistic  
Solve cases  
Help others  
Keep people out of trouble  
Don't want abuse  
Help the innocent  
It's interesting  
Get to rule on people  
Get to sue people  
Like reading

**FIFTH GRADE GIRLS**

It's enjoyable  
Like to argue  
Will like it  
Fun  
Carry a briefcase  
Be an opportunity

It's altruistic  
Help/support people  
Solve crimes/problems  
Make money  
Prove people innocent  
It's interesting  
Get to know the law  
Take notes  
Get to go to court  
Get to research  
Strive to win

**THIRD GRADE BOYS**

It's enjoyable  
Fun  
It's altruistic  
Keep people out of jail  
Help people  
Make people nice  
Make people do good things  
Protect friends  
It's interesting  
Dad thinks so  
Important job  
Decide if someone's guilty

**FOURTH GRADE BOYS**

It's enjoyable  
Could be famous  
Make money  
Like to talk/argue  
Dress nicely  
It's altruistic  
Solve stuff  
Help with problems  
Defend client  
It's interesting  
Work for famous people

**FIFTH GRADE BOYS**

It's enjoyable  
Like to argue  
Wear a suit  
It's altruistic  
Help people win  
Help people  
Solve cases  
Support laws  
It's interesting  
Learn about laws

**UNMARKED**

It's enjoyable  
Make money/be rewarded  
Get paid  
Wear a suit  
It's altruistic  
Help with problems  
Get people out of jail  
It's interesting  
Sue people

2011]

*TO BE OR NOT TO BE . . . A LAWYER*

23

*Things lawyers do* [categorized generally by comments of being “enjoyable,” “altruistic,” or “interesting”]:

**THIRD GRADE GIRLS**

It's altruistic  
 Help people  
 Make money for people  
 Help people in need

**FOURTH GRADE GIRLS**

It's enjoyable  
 Get paid  
 Talk/argue  
 Bam on hammer  
 It's altruistic  
 Solve cases/problems  
 Make people happy again  
 Give information  
 Keep people out of jail  
 Send people to jail  
 Protect people  
 Help people  
 Make money for people  
 Get people out of trouble  
 Be nice  
 It's interesting  
 Sue people  
 Correct judges  
 Question people  
 Decide who goes to jail  
 Read  
 Go to court  
 Get to the bottom of stuff

**FIFTH GRADE GIRLS**

It's enjoyable  
 Argue  
 Fun  
 Carry briefcases  
 It's altruistic  
 Help people  
 Get money

Solve crimes/problems

Argue  
 It's interesting  
 Know all the laws  
 Go to court  
 Do research  
 Take notes  
 It's an opportunity  
 Prove client innocent

**THIRD GRADE BOYS**

It's altruistic  
 Help people  
 Defined people  
 It's interesting  
 Go to court  
 Decide if guilty

**FOURTH GRADE BOYS**

It's enjoyable  
 Get money  
 It's altruistic  
 Give people money  
 Act responsibly  
 Protect from jail  
 Help prove guilt  
 Make \$ for people  
 Help with problems  
 It's interesting  
 Tell what happened  
 Sue people  
 Tell is innocent  
 Read  
 Get to court

**FIFTH GRADE BOYS**

It's enjoyable  
 Make money  
 It's altruistic  
 Help people



Solve problems  
It's interesting  
Go to court  
Read  
Make big choices

**UNMARKED**  
It's altruistic  
Help people  
It's interesting  
Sue people

2011]

*TO BE OR NOT TO BE . . . A LAWYER*

25

*I would be a good lawyer because* [categorized generally by comments of being a “good person” or “good worker”]:

**THIRD GRADE GIRLS**

Good person  
Helping  
Likes people  
Good worker

**FOURTH GRADE GIRLS**

Good person  
Helping  
Follow rules  
Smart  
Reasonable  
Talented  
Nice  
Good worker  
Speaker  
Like to defend  
Argue  
Solve problems

**FIFTH GRADE GIRLS**

Good person  
Kind  
Responsible  
Trustworthy  
Caring  
Smart  
Respectful  
Just  
Listen  
Helping  
Good worker  
Don't give up  
Argue  
Fight for rights  
Research things  
Interest in learning

Computers  
Reading

**THIRD GRADE BOYS**

Good person  
Honest  
Reasonable  
Obeys laws  
Good worker

**FOURTH GRADE BOYS**

Good person  
Helping  
Honest  
Smart  
Respectful  
Kind  
Good worker  
Know law  
Listen  
Argue  
Sees things  
Reading

**FIFTH GRADE BOYS**

Good person  
Kind  
Responsible  
Trustworthy  
Nice  
Good grades  
Respectful  
Good worker  
Dependable  
Good at convincing  
Punctual



IF YOU THINK LAW SCHOOLS TEACH STUDENTS TO  
*THINK LIKE A LAWYER . . . THINK AGAIN!*

Douglas K. Rush, J.D., Ph.D.\*

I.	INTRODUCTION . . . . .	27	
	A. <i>Thinking Like a Lawyer</i> . . . . .	28	R
	B. <i>The Socratic Method</i> . . . . .	29	R
	C. <i>The Research Question</i> . . . . .	30	R
	D. <i>The Research Studies</i> . . . . .	31	R
II.	BACKGROUND . . . . .	32	R
	A. <i>What Are the ‘Think Like a Lawyer’ Skills, and Can They Be Measured?</i> . . . . .	32	R
	B. <i>State Bar Examinations</i> . . . . .	33	R
	C. <i>Do Law Schools Purposely Select Prospective Students Who Have the Ability to ‘Think Like a Lawyer’ Upon Admission?</i> . . . . .	34	R
	D. <i>Do Undergraduate Students Who Have Developed ‘Think Like a Lawyer Skills’ Self-Select to Attend Law School? . . .</i>	35	R
	E. <i>Can We Empirically Measure Whether Law Schools Teach Students to ‘Think Like Lawyers?’</i> . . . . .	35	R
	F. <i>The ‘Midwestern’ School of Law and ‘Big Apple’ School of Law Studies</i> . . . . .	37	R
III.	METHODOLOGY . . . . .	37	R
	A. <i>The Midwestern Law Study</i> . . . . .	37	R
	B. <i>The Big Apple School of Law Replication Study</i> . . . . .	42	R
IV.	DISCUSSION AND CONCLUSION . . . . .	44	R

I. INTRODUCTION

*“You teach yourselves the law. I train your mind. You come in here with a skull full of mush, and if you survive, you’ll leave thinking like a lawyer.”*

- Professor Charles W. Kingsfield, Jr., *The Paper Chase*<sup>1</sup>

---

\* Assistant Professor, Saint Louis University, College of Education and Public Service, Department of Education.

<sup>1</sup> *The Paper Chase* (CBS television broadcast 1978); *THE PAPER CHASE* (Twentieth Century Fox 1973). The quote has long been attributed to JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971). However, the Kingsfield character in the book does not recite those exact words. Instead,

### A. *Thinking Like a Lawyer*

The fictionalized Professor Kingsfield is familiar to almost every lawyer and law student. Most lawyers and law students relate to the character because they have survived a class led by a Kingsfield-like law school professor whose Socratic skills taught them to *think like lawyers*. Indeed, Professor Judith Welch Wegner, co-author of *Educating Lawyers: Preparation for the Profession of Law*,<sup>2</sup> once stated that the Socratic method of legal instruction, and the promise of thinking like a lawyer, has been embraced as a “trope” for the legal academy’s own “core identity.”<sup>3</sup>

Surprisingly, however, there is little agreement among legal scholars concerning the meaning of *thinking like a lawyer*. Wegner described it as a “wicked problem,” which is not easily analyzed because it is multi-dimensional, non-linear, subject to trial and error, and has a “no stopping rule” because there is no clear point of attainment.<sup>4</sup> Wegner also described thinking like a lawyer as including legal literacy—the learning of a new language in fact—and further stated that “[l]egal reasoning lies at the heart of ‘thinking like a lawyer . . . .’”<sup>5</sup> Cohen posited that this new legal language is best learned in law school by the immersion method.<sup>6</sup> Similarly, Mertz has stated that learning to “‘think like a lawyer’ . . . is in large part a function of learning to read, talk, and write like a lawyer.”<sup>7</sup>

Chief Judge Deanell Reece Tacha of the United States Court of Appeals for the Tenth Circuit believes that thinking like a lawyer is constructive problem solving,<sup>8</sup> while Chief Judge Emeritus Aldisert of the United States Court of Appeals for the Third Circuit states that thinking like a lawyer involves the deductive logic of the syllogism taught by Aristotle.<sup>9</sup> David T. Ritchie is also a fan of the logic school of thinking like a lawyer, but he added rhetoric as an

---

John Houseman, who played the role of Professor Kingsfield in both the movie and television series, spoke those words in the television series.

<sup>2</sup> WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

<sup>3</sup> Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems,"* 61 *RUTGERS L. REV.* 867, 891 (2009).

<sup>4</sup> *Id.* at 870-71.

<sup>5</sup> *Id.* at 895.

<sup>6</sup> See Beth D. Cohen, *Legal Learning for Life: Legal Immersion Fluency Education (LIFE)*, 43 *HARV. C.R.-C.L. L. REV.* 605, 606 (2008).

<sup>7</sup> ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 42 (2007).

<sup>8</sup> See Deanell Reece Tacha, *Refocusing the Twenty-First-Century Law School*, 57 *SMU L. REV.* 1543, 1543 (2004).

