

University of Missouri-Kansas City School of Law

## UMKC School of Law Institutional Repository

---

Book Chapters

Faculty Scholarship

---

2019

### Conquering the Elephant

Wanda Temm

University of Missouri - Kansas City, School of Law, [temmw@umkc.edu](mailto:temmw@umkc.edu)

Follow this and additional works at: [https://irlaw.umkc.edu/faculty\\_book\\_chapters](https://irlaw.umkc.edu/faculty_book_chapters)



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

---

#### Recommended Citation

Temm, Wanda, "Conquering the Elephant" (2019). *Book Chapters*. 38.

[https://irlaw.umkc.edu/faculty\\_book\\_chapters/38](https://irlaw.umkc.edu/faculty_