2008

Expert learning for law students

Michael Hunter Schwartz

University of the Pacific, McGeorge School of Law, mschwartz@pacific.edu

Follow this and additional works at: http://scholarlycommons.pacific.edu/facultybooks

Part of the Legal Education Commons

Recommended Citation

http://scholarlycommons.pacific.edu/facultybooks/23

This Book is brought to you for free and open access by the McGeorge School of Law Faculty Scholarship at Scholarly Commons. It has been accepted for inclusion in McGeorge School of Law Scholarly Books by an authorized administrator of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
Expert Learning
for
Law Students
Expert Learning for Law Students

SECOND EDITION

Michael Hunter Schwartz
WASHBURN UNIVERSITY SCHOOL OF LAW

CAROLINA ACADEMIC PRESS
Durham, North Carolina
Contents

Preface xi

Part I
Basic Principles

Chapter 1 · Introduction to Expert Learning 3
What Expert Learners Know and Do 3
Evidence That Expert Learning Improves Student Performance 4
Reflection Questions 5
References 5

Chapter 2 · Introduction to Law School Instruction 7
The Goals of Legal Education 7
Acquiring Knowledge in Law School 7
Acquiring Skills in Law School 8
Acquiring Values in Law School 9
The Skills, Knowledge and Values Law Schools Assume You Already Possess 9
The Four Main Units of Law School Instruction 10
Rules of Law 11
Court Opinions 13
Public Policies 14
Hypotheticals 15
How Rules, Court Opinions, Policies and Hypotheticals Are Integrated in Law School Instruction 15
The “Socratic” Method and What It Assumes Students Will Be Doing 16
Law School Stress 17
Reflection Questions 20
References 20

Chapter 3 · How Humans Learn 23
Cognitivism 23
Schema Theory 25
Constructivism 26
Reflection Questions 27
References 28
## CONTENTS

### Chapter 4 · The Self-Regulated Learning (SRL) Cycle

- The Forethought Phase · 30
- The Performance Phase · 32
- The Reflection Phase · 33
- Reflection Questions · 33
- References · 34

### Chapter 5 · The Forethought Phase of the SRL Cycle

- Step 1: Perceiving the Task · 35
- Step 2: Classifying the Learning Task
  - Legal Reading Comprehension · 38
  - Research · 38
  - Synthesis · 39
  - Problem Solving · 39
  - Exam Preparation · 39
- Step 3: Invoking Self-Interest and Self-Efficacy
  - Invoking Self-Interest · 42
  - Invoking Self-Efficacy · 43
- Step 4: Setting Learning Goals
  - Goal Setting Rule #1: The Goals Must Be Concrete · 44
  - Goal Setting Rule #2: The Goals Must Be Short-Term · 45
  - Goal Setting Rule #3: The Goals Must Be Challenging · 46
  - Goal Setting Rule #4: The Goals Must Be Realistic · 46
  - A Few Final Thoughts about Setting Goals · 46
- Step 5: Selecting Strategies
  - Motivational and Environmental Strategies · 47
  - Cognitive Strategies · 48
  - An Introduction to the Factors the Student Should Weigh in Making Cognitive Strategy Selections · 50
- Time Management · 51
- Reflection Questions · 52
- References · 53

### Chapter 6 · Know Thyself: Personality Types and Learning Styles

- Introduction to Personality Types and Learning Styles · 55
- Personality Types · 56
  - Population Breakdown · 58
  - Additional Information about Potential Strengths and Weakness for Law School Studying of Each Four-Letter Classification · 58
- Learning Styles · 63
- Reflection Questions · 65
- References · 65

### Chapter 7 · The Performance Phase of the SRL Cycle

- Attention-Focusing · 67
- Implementation · 69
- Self-Monitoring
  - Monitoring of Comprehension · 69
  - Monitoring of Efficiency · 70
## CONTENTS