<sup>9</sup> See Ruggero J. Aldisert et al., *Logic for Law Students: How to Think Like a Lawyer*, 69 *U. PITT. L. REV.* 1, 3 (2007).

important component of thinking like a lawyer.<sup>10</sup> Steven I. Friedland added critical thinking to the thinking like a lawyer mix, which he defined as “reasonable and reflective thinking that is focused upon deciding what to believe or do.”<sup>11</sup>

The American Bar Association’s Section of Legal Education and Admission to the Bar Pre-Law Committee states that the core skills necessary to succeed in law school and as a lawyer include “analytical/problem solving skills; critical reading; and writing skills.”<sup>12</sup> The same guide also holds out the promise that a good legal education will teach students to think like a lawyer, but it states that “the analytic and problem solving skills required of lawyers are not fundamentally different from those employed by other professionals.”<sup>13</sup>

Perhaps *thinking like a lawyer* is the same as *thinking like a [fill in the blank with physician, accountant, banker, veterinarian, hedge fund manager, etc.]*. Helpfully, Michael C. Dorf reminds us that “[t]here is no such thing as thinking like a lawyer. There is only clear thinking and confusion.”<sup>14</sup> Finally, John Quincy Adams described legal logic as “an artificial system of reasoning, exclusively used in courts of justice, but good for nothing anywhere else.”<sup>15</sup>

### B. *The Socratic Method*

The accepted pedagogy to teach *thinking like a lawyer* skills for the past 140 years has been Professor Christopher Columbus Langdell’s Socratic instruction based on the case system (casebook) method.<sup>16</sup> Enamored with the German universities’ nineteenth-century scientific approach to the education of doctoral students, Professor Langdell, with the encouragement of President Charles William Eliot, developed this new approach to legal education at Harvard Law School.<sup>17</sup> Langdell saw the teaching of law as a “science” and not as a “handicraft.”<sup>18</sup> He proposed to *train* the minds of law students.

---

<sup>10</sup> See David T. Ritchie, *Situating “Thinking Like A Lawyer” Within Legal Pedagogy*, 50 CLEV. ST. L. REV. 29, 42 (2003).

<sup>11</sup> Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 7 (1996).

<sup>12</sup> *Preparing for Law School*, AM. B. ASS’N, <http://www.abanet.org/legaied/prelaw/prep.html>.

<sup>13</sup> *Id.*

<sup>14</sup> Michael C. Dorf, *How to “Think Like a Lawyer”: Advice to New and Prospective Law Students*, FINDLAW <http://writ.news.findlaw.com/dorf/20010822.html>.

<sup>15</sup> Jeffrie G. Murphy, *Law Logic*, 77 ETHICS 193, 193 (1967) (quoting John Quincy Adams).

<sup>16</sup> See William Schofield, *Christopher Columbus Langdell*, 55 AM. L. REG. 273 (1907).

<sup>17</sup> See THE OXFORD COMPANION TO AMERICAN LAW 109 (Kermit L. Hall et al. eds., 2002).

<sup>18</sup> See A. V. Dicey, *The Teaching of English Law at Harvard*, 13 HARV. L. REV. 422, 423-24 (1900).

Almost all other American law schools quickly fell in line and adopted the Socratic method of instruction in conjunction with the use of casebooks.<sup>19</sup>

In spite of criticism directed at that pedagogy, the casebook method is still widely entrenched in twenty-first century American law schools.<sup>20</sup> A recent survey found that ninety-seven percent of first-year law classes, and a smaller but still substantial number of second-year and third-year law school courses, employ some version of this method regardless of whether it is labeled as Socratic instruction, dialectic instruction, or dialog instruction.<sup>21</sup>

### C. *The Research Question*

The question explored by this article, assuming that we can define what it means to *think like a lawyer*, is: Do law schools really teach students to *think like a lawyer*? Not surprisingly, there is little or no empirical evidence to support the proposition that law schools teach students to *think like a lawyer*.

Can students learn think like a lawyer skills in law school? If so, many argue that those skills are taught in the first-year law school courses (e.g., Contracts, Torts, Civil Procedure, Property, and Constitutional Law), which use the Socratic method, and in the upper division “bar exam” courses (e.g., Evidence,

---

<sup>19</sup> See generally Jess M. Krannich et al., *Beyond “Thinking Like a Lawyer” and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 384 (2009); Schofield, *supra* note 16, at 290; Wegner, *supra* note 3, at 924.

<sup>20</sup> See generally Paul Bateman, *Toward Diversity in Teaching Methods in Law School: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 408 (1997) (summarizing critiques which assert that the Socratic method alienates students due to the puzzling nature of the Socratic question, the negative effect of classroom criticism, and the lack of feedback due to student evaluation based solely on a final exam); James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471, 472 (2003) (stating that the Socratic method “humiliates, intimidates, and silences students”); Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1220-24 (2005) (reporting on the literature which finds the Socratic method has a negative influence on women and minority students); Patricia Mell, *Taking Socrates’ Pulse: Does the Socratic Method Have Continuing Viability in 2002?*, 81 MICH. B.J. 46, 46 (May 2002) (finding that while the Socratic method is an economical form of legal instruction, it alienates and creates a hostile environment for women and minority students).

<sup>21</sup> See generally Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching after the Carnegie Foundation’s Educating Lawyers*, 31 W. NEW ENG. L. REV. 97, 105 (2009) (defending the proper use of the Socratic dialog method of legal instruction which “coaches students to develop the abilities to think critically and to present ideas effectively”); Friedland, *supra* note 11, at 28-29 (reporting the findings of a survey of 383 law school faculty members, finding that the Socratic method predominated first-year classes, and finding that the Socratic method or modified Socratic/lecture methods were used extensively in second-year and third-year courses). See also *id.* at 20-22 (finding a wide variety of opinions among faculty members concerning what constituted thinking like a lawyer, questioning whether the phrase “thinking like a lawyer” is universally understood by faculty and students, and questioning whether instruction was aligned toward the same goal).

Commercial Transactions, Trusts and Estates, etc.), which utilize modified Socratic/lecture methods of instruction.<sup>22</sup> If this claim is true, students who take more of these courses should develop more of the think like a lawyer skills than students who take seminars, work on law journals, or enroll in clinical programs.

#### D. *The Research Studies*

This article will report the empirical findings on this issue at two American Bar Association (“ABA”) accredited law schools. The article will test whether students who have taken more of the courses designed to instill the think like a lawyer skills have greater success on state bar examinations when controlling for the Law School Admission Test (“LSAT”) scores, final law school grade point averages (“LGPA”), and undergraduate grade point averages (“UGPA”).

The findings reported by this article suggest that law schools do not teach students to think like lawyers. Instead, prospective law students who believe that they have the think like a lawyer skills necessary to succeed in law school self-select law as a course of study. Law schools abetted by the Law School Admission Council (“LSAC”) use the LSAT to prescreen candidates for the desired think like a lawyer traits. It should come as no surprise that the LSAT has the highest correlation to law school success as measured by both first-year law school grade point averages (“FYA”) and LGPA,<sup>23</sup> and that LGPA is the variable that has the highest correlation with passage of state bar examina-

---

<sup>22</sup> See generally Dickinson, *supra* note 21, at 102, 113 (asserting that the dialog based law school pedagogy was a sound strategy for training lawyers); Friedland, *supra* note 11, at 27-29 (finding that the majority of law school faculty used the Socratic method in first-year classes and that the lecture or modified Socratic method predominated the teaching techniques in second-year and third-year course work); Krannich, *supra* note 19, at 382 (finding the Socratic method to still exist in most law school classes but questioning the effectiveness of the technique and finding it to be a detriment to actually learning to practice law); Wegner, *supra* note 3, at 923 (suggesting that a rethinking of the use of the Socratic and Case Dialog methods could open space for innovation in upper year law school course work and also “help students to master ‘thinking like a lawyer’ more effectively”).

<sup>23</sup> See generally SUSAN DIAMOND-DALESSANDRO ET AL., LAW SCH. ADMISSIONS COUNCIL, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 2003-2004 CORRELATION STUDIES 6 (2005), available at <http://www.lsac.org/LSACResources/Research/TR/TR-05-02.pdf>; WILLIAM P. LAPIANA ET AL., LAW SCH. ADMISSIONS COUNCIL, A HISTORY OF THE LAW SCHOOL ADMISSION COUNCIL AND THE LSAT 3 (2001), available at <http://www.lsac.org/LSACResources/Publications/PDFs/history-lsac-lsat.pdf>; LISA ANTHONY STILWELL ET AL., LAW SCH. ADMISSION COUNCIL, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 2001-2002 CORRELATION STUDIES 5 (2003), available at <http://www.lsac.org/LSACResources/Research/TR/TR-03-01.pdf>; LINDA F. WIGHTMAN, LAW SCH. ADMISSION COUNCIL, BEYOND FYA: ANALYSIS OF THE UTILITY OF LSAT SCORES AND UGPA FOR PREDICTING ACADEMIC SUCCESS IN LAW SCHOOL 2 (2000), available at <http://www.lsac.org/LSACResources/Research/RR/RR-99-05.pdf>.



tion.<sup>24</sup> Previous studies demonstrated that students with the highest prerequisite ability to *think like a lawyer*, as measured by the LSAT, attain the highest LGPA. Additionally, those with the highest LGPA have the highest bar examination passage rates.<sup>25</sup>

## II. BACKGROUND

### A. *What Are the ‘Think Like a Lawyer’ Skills, and Can They Be Measured?*

As noted above, there appears to be little agreement on what constitutes think like a lawyer skills.<sup>26</sup> However, the array of views generally consider critical thinking, analytical reasoning, and reading comprehension important elements in thinking like a lawyer.<sup>27</sup> Is there an instrument that can measure these skills in prospective law students? In fact, there is such an instrument: The LSAT. The LSAC has developed and validated the LSAT as a measure of those skills.<sup>28</sup> The facts that all ABA accredited law schools require a standard admissions test for all applicants and that the ABA recognizes the LSAT as the only approved admissions test underscore the importance of the LSAT.<sup>29</sup>

---

<sup>24</sup> See LINDA F. WIGHTMAN, LAW SCH. ADMISSION COUNCIL, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 35 (1998), available at <http://www.lsac.org/LSACResources/Research/RR/Wightman-LSAC-98.pdf>.

