

## LESSENING STRESS OF THE 1L YEAR: IMPLEMENTING AN ALTERNATIVE TO TRADITIONAL GRADING

*Clinton W. Shinn\**

NEARLY one in five practicing lawyers suffers stress-related depression during (and throughout) his or her career. Disturbingly, recent national studies have concluded that the teaching and performance evaluation methodologies used in American law schools during the first year of law studies may trigger the onset of depression. All law schools operate in that factual environment.

The Appalachian School of Law Faculty has taken affirmative steps intended to ameliorate the stress and related development of depression during the 1L experience.

### I. ONE PROBLEM FOR LEGAL EDUCATION

The law, as a discipline, requires different educational methodologies than students faced in undergraduate classes. The transition to legal studies, the methods of evaluating student performance, and the profession's preference for quasi-Socratic pedagogy all lead to a highly stressful and unnecessarily competitive<sup>1</sup> introduction to a profession grounded in collegiality.

A growing body of literature<sup>2</sup> establishes that the traditional approach to legal education may be harmful to the development of legal professionals. Legal education is different than the previous experiences that students encountered in their undergraduate studies; the objectives of critical thinking and legal analysis may be counterintuitive and particularly difficult during the first semester or year. The competitive nature of a ranking and rewards system among peers during that initial transition places additional stress on 1L students, creating an environment that fails to foster the tradition of collegiality essential to a well-

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\* Dean and L. Anthony Sutin Professor of Law, Appalachian School of Law. J.D., Tulane; LL.M., Harvard. This essay "borrows" liberally from the works of the ASL Academic Standards Committee, chaired by Associate Professor Judie Barger, the Strategic Planning Committee, chaired by Associate Professor M. Scott Boone, and the ASL 2007-08 Self Study, for which Associate Professor Paula Young was coordinator and primary draftsman. Good and respected colleagues, each and all. I thank them for their hard work and dedication to our mission and for the content of this essay that proves accurate. I hold them entirely blameless and harmless from responsibility for any errors I bring to this piece.

1. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 31 (2007).

2. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 29-36 (2007). See also generally SULLIVAN ET AL., *supra* note 1.

functioning legal profession. The study of law is different and difficult; it involves a different type of learning, a different type of teaching, and a different type of individual proficiency evaluation.

Increasingly, national studies have documented the counterproductive impacts of stress during the 1L year.<sup>3</sup> Stress in law school has been identified as a “highly correlated predictor of depression, and lawyers are the most frequently depressed occupational group in the United States.”<sup>4</sup> Gerald F. Hess summarized the research in this area, and the consensus is that the law school environment is “stressful, intensely competitive, ... alienating,” anxiety producing, isolating, intimidating, de-motivating, and distressing.<sup>5</sup>

Depression levels for students before law school are about 10%. Depression rates for the general population range from 3% to 9%. By the end of the first year, “32% of students reported significantly elevated depression levels,” by the end of the third year, 40% reported significantly elevated depression levels, and “two years after graduation,” 17% still report depression—and this is the constant rate regardless of the length of practice.<sup>6</sup>

A 2001 study confirmed that law students’ mental health was normal to above average before starting law school but that “[b]y April of the first year of law school, ‘[e]very measure of positive well-being (i.e., positive mood, self-actualization, life-satisfaction)’ had significantly decreased and ‘every measure of negative well being (i.e., physical symptoms, negative mood, depression)’ had significantly increased for these law students as a group.”<sup>7</sup> According to Susan Daicoff, “[t]he first year of law school itself appears to cause the distress (or trigger it) and, surprisingly, it does not abate after graduation. One might conclude that law school somehow irretrievably damages 10 to 20% of its graduates.”<sup>8</sup>

Law students have taken the initiative in responding to this concern. During the 2007 ABA Annual meeting, student bar association representatives expressed

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3. See, e.g., LAW STUDENT DIVISION, AM. BAR ASS’N, MENTAL HEALTH INITIATIVE: TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS 1 (2008), <http://www.abanet.org/lsd/mentalhealth/toolkit.pdf>.

4. John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 339 (2007).

5. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75-79 (2002).

6. SUSAN SWAIN DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES 9 (2004) (reporting results from multiple studies).

7. *Id.* at 116. Lani Guinier and her co-authors found an even greater negative psychological impact of law school on women students. Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994). She studied students from 1987 to 1992 and showed that despite women’s slightly higher entry-level credentials, “men are three times more likely ... to be in the top 10% of their law school class.” *Id.* She also found that women enter law school with strong attitudes about the social status quo, legal education, and public interest career goals and leave with “corporate ambitions and some [evidence] of mental health distress.” *Id.* Her research revealed that women are alienated (and psychologically defeated) by the Socratic method. *Id.* Women in her study described the first year of law school as “a radical, painful, or repressive experience.” *Id.* at 42.

8. DAICOFF, *supra* note 6, at 124.

significant concern about the mental health of their student bodies.<sup>9</sup> The ABA Law Student Division responded in short order with a Mental Health Initiative to be implemented by law students.<sup>10</sup>

The 2009 publicity about stress-related depression<sup>11</sup> and deaths<sup>12</sup> among lawyers was not solely attributable to the effect of the general economic downturn on the market for legal services. The organized legal profession has known for much too long that lawyers disproportionately suffer depression,<sup>13</sup> anxiety and other mental illness,<sup>14</sup> alcoholism and drug abuse,<sup>15</sup> divorce,<sup>16</sup> suicide,<sup>17</sup> and deplorable physical health.<sup>18</sup> In fact, Patrick Schiltz concludes with an alarming, albeit true, indictment of the effect of lawyering on lawyers:

In sum, attorneys seem to be an unhealthy lot. Researchers do not know whether lawyers are unhealthy because unhealthy people are attracted to the legal profession or because something about the practice of law turns healthy people into unhealthy people. But the few researchers who have studied the legal profession are unanimous that lawyers are, as a group, in remarkably poor health.<sup>19</sup>

“And yet, the legal profession remains a respected, desirable, and privileged profession in American society.”<sup>20</sup>

Lawrence Krieger, among others, argues that the legal academy bears great responsibility for initiating lawyers into a life-long decline in quality of life during the first year of law school.<sup>21</sup> Within the suspect core attitudes among legal educators identified by Krieger as contributing to mental health decline

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9. A.B.A. MENTAL HEALTH INITIATIVE, *supra* note 3, at 2.

10. See *id.* An article in the March 2008 *ABA Journal* mentioned that concerns about the stress created by law school further justified the ABA’s approval of a Model Rule on conditional Admission to Practice Law. The rule seeks to encourage stressed-out students to seek counseling without concern about being precluded from bar admission for seeking successful treatment. James Podgers, *Endorsing Early Treatment: Conditional Bar Admission Aims to Encourage Timely Help*, A.B.A. J., Mar. 2008, at 65.