- Monitoring of Environmental Strategies 70
- Monitoring of Help-Seeking 70
- Monitoring of Attention 70
- Reflection Questions 71
- References 71

### Chapter 8 · The Reflection Phase of the SRL Cycle 73

#### Self-Evaluation 74
- Internal Evaluation: How Well Do I Think I Learned? 75
- External Evaluation: How Well Did I Perform on Any Formal or Self-Imposed Assessment Opportunity? 75
- Criteria-Based Evaluation: Given My Goal and My Results, How Efficient Was My Learning? 76
- Reflective Evaluation: How Accurately Did I Predict My Assessment Results? 76
- Attribution 77
- Self-Reaction 78
- Adaptation 79
- Conclusion: Completion of the Reflection Phase—On to the Next Forethought Phase 80
- Reflection Questions 80
- References 80

### Part II

#### Learning Strategies for Law Students

### Chapter 9 · Strategies for Reading and Briefing Court Opinions 85

#### Introduction 85

#### Pre-Reading Strategies 85
- Developing Knowledge about the Subject of the Case(s) 88
- Previewing the Case 91
- Noting Details 94
- Generating Questions 95

#### Reading Strategies 97
- Engaging with Court Opinions 97
- Attention to Detail 100

#### Conclusion Regarding Pre-Reading and Reading Strategies 103

#### Summary Sheet for Pre-Reading and Reading Strategies 103

#### Briefing Strategies 104
- Facts 105
- Issue(s) 107
- Holding(s) 111
- Rationale(s) 113
- Synthesis 118
- Dissents and Concurrences 119

#### Conclusion Regarding Case Briefing Strategies 120

#### Reflection Questions 120

#### References 122
Chapter 10 · Strategies for Learning in the Law School Classroom

Introduction 125
Preparing for Class 127
Set Learning Goal 127
Read and Brief the Cases 127
Review/Synthesize Prior Day’s Class Notes 128
Plan Notes 128
Plan Strategies for Focusing Attention 131
Assume Some Disagreement 131
Develop Questions to Ask and Questions You Expect to Be Answered 132
Effective Listening 132
Effective Note-Taking 133
Focus on Key Points/Follow Cues 133
Leave Lots of Space 134
Correct Confusion Regarding Rules and Holdings and Restate Them 134
Organize While Writing 134
Post-Class Activities 135
Reviewing for Comprehension and Legibility 135
Reflect on Your Experience of the Class 136
Transfer to Outline/Graphic Organizer 136
Checklist of Strategies for Learning in the Law School Classroom 136
Reflection Questions 137
References 137

Chapter 11 · Strategies for Obtaining Assistance

Introduction 139
Self-Help 139
Approach to Restudying 140
Using Supplemental Resources Effectively 140
Peer Help and Productive Study Groups 143
Characteristics of Productive Cooperative Learning Groups 144
Some Commonly Used Cooperative Learning Exercises 146
Professorial Help 147
Reflection Questions 148
References 148

Chapter 12 · Organizational Strategies

Introduction 149
Deconstructing Rules 151
The Five Patterns 151
Outlining Courses 158
Goals for Law School Course Outlines 160
How to Create Excellent Law School Course Outlines 160
Creating Graphic Organizers 164
Timelines 164
Comparison Charts 165
Hierarchy Charts 166
Flow Charts 168
Mind Maps 170
CONTENTS

Reflection Questions 170
References 172

Chapter 13 · Memorization Strategies 173
Introduction 173
Connecting New Learning to Prior Knowledge 174
Clustering and Chunking 175
Associational Techniques 176
Imagery 176
Analogies 177
Mnemonics 178
Rehearsal 183
Elaboration 184
Selecting Memorization Strategies 186
Reflection Questions 188
References 188