<sup>25</sup> See generally DIAMOND-DALESSANDRO, *supra* note 23, at 6; LAPIANA, *supra* note 23, at 3; STILWELL, *supra* note 23, at 5; WIGHTMAN, *supra* note 23, at 2.

<sup>26</sup> See Friedland, *supra* note 11, at 22.

<sup>27</sup> See generally Friedland, *supra* note 11, at 7 (stating that critical thinking is “reasonable and reflective thinking that is focused upon deciding what to believe or do” (citing Stephen P. Norris, *Can We Test Validity for Critical Thinking?* 18 EDUC. RESEARCHER, Dec. 1989, at 21, 21)); See *Preparing for Law School*, *supra* note 12; *About the LSAT*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/JD/LSAT/about-the-LSAT.asp>.

<sup>28</sup> The Law School Admission Council (LSAC) publishes numerous Technical Reports, available at <http://www.lsac.org/LSACResources/Research/TR/tech-reports.asp>, which document the validity of the Law School Admissions Test as a predictor of first-year law school grade point averages. See DIAMOND-DALESSANDRO, *supra* note 23, at 6; STILWELL, *supra* note 23, at 5; See also *About the LSAT*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/JD/LSAT/about-the-LSAT.asp> (advising that the LSAT is designed to measure skills necessary to succeed in law school including reading comprehension, analytical reasoning, and logical reasoning). LSAC also recommends that prospective law students take courses that require analytic/problem solving skills, critical reading ability, and writing skills. See also *Preparing for Law School*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/JD/Think/preparing-for-law-school.asp>.

<sup>29</sup> *2011-2012 Standards and Rules of Procedure for Approval of Law Schools*, AM. B. ASS’N, [http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html).

### B. State Bar Examinations

Each state's highest court is responsible for determining the qualifications of individuals authorized to practice law within its borders.<sup>30</sup> Forty-nine states require law school graduates to pass a bar examination to become licensed to practice law in the state.<sup>31</sup> Wisconsin automatically admits graduates of in-state law schools but requires graduates of out-of-state law schools to take and pass the Wisconsin bar examination to obtain a license to practice law.<sup>32</sup>

The bar examination requirements and the standards for passing the examination vary by state. For the most part, however, there are five components to bar examinations: the Multistate Bar Examination ("MBE"),<sup>33</sup> the Multistate Essay Examination ("MEE"),<sup>34</sup> a State Essay Examination ("SEE"),<sup>35</sup> the Mul-

---

<sup>30</sup> See generally National Conference of Bar Examiners, *2009 Statistics*, B. EXAMINER, Feb. 2010, at 6, available at [http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar\\_Admissions/2009\\_Stats.pdf](http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar_Admissions/2009_Stats.pdf) (citing bar examination statistics and requirements as supplied by each jurisdiction).

<sup>31</sup> SULLIVAN, *supra* note 2, at 25, 28.

<sup>32</sup> See WIS. SUP. CT. R. 40.03 (2010).

<sup>33</sup> Forty-eight states and five foreign jurisdictions required the MBE as part of their bar examinations in 2009. The MBE is a 200 question, multiple-choice examination that tests Constitutional Law, Contracts, Criminal Law, Criminal Procedure, Evidence, Real Property, and Torts. The test is given in two, three-hour-long sessions on one day. Students answer 100 questions during each three-hour test period, which allows the student an average of 1.8 minutes per question. These jurisdictions required passage of the MBE as a condition for admission to practice law. See National Conference of Bar Examiners, *supra* note 30, at 30.

<sup>34</sup> Twenty-three jurisdictions administered the MEE as part of their state bar examinations in 2009. The MEE offers nine, thirty minute questions covering Business Associations, Corporations and Limited Liability Companies, Conflicts of Law, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates, and the Uniform Commercial Code. Typically, states administer the MEE as a three-hour examination that consists of six essay questions. The purpose of the MEE is to: (1) identify issues raised by a hypothetical question; (2) separate relevant material from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. See *id.* at 38.

<sup>35</sup> Individual SEEs are given in many jurisdictions. These examinations vary from one-half a day in length to a day and a half in length. SEEs usually test the subject matter listed in the MEE and additionally test areas of state law not covered by the MEE or material that is unique to the individual state. Such subjects may include state civil procedure, water law, Native American law, oil and gas law, and mining law. The typical pattern is for states that have adopted the MEE to require the taking of a SEE to cover areas not covered in the six MEE questions.

tistate Performance Test (“MPT”),<sup>36</sup> and the Multistate Professional Responsibility Examination (“MPRE”).<sup>37</sup>

Importantly, it has been stated that the bar examination is intended to test legal knowledge and skills, which include “reading comprehension and reasoning, identifying and formulating legal issues, organizing information, following directions, and the ability to write.”<sup>38</sup> The skills tested on the bar examination are not intended to predict future success as a lawyer, but are only to test the necessary “skills” of a lawyer upon graduation from law school.<sup>39</sup> These skills sound suspiciously like the skills tested on the LSAT and the think like a lawyer skills that law schools purport to teach.

*C. Do Law Schools Purposely Select Prospective Students Who Have the Ability to ‘Think Like a Lawyer’ Upon Admission?*

It has been stated that the ability to think like a lawyer is “both a prerequisite and a co-requisite” for undertaking legal course work.<sup>40</sup> The ABA’s Section of Legal Education and Admission to the Bar strongly recommends that students take undergraduate courses that promote analytic, problem solving, critical reading, and writing skills in order to prepare for law school.<sup>41</sup> The LSAT tests the think like a lawyer skills previously attained by undergraduates, and law schools heavily rely on the LSAT scores in making admission decisions. In fact, law schools establish law-school-index scores, which combine and weigh the LSAT scores and UGPA, and then use those index scores as the principal means of determining whom to admit.<sup>42</sup> Using LSAT scores and

---

<sup>36</sup> Thirty-four jurisdictions administered the MPT in 2009. The MPT provides students with a packet of information and students are required to use fundamental lawyering skills to complete a task, such as writing a legal memorandum. *See id.* at 40.

<sup>37</sup> Forty-nine states required the MPRE as part of their state bar examinations in 2009. The sole exception was the State of Washington. The MPRE is an ethics test that examines applicants on the rules of professional conduct. *See id.* at 34.

<sup>38</sup> *See* Suzanne Darrow-Kleinhaus, *A Response to the Society of American Teachers Statement on the Bar Exam*, 54 J. LEGAL EDUC. 442, 442-58 (2004), *as reprinted in* Suzanne Darrow-Kleinhaus, *A Response to Criticism of the Bar Exam*, 74 B. EXAMINER, May 2005, at 35-44, *available at* [http://www.ncbex.org/uploads/user\\_docrepos/740205\\_darrowkleinhaus.pdf](http://www.ncbex.org/uploads/user_docrepos/740205_darrowkleinhaus.pdf).

<sup>39</sup> *See* Susan M. Case, *The Purpose of the Bar Exam: To Predict Future Success as a Lawyer?*, 78 B. EXAMINER, Nov. 2009, at 35, *available at* [http://www.ncbex.org/uploads/user\\_docrepos/780409\\_testing.pdf](http://www.ncbex.org/uploads/user_docrepos/780409_testing.pdf).

<sup>40</sup> Wegner, *supra* note 3, at 891.

<sup>41</sup> *Preparing for Law School*, *supra* note 12.

<sup>42</sup> *See* George L. Dawson, *The Law School Admission Test Battery: A Different Selection Concept for the 1980s and Beyond*, 34 J. LEGAL EDUC. 388, 395 (1984); *How Law Schools Select Applicants*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/CanadianCFC/Old?HowApplicantsSelected.htm>.

UGPAs, law schools preselect those students who already have the think like a lawyer skills necessary to succeed in law school.

*D. Do Undergraduate Students Who Have Developed 'Think Like a Lawyer Skills' Self-Select to Attend Law School?*

What about law students? Do they self-select? Do the students who already have the think like a lawyer skills choose to go to law school? Recent studies imply this conclusion.