11. See Karen Sloan, *Depression Stalks the Legal Profession*, NAT’L L.J., May 4, 2009, <http://www.law.com/jsp/nlj/PubArticlePrinterFriendlyNLJ.jsp?id=1202430438300>.

12. See Lynne Marek, *Reports of Suicides Point to Job Stress*, NAT’L L.J., May 11, 2009, <http://www.law.com/jsp/nlj/PubArticlePrinterFriendlyNLJ.jsp?id=1202430579215>.

13. See, e.g., Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874-75 (1999).

14. *Id.* at 876.

15. *Id.* at 876-77.

16. *Id.* at 877-79.

17. *Id.* at 879-80.

18. *Id.* at 880-81.

19. *Id.* at 881.

20. *Something Strange Going on at Appalachian School of Law*, LAWSCHOOL.COM, Jan. 22, 2009, <http://www.lawschool.com/strange.htm> (last visited Jan. 14, 2009).

21. Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 118-19 (2002).

among law students are the top-ten percent *tenet*<sup>22</sup> and the contingent-worth paradigm.<sup>23</sup> He urges law teachers to consider the deleterious effects of those paradigms:

[T]he contingent-worth and top-ten-percent paradigms create continuing tension for many students by generating insecurity about future employment, the constant need to outperform peers and friends, the sense that a student is only as worthwhile as his grades and résumé, and the impression that, regardless of any amount of rhetoric about professionalism and the like, in fact personal character, values, ideals, and intentions are largely irrelevant to the new agenda students have undertaken. One could hardly design purposely a more effective belief system for eroding the self-esteem, relatedness, authenticity, and security of an affected population. And schools that have a mandatory or “strongly suggested” grading curve (particularly those requiring very low grades)—a stranger to virtually all other graduate schools—strengthen this effect by promoting the perception among students that their institutions intentionally pit them against each other in order to facilitate numerical differentiation of their contingent worth. Beyond the undermining of basic needs, all of the foregoing pressures contribute to the intense stress experienced by law students—a matter of additional concern because stress is the primary predictor of clinical depression and is thus likely to promote suicidal thinking.<sup>24</sup>

The discussion within the academy will continue for decades to come over these criticisms of legal education and which responses, if any, are appropriate to each. Are law schools somehow sufficiently different from other graduate schools to warrant a different evaluative methodology? Is a professional first-degree granting school even, in actuality, a graduate school? What justifies (and just which constituencies require or cause) a mandated, rigorous grading curve? Are the accrediting requirements imposed on law schools qualitatively different than those of other higher education accrediting bodies, particularly since there currently is no meaningful alternative regulatory system for law schools? Does the structure of legal education serve a legitimate purpose for the legal profession? Is the competitive environment necessary training for the rigors of post-education practice? To what extent are (or should) curricular requirements

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22. *Id.* at 117. “The top-ten-percent *tenet* [is] the belief that success in law school is exclusively demonstrated by high grades, appointment to a law review, and similar academic honors. This belief is entirely obvious at most law schools, whether elite or more typical.”

23. *Id.*

The contingent-worth paradigm [is] the corollary sense that personal worth, the opinions of one’s teachers and potential employers, and therefore one’s happiness and security in life depend on one’s place in the hierarchy of academic success. While there are, of course, comparative evaluations and rankings in other educational settings and in our broader society, in many law schools these considerations virtually dominate the collective thinking and become identified with personal worth.

*Id.*

24. *Id.* at 124-25.

be bar examination-driven, given the new ABA bar passage standards? And the list will grow as the issue is engaged by the academy. But, in reality, the 1L year is, and seemingly always has been, intentionally or otherwise, a particularly onerous introduction to the profession of law.

## II. ONE LAW SCHOOL

To paraphrase the old saw, “if you have experienced one law school, you have experience with one law school.” No two law schools are, can be, or should be, alike. Each differs from the other in more ways than any two are common, sharing perhaps only the unifying purpose of providing a sound program of legal education.<sup>25</sup>

The Appalachian School of Law (“ASL”) is a free-standing,<sup>26</sup> not-for-profit law school, teaching first classes in 1997 and graduating its first class in 2000.<sup>27</sup> ASL was provisionally accredited by the ABA in 2001 and fully accredited in 2006.<sup>28</sup> With the most recent graduation of the Class of 2009, ASL has operated for twelve years and has celebrated ten commencements. The alumni count is still less than 900. The school is still very young as an institution, with all of the attendant challenges that operating a new institution poses.

The school is located in the far southwest corner of Virginia, in the midst of the Allegheny Mountain range of central Appalachia, a region of steep, jagged hills and narrow, winding valleys.<sup>29</sup> While the location presents a challenge for attracting and retaining qualified faculty and students, the location is intentional. Central Appalachia is profoundly in need of legal services<sup>30</sup> and civic leadership

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25. See 2009-2010 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 101: BASIC REQUIREMENTS FOR APPROVAL (“A law school approved by the Association or seeking approval by the Association shall demonstrate that its program is consistent with sound legal education principles....”). Of course, then, each of the currently 200 ABA accredited law schools will define the required program uniquely and differently.

26. ASL is an independent Virginia non-stock corporation, not affiliated with any other college or university. See Appalachian School of Law: About ASL—Mission of the Law School, <http://www.asl.edu/about/mission.aspx> (last visited Jan. 15, 2010).

27. *Id.*

28. Appalachian School of Law: About ASL—Accreditation, <http://www.asl.edu/admissions/accreditation.aspx> (last visited Jan. 15, 2010).

29. See GERALD M. STERN, THE BUFFALO CREEK DISASTER: HOW THE SURVIVORS OF ONE OF THE WORST DISASTERS IN COAL-MINING HISTORY BROUGHT SUIT AGAINST THE COAL COMPANY—AND WON 27 (1977).

As we drove through the narrow hollows and valleys, towering mountains on each side, it was almost impossible to see the horizon. Maybe this is the reason people in West Virginia have accepted their fate ... for so many years. It is easy to lose hope when you can't see even beyond your own valley.