Chapter 14 · Strategies for Excelling in Legal Research and Writing Classes 189
Introduction 189
Strategies for Learning Legal Research 190
Strategies for Learning Legal Citation Form 193
Strategies for Learning to Write Excellent Law School Papers 194
Preliminary Writing Activities 195
Trans-Writing Activities 197
Conclusion 203
Reflection Questions 203
References 203

Chapter 15 · Strategies for Learning Legal Analysis 205
Introduction 205
Spotting Issues 205
Introduction 205
Example 207
The Keys to Developing the Ability to Spot Issues 207
Applying Rules to Facts 211
Introduction 211
The Basics of Applying Rules to Facts 213
The Keys to Learning How to Apply Rules to Facts 220
Applying and Distinguishing Cases 220
Introduction 220
The Basics of Applying and Distinguishing Cases 222
The Keys to Learning to Apply and Distinguish Cases 227
Reflection Questions 227
References 228

Chapter 16 · Strategies for Preparing for and Taking Law School Examinations 229
Introduction 229
Strategies for Preparing for Law School Exams 229
CONTENTS

Introduction 229
Dumping the Negatives 230
Specific Studying Strategies 231
Learning Self-Assessment 238
Learning from Taking Tests 240
Strategies for Taking for Law School Exams 243
   Introduction 243
   Dealing with Exam Stress 243
   Exam Time Management 245
   Taking Law School Multiple Choice Tests 245
   Taking Law School Essay Tests 249
Reflection Questions 250
References 250

Chapter 17 · A Chapter for the Family and Friends of Law Students 253
   Introduction 253
   The Five Characteristic Difficulties Encountered by New Law Students 254
      Law School Workload 254
      Law Professors’ Expectations 256
      Law School Testing and Grading Practices 256
   How Law School Changes People 257
      Law School Stress 258
   Challenges to Your Relationship and What You Can Do to Make Things Better 258
      Problems and Solutions Applicable to All Loved Ones 258
      Problems and Solutions Applicable to Spouses and Significant Others 260
   Conclusion 260
   Reflection Questions (For the significant others of law students) 261
   References 261

Appendix A · Time Management/Self-Monitoring Log 263

Appendix B · Exemplar Case: Parker v. Twentieth Century-Fox Corporation 273
   Version 1: Parker in Casebook Form 274
   Version 2: Parker in Full-Text Form 276
Preface

For years, law professors, law schools and even the Law School Admissions Council (the creators of that bane of every aspiring law student’s life, the LSAT) have known that a student’s LSAT score and undergraduate grades do not really tell you whether the student will succeed in law school. Some law students who have high LSAT scores and excellent undergraduate grades fail out of law school. Some law students who have lower LSAT scores and lower undergraduate grades graduate at or near the top of their law school classes. And some students who study incredibly hard still do poorly in law school. If one were to look only at the entrance credentials and effort level of these groups of students, one might be baffled by these outcomes. Looking at how these students studied and learned law, however, clears up the confusion.

The successful students studied differently. Not harder, but differently. The successful students were, as we will see, “Expert Learners.” Ask any law professor and she will tell you—we can spot expert law students from miles away. Some students just seem to be better at being law students. These expert learners approach their law studies with confidence, resourcefulness, diligence and planning. They are in control of their own learning, figuring out for themselves what they need to do to learn law. They know when they understand and know when they need help, and they even prepare better for meetings with their professors and ask better questions. They do better in law school than their peers, seem to have an easier time of it, and enjoy the experience more.

We law professors can cite countless examples of students who were either much better or much worse at being law students than their peers. We know that the students who are better at being law students do better in law school, and we even can describe the characteristics typical of the better students. The fact that we know all of this, however, has been largely irrelevant over the 110-year history of legal education. It’s as if we all had agreed that expert law students are simply born that way and that students cannot be taught to be experts.

Meanwhile, the rest of the educational world has been investigating expert learning. In fields as diverse as medical education, graduate statistics education, undergraduate education and even K–12 education, researchers have been discovering not only that expert learning skills predict student outcomes, but also that students can be successfully taught to be expert learners. As a result, instructional programs designed to teach students to be expert learners have popped up in colleges, graduate programs, undergraduate schools, and high schools. Legal education, however, has entirely ignored this important research—until now.