It has been stated that there is a self-selection component to students' decisions concerning whether to attend college.<sup>43</sup> Susan E. Cross and Hazel Rose Markus have extensively studied the self-selection process of college students and have found that students develop "self-schemas" in which they view "possible selves" where the skills the students have already developed, or wish to develop, translate into decisions about educational programs and career selections.<sup>44</sup>

Abbie Willard Thorner recognized that a "natural self-selection" takes place as students choose law schools.<sup>45</sup> Nathan R. Kuncel and David M. Klieger have expanded understanding of the law student self-selection phenomena.<sup>46</sup> They found that law students who have knowledge of their LSAT scores self-select law schools appropriate to their ability levels.<sup>47</sup> Again, stating the obvious, undergraduate students who have the highest think like a lawyer skills, as measured by previous course work, self-schemata, possible selves, UGPA, and LSAT scores apply for admission and attend law schools. Those students who do not have the prerequisite think like a lawyer skills either do not apply to law schools or do not gain admission to law school due to the students' demonstrated lack of think like a lawyer skills.

*E. Can We Empirically Measure Whether Law Schools Teach Students to 'Think Like Lawyers?'*

We have already explored how college students with the pre-existing ability to think like a lawyer select themselves for application to law school and

---

<sup>43</sup> See Lawrence W. Kenny et al., *Returns to College Education: An Investigation of Self-Selection Bias Based on the Project Talent Data*, 20 INT'L ECON. REV. 775, 775 (1979).

<sup>44</sup> See Susan E. Cross & Hazel Rose Markus, *Self-Schemas, Possible Selves, and Competent Performance*, 86 J. EDUC. PSYCHOL. 423, 424 (1994).

<sup>45</sup> See Abbie Willard Thorner, *Legal Education in the Recruitment Marketplace: Decades of Change*, 1987 DUKE L.J. 276, 276 (1987).

<sup>46</sup> See Nathan R. Kuncel & David M. Klieger, *Application Patterns When Applicants Know the Odds: Implications for Selection Research and Practice*, 92 J. APPLIED PSYCHOL. 586, 590 (2007).

<sup>47</sup> *Id.*

that law schools purposely seek out for admission students who already have the ability to think like a lawyer. Knowing that, is there a method of determining whether law schools also teach students to think like lawyers after admission?

One study, conducted between 1983 and 1985, attempted to determine whether graduate education had an effect on reasoning skills.<sup>48</sup> Darrin R. Lehman, Richard O. Lempert, and Richard E. Nisbett examined the effect of graduate education in law, medicine, psychology, and chemistry at the University of Michigan on students' verbal reasoning, statistical-methodological reasoning, and conditional reasoning.<sup>49</sup> They conducted two separate studies.<sup>50</sup>

The first cross-sectional study compared reasoning test scores of first-year and third-year students in the graduate programs in 1983.<sup>51</sup> The second longitudinal study followed students who entered those programs in 1983.<sup>52</sup> This study compared the students' reasoning test scores upon entry with their third-year reasoning test scores in their respective programs.<sup>53</sup>

Both the cross-sectional and the longitudinal study failed to find any statistically significant difference in the verbal reasoning scores for law students between beginning law school and completing law school.<sup>54</sup> Similarly, law students in both studies showed no statistically significant gain in statistical or methodological reasoning during their years in law school.<sup>55</sup> Finally, the cross-sectional study did not demonstrate any significant gain in conditional reasoning scores for law students.<sup>56</sup> The longitudinal study did show a statistically significant gain in law students' conditional reasoning scores, but those gains lagged behind the gains demonstrated by medical or psychology students.<sup>57</sup>

These results appear to support the proposition that law students at the University of Michigan either were not gaining significant think like a lawyer skills or were gaining less of those skills than medical or psychology students.

---

<sup>48</sup> See generally Darrin R. Lehman et al., *The Effects of Graduate Training on Reasoning: Formal Discipline and Thinking About Everyday-Life Events*, 43 AM. PSYCHOL. 431, 431-42 (1988).

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> *Id.* at 434.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 434-36.

<sup>54</sup> *Id.* at 437.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 438.

<sup>57</sup> *Id.* at 437-38.

F. *The 'Midwestern' School of Law and 'Big Apple' School of Law Studies*

This article reports the findings of two studies that attempted to determine whether attending law school increases the ability of students to think like lawyers. The initial study was conducted at an ABA accredited law school located in a major city in Missouri (hereafter referred to as *Midwestern Law*). A replication study was subsequently conducted at a law school in the metropolitan New York City area, which the author will identify as the Big Apple School of Law (hereafter referred to as *Big Apple Law*). The law school courses tested on bar examinations are typically taught using the Socratic method, or some version of a revised Socratic method combined with lecture and dialog. If the professors in those courses are truly teaching students to think like lawyers, then students who take more of those courses should, after controlling for incoming LSAT scores, LGPA, and UGPA, have a better chance of passing state bar examinations.

### III. METHODOLOGY

A. *The Midwestern Law Study*

1. Population of the Study

The population in this study consisted of all graduates from Midwestern Law during a recent five-year period.<sup>58</sup> The population consisted of 828 examination takers who participated in eleven different Missouri bar examinations during this period.<sup>59</sup> The population included 430 males and 398 females.<sup>60</sup> The population included 624 students who began their studies as full-time students and 202 who began as part-time students.<sup>61</sup> The study included 729 Caucasians (88.0%), 47 African Americans (5.7%), 16 Asians/Pacific Islanders (1.9%), 10 Mexicans/Hispanics (1.2%), 7 Indians/Pakistanis (0.8%), and 19 Native Americans/Other/Unknown/Missing (2.3%).<sup>62</sup>

2. Midwestern Law Curriculum

The Midwestern Law curriculum was typical of ABA approved law schools.<sup>63</sup> First-year students were required to take thirty semester hours of

---

<sup>58</sup> *The Midwestern Law Study* (on file with author).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See generally Catherine Carpenter et al., *A Survey of Law School Curricula*, 2004 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO B. 23-36.

core course work, which included Contracts, Federal Civil Procedure, Torts, Property, Constitutional Law I, Criminal Law, and Legal Research and Writing.<sup>64</sup> The Missouri bar examination tested all of these subjects except Legal Research and Writing.<sup>65</sup>

Midwestern Law students were not required to take additional course work in topics that tested on the Missouri bar examination.<sup>66</sup> Midwestern Law offered the following elective courses in subject areas tested on the Missouri bar examination: Administrative Law, Business Associations, Commercial Transactions, Conflicts of Law, Remedies, Family Law, Missouri Civil Procedure, Secured Transactions, Trusts and Estates, Evidence, Real Estate Transactions, Criminal Procedure I, Criminal Procedure II, Constitutional Law II, Federal Courts, and First Amendment.<sup>67</sup>

### 3. Data Collection

The study used archived data available at Midwestern Law.<sup>68</sup> UGPA were determined by inspecting the Law School Data Assembly (“LSDAS”) reports.<sup>69</sup> UGPA included all grades for completed undergraduate course work and was not limited to the grades earned at the undergraduate institution where the graduate received his or her undergraduate degree.<sup>70</sup> LSAT scores were also determined by inspecting the LSDAS report.<sup>71</sup> In cases where a graduate took multiple LSAT tests, the study recorded the average LSAT score.<sup>72</sup>

Midwestern Law archives provided the following data for each graduate: the calendar year in which the student graduated, the graduate’s final LGPA, the graduate’s class rank by quartiles at graduation, whether the graduate ranked in the bottom ten percent of his or her graduating class, and the number of elective, upper division, and bar examination subject matter courses taken by the graduate.<sup>73</sup> Given that all graduates were required to take the core thirty-hour, first-year curriculum, the variable collected in this study was the total number of elective, upper division bar examination subject matter courses (hereafter *bar courses*) taken by each graduate.<sup>74</sup> Additionally, the Missouri Board of Law Examiners reported to Midwestern Law the dates that graduates

---

<sup>64</sup> *The Midwestern Law Study* (on file with author).

<sup>65</sup> Mo. SUP. CT. R. 8.08 (2008) (amended 2010).

<sup>66</sup> *The Midwestern Law Study* (on file with author).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

took the Missouri bar examination and whether the graduates passed or failed the examinations.<sup>75</sup>

#### 4. Statistical Techniques in Relation to Research Questions

The study utilized binary logistic regression to analyze whether the independent variables (LGPA, LSAT, UGPA, and number of bar courses taken) were related to the dependent variable (bar examination passage, yes or no).<sup>76</sup> The regression was run separately for data relating to those students who ranked in the second, third, and fourth quartile of graduates, and also separately run for data about those students who graduated in the bottom ten percent of their class.<sup>77</sup>

The study did not run logistic regression for data on the Midwestern Law graduates who ranked in the first quartile of their graduating class because all such students passed the Missouri bar examination on their first attempt during the period of this study.<sup>78</sup> This result was true in spite of the fact that the number of bar courses taken varied widely for this group of graduates ( $M = 8.73$ ,  $S.D. = 1.46$ ).<sup>79</sup>

#### 5. Data Analysis

The study performed the calculations using the SPSS version 19.0.<sup>80</sup> The statistical tests were conducted at a .05 significance level.<sup>81</sup> In this study, a finding of a significant result on the binary logistic regression test was reported as a *relationship* or was reported as a variable, which was a *predictor* of bar examination passage.<sup>82</sup>

It has been noted that for very large samples, even very small differences between groups can become statistically significant; however, a finding of statistical significance may not have any practical significance.<sup>83</sup> Lempert cautioned that statistical significance tells a researcher nothing that matters beyond that the results are not likely due to chance.<sup>84</sup> The Exp (B) reported in the logistic regression tables is an odds ratio ("OR"). It is the change in odds of

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *See id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Barbara G. Tabachnick & Linda S. Fidell, *Using Multivariate Statistics* 52 (4th ed. 2001).