*Id.*

30. A May 2000 article in the *Washington Post* reported that “[o]nly one in every 1,000 residents of Southwest Virginia is a lawyer/....” Craig Timberg, *From Mining Coal to Minting Lawyers*, WASH. POST, May 12, 2000, at B1. That number should be compared to a ratio of one lawyer to every fourteen people in Washington D.C. *Id.*

for the underserved and economically depressed communities within the region that lawyers traditionally provide.<sup>31</sup>

Thus, the law school's mission (in addition to the common mission of all law schools—providing a sound program of legal education) serves two goals. The first goal is to create an opportunity for central Appalachians to see beyond their own valleys and, having done so, return to their home communities with greater insight, legal skills, leadership skills, high ethical standards, and an orientation to community service.<sup>32</sup> Stated differently, the goal is to provide access to legal services in an underserved region by educating young lawyers, many of whom return to the regional communities—to produce community-based generalists at law. The second goal is to provide legal education to qualified students who would not otherwise have the option to attend law school. At the time ASL was founded, the distance to the closest law school, some 200 miles away, discouraged many promising students from pursuing a legal education because they could not leave the region for three years of law study.<sup>33</sup> Many who could leave often had to sacrifice their cultural identity to succeed in an educational environment that regarded them as “hillbillies.”<sup>34</sup> That

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31. *Id.*

32. Each ASL student is required to perform 25 hours of community service each semester in the surrounding regional communities. That requirement amounts to a minimum of nearly 18,000 hours of community service in each academic year provided by ASL students. In truth, the minimum is exceeded. Lynda McDaniel, *Law and Community Service: The Appalachian School of Law*, APPALACHIA MAG., Jan.–April 2001, <http://www.arc.gov/index.do?nodeId=599>.

33. Timberg, *supra* note 31, at B1 (noting that “family obligations ... made attending another law school—the closest nearly four hours away—nearly impossible [for many students in the region]”).

34. In contrast, the founders of ASL embraced the stereotype. As the *Washington Post* article noted:

After all, the founders did not name it Southwest Virginia Law School. They chose Appalachian School of Law, embracing an identity laden with stereotypes that could turn some students off. It is a school of Appalachia, for Appalachia. “That’s who we are. That’s where we are. Those of us who grew up here have a great deal of pride in that .... We consider ourselves survivors.”

*Id.* The “hillbilly” stereotype seems the only one that has survived with impunity in popular culture at a time when stereotypic comments about African-Americans, Hispanics, or women are considered politically incorrect. For instance, an episode of “Friends” connected incest to Appalachians. Just a year or two ago, one TV network had planned to develop a reality TV show exploiting poor persons who live in trailers by focusing on the life of an Appalachian “hillbilly.” A first season episode of “Dharma & Greg” had Greg’s mother commenting that a boutonniere made of carnations was not fit for a wedding, but only fit for an Appalachian prom. See generally Center for Rural Strategies: Projects—Campaign to Stop the Real Beverly Hillbillies (Oct. 15, 2009), <http://www.ruralstrategies.org/projects> (discussing the organization’s efforts to stop a planned reality program that involved “find[ing] a poor rural family, move[ing] them to a Hollywood mansion, and mak[ing] a reality TV show out of their encounters with affluence and hip culture”).

Instances of that cultural and socio-economic discrimination seem endless and gratuitous. For example, a *New York Times* bestseller about textual criticism applied to the origins of the Bible distinguished among Christian denominations identified by the author as “Baptists, Pentecostals, Presbyterians, Roman Catholics, Appalachian snake-handlers, Greek Orthodox, and on and on.” BART D. EHRLMAN, *MISQUOTING JESUS: THE STORY BEHIND WHO CHANGED THE BIBLE AND WHY*

environment devalued their traditions and language, and discounted their unusual determination and resourcefulness. With the mission of providing access to legal education, ASL intends to enhance the status and visibility of southwest Virginia and to change the image of the area (that is, assist to rebut the stereotype). Many of ASL's graduates are from the Appalachian region in the states of Virginia, Tennessee, Kentucky, West Virginia, and North Carolina. However, graduates have come from as far away as Alaska, Micronesia, Texas, New York, and most other states across the country. The student body on campus in the 2008-09 academic year—356 students—came from thirty states and represented 145 different undergraduate institutions.

ASL is but one law school. It is one with a unique mission—to provide a legal education to students who might not otherwise have that access, and, simultaneously, to create a rigorous educational environment that provides its students with the opportunity for success.

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216 (2005) (emphasis added). Earlier in the book, in identifying a biblical passage that the author concludes was not original to the assumed author (Mark), Ehrman states: "it is the principal passage used by groups of 'Appalachian snake-handlers,' who till this day take poisonous snakes in their hands in order to demonstrate their faith in the words of Jesus, that when doing so they will come to no harm." *Id.* at 66. The reader can almost see the curled lip of disdain the author seems to assume the more intelligent reader will share. Tellingly, he attributes the aberrant and unauthorized "speak[ing] in unknown 'tongues'" taken from the same criticized passage to generic "Pentecostal Christians" of no particular regional location. *Id.* If Ehrman's point is that the practice of snake-handling is not based on original biblical text, the geographical location of that practice lends nothing to his argument. Snake-handling is practiced in places other than Appalachia, even outside the United States. The Snake Handlers, <http://www.geocities.com/alanstreet/snakehan.html> (identifying non-Appalachian states of Florida, Georgia, Alabama, Ohio, Texas); Snake Handling, [http://en.wikipedia.org/wiki/Snake\\_handling](http://en.wikipedia.org/wiki/Snake_handling) (identifying the practice in Alberta and British Columbia provinces). Ehrman's adding the appellation "Appalachian" to his comment was truly unnecessary to the case being made—that is, it was gratuitous and assuredly un-"Christian." Ehrman will not take offense at the un-"Christian" label in this piece. BART D. EHRMAN, *GOD'S PROBLEM 1-3* (HarperOne 2008).

The writer of this Essay is not an Appalachian. I even had to be taught by ASL students how to properly pronounce "Appalachia" (imagine someone warning that a red fruit is headed in your general direction—"apple, atcha"). But, the gratuitous denigration of all folk Appalachian based on cultural stereotypes is as bridling as hearing that all Louisianans (my home state) are politically corrupt, pirogue-poling, crawfish-eating, zydeco-playing marshrats. My response: "Mais oui! An' ain't that grand, cher." But no one really thinks that all Louisianans carry money belts of bribes through airport security or maintain cash deposited in kitchen appliances. *See, e.g.,* Natalie Gott, *Four-time Governor Guilty of Racketeering*, *CJONLINE.COM*, May 10, 2000, [http://www.cjonline.com/stories/051000/new\\_governor.shtml](http://www.cjonline.com/stories/051000/new_governor.shtml); Paul Courson, *Ex-Rep. Jefferson Convicted of Corruption*, *CNNPOLITICS.COM*, Aug. 6, 2009, <http://www.cnn.com/2009/POLITICS/08/05/us.rep.trial/index.html>. On the other hand, everyone seems to accept that all Appalachians, on a good day, are adequately represented by Jed Clampett, Jethro Bodine, and the lovely, but eternally vacuous, Elly Mae. (This is not the time, place, or space for consideration of the extra scoops of gender discrimination served up to competent professional women, including top ASL graduates, superficially justified under the guise of permissible and accepted anti-Appalachian bias). The difference is that somehow the eccentricities of the Louisiana stereotype have become "lovable" while the Appalachian cultural stereotype remains denigrated, in the main.

