

PREFACE

The book has three levels. The first is a perspective and a set of methods and techniques for doing your best on law exams. That inevitably requires a second level: an introduction to legal reasoning and legal process. Lastly, the book is implicitly a critique of the obscurity that permeates too much of legal pedagogy.

I wish to acknowledge the assistance of friends, professors, students and others in the completion of this book. Any deficiencies, however, are solely my responsibility. I especially wish to express my gratitude to Professor Robert Pugsley of the Southwestern University School of Law in Los Angeles. Professor Pugsley, a former student who has become a friend, has contributed basic ideas, illustrations and critiques—and always with grace and wit. Professor Lisa Blitman of the New York Law School has provided constant encouragement and many suggestions. The critiques of Professor Eric Lane of the Hofstra Law School and Professor Jesse Kasowitz of the New York University School of Law have been most constructive.

Three current New York University law students have given generously of their time and ideas: Susan Stabile, a former student who is the current Editor-in-Chief of the Law Review; Sheryl Michaelson, a member of the Law Review; and Liaquat Naz, a doctoral student. Santha Sonnenberg, a student at the Georgetown University Law Center, also aided. Three young lawyers and former students, Ann and Jim Chamberlain and Patricia Crown, gave freely of their time and keen intelligence. Kathy Morahan and Larry Abramson deserve recognition for editing the manuscript, as does Johanna deNiet, my extraordinary secretary, who also typed the manuscript, and Christina Thomas, who produced it with patience and skill. Others who aided include: Jane Aiken, Edgar Campbell, Professor Oscar Chase, Joan Delaney, Nancy Feldman, Professor Eleanor Fox, Howard Klumpp, Professor Charles Knapp, Susan Martin, Chris McAiley, Jerry McElroy, Professor Jack Slain and Professor Harry Subin.

John Delaney, Oct. 1, 1982

PREFACE TO THE SECOND EDITION

The response by both students and professors to the publication of *How To Do Your Best On Law School Exams* (1982) has exceeded my expectations and confirmed the hypothesis that our law schools fail to prepare students for the formidable reality of law school exams. In these last six years, eight printings of the first edition have been necessary to meet the demand.

This revised edition, like the initial edition, is “implicitly a critique of the obscurity that permeates too much of legal pedagogy.” The challenge in law teaching is to empower students, not to add obscurity and mystification, a now waning “hide-the-ball” type of teaching often performed by a bullying professor who was hiding out from the real challenge. That real challenge is to illuminate the complex understanding, insight and method that students must learn. This multi-dimensional reality includes history, jurisprudence, doctrine and modes of legal reasoning. It also includes critical perspectives relating to the diverse realms of law, practice and public life as a lawyer. It is this understanding, insight and method, not an artificially added professorial complexity that enables students to make sense of this form of the human enterprise. The challenge of legal culture demands that teachers be illuminators, not obfuscators.

Since writing this book in 1981–1982, my interest in learning theory, method and technique has increased and has matched my older interest in decoding legal pedagogy. Thus, I embody in this revised edition what I have learned in the last six years of law teaching, writing and studying about learning theory, methods and techniques as well as a deeper understanding of law exams. This learning, emerging

from experience, teaching and my own studying, builds upon many prior years of law teaching, writing, and trial and appellate practice.

My first debt of gratitude is to the students at New York University School of Law, where I taught for many years, and to the students at the new City University of New York Law School at Queens College, where I have taught in recent years. Lewis Creekmore, Mary Jane Graves, Angel Recchia and Paul Zupka, all CUNY law students, have helped me to deepen my understanding about learning. Bridget McCormack, a New York University law student, has also assisted. Ellen James, Luis DeGraffe and Cheryl Meyer, members of the CUNY law faculty, have also informed my understanding. Anne Burgess' graceful art and Eleanor Nigretti's impressive cover design deserve recognition. Louisa Head, my extraordinary secretary, provides constant support. My children, Jacqueline and Joan, have also encouraged me.

John Delaney, Oct. 1, 1988

PREFACE TO THE THIRD EDITION

Thirteen years after the Second Edition, nineteen years after the first publication, and countless books later, this Third Edition captures additional years of teaching, writing and trying to illuminate what has been aptly called the “twilight zone” of law school pedagogy, especially law school exams.

In 1988 in the Preface to the Second Edition, I referred to professorial “obscurity and mystification, a now waning ‘hide-the-ball’ type of teaching often performed by a bullying professor....” Today, I’m not sure it’s waning. I’m semi-retired, teaching mainly a First Amendment seminar one day a week, and no longer attend meetings of law professors, but I hear disturbing reports from recent law graduates about the national persistence of “twilight zone” teaching. The very survival of first-year, in-class, closed-book exams requiring hurried first-draft writing with intense time pressure as the sole basis for grading at a graduate school is indefensible. And disgraceful is the fact that most of these exams still concentrate on a grossly reductive, one-note theme: Slotting key facts into the right categories while implicitly pretending that law is not deeply historical, political, cultural and value-saturated.