Until Summer 2001, I was like every other law professor in this country. I enjoyed the expert law students. I tried to tell all my students to do what I perceived the expert students to be doing and had no success whatsoever in getting the novices to act like ex-
erts. In Summer 2001, I was granted a leave of absence from my teaching obligations and was given the resources to figure out what makes the expert students expert, whether novices can be taught to be experts, and how to teach the novices to be experts.

This textbook and the accompanying workbook are the result. This project, in many ways, has a singular message to you, its readers: you can be an expert learner of the law!

The text is organized into two parts. Part I provides background information about law school, about how humans learn and about expert learning. It then explains how to perform each aspect of expert learning and helps students become experts in their own learning preferences. Part II focuses on specific learning strategies needed by new law students.

You may want to re-read certain chapters in Part II of this book once you have started law school. For example, Chapters 12 and 13, dealing with strategies for organizing and memorizing, will be helpful once you have attended a few classes and need to begin making sense of all the new material you are learning. Likewise, Chapters 14 through 17 will ease your transition into writing law school exams and papers but may be most meaningful to you once classes have started.

All of the chapters conclude with a list of references you may find helpful and a set of reflection questions designed to help you make what you are learning become a part of who you are and develop the high-level self-reflection skills that expert learners possess. The reflection questions are reproduced in the workbook with space for you to respond. By responding to the questions you will gain the particular insights possible only when you are forced to put your thoughts in writing. Beginning with the skills addressed in Chapter 5, the workbook has exercises that you can do on your own to begin developing your expert learning skills. Those exercises are organized and numbered by chapter. For example, the exercises relating to Chapter 5 are labeled 5-1, 5-2, 5-3, etc.

Readers familiar with the first edition of this book will notice that the core ideas developed in the book have not changed. At the same time, writing a second edition allows an author to try to improve upon the first edition. Accordingly, the second edition reflects the following changes:

• The edition corrects typos and other, similar errors in the first edition about which I remain embarrassed to this day.
• The edition places greater emphasis on each student personalizing the strategy suggestions in the book by adapting the suggested strategies to address the student’s learning style, personality type, and, most importantly, the student’s results in law school and evaluation of the causes of those results.
• The edition includes additional materials designed to help students deal with law school stress and reflecting the insights for ameliorating that stress developed within the Humanizing Legal Education movement.
• The edition includes additional materials on time management and on avoiding procrastination.
• The edition contains revisions to the discussion on case reading to reflect recent research.
• The edition adds a short, new section on using color as a memorization tool.
• The edition includes a revised discussion of how to apply rules to facts and how to apply and distinguish cases.

I hope readers perceive these changes as improvements and welcome feedback either way.

Of course, no preface is without a thank you or two. I therefore wish to thank my wife, Dr. Stacey Hunter Schwartz, for pointing me in the right direction and giving me
the support I have needed to get there, my daughters, Kendra and Samantha, for being the amazing humans they are, and my deans at Western State University College of Law, Maryann Jones and James Hogg, for the opportunity to blaze a trail where none existed. I also appreciate the opportunities I have had, at Western State and now at Washburn University School of Law, to develop programs based on the ideas in this book. Finally, I owe a thank you to the many readers who provided suggestions, edits and helpful comments during the process, including Professor Gerry Hess of Gonzaga University School of Law, Professor Vernellia Randall of Dayton University College of Law, the following former colleagues at Western State, Professors Carole Buckner, Glenn Koppel, Constance Hood, Susan Keller, Niccol Kording, Paula Manning, Kevin Mohr, Brent Romney and Greg Sergienko, and my research assistant at Washburn, Karin Tollefson.

Michael Hunter Schwartz, April 2003, May 2008