*A. The Students Served*

As an access-to-legal-education,<sup>35</sup> mission-oriented, young, developing, free-standing, non-university-affiliated, not-for-profit, fourth-tier, and rurally-located<sup>36</sup> law school, the need and justification for ASL (or other similarly oriented new schools) is frequently questioned, within and outside the academy.<sup>37</sup>

The continued presence of ASL demonstrates the need for the law school, attracting a student enrollment averaging 350+ each year, entering the thirteenth academic year, graduating the tenth class, with 800+ alumni, and a highly qualified and stable faculty.<sup>38</sup> The need is also demonstrated by the recent, successful establishment of four new law schools within the geographic service region that ASL's founders identified in 1996.<sup>39</sup> The justification can be seen in the realities of providing access to legal education at ASL—access that would

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35. "Access" in ASL's mission refers to providing an opportunity for legal education to a socioeconomic population that is underserved by, and underrepresented in, the legal profession.

36. And whatever other pejorative categories that may be useful in maintaining the *U.S. News* grading and ranking system to create a perception of relative worth among segments of the academy. How those grades create stress among law school Deans is an entirely different study topic.

37. See, e.g., James M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 227 (2007) (noting that "[t]here are simply too many lawyers and too many law schools in the United States" and suggesting that "if law schools were at all sensitive to market forces, they would be shutting their doors, or at least reducing their student headcount").

38. APPALACHIAN SCHOOL OF LAW, 2006-2007 CATALOG 5, 7-11 (2006). For Academic Year 2008-09, the Faculty consisted of 18 tenure-earning full-time teachers, and four full-time visitors. Nine are tenured (longevity and stability); of the nine who are untenured, seven are assistant professors and two are associate professors. Five faculty members have LL.M. degrees, one has an additional graduate degree, and one has an M.L.S. in addition to the LL.M. Reflecting the mission of ASL, all faculty members have practice experience, aggregating in excess of 320 years of practice. Further reflecting the mission of ASL, particularly the emphasis on skills and experiential training of community-based lawyers and civic leaders, ASL makes no distinction between teachers of legal writing, or other skills courses, and non-legal writing or skills teachers; all who teach full-time (except visitors) are on tenure-track.

The Faculty is diverse. Among tenure-track Faculty, three are African-American, one is Asian-American, and seven (40%) are female. See *id.* at 7-11. Twelve of the current permanent Faculty have published or placed for publication a total of 31 law review articles; five have published books or book chapters. See *id.*

39. Imitation as flattery? Or, just capitalizing on the best ideas of others (it's what lawyers do, is it not?). Charleston School of Law opened in 2003. LSAC: Official Guide to ABA Approved Law Schools—All Law Schools, <http://officialguide.lsac.org/SearchResults/ShowAllSchools.aspx> (last visited Jan. 15, 2009). Liberty University School of Law followed in 2004. *Id.* Further, both Elon University School of Law and Charlotte School of Law opened in 2006. *Id.* All four are provisionally accredited by the ABA Council on Legal Education. Am. Bar Ass'n: Legal Education—Approved Law Schools, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Jan. 15, 2010).

Lincoln Memorial University plans to commence classes in Fall 2009. Lincoln Memorial University: Law Home, News and Events, <http://www.lmunet.edu/law/> (last visited Jan. 15, 2010). American Justice School of Law Barkley School of Law, opened in 2004, but closed at the end of 2008, in what appears to be a good idea poorly executed. Karen Sloan, *A Kentucky Law School to Close Down*, NAT'L L.J., Oct. 27, 2008, at 1.



otherwise be denied—and the opportunity for success that a legal education provides.

Before discussing the opportunity, let us examine the success. The ASL access program is successful. The examination can begin with the premise, which will be addressed later, that an access school intentionally admitting students considered “under-credentialed”<sup>40</sup> and, thereby, unlikely to gain admission to other schools, is not serving them unless the students successfully enter the profession—that is, graduate and pass a bar examination. Although an argument can be made that bar passage does little to validate the quality of a legal education program, ABA Standard 301(a) and Interpretation 301-6 make that argument moot for most law schools.<sup>41</sup>

Since its inception, ASL has been acutely aware of the need to produce graduates who can successfully complete the bar examination. Due to the school’s location in central Appalachia, ASL graduates sit for the bar exam in many states (twenty-two different states in July 2008), rarely with one state accounting for as much as 25% of the first-time takers in any given year. As a recent example, for first-time takers in July 2008, the overall bar passage rate (all states included) was 80%.<sup>42</sup> In the central Appalachian states, the core service region accounted for only 66% of all first-time takers, with no state accounting for more than 18.5%—Virginia (18.5%), North Carolina (18.5%), Tennessee (13%), Kentucky (11%), and West Virginia (5%).<sup>43</sup> The jurisdiction with the largest number of first-time takers varies from year to year, with Virginia, Tennessee, and North Carolina frequently alternating as the largest.

The bar examinations for those primary jurisdictions are very different. What that means for curricular and support program development is that ASL cannot concentrate its preparation efforts on the structure or anticipated content of any one particular bar exam. If the Faculty opted to “teach to the bar,” it would have at least five bar examinations to anticipate. Nonetheless, the Faculty has developed a structured curriculum, a student-centered institutional culture, a bar preparation studies program, and a persistent general focus on this important outcome metric, and these efforts have become increasingly successful.<sup>44</sup>

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40. See, e.g., *Hopwood v. Texas*, 78 F.3d 932, 935 (5th Cir. 1996) (noting the use and importance of undergraduate GPAs and scores on the Law School Aptitude Test in law school admissions). See also Philip C. Aka, *Assessing the Impact of the Supreme Court Decision in Grutter on the Use of Race in Law School Admissions*, 42 CAL. W. L. REV. 1, 6-7 (2005) (noting that “[a]dmissions officials [at the University of Michigan Law School] also looked to the traditional factors of an ‘applicants undergraduate ... (GPA) and ... (LSAT) score’”).

41. 2007-2008 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 301(a): PROGRAM OF LEGAL EDUCATION: OBJECTIVES, <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf> (“A law school shall maintain an educational program that prepares its students for admission to the bar ....”) (last visited Jan. 15, 2010); 2007-2008 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, INTERPRETATION 301-6, <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>.

42. Appalachian School of Law: Pressroom (on file with the University of Toledo Law Review).

43. See *id.*

44. ASL has increased the bar passage rate more significantly than any other law school. An article appearing in the winter 2008 edition of *PreLaw Magazine* listed the law schools showing the

First-time taker aggregate pass rates (all states included) were 66% in 2006; 75% in 2007; and 80% in 2008.<sup>45</sup> Using the new Standards Interpretation 301-6 tests for ultimate pass rates, the five-year comprehensive summary pass rate is 78.22%.<sup>46</sup> Ultimate bar passage rates for the past five years are: 83.33% (2007); 81.10% (2006); 76.70% (2005); 79.79% (2004); and 65.15% (2003).<sup>47</sup> The conclusion is inescapable that, if one accepts the ABA Council's notion that bar passage is an appropriate metric for quality of legal education, the ASL academic program is performing well. The students who are provided access to legal education are achieving measurable and appropriate success.