<sup>84</sup> *See* Richard Lempert, *The Significance of Statistical Significance: Two Authors Restate an Incontrovertible Caution. Why a Book?*, 34 *LAW & SOC. INQUIRY* 225, 232 (2009).



being in an outcome category (e.g., bar examination passage) when the predictor variable (e.g., bar courses) increases by one unit.<sup>85</sup>

## 6. Findings of the Midwestern Law Study

The study conducted logistic regression on data pertaining to the second, third, and fourth quartile graduates separately, as well as on data pertaining to those graduates who ranked in the bottom ten percent of their class.<sup>86</sup> The study could not conduct logistic regression on data concerning first quartile graduates because all such graduates passed the Missouri bar examination during the period of the study.<sup>87</sup> Table 1 below presents the results.

Logistic regression analysis of data about second quartile graduates revealed that neither LGPA, UGPA, nor the number of bar courses taken were statistically significant predictors of bar examination passage.<sup>88</sup> The only statistically significant predictor of bar examination passage for second quartile graduates was their LSAT scores.<sup>89</sup>

Table 1 also displays the logistic regression results for data concerning third quartile graduates.<sup>90</sup> Both LGPA and bar courses taken were found to be statistically significant predictors of bar examination passage for third quartile graduates.<sup>91</sup> UGPA and LSAT scores were found to not be statistically significant predictors of bar examination passage for third quartile graduates.<sup>92</sup>

The  $\eta^2$  effect size of this difference only accounted for 1.4% of the variation in bar examination passage rates for third quartile graduates.<sup>93</sup> The Exp (B) is also an effective size measure; also called an odds ratio, it represents the change in odds in passing the bar examination based on a one unit increase in the predictor variable.<sup>94</sup> Third quartile graduates were 1.349 times more likely to pass the bar exam for each additional bar exam elective course taken during law school.<sup>95</sup>

The study then ran the logistic regression model using data about test-takers who ranked in the fourth quartile of their graduating classes.<sup>96</sup> The analysis

---

<sup>85</sup> JULIE PALLANT, SPSS SURVIVAL MANUAL 177: A STEP BY STEP GUIDE TO DATA ANALYSIS USING SPSS 169 (2d ed. 2005).

<sup>86</sup> *The Midwestern Law Study* (on file with author).

<sup>87</sup> *Id.*

<sup>88</sup> See Table 1.

<sup>89</sup> See *id.*

<sup>90</sup> See *id.*

<sup>91</sup> See *id.*

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

TABLE 1

Logistic Regression of Selected Variables on Bar Examination Passage by Law School Class Rank								
Quartile Rank			<i>B</i>	<i>S.E.</i>	<i>Wald</i>	<i>df</i>	<i>Sig.</i>	<i>Exp (B)</i>
<b>Second</b>	Step 1 (a)	LGPA	5.180	3.681	1.981	1	.159	177.763
		LSAT Scores**	.242	.078	9.623	1	.002	1.274
		UGPA	.635	.815	.607	1	.436	1.888
		Bar Courses Taken	.244	.226	1.164	1	.281	1.277
		-2LL	68.453					
		Nagelkerke R <sup>2</sup>	.188					
<b>Third</b>	Step 1 (a)	LGPA*	5.077	2.106	5.813	1	.016	160.337
		LSAT Scores	.061	.048	1.639	1	.200	1.063
		UGPA	.798	.536	2.219	1	.136	2.222
		Bar Courses Taken*	.300	.126	5.638	1	.018	1.349
		-2LL	158.210					
		Nagelkerke R <sup>2</sup>	.159					
<b>Fourth</b>	Step 1 (a)	LGPA***	5.504	1.353	16.550	1	.001	245.629
		LSAT Scores***	.155	.038	16.794	1	.001	1.168
		UGPA	.039	.416	.009	1	.926	1.039
		Bar Courses Taken	.210	.111	3.572	1	.059	1.234
		-2LL	203.690					
		Nagelkerke R <sup>2</sup>	.318					
<b>Bottom 10 % Yes</b>		LGPA*	6.660	3.162	4.436	1	.035	780.327
		LSAT**	.182	.071	6.558	1	.010	1.200
		UGPA	-.338	.721	.220	1	.639	.713
		Bar Courses Taken	.162	.204	.632	1	.427	1.176
		-2LL	67.350					
		Nagelkerke R	.307					

(a) Variable(s) entered on Step 1: LGPA, LSAT Scores, UGPA, Bar Courses Taken.

Bar Exam: pass = 1, fail = 0

\* =  $p < .05$ , \*\* =  $p < .01$ , \*\*\* =  $p < .001$

revealed that for fourth quartile test-takers, LGPA and LSAT scores were statistically significant predictors of bar examination passage.<sup>97</sup> The analysis also revealed that UGPA and bar courses taken were not statistically significant predictors of bar examination passage for fourth quartile graduates.<sup>98</sup>

Finally, the logistic regression model ran data regarding graduates who ranked in the bottom ten percent of their graduating class.<sup>99</sup> The results determined that LGPA and LSAT scores were statistically significant predictors of Missouri bar examination passage.<sup>100</sup> However, UGPA and bar courses taken

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See *id.*

<sup>100</sup> See *id.*

were not significant predictors of Missouri bar examination passage for bottom ten percent graduates.<sup>101</sup>

When the data was examined by class rank and law school quartile, the number of bar courses taken was only a statistically significant predictor of bar examination passage for third quartile graduates.<sup>102</sup> The number of such courses taken was not a statistically significant predictor of bar examination passage for second quartile graduates, fourth quartile graduates, or graduates who ranked in the bottom ten percent of their law school class.<sup>103</sup>

It is significant to note that the bar examination failure problem is especially acute for graduates in the fourth quartile and for graduates who ranked in the bottom ten percent of their law school class. Eighty-three percent of third quartile Midwestern Law graduates passed the Missouri bar examination on their first attempt.<sup>104</sup> The passage rate for fourth quartile graduates dropped to forty-six percent.<sup>105</sup> The passage rate for graduates who ranked in the bottom ten percent of their class was an abysmal twenty-seven percent.<sup>106</sup>

#### B. *The Big Apple School of Law Replication Study*

A replication study was carried out using data supplied by Big Apple Law to test the validity of the statistical results obtained in the Midwestern Law study. Big Apple Law is a private, nonsectarian institution, which is one of the colleges of a larger university.<sup>107</sup> The study was conducted using data from graduates of Big Apple Law who took a recent administration of the New York state bar examination as their first state bar examination.<sup>108</sup> The population consisted of 241 subjects.<sup>109</sup> There were 119 males, 112 females, and 10 subjects whose sex was unknown.<sup>110</sup> There were 207 full-time students, 28 part-time students, and 6 whose status was unknown.<sup>111</sup> The population contained 147 Caucasians (61.0%), 12 African Americans (4.98%), 16 Asian/Pacific Islanders (6.64%), and 66 students of other races or whose race was unknown (27.39%).<sup>112</sup>

---

<sup>101</sup> *See id.*

<sup>102</sup> *See id.*

<sup>103</sup> *See id.*

<sup>104</sup> *The Midwestern Law Study* (on file with author).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *The Big Apple School of Law Replication Study* (on file with author).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

Similar to other ABA accredited law schools, Big Apple Law had a first-year required curriculum that included courses covering Contracts, Torts, Real Property, Constitutional Law, Criminal Law, and Criminal Procedure.<sup>113</sup> Students in the second-year and third-year of their legal education at Big Apple Law were free to take elective courses.<sup>114</sup>

The New York bar examination included the Multistate Bar Examination (MBE), which included questions covering Contracts, Torts, Constitutional Law, Criminal Law, Evidence, and Real Property.<sup>115</sup> The New York SEE included questions concerning another fourteen subject areas whose content was included in elective, upper division courses offered by Big Apple Law.<sup>116</sup> The methodology for the Big Apple Law replication study was similar to the Midwestern Law study, except only one year of Big Apple Law graduates were included in the study and the study only collected data from one administration of the New York bar examination.<sup>117</sup>

### 1. Big Apple Law Study Findings

Logistic regression was again conducted to examine the effect (or lack of effect) of these variables on test-takers when segregated by Big Apple Law class rank and by quartile.<sup>118</sup> The analysis of the first quartile results has been eliminated because only one first quartile graduate failed the New York bar examination.<sup>119</sup>

The number of bar courses taken was not a statistically significant predictor of bar examination passage for Big Apple Law graduates who ranked in the second or fourth quartiles.<sup>120</sup> There was a statistically significant relationship between the number of bar examination courses taken and bar examination passage for graduates who ranked in the third quartile of their graduating class.<sup>121</sup> The Exp (B) odds ratio effect size indicated that third quartile students were 2.373 times more likely to pass the bar examination for each extra bar course taken.<sup>122</sup> This result replicates the results of the Midwestern Law study.<sup>123</sup>

---

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See N.Y. COMP. CODES R. & REGS. tit. 22, § 6000.6(d) (2008) (amended 2009).

<sup>116</sup> See *id.*

<sup>117</sup> Compare *The Midwestern Law Study* (on file with author) with *The Big Apple Study* (on file with author).

<sup>118</sup> *The Big Apple Study* (on file with author).