Meanwhile, back at school you have to cope with what exists, but you can be comforted with the prospect that becoming a lawyer can transform your opportunities and your life. I am astounded that I did what I wanted—initially extensive trial and appellate experience, then some years of writing for governmental “blue ribbon” commissions, and since 1972 mostly full-time law teaching, studying and writing.

In this Third Edition, Chapter Three on Issue Spotting is extensively revised and expanded. Chapters Six and Seven, presenting sample exams and answers at different levels are expanded. All chapters are refined and sharpened. Though the content is significantly expanded, the number of pages is fewer, while readability is enhanced, thanks to the magic of word processing.

I credit Betty Tabor for this word processing magic, and her myriad insights and assistance in improving this book. I am grateful to her beyond measure. Catherine Park’s able copy editing materially improved this revision. Leah Bernstein, my secretary, provided continuing support as always, and facilitated my teaching and writing. Students who helped include a recent graduate, Nitin Savur, now a trial lawyer, and especially Gloria Macri, Irusia Kocka and Mordechai Pelta. I also acknowledge the support of Dean Kristin Booth Glen and Associate Dean Mary Lu Bilek.

Finally, I cannot express in words my gratitude for the day-to-day emotional support of my wife, Patricia Ruck, and our sparkling twelve year old, Clare Delaney.

John Delaney, April, 2001

PREFACE TO THE FOURTH EDITION

In prior editions of this book, I had decoded the vexing problem of how to write a variety of concise, advocacy exam arguments to resolve the issues spotted on diverse essay exams. The series of CIRI(P) formats, detailed in Chapter Five and now refined, explains and illustrates the writing formats required for these exams. The major substantive innovation in this Edition is a second decoding: a *new five-step process for determining how best to spot issues*. If practiced vigorously each week during the semester with old exams of each professor and daily with hypotheticals for rules from class, assigned materials and elsewhere, you should be able quickly to spot the issues presented on the typical, multi-issue essay exams you will likely confront in any subject, and then write the concise advocacy arguments that merit the ‘A’ grades. Indeed, if you embrace the *mastery learning ideal* expounded herein, you will anticipate and prepare such arguments for many, even most, of the *exam issues well before you enter the exam room*. These ‘A’ grades then usually lead to membership on the Law Review and thus produce an incomparably wider arena of opportunity upon graduation. In regularly perfecting all my books, I am driven by the ideal of making the books as clear and useful as possible in order to help students pierce the “twilight-zone” pedagogy and mystification that still plagues too much of legal pedagogy.

The major procedural change in this Fourth Revision springs from a realization that linking this Book to my new website (www.JohnDelaneyPub.com) has clear benefits for everyone. For example, I have transferred FAQ about “Preparing For The Law School Exams” from the Book to the website and I have also added FAQ about “Preparing For the Law School Classroom” to the website. Such website questions can more easily be added or deleted in response to new student inquiries and comments. In addition, I have added to the website a detailed article, “Law School Exams,” comparing the crucial differences between law school and college exams as well as a recent illuminating article, “A Meta-Framework for Mastery Learning of Law.” In addition to the FAQ just noted, I’ve added to the website step-by-step directions about how, after studying the Book, to proceed before law school, during the semester, and on exam day. They both *summarize* and *amplify* the contents of the Book.

Over time, I may add to the website new sample exam problems and responding arguments (now just in Chapters Six and Seven) to reflect emerging exam themes and priorities. Moreover, as new insights occur to me about issue spotting and writing exam arguments, I can more easily add them there.

To illustrate streamlining, Chapter Two (“Mastery Learning for Exams and Practice”) had previously covered thirty-five pages (many detailing various learning styles and approaches), and I intended to add some new insights to the Chapter in this Revision. But it’s clear that many students are already strong learners and do not need all this detail. Thus, I’ve retained the core Chapter suggestions in this Revision and may transfer other detail to the website. As I learn more about this topic, I can more easily share it by adding it to the website, and those students who are interested can quickly access it by going there.

With these changes, the Book and the website together become a “*living document*,” enabling us to more easily share new insights and materials with readers and to gain insight from their comments.

I wish again to thank my wife, Patricia Ruck, and our sparkling seventeen-year-old, Clare, for the continuing love and support that sustain my writing projects. I also thank my older daughters, Jacqueline and Joan and their children, for their continuing love and support. I thank Pat too for her ideas, inspiration and hard work in accomplishing this Revision. I wish also to express my appreciation to Christine Bush who ably, conscientiously and gladly designed and edited this Revision. And I appreciate the many valuable insights, ideas and suggestions of Christopher Byck, a recent law-school graduate; they have materially improved the Book.

John Delaney, October, 2006