More significantly, if one considers the relative predictors of capacity for legal education, ASL's program adds significant value for its students. A school with a 160+ median LSAT and a 3.5+ median UGPA does not need to tend the knitting as carefully as an access school does.<sup>48</sup> ASL's median LSAT and UGPA, hovering nearer 150 and 3.00 respectively, mandate a much more thoughtful academic program, curriculum, academic support, and student-centered approach in order to achieve an outcomes metric of 80% bar passage for first-time takers.<sup>49</sup> That is not to say that the academic programs of non-access

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most improvement in bar passage rate between 2002 and 2005. According to the article, ASL's bar passage rate increased more than that of any other school. Its graduates experienced a 38% increase in bar passage success, 12 points higher than that of the second best record of improvement (Regent). Ursula Furi-Perry, *Bar Exam 'Secrets' and Sessions*, PRELAW MAG., Winter 2008, at 14.

45. See Appalachian School of Law: Pressroom, *supra* note 42.

46. Statistical information on file with author.

47. Statistical information on file with author.

48. As an access school, ASL is not "competing" directly for students with the nearest law schools that were in the region prior to ASL's existence. The unique mission of ASL can clearly be seen by comparing the acceptable "credentialing" (LSAT/UGPA) of some of those law schools (University of Tennessee, University of Virginia, University of North Carolina, University of Kentucky, Washington & Lee, William and Mary, and University of Richmond):

	ASL	UT	UVA	UNC	UK	W&L	W&M	U Rich.
75%	153/3.32	162/3.82	171/3.87	164/3.80	162/3.79	167/3.81	166/3.82	162/3.66
Med.	149/3.08	160/3.59	170/3.76	161/3.65	160/3.63	166/3.62	164/3.68	160/3.45
25%	147/2.75	157/3.35	167/3.51	157/3.45	156/3.36	161/3.25	159/3.44	158/3.23

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA-LSAC OFFICIAL GUIDE TO ABA APPROVED LAW SCHOOLS 93, 393, 509, 609, 721, 785, 801 (2009). ASL is thus providing an opportunity for access to legal education to students who would not otherwise have that access. Of course, the accepted "credentials" are not nearly as predictive of success in law school, or of success with the bar exam, as is actual performance in law school during the 1L year. Many of the law schools within the region will not consider the under-credentialed students ASL admits into the 1L year (too "risky"), but will accept them as transfers after the 1L year (or even the first semester of the 1L year) when the LSAT/UGPA credentials no longer are reportable statistics. Some even solicit ASL students during the 1L year; some have reportedly sent "unacceptable" students to ASL for the 1L year with a commitment to accept them as transfers if they are in the upper half or two-thirds of ASL's 1L class. The latter two events are clearly "predatory transfer practices" and properly labeled as such. Perhaps a backhanded compliment to the ASL academic program is intended; perhaps not.

49. See Appalachian School of Law: Pressroom, *supra* note 42.

law schools are not excellent; of course they are, and with the luxury (from an access school's perspective) of pursuing multiple, enhanced, and advanced academic missions. For the access school, the soundness of the academic program must be demonstrated through successfully providing a sufficient foundation in law for students not predicted as having the capacity for legal education, using solely the traditionally accepted indicators.

The lack of appreciation for Appalachian culture, previously discussed, serves as a barrier for many ASL students during their undergraduate years, reflected in lower UGPAs and lower standardized test scores.<sup>50</sup> Part of that culture—and it seems of many cultures denied representative access to legal education—is a lack of emphasis on the importance of education.<sup>51</sup>

Often, ASL students are the children of parents and grandparents of limited educational background.<sup>52</sup> A recent student survey, conducted in conjunction with a strategic planning process, revealed that, on average, the parents of ASL students only had “some college” or a “2-year degree.”<sup>53</sup> A contemporary alumni survey provided a similar picture, reporting that 34% of their mothers obtained only a high school diploma (or less).<sup>54</sup> Another 30% reported that their mothers had business or trade school, some college, or a two-year associate degree.<sup>55</sup> Their fathers tended to be more highly educated, with 26% of alumni reporting that their fathers had a high school education (or less), with 20% reporting that their fathers had business, trade school, some college, or a two-year associate degree, and another 53% reporting that their fathers had a four-year college or graduate school degree.<sup>56</sup> Quite obviously, this lack of experience, with or without an emphasis upon the value of higher education within the student's core support group—the immediate family—exacerbates the stress that a rigorous professional education entails.

In addition to a more lenient LSAT and UGPA review, ASL has developed the Pre-Admission Summer Opportunity (“PASO”) program to provide another route to admission for those students who otherwise may not have the opportunity to attend law school. The PASO program looks to alternative predictors of capacity for legal education, including life experience and personal history. The PASO program creates even more tension between ASL's mission of providing an opportunity for legal education and the ABA Standard Interpretation 301-6 “bright line” bar passage requirements. Taking risks with

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50. See Eva A. Thaller, Paper Presented at the Annual Meeting of the Southern Organization of Human Service Educators: Making a Case for a Cross-Cultural Approach to Literacy in Appalachia, at 14 (Mar. 1994) (noting that “traditionally[,] schooling has not been an extremely high priority [among Appalachians] and ... many Appalachians have had low educational expectations for themselves and their children”).

51. See *id.*

52. See *id.* at 4.

53. ASL Strategic Planning Committee, Confidential Student Survey (Spring 2007) (on file with author).

54. ASL Strategic Planning Committee, Confidential Alumni Survey (Fall 2008) (on file with author).

55. *Id.*

56. *Id.*

access students could place at risk the institution's accreditation. As implemented, however, the PASO program has been highly successful at achieving an appropriate balance.

The PASO program's success has been achieved in two ways. First, the Faculty Admissions Committee carefully looks for applicants who, while lacking traditional predictive measures of success, nonetheless demonstrate the potential to succeed in law school. Second, those applicants participate in a highly structured, rigorous four-week program designed to expose them to the fundamentals of legal analysis while pushing them to the limits of their abilities prior to an admissions decision. The first three weeks of the program is comprised of at-home study pursuant to a detailed syllabus. Students also submit written assignments via email. The program's final week consists of five days of on-campus classes which meet for approximately six hours each day. The program culminates in a lengthy final examination. ASL then admits PASO students on the basis of their performance on the examination and on the written assignments.

PASO is an unqualified success. Over the past several years, PASO students have, on average, performed better than or comparably to the first-year class as a whole.<sup>57</sup> In addition, many individual PASO students have earned class rankings at or near the top of their classes. In 2005, PASO students ranked first, seventh, and twenty-second in the class. That same year, six PASO students successfully transferred to schools like University of Richmond and the University of Connecticut School of Law.<sup>58</sup> In 2006, PASO students ranked thirteenth, sixteenth, twentieth, twenty-first, twenty-second, and twenty-fourth in the class. In 2007, a PASO student ranked twenty-eighth in the class.