<sup>119</sup> *Id.*

<sup>120</sup> See Table 2.

<sup>121</sup> See *id.*

<sup>122</sup> See *id.*

<sup>123</sup> Compare *The Midwestern Law Study* (on file with author) with *The Big Apple Study* (on file with author).

The only other statistically significant variable, when controlling for the effect of other variables, was LGPA for the third quartile and fourth quartile graduates.<sup>124</sup>

TABLE 2

Logistic Regression of Selected Variables on Bar Examination Passage by Law School Class Rank								
Quartile Rank			<i>B</i>	<i>S.E.</i>	<i>Wald</i>	<i>df</i>	<i>Sig.</i>	<i>Exp (B)</i>
<b>Second</b>	Step 1 (a)	LGPA	6.544	7.378	.787	1	.375	1.33E9
		LSAT Scores	-.039	.097	.160	1	.689	1.163
		UGPA	.153	1.011	.023	1	.880	8.451
		Bar Courses Taken	-.141	.410	.118	1	.732	1.940
		-2LL	39.679					
		Nagelkerke R <sup>2</sup>	.039					
<b>Third</b>	Step 1 (a)	LGPA***	22.065	6.756	10.668	1	.001	3.83E9
		LSAT Scores	.078	.101	.591	1	.442	1.081
		UGPA	-1.118	1.242	.810	1	.368	.327
		Bar Courses Taken*	.864	.435	3.939	1	.047	2.373
		-2LL	43.210					
		Nagelkerke R <sup>2</sup>	.530					
<b>Fourth</b>	Step 1 (a)	LGPA**	8.013	2.682	8.925	1	.003	3019.031
		LSAT Scores	.061	.051	1.445	1	.229	1.063
		UGPA	-.193	.737	.069	1	.794	.825
		Bar Courses Taken	.143	.303	.224	1	.636	1.154
		-2LL	60.582					
		Nagelkerke R <sup>2</sup>	.340					
<b>Bottom Ten % Yes</b>	Step 1 (a)	LGPA	123.400	170.746	.522	1	.470	3.90E53
		LSAT Scores	.203	.187	1.187	1	.276	1.225
		UGPA	-.935	3.501	.071	1	.789	.393
		Bar Courses Taken	.859	2.092	.169	1	.681	2.362
		-2LL	7.845					
		Nagelkerke R	.523					

(a) Variable(s) entered on Step 1: LGPA, LSAT Scores, UGPA, Bar Courses Taken.  
 Bar Examination: pass = 1, fail = 0  
 \* = p < .05, \*\* = p < .01, \*\*\* = p < .001

#### IV. DISCUSSION AND CONCLUSION

It has been an accepted tenet that the dialectic, dialog, or Socratic method of legal instruction teaches students the think like a lawyer skills. There is some disagreement about what it means to think like a lawyer. A consensus

<sup>124</sup> See *The Big Apple Study*.

does appear to have developed that think like a lawyer skills include critical thinking, analytical reasoning, and reading comprehension.

In spite of the claims of a scientific methodology to law school pedagogy, the studies presented in this paper found no empirical evidence to warrant the conclusion that the Socratic method is an effective teaching tool or that law schools actually teach their students to think like lawyers. What has become increasingly obvious is that prospective law students arrive at law schools already armed with the skills to *think like a lawyer*.

Prospective law students self-select to attend law school.<sup>125</sup> Those with the most highly developed think like a lawyer skills have “possible selves” in which their “self-schemata” leads them to law school enrollment.<sup>126</sup> Those students who have already developed think like a lawyer skills choose to apply to appropriate law schools.<sup>127</sup> Arguably, those without those skills choose other educational programs.

The findings of the Midwestern Law and the Big Apple Law studies reported above lend evidence to the proposition that law schools do not teach their students to think like lawyers.

If law schools truly teach those skills to their students, it would be expected that the skills are being taught in the courses that are tested on bar examinations and that are taught using the Socratic, dialectic, or dialog method of instruction. Presumably, students who take more of these bar courses will develop higher think like a lawyer skills and, therefore, have greater success in passing state bar examinations.

In fact, the findings of the studies demonstrate that for law students who graduate in the second and fourth quartiles and law students who graduate in the bottom ten percent of their class, taking more of the think like a lawyer bar courses do not improve those students' ability to pass state bar examinations. Arguably, the same holds true for students who graduated in the first quartile of their law school class because only one such student in either study failed a state bar examination. This was true even though first quartile graduates took vastly different numbers of the think like a lawyer courses.

There was a statistically significant difference in the number of those courses taken by law students who ranked in the third quartile of their graduating class. For those students, taking more bar courses improved their ability to pass state bar examinations; however, taking more bar courses only explained 1.4% of the difference in the passage rate on the bar examination for third-

---

<sup>125</sup> See Kenny et al., *supra* note 43.

<sup>126</sup> See Cross et al., *supra* note 44.

<sup>127</sup> See Kuncel et al., *supra* note 46.

quartile graduates. Clearly, something else is happening that separates the students who pass state bar examinations from the students who fail.

These studies suggest that what is happening is that most, if not all, students enter law school with a certain level of think like a lawyer skills due to self-selection by the students and purposeful selection by the law schools. Those students with the greatest prerequisite think like a lawyer skills do better than those students with lesser amounts of those skills. Students with the most think like a lawyer skills achieve higher LGPAs and pass bar examinations at a higher rate than students with lesser amounts of think like a lawyer skills regardless of the courses they took in law school.

With apologies to Professor Langdell and generations of law school professors and deans, the studies demonstrate that law schools do not teach their students to think like lawyers!

INTERVIEWING THE DOMESTIC VIOLENCE SURVIVOR: INCORPORATING  
INTERDISCIPLINARY LAWYERING SKILLS IN THE 1L CURRICULUM

Sara R. Benson\*

CONTENTS

I.	INTRODUCTION .....	47	
II.	PRECURSOR TO THE INTERVIEW .....	48	R
	<i>A. Concerns Unique to Domestic Violence Survivors</i> .....	49	R
	<i>B. Interview Techniques</i> .....	51	R
III.	DURING THE INTERVIEW .....	53	R
IV.	DEBRIEFING THE INTERVIEW .....	54	R
V.	CONCLUSION .....	56	R

I. INTRODUCTION

Many legal problems require attorneys to navigate issues that cross between law and economics, law and psychology, or law and social work. These intersections represent the classic problems that lawyers face in their real-world practice and interactions with multi-dimensional clients. In the 2008 Law School Survey of Student Engagement, however, forty-five percent of the students surveyed maintained “that their legal education [did] not contribute substantially to their ability to apply legal writing skills in real-world situations.”<sup>1</sup> By incorporating a hypothetical domestic violence survivor interview into their legal writing curriculum, and encouraging students to navigate issues ranging from a client’s psychological or physical needs to a client’s safety or monetary concerns, professors can address this pressing concern.

Although interviewing a witness does not seem to fit within the traditional legal research and writing pedagogy, the open memorandum problem permits students to gather facts using client interviews. Additionally, legal writing

---

\* Visiting Assistant Professor, University of Illinois College of Law; LL.M. 2005, Boalt Hall School of Law, University of California, Berkeley; J.D. 2001, University of Houston Law Center. The author would like to dedicate this Article to her daughter, Avery Quinn Benson, who inspires her every day.

<sup>1</sup> LAW SCH. SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: PREPARING 21ST CENTURY LAWYERS 10 (2008), *available at* [http://lssse.iub.edu/2008\\_Annual\\_Report/pdf/j4u5h7e9/LSSSE\\_2008\\_Annual\\_Report.pdf](http://lssse.iub.edu/2008_Annual_Report/pdf/j4u5h7e9/LSSSE_2008_Annual_Report.pdf).



professors foster the development of practical lawyering skills, oral advocacy, and legal research and writing, which provide students with essential tools every lawyer needs to successfully represent a client<sup>2</sup> and assist upper-level clinical professors by laying the groundwork for clinical courses.<sup>3</sup> Accordingly, incorporating a domestic violence client interview into the legal writing curriculum prepares students for real-world practice and multi-faceted client problems, incorporates interdisciplinary skills into law school education, and trains students for upper-level clinical work.

Part II of this Article elucidates the interdisciplinary nature of a typical domestic violence survivor's concerns. These concerns encompass issues as varied as the intersection between law and social work and the crossroads of law and economics. Part II also suggests topics that instructors should include in class discussions preceding the client interview exercise, such as the methodology to utilize during client interviews. Part III recommends a factual scenario that the professor can utilize during the client interview. The factual scenario incorporates the client's lack of trust, the client's disbelief that she is a domestic violence survivor, and a deficient intake form that misidentifies the client as a non-victim. Next, Part IV discusses the debriefing session, which is a necessary component of the course and occurs immediately following the interviews. During this session, students can discuss their experiences with the client interviews and the instructor can provide feedback to the class as a whole. Additionally, the students can help re-draft the intake form in an effort to better identify survivors of domestic abuse. Finally, the Article concludes with a summary of the various interdisciplinary issues that the client interview scenario raised, and it encourages professors to adopt and apply this suggested class exercise to their legal writing curriculum.

