

Conformity and Rebellion in Outlining

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In its simplest form, an outline is a document that shows the organizational structure needed to convey the relationships between ideas. When law students are creating a course review outline they are not just documenting the relationships between doctrine, policy, and factual variances, but they are striving to organize the material in a manner that will help them solve a new-to-them problem under severe time constraints. In teaching these skills, it is difficult to find a good balance between the ASPish message “no one-size-fits-all” and the expert’s un-

derstanding “there is a right way to do this thing.” Further, acknowledging differences in learning style preferences seems to make students want to throw up their hands in frustration and run to the bookstore to buy a canned product off the shelf.

For many of my students who are struggling after first semester grades come out, I set aside the rich possibilities of acknowledging their learning styles and try to help them learn to use tools that will enable them to cut through the linguistic differences of different court opinions and casebook authors in a way that poises them to turn around and produce structured, coherent prose for their professors on final exams. This process is frequently

painful, but forcing students to operate in conformity for a short time seems to result in better execution of dissecting others’ thoughts and communicating their own thoughts after the artificial constraint is lifted.

The exercise begins with a small subtopic in a course, such as the rules relating to found property. I provide the student with a table template based, loosely, on the IRAC paradigm. This gives me the opportunity to discuss with students the difference between the data and metadata of exam answers, and effective use of headings and subheadings. Here is a reproduction of one of these tables:

The contents of this column are meta-data. They are the invisible organizational expectations of a law trained reader.	
Issues (roughly correspond to roman numeral level of a traditional outline)	Who has the best claim to found property? [triggering fact: (Someone) finds a piece of (personal property)]
Rules (roughly corresponds to the capital letter level of a traditional outline)	(A finder) of (lost personal property) is entitled to it against all others but the [true owner], unless it has been found on a person’s land and that person has manifested an intent to exclude others from their land.
Illustrations (roughly corresponds to the Arabic numeral level of an outline)	(chimney sweep) finds (gemstone in chimney); court gives chimney sweep gemstone because as <u>finder</u> his rights are superior to those of the appraising jeweler or his apprentice (<i>Armory v. Delamirie</i>) (pool cleaner) finds (rings on bottom of pool); court gives landowner rings because landowner <u>exercised right to exclude</u> others from land and maintain his dominion over the objects on that land (<i>South Staffordshire Water Co. V. Sharman</i>) (salesman) finds (banknotes on floor of shop); court gives banknotes to salesman over shopkeeper because the banknotes were left in plain sight so finder has right superior to all but the true owner (<i>Bridges v. Hawkesworth</i>) (tenant) finds (broach in rental house window); court gives broach to tenant because the landowner failed to exercise the right to exclude (<i>Hannah v. Peel</i>) (construction workers) find (a jar of coins in soil of home); court gives the coins to the property owner because the jar was “misplaced” property rather than “treasure trove” – if court classified it as treasure trove it would undermine the landowner’s right to exclude others from their land and incentivize trespassing (<i>Corliss v. Wenner</i>)

Outlining (cont'd)

The next steps of the exercise are difficult for two main reasons. First, creating a synthesized rule statement from cases is a skill that most of the students I work with have not mastered so I am using a single exercise to teach at least two skills, outlining and rule synthesis. Second, the parallel construction of case descriptions I make them use is unnatural and uncomfortable, and students frequently rebel against the constraints of an actor-act-result recitation of case facts followed by the crux of the court's reasoning.

In spite of these difficulties, I provide the student with an issue and use this as the guiding Roman numeral for the rest of the table segment. In my experience, it is easier for students to understand the different focal lengths that can be used to frame legal issues after they have become comfortable translating cases into the same focal length and synthesizing a rule from multiple cases.

After identifying a topic, we begin re-reading the cases to extract the rules articulated by the court so that we can create a synthesized rule covering the entire subtopic. On several separate pieces of paper the student writes down the "moving pieces" of the rule and then tries to assemble them into a single coherent explanation that uses all of the pieces. Once the student has a rule statement, I instruct her to put paren-

theses around the actors, objects, and acts this rule is meant to cover. I also recommend that the student include a note about whether this is the unified comprehensive rule for this subject as taught by her professor, or if there is a majority/minority approach and another block with a competing rule and set of illustrations below.

After identifying the actors and acts as stated in the rule, the student has to write the case facts in that same order. This forced conformity helps students reframe the cases so that they can perform apples-to-apples comparisons, inasmuch as apples-to-apples comparisons are possible when studying law. At this point, I provide a practice problem on the issue, and the student sees how much easier it is to write out the rule and engage in a methodical and complete analysis that includes case comparisons and distinctions when this much work has been performed in advance.

This forced conformity helps students gain a perspective that they can use to communicate their individual thought processes with others. Once they learn how to do that, then they have baseline knowledge of the "rules" that they can follow or break in the future as required by the subject matter and the audience.

References & Further Reading

Many thanks to Rory Bahadur for sharing the IRAC assembly line exer-

cise at the 2012 AALS Academic Support Program. That's where I got the idea of using a table to constrain the free-radicals of thought that seduce students into following a will-o'-the-wisp instead of a legal argument.

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The Learning Curve

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Letter from the Editors

Academic support has always been a vital component of legal education, but it is becoming more high-profile as law school entering classes across the nation evolve. Shifts like the economic recession spurred major changes in legal education, from the way prospective students view law as a career path, to reduced numbers of applications, to lower institutional standards for entering credentials. Complicating matters is an often negative view of certain high school and college education policies. Consequently, college graduates are often seen as less equipped for the rigors of law school (see, for example, *Academically Adrift* by Richard Arum and Josipa Roksa).

All of this means that the students sitting in first-year law classrooms today are very different from the students who sat in those same seats only a few years ago. Things are unlikely to revert back to that “old normal,” so law schools must adjust to meet the needs of students in this “new normal” in legal education. Strong academic support programs will play a key part in this successful adjustment.

Much of the research concerning the new normal in

education is pessimistic. Ultimately, however, these changes have the potential to improve legal education dramatically, resulting in better, happier, more well-adjusted attorneys. New normal law students may be different, but they are not necessarily “less able” (despite what the NCBE might suggest).

For instance, the public no longer views law as a failsafe career choice, so fewer people are likely to pursue a J.D. simply because they do not know what else to do with a liberal arts education. Media attention on truthful law school data reporting allows potential law students to make informed decisions regarding both law school and the field in general. Thus, they should matriculate with a clearer picture of what a legal education will provide and what to expect in practice. Law students in the new normal should have a deeper dedication to legal study and a stronger sense of purpose in pursuing the profession.

Further, professors who want their students, programs, and schools to thrive will adjust to their students’ needs in ways that encourage true learning and lead to greater psychological well-being. Perhaps at some schools these seemed

like goals held only by academic support professionals and a handful of faculty, but in the near future they should become much more common. This shift may then lead to greater coordination between departments and a more cohesive educational experience for students. Another positive possibility is that increased focus on academic support may result in more resources allocated for such programs.

Academic support professionals are fortunate to be in an ideal place to help guide their students and schools through the changes necessitated by the new normal, and we hope that the articles in this issue of *The Learning Curve* will at least help begin the discussion. I am so thankful to have had the opportunity to work with such gifted academic support scholars through my involvement with this publication, and I look forward to seeing where the next team of editors takes it in the future. I wish them, and you, all the best as we navigate through this uncharted territory together.

Courtney Lee,

On behalf of the Editors