Although stress is inherent to the 1L experience without regard to the identity of the law school, it is likely that ASL's unique mission might engender an even more stressful transition than most. Many of our students have the cultural stress of having to achieve against a background that does not necessarily

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57. Average Law School GPA of PASO Students Compared to the Students in the Corresponding Law School Class:

	UGPA	1L	2L	3L
2005 PASO matriculants	2.94	2.66	2.66	2.84
Class of 2008	2.97	2.51	2.54	2.64
2006 PASO matriculants	2.82	2.34	2.48	--
Class of 2009	2.97	2.53	2.57	--
2007 PASO matriculants	2.70	2.21	--	--
Class of 2010	3.05	2.49	--	--

Information available through the time of preparation of this essay on file with author.

58. Of course, once admitted, no identification or distinction is made between PASO matriculants and other students. Participation in Academic Success Program ("ASP"), open to all students, is mandatory for PASO students as well as other students whose performance in the one-week Introduction to Law class suggests that ASP would be beneficial. Therefore, schools accepting transfer applicants from ASL are not informed that the student may have been a PASO participant.

value education.<sup>59</sup> Most of our students were rejected by their first choice for law school—or even their first several choices—and must deal with the burden of that rejection and the not-overly-subtle negative evaluation received from those schools. Some of our students enter the classroom through the alternative PASO admissions program. And all of our students face a rigorous academic program that is designed to add value to the experience through an intentionally-developed and focused pathway to success on the bar examination and to service as a community-oriented lawyer.

The psychological stressors that all 1Ls face reflect new students' exposure to an entirely new type of learning, an intentionally different teaching methodology (Socratic and its many variations), law school-specific modes of performance evaluations, and a highly competitive peer environment.<sup>60</sup> Students admitted to ASL pursuant to our mission of providing access to legal education—many from working-class backgrounds—may have even more problems making the transition to this intellectual environment.<sup>61</sup> They may be elated at being admitted to law school, while also feeling like they do not fit in.<sup>62</sup> “Working-class students see themselves as completely alone.”<sup>63</sup> Some may even lose the support from their families, who may view them as “getting above their raising.”<sup>64</sup> “[M]ost feel a tremendous amount of pressure to succeed, pressure

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59. See Thaller, *supra* note 50, at 14.

60. One scale evaluating experiences that produce stress suggests that many 1L students experience levels of stress (a score of over 300 points) that requires the student to take “great care and urgently try to minimize the amount of stress in [their] life.” Experiences leading to higher levels of stress include major changes in sleeping habits, personal habits (including associations), recreational habits, social activities, in the number of family get-togethers, in financial state, in the number of arguments with spouses, in working hours or conditions, residence, or in living conditions. Other experiences leading to higher levels of stress include incurring major debt obligations, changing to a new school, or beginning formal schooling. ASL students have most of these experiences during their first year of law school. See generally *supra* notes 1-24 and accompanying text.

61. TEACHING WORKING CLASS 240 (Sherry Lee Linkon ed., 1999) (“[A]ssimilating’ into the educated middle class” environment typically “involves learning a new language and new customs, leaving their old ways behind, and distancing themselves from the family and friends still living in working- and lower-middle-class worlds from which they come.”).

62. *Id.* at 28.

63. *Id.* at 33. One contributor to the book explained:

When I was in graduate school ... I felt that I did not belong, that I wasn’t entitled to an education. I felt very out of place among my fellow students, most of whom came from much more privileged backgrounds than I did. Most of them had parents—and some even had grandparents—who had B.A.’s or even advanced degrees. I, on the other hand, was the first in my family to get a college education, and being in a Ph.D. program really felt like being in another universe for me.

*Id.* at 204.

64. This is a common Appalachian phrase. See generally Mary Darcy O’Quinn, *Getting Above Our Raising: A Case Study of Women from the Coalfields of Southwest Virginia and Eastern Kentucky*, 15 J. RES. IN RURAL EDUC. 181, 185 (1999) (discussing the history of Appalachian women and the obstacles they face in higher education).

that sometimes has more to do with survival than with pride.”<sup>65</sup> “[T]he idea of getting an education simply to ‘better oneself’ ... sounds like a luxury to many [working class students], an option available only to those who already possess financial security.”<sup>66</sup>

*B. One Intentional Step toward Ameliorating Stress in the 1L Year*

In seeking to ameliorate the stress that results from the unnecessarily competitive first year of law school, and to foster collegiality among professionals-in-training, the Appalachian School of Law Faculty has adopted an alternative to the traditional grading system applicable to the first year of law school. No “fine distinctions” between students based on grading evaluations and no artificial rankings among peers will occur during the transitional 1L year.

The new first-year grading system may ease the transition into law school by eliminating many bases for peer competition and by fostering collegiality—a value of professionalism that the ASL Faculty desires to promote early in the educational process. The Faculty anticipates that removing the hyper-competition of the first year will encourage students to build a greater sense of community and interdependence that will translate into ongoing mutual support as they prepare for and take the bar exam.

During the 1L year, the standard law school curriculum is taught with the same rigor and expectations of the traditional evaluative system, but the artificial competition caused by five-tiered, letter-grading has been eliminated. Further, all 1L students are evaluated to determine whether they have achieved sufficient proficiency in the substance of each course. They must demonstrate that they have the capacity and proper foundation for the advanced law studies that they will encounter in their 2L and 3L years.

A grade of “Proficient” is given to any student who completes the requirements for a course and does so in a fashion that is competent for a law student and future lawyer at this stage of his or her education. This grade confers credit for the course. A grade of “Not Proficient” is given to any student who completes the requirements for a course and does so in a fashion that is only marginally competent or reflects more than minimal skill but does not rise to the level of competence for a law student and future lawyer at this stage of his or her education. This grade also confers credit for the course. Finally, recognizing the obligation to determine capacity for law studies early in the educational process, a grade of “Fail” is given to any student who either (a) completes the requirements for a course but does so in a fashion that is not acceptable at all and demonstrates none of the skill or talent generally found in a law student and future lawyer at this stage of his or her education or (b) does not complete the requirements for the course in a timely fashion. This grade confers no credit for the course.

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65. TEACHING WORKING CLASS, *supra* note 61, at 61.

66. *Id.* at 238.