## II. PRECURSOR TO THE INTERVIEW

The professor can use the client interview at any time during the legal writing curriculum; however, perhaps the best time in the first semester schedule for utilizing this method of fact-gathering is just before the open memorandum, when students must obtain facts from a client to assess the potential viability of a particular claim or defense. Before permitting students to conduct the interview, at least one class session is necessary to address both the interdis-

---

<sup>2</sup> See *Legal Education and Professional Development—An Education Continuum*, 1992 A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE B. 138-39 (1992) (hereinafter "MacCrate Report") (encouraging law schools to teach students how to conduct and analyze factual investigations).

<sup>3</sup> Cf. Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 J. LEGAL WRITING INST. 207, 219-20 (2007) (discussing the significance of student awareness of the importance of legal research and writing in clinical programs).

ciplinary concerns of domestic violence survivors that might arise during the interview and the basic instructions regarding the practitioner skills required to conduct the interview.

#### A. *Concerns Unique to Domestic Violence Survivors*

It would be difficult to address all of the interdisciplinary concerns implicated by an interview with a domestic violence survivor in just one class session, and it would be especially precarious to attempt to discuss these diverse issues in that time. Thus, at the outset, the professor should remind students that this overview of domestic violence law and practice is not comprehensive. The professor should encourage students who are especially interested in the issues addressed in the readings and in class to enroll in a domestic violence clinical course, where available. Additionally, the professor should assign one or more articles for students to read before the class meeting to facilitate discussion.<sup>4</sup>

The class before the interviews should specifically address, at a minimum, the safety concerns related to providing legal assistance to a domestic abuse survivor. Attorneys should always begin interviews with a domestic violence client by assessing whether the client is in any immediate danger. Attending to these concerns permits the attorney to gather important information related to abuse that is necessary to obtain an order of protection.

Rather than begin an interview by asking background questions, attorneys generally have a potential client complete a pre-interview intake form.<sup>5</sup> For a client with potential domestic violence-related issues, the form can include questions about the abuse suffered. The information the attorney obtains from the form can also be used to instruct the client regarding basic safety measures and the availability of non-legal services. For instance, even if previous violence at home has not risen to the level of a threat of immediate violence, the attorney should refer the client to a local domestic violence shelter.<sup>6</sup> In addi-

---

<sup>4</sup> See generally Nicole E. Allen et al., *Battered Women's Multitude of Needs: Evidence Supporting the Need for Comprehensive Advocacy*, 10 VIOLENCE AGAINST WOMEN 1015 (2004) (noting that comprehensive services are necessary for domestic violence survivors); Wendy Boka, *Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting*, 9 DRAKE J. AGRIC. L. 389 (2004) (discussing the needs of domestic abuse survivors in rural areas); Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL'Y 157 (2003) (recognizing the pressures specific to mothers who have survived abuse).

<sup>5</sup> Cf. Reba Nance, *Ten Timely Tips to Keep Your Law Practice Client-Centered*, 35 COLO. LAW., 91, 91 (2006) (discussing the importance of becoming familiar with clients prior to initial interviews).

<sup>6</sup> See generally Sara R. Benson, *Failure to Arrest: A Pilot Study of Police Response to Domestic Violence in Rural Illinois*, 17 AM. U. J. GENDER SOC. POL'Y & L. 685 (2009). Note that

tion, the attorney should explain that if it is necessary for the client to flee the household for her safety, she should gather as many important documents as possible and bring her children (if any) with her.

The attorney can also refer the client to the shelter, regardless of whether she plans to stay there, because domestic violence shelters provide free outpatient counseling and support group services to women suffering from abuse. Finally, shelters often provide legal advocate assistance.<sup>7</sup> Thus, in addition to having an attorney, a client can utilize the services of a legal advocate for assistance with transportation to and from court, emotional support during the litigation, and access to social services.<sup>8</sup>

It is also important to explain to students that the potential client may be reluctant to trust the attorney with the details of her relationship. This explanation is particularly important as the attorney-client relationship continues because the client may have the urge to reconnect with the abuser and may not want to tell the attorney for fear of being judged. Domestic violence generally follows a cycle of abuse in which the abuser commits a violent act or threat and then expresses remorse.<sup>9</sup> During the period following the act of violence, there may be a “honeymoon” phase wherein the couple reunites for a period of time; however, the cycle of abuse will usually continue at some later date with another act of violence.<sup>10</sup> Therefore, it is important for the attorney to understand that the client has feelings for her abuser and may wish to return to him during the honeymoon period. At this time, it is crucial for the client to be honest with the attorney about her feelings (without feeling judged by the attorney), and to have access to support groups and counseling sessions, which will help her to avoid the emotional draw of returning to her abusive relationship.

Students must also understand the relationship between representing a domestic violence client and potential mandatory child abuse notification obligations. Many state laws require attorneys to report child abuse, even if they learn of the abuse from their client (a survivor of domestic violence).<sup>11</sup> Stu-

---

in some counties, especially rural ones, a domestic violence shelter does not exist within city or county limits; however, generally, a service provider may be available. *See id.* at 685-86.

<sup>7</sup> *See* Suzanne J. Schmitz, *What's the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law*, 10 WM. & MARY J. WOMEN & L. 295, 299-300 (2004) (explaining how domestic violence lay advocates assist survivors of domestic abuse before and during court proceedings).

<sup>8</sup> *Id.*

<sup>9</sup> *See* Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M. L. REV. 149, 166-67 (2009) (referring to Doctor Lenore Walker's seminal use of the term “battered woman syndrome” to describe the cycle of abuse common to domestic violence cases).

<sup>10</sup> *See id.*

<sup>11</sup> Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M. L. REV. 125, 126-29 (2006) (noting that as of 2006, a “handful of state statutes specifically mention attorneys either to exempt or include attorneys in the report-

dents should be encouraged to research child abuse reporting requirements in their home state and decide whether the law mandates attorney reporting. If so, the student should remind the client of this obligation during the interview and explain the risks of such disclosure to the client. These risks include potential criminal or civil charges against the survivor and the potential for increased danger to the survivor due to a child protection investigation against her abuser.<sup>12</sup>

### B. Interview Techniques

As a preliminary matter, students must review the domestic violence law for their state. Although domestic violence statutes are very similar from jurisdiction to jurisdiction, and although the exercise requires students to obtain an order of protection on behalf of their clients using a fairly standard set of requirements, students should become familiar with their local laws. Students need to understand the legal requirements necessary to obtain an order of protection in their state before they can ask the client the *right questions* or identify additional areas for discussion during the interview. For example, in Illinois, students will learn that the definition of “abuse” in the Illinois Domestic Violence Act includes “physical abuse, harassment, [and] intimidation of a dependent, [as well as] interference with personal liberty or willful deprivation . . . .”<sup>13</sup> “Harassment” includes “knowing conduct” that “would cause a reasonable person emotional distress,” with a presumption that a threat of “physical force” on one or more occasions causes such distress.<sup>14</sup>

Generally, students should be instructed about a typical method for interviewing a client, such as the T-Funnel method.<sup>15</sup> Utilizing the T-Funnel method, students ask broad, open-ended questions, and then narrow in on the parts of the client’s responses that are particularly relevant to the legal issue or those that might lead to other important information.<sup>16</sup> Additionally, students should strike legalese from their vocabulary during the client interview. For instance, instead of asking whether the client had a common law marriage, students should identify the legal elements of a common law marriage and ask related questions, such as whether the parties lived together for any length of time. Likewise, students should avoid asking questions such as, “has your partner ever abused you,” because domestic violence survivors may be reluctant to

---

ing statutes” and about “fifteen state statutes require ‘all persons’ or ‘everyone’ to report child abuse.”).

<sup>12</sup> *Id.* at 148-54.

<sup>13</sup> 750 ILL. COMP. STAT. 60/103(1) (2011).

<sup>14</sup> *Id.* at 60/103(7).

<sup>15</sup> Moscato, *supra* note 3, at 240 n.19.

<sup>16</sup> *Id.*

self-identify as victims of abuse.<sup>17</sup> Instead, the students should use a generic form to ask specific, factual questions about the abuse. The form should include questions about whether the survivor's family or household member has ever hit her, threatened to hit her, maintained all control over the money in the household, and so forth. Based on the responses to the form questions, students could ask follow-up questions to obtain details about the specific instances of abuse during the client interview.

Domestic violence survivors, like all clients, may be reluctant to discuss their personal issues when an attorney takes notes during an interview.<sup>18</sup> The client may not understand that the notes are confidential or may not trust the attorney at such an early stage in the attorney-client relationship. Thus, the attorney should first establish rapport with the client by introducing herself, explaining that all information is confidential (unless the attorney has mandatory legal reporting obligations relating to child abuse, which should be disclosed to the client),<sup>19</sup> and beginning the interview by making eye contact with the client.<sup>20</sup> If the attorney wishes to take notes, she should explain to the client why she needs to take notes (e.g., to help the client achieve her legal goals) and ask the client for permission to write down information during the interview.<sup>21</sup>

Additionally, it is crucial for the student *attorney* to view the attorney-client relationship as collaborative and client-centered. In this manner, the student will listen more attentively to the wishes and goals of the client and permit the client to help direct her legal representation to meet her needs. The client-centered approach engages two qualities: (1) the ability to listen and not solely direct the interview;<sup>22</sup> and (2) the knowledge that the domestic abuse survivor has a variety of different concerns, ranging from legal to economic and psychological to physical.<sup>23</sup>

Thus, as an advocate, the student must understand the client's multitude of needs and refer the client to other service providers and agencies to help meet

---

<sup>17</sup> Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027, 1051-1056 (1995).