To preserve the obligation to provide sufficient rigor in the curriculum, and based on an analysis of ASL's actual experience with the five-tier grading system during the 1L year,<sup>67</sup> ASL's first-year program requires that the total number of "Proficient" grades shall not exceed 85% of the total number of students in the class. Moreover, students who receive a specified number of "Not Proficient" and/or "Fail" grades are academically dismissed, with limited opportunity to apply for academic probation.<sup>68</sup> The ASL Academic Standards Committee formulated the new grading system based upon an evaluation of grading information compiled from Academic Year 2006-07 and Academic Year 2005-06. Based on this information, the Faculty determined that at least 15% of each 1L course must receive a grade of "Not Proficient" or "Fail" (if appropriate). The new grading system, however, is not a simple "Pass/Fail" system. A professor is not required to give any grades of "Fail;" the option to give a grade of "Fail" remains available to the professor if he or she determines that a given student's performance reflects that particular standard. Further, the distinction between "Proficient" and "Not Proficient" performance requires a more rigorous and nuanced individual evaluation than does a Pass/Fail determination. After the 1L year, traditional five-tier grading applies to the 2L and 3L courses.

This alternative evaluation system was implemented with the entering 1L class for the Academic Year 2008-09. The Faculty committed itself for at least three years to annually review the grading system's impact in order to have a complete iteration—that is, the whole law school experience of the Class of 2011—as the basis for evaluation. That initial class entered the 2L year in Fall 2009, which will be the first semester of the return to traditional grading.

### C. *Ameliorating Stress: The Stresses of Implementation*

No matter how deliberate the process and noble the purpose, change in and of itself causes stress, both anticipated and unexpected. At the time this essay is being written, the first year of the new grading system has concluded, and the second 1L class to experience the new system has just arrived. Any conclusions about the impact of this change would be premature. Until the Class of 2011 has taken bar examinations and entered the work force, the full complement of the program's effects will remain unknowable. Nevertheless, some preliminary observations, particularly about the problems of implementation, are warranted.

*A Sense of Community.* Based purely on observations and conversations with Faculty, staff, 1L students, and upper level students, the changes ASL has implemented have seemed to reduce the stress of competition and have promoted

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67. See APPALACHIAN SCHOOL OF LAW, ACADEMIC STANDARDS 14-17 (2008), <http://www.asl.edu/uploads/files/standards.pdf>. The Faculty began consideration of the alternative grading system in Spring 2006, proceeding deliberatively and systematically. The Academic Standards Committee carried the primary responsibility for development of the proposal, which became a standing topic for monthly Faculty meetings until finalized and adopted in November 2007 for implementation in Fall 2008 (and a continuing topic, although not a standing agenda item, in most meetings since).

68. *Id.* at 18.

a feeling of community within the 1L class during the past academic year. The Deans heard fewer complaints about the “unfairness” of section assignments (you know, the inevitable “Section A of Legal Process has fewer drafting deadlines than my section” or “Professor X gave us a mid-term on future interests that the other section of Property did not have to take”). Teachers reported more cooperative and collaborative attitudes about group work, with the concerns about the “better” students being in the other group eliminated. More, and apparently larger, study groups seemed to have developed. Fewer students who consistently volunteer in class seemed to have been labeled “podium trolls” by either their peers or the teachers. More students seemed willing to take advantage of teachers’ office hours. We seemed to have had fewer anxiety attacks and “crash and burn” incidents during exams. The 1L students were reported to be more cooperative and compliant with the administrative requirements of the examination process than prior 1Ls or the current upper class students.

Of course, all of those observations are subjective and, perhaps, wishful validations of the change. The sense of community was more objectively manifested when a large group of 1Ls (probably one-third of the class) responded to a student-initiative committee call for volunteers to beautify the campus in anticipation of an October ABA site team visit, spending hours (and days) renewing and enhancing the landscaping, refurbishing the fountain, pressure washing the courtyard and cleaning/repairing/assembling outdoor furniture. Then, the same group repeated the process during the Spring semester for two Open House events for applicants. Thus, although each new class develops its own group personality, and this may merely be the group dynamic at work, I am willing to conclude that the less stressful environment in the classroom contributed to a sense of collegiality and community among this group.

*Communicating the Change.* An early known and anticipated problem concerned consumer information and general notice to the affected cohort and prospective ALS students. Since the new grading system is unique, how and when would that change be communicated to applicants? The Faculty decision in November 2007 to implement the new grading system in Fall 2008 came early enough in the 2008-09 admissions cycle to permit the Student Services Director and Admissions counselors to communicate the change in writing prior to extending any acceptance offers. The change was posted on the school webpage as a “News” and announcement item. The change became a part of the telephone counseling by admissions. A written piece was prepared and sent with each acceptance letter. Finally, the Spring 2008 Open House included a discussion of the grading change, and the change was a topic during the Fall 2008 Introduction to Law week for incoming 1Ls.

*Difficulties of Faculty Implementation.* The Faculty’s adjustment to the non-ranking aspects of the new grading system proved unexpectedly difficult for some teachers. Since ASL is a new school relatively unknown to the legal profession with an intentional access mission, Faculty members have taken a more active role in assisting students with evaluation of learning style, exam preparation needs, and external communications. To achieve the objective of fostering collegiality and lessening competition during the 1L year, it was



imperative that no distinction be made among students other than the distinction reflected in the “Proficient” and “Not Proficient” grades. For some teachers, the practice of providing relational or relative performance information was difficult to avoid. Many wanted to tell students where they fell within the performance range for the course (i.e., upper quarter, near the middle, just above the “NP” cut point, best paper in the course). Many continued to use a point-based grading system and wanted to post or disclose the cut point between “P” and “NP” to allow students to determine relative standing within the course. Others wanted to provide similar relative evaluations in recommendation letters to potential employers or externship placements or transfer applications. After the first iteration of grading under the new system (Fall semester 2008 exams), those problems seem to have been alleviated.

*Initial Student Discomfort.* Likewise, students evidenced a degree of initial discomfort at the end of the Fall semester over not having a feel for relative placement among their peers. Students with 15 credit hours of “P” grades still wanted to know how that “stacked up” in the class. Shortly into the Spring 2009 semester (after Fall grades were posted), the Student Bar Association coordinated a 1L “town meeting” to allow the Dean and Associate Dean for Academic Affairs to answer questions relating to that discomfort. A second wave of student attempts to persuade individual teachers to provide relative rankings (but with just a few students) occurred just prior to Spring Break—the mid-point of the semester when ASL students have usually begun externship placement interviews, summer placement applications, and transfer applications.

A small, consistent group of students attempted to create a ranking by soliciting information from classmates about grading ranges through mutual disclosure of any “raw numerical” notations students received on individual exams. Those efforts were abandoned when the organizers began to realize that (a) not all students review their graded exams and could not be pressured into doing so, (b) not all students who did review their exams were willing to disclose, even confidentially, information gleaned from the review, and (c) not all students who reviewed exams and disclosed information were candid. What a “real world,” and purely unintended, learning moment that must have been.