<sup>18</sup> Laurie Shanks, *Whose Story is it, Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 532 (2008).

<sup>19</sup> Lockie, *supra* note 11, at 126-29.

<sup>20</sup> Shanks, *supra* note 18, at 533.

<sup>21</sup> *Id.*

<sup>22</sup> See generally DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 41-42 (2 ed. 2004) (discussing the role of active listening in the authors' theory of a client-centered approach to client counseling).

<sup>23</sup> See Ann Shalleck, *Theory and Experience in Constructing the Relationship between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1035 n.82 (1997) (stating that "[t]he importance of both legal and non-legal client concerns, as well as legal and non-legal solutions to client problems are powerful themes in standard clinical literature.").

those needs. The student must also be aware that some of the client's goals may be hindered by a strictly legal approach. For instance, if the client has a low wage job and relies on the abuser for child support payments, it may not be useful for her to put him in jail where he may, as a result, lose his job and be unable to continue to support the children. In this manner, the advocate is truly able to listen to the needs and goals of the client.<sup>24</sup> Thus, instead of recreating the power dynamic of the abusive relationship by dominating conversations with the client, the attorney can better collaborate with the survivor in order to achieve her true directives.<sup>25</sup>

### III. DURING THE INTERVIEW

For this exercise, the professor will play the *client* during the interview. The interview could take place during class or in small groups outside of class, depending on how much time the professor has allotted for the assignment. If the professor wishes to grade the interviews, one method to determine how well the student(s) performed during the interview is to follow-up with a fact memorandum assignment. Students will turn in their fact memorandum for the *client file*, detailing facts discovered during the interview. The professor can assign points or a grade to the students, awarding the most points to those students who were able to obtain all of the facts from the client. The professor may also wish to grade students on their performance during the interview itself. For instance, the professor could award more points to those students who are empathetic to the client, good listeners, and adept at asking follow-up questions to obtain additional facts about a given situation. Any number of factual situations could provide a practical learning experience for legal writing students; thus, professors should not feel limited by the set of facts detailed below. I will simply provide one set of facts that professors could use to demonstrate a variety of different interdisciplinary issues inherent in domestic violence cases.

At the beginning of the interview, the attorney should introduce herself, explain that everything discussed is confidential (unless there are mandatory reporting requirements), and explain that she understands that this is not an easy thing for the client to discuss. Then, she should ask if the client would be willing to fill out a brief form so the attorney can obtain some preliminary information that will help assess the client's possible legal claims. The client should briefly complete and return the intake form to the attorney.<sup>26</sup> The form is intentionally quite bare. It does not include all potential forms of abuse; it

---

<sup>24</sup> See *id.* at 1046-47.

<sup>25</sup> See V. Paulani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 93-94 (2002) (discussing the dynamic of client empowerment).

<sup>26</sup> See *infra* Appendix.

includes only instances of physical abuse. In this instance, the client will answer *no* to all of the questions in the form because she has not suffered from any physical abuse to date.

Instructors may use the following fact scenario for the interview: The client was reluctantly referred to this attorney by a friend and does not self-identify as a victim of domestic abuse. She is reluctant to trust the attorney and does not want to reveal personal facts to a stranger. Thus, she will not easily divulge information until the attorney introduces herself, makes her feel comfortable, and explains confidentiality and the procedure for the interview. At the beginning of the interview, she protests a bit that she may be in the wrong place because none of the things listed on the form have happened to her. It is up to the student attorney to obtain more detailed information about any potential abuse or threats of abuse from the client. Additionally, a display of empathy on the part of the attorney during the interview will help reassure her that she may speak frankly about her situation.

She was dating her husband for six months before they got married. They have been married for six months to date. Everything in their relationship was fine until she moved in with him after they were married. While her husband has not laid a finger on her physically, he is very controlling. He denies her access to any of her earnings; he makes her cash all of her paychecks and provide the earnings directly to him. He then gives her an *allowance* of just enough money to purchase groceries. He uses the rest of the money to buy things for himself, such as televisions and expensive cameras. Yesterday, when she asked for additional money to buy herself some clothing for work, he raised a fist at her and threatened to *beat her to a pulp* for asking. She believes that he will carry out this threat due to his terrible temper and the fact that he constantly gets into bar fights when he is drunk.

#### IV. DEBRIEFING THE INTERVIEW

During the class immediately following the client interview, the students should be prepared to discuss the interview process. To begin, the professor should ask whether the students found the intake form to be a helpful tool during the interview. The answer should generally be *no*, and the students should be pressed to further explain this conclusion. They should note that the intake form does not include many forms of abuse and is only focused on physical abuse. If the students stop there, the professor should continue the discussion by further inquiring about what different types of abuse are prohibited by the domestic violence statute. Additionally, students should be prompted to explain why this form might have hindered the client's ability to discuss the abuse. In other words, the client does not self-identify as a *victim* and is not aware that the law prevents abuse other than physical abuse. Thus, the form

2011] *INTERVIEWING THE DOMESTIC VIOLENCE SURVIVOR* 55

actually hindered the client's awareness that she could obtain legal redress by further convincing her that she was not a victim of domestic violence.

Some students may offer ways the form could be modified to better identify legally significant abuse, such as threats of violence, stalking, and emotional abuse. This exercise may also provide an excellent opportunity for group work during class. The instructor could advise students to keep the definition of *abuse* from the domestic violence statute at hand as they work in groups to propose potential revisions to the intake form. Then, the groups could discuss their proposed modifications with the entire class. The students' proposals might add additional categories of abuse and a qualitative section to the form where clients are permitted to express in their own words how they felt when they were mistreated in their relationship. This type of catch-all question on the form might be a good way to ensure that all forms of abuse are captured, and it gives the client an opportunity to present what she feels is the most important incident(s) giving rise to a legal claim.

Students should be encouraged to discuss client concerns that are related to non-legal issues, such as the client's safety, economic well-being, and psychological needs. For example, did the students engage in safety planning with the client? Did they discuss whether she will be able to make ends meet on her own if she breaks ties with her abusive partner? Perhaps she has doubts about whether she really wants to leave her partner and could benefit from group therapy or individual counseling. Additionally, how many students referred the client to the local shelter or domestic violence service center to obtain legal advocate services or counseling? These types of matters may be specific to domestic violence clients, but clients in all types of lawsuits have multiple concerns that may affect their ability to engage with their lawyer. Therefore, it is important for attorneys to be aware of other issues their client faces that may hinder their ability to focus on their legal claim.

Students should also explain whether they felt the client was comfortable enough to discuss the abusive relationship with them. If not, students should be encouraged to discuss different techniques they could use to help foster a better rapport with the client. For instance, some students may have forgotten to properly introduce themselves to the client. Other students may not have made the client feel comfortable that information discussed in the meeting would be kept private. Others could form a client-centered relationship by informing the client up front that their only interest was to help her achieve her goals. Then, they could explain some legal options, such as an order of protection, and ask the client what she would like to achieve with the legal representation.

Finally, students should be permitted to conclude the class with any other observations about the client interview process. The instructor should also be prepared to give his or her thoughts about things that went well during the



client interviews, suggest how the students could strengthen their interview skills, and provide additional reference sources should the students wish to continue with self-study.

#### V. CONCLUSION

Incorporating a hypothetical interview with a domestic violence client into the first-year legal writing curriculum accomplishes two tasks: It prepares students for upper-level clinical courses (and the practice of law), and it trains students to think about interdisciplinary issues when interacting with clients. Although other types of cases may also incorporate such interdisciplinary concerns into the curriculum, domestic violence scenarios provide ideal vehicles for discussing the psychological, safety, economic, and social concerns of clientele. It also provides students with a real-world example of the application of legal skills in practice. Additionally, it permits students to exercise their listening and empathy skills, which are underutilized in traditional first-year courses and that are essential to practicing client-centered law. Thus, legal writing professors are encouraged to employ this exercise in their classes to engage students in the complex task of representing a domestic violence survivor.

APPENDIX: SAMPLE INTAKE FORM<sup>27</sup>

Date:  
Name: Samantha Freitag

Instructions: We understand that this information may be difficult for you to share. Please understand that all of your answers are confidential.

Has your family member, past or present boyfriend, or current or former spouse ever committed one of the following acts? If so, please circle Y and list the date of the event(s):

- Slapped you Y  date(s): \_\_\_\_\_
- Pushed or shoved you Y  date(s): \_\_\_\_\_
- Bit you Y  date(s): \_\_\_\_\_
- Kicked you Y  date(s): \_\_\_\_\_
- Burned you Y  date(s): \_\_\_\_\_
- Pinched you Y  date(s): \_\_\_\_\_
- Pulled your hair Y  date(s): \_\_\_\_\_
- Injured you by squeezing you too tightly Y  date(s): \_\_\_\_\_
- Hit you with an object Y  date(s): \_\_\_\_\_
- Used a weapon against you Y  date(s): \_\_\_\_\_

Who committed these acts? Alex Freitag  
What is your relationship to the person who committed these acts? Husband

<sup>27</sup> See Diana Philip, *Ways Your Partner May Have Hurt You*, TEX. ADVOC. PROJECT (revised Apr. 2006), [http://www.texasadvocacyproject.org/program\\_service.php?pid=1](http://www.texasadvocacyproject.org/program_service.php?pid=1) (Follow “Ways Your Partner May Have Hurt You” hyperlink under “Related Documents”) (last visited Sept. 19, 2011).