*Acceptance by Potential Employers.* The Career Services Director was an active and principled opponent of the new grading system throughout deliberations, and continued to speak out about placement problems after the Faculty adopted the new grading policy. One detriment that the Faculty considered when it evaluated the new grading policy was whether a non-ranking system, using a unique evaluative designation, would find acceptance among potential employers. That risk was a known cost of the change. As a part of the curriculum, however, all ASL students are required to participate in a six-week supervised externship placement, which is a non-compensated public or public interest experiential component that occurs during the summer between the 1L and 2L years. Thus, as a result of the externship requirement, it has always been difficult for ASL students to obtain law-related, compensated employment for the remaining six to seven weeks of their 1L summer. Since traditional grades are given for the 2L and 3L courses, Faculty determined that the anticipated stress-reduction benefits the new grading system would offset the risk that some

students might not obtain employment for the short period of the summer following the 1L year until regional employers became familiar and comfortable with the new grading system. The effect on placement after the 1L year is identified as a concern that must be evaluated during the initial trial period with the new grading system. Whether there will be a similar impact after the 2L year is, as yet, unknown and will be monitored by the Faculty.

*Access to Scholarships.* One unexpected consequence of the grading change occurred near the end of the Spring 2009 semester. The occurrence serves to demonstrate just how deeply embedded within the academy is the notion that individual student value can only be measured by a ranking evaluation system. For the past couple of years, ASL students have been successful applicants for scholarships awarded by a national industry law association to upper class law students. An ASL Faculty member served in 2009 as a scholarship selection committee member for that association. Two ASL students who were rising 2L students (and thus had only the new grades for the 1L year) did not receive scholarship consideration due, primarily, to the non-ranking grading system. Committee members from other law faculties reportedly were uncomfortable awarding scholarships to ASL students (even with all grades of "P") because each individual student could rank as high as the 100th percentile or as low as the 16th percentile within the 1L class, thus illustrating how pervasive competitive ranking can be as an indicator of individual relative worthiness (that is, artificial self-worth).

For internally-awarded performance scholarships, grants have been delayed until the end of the first 2L semester, when traditional grading and ranking resumes. Criteria for retention of internal scholarships granted to 1Ls were adjusted to reflect the new, non-ranking grading system. The internal scholarship award process is an area for specific monitoring and review each year as the new grading system is evaluated.

*Co-curricular Participation; Awards.* Another known detriment of the new grading system involved the selection of Law Journal members based on grades. The *Appalachian Journal of Law* previously "graded on" a number of students based on 1L performance and added other members through a "write on" process. The student editors initially asked the Faculty to consider a confidential ranking, internal exclusively to the Faculty, that would provide the editors with a list of students to be invited after completion of the 1L year. Faculty recognized, however, that preparing and preserving even a confidential ranking for the limited purpose of disclosure after completion of the 1L year would inevitably encourage (or at least risk) earlier inquiry and disclosure over time. The journal editors have adopted a modified, but more extensive, write-on qualifier that is conducted during the summer following the 1L year. Faculty members who have taught the applicants in Legal Process participate in evaluating the students' written products, but Faculty does not provide any indication of students' rankings within the prior 1L Legal Process course. The editors of the *Appalachian Natural Resources Law Journal*, a newer journal, will follow a similar write-on qualification process. Since the Faculty was well aware of the impact the new grading system would have on Law Journal member selection,

Faculty members, in particular the advisors to the two journals, will monitor and evaluate the effects during the three-year period.

The Moot Court program uses an open competition following Appellate Advocacy classes in the Fall 2L semester, as the qualifier for participation, and thus the grading changes should be neutral.

No Dean's Lists will be compiled for the 1L semesters; no ranking is maintained for any purpose. The tradition of identifying those who "book" a course (highest grade for each course) will not apply to 1L courses under the new system; not even the top performance on exams is identified (formally or informally) in the non-ranking system adopted by ASL Faculty.

*Alumni Reaction.* A number of individual alumni expressed concerns about the effect of the new grading system on the value of their ASL degrees. Most concerns arose from a misunderstanding of the changes. The initial perception was that the Faculty was adopting a Pass/Fail system for the 1L year, which would lessen the rigor of the curriculum. With the assistance and support of the Alumni Association officers, a more thorough explication of the new grading system and of the Faculty's objectives and expectations seems to have satisfied those initial concerns.

*Disbelief by "Receiving" Law Schools.* An external "constituency" has proven extremely unaccepting of the new 1L grading system. Transcripts issued for 1L students have been modified to contain an explanation of the new 1L grades, and the definitions of the grading categories will be part of the transcript for those students even after traditional five-tiered grades for 2L and 3L courses are added. Admissions personnel at "receiving" law schools reviewing transfer applications from ASL students have insisted upon being given class ranks, expressing disbelief when told that the intent not to rank is actually being honored within the ASL Faculty and community. Apparently the system is seen by some receiving schools as a sham; a ploy to prohibit our students from transferring while maintaining a "second set of books" internally with ranking and traditional grades. Not true! The ASL Faculty and community have embraced the new grading system, with the attendant benefit of reducing the stress of competition that results from a ranking system.

ASL does not, and could not, prohibit our students from seeking transfer to another law school. The new 1L grading system may have the effect of requiring the receiving school to individually and subjectively evaluate the applicant's capacity for legal education and potential for success with bar passage. The ASL mission encourages ASL to take risks with some "under-credentialed" students,<sup>69</sup> and we have developed a curriculum and academic program that makes those risks acceptable to the institution and beneficial for our students. Ameliorating the stress of the 1L year, we believe, will benefit the students who fulfill the mission objective for the law school and will enhance their chances for success in our academic program, in the legal profession, and as leaders in their home

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69. Appalachian State Law School: Mission of the Law School, <http://www.asl.edu/prospective/mission.php> (last visited Jan. 15, 2010). The ASL mission trumps the concerns of many schools requiring focus on incoming credentials (LSATs and UGPAs) solely to preserve *U.S. News* rankings to the extent based on 1L credentials—that is, gaming the system.

communities. If one collateral consequence is that receiving schools must share some of the risks that ASL embraces in furthering the access mission in order to “skim the cream” of our student body, then so be it.

### III. (VERY) PRELIMINARY CONCLUSION

After years of reading and hearing that traditional legal education is detrimental to the mental health and physical well-being of law students and lawyers, the Faculty of the Appalachian School of Law has taken a bold, albeit tentative, experimental step toward ameliorating the competitive stress of the transitional 1L year. At the end of the first academic year in that experiment, the results are encouraging. Not without angst, not without complaints, not without consequences, not without costs, but encouraging nonetheless. When the Class of 2011 has maneuvered through the bar examination process and the quest for employment, the ASL Faculty will have a more fulsome dossier of information for evaluation of the effort. At that time, this very preliminary conclusion of success may be validated.

Meanwhile, I applaud my ASL colleagues for making this unique change, and for taking this additional risk, with the purpose and intent of enhancing the program of legal education offered our future colleagues before the bar. This is one instance where the best practices of the academy mesh well with the needs of the legal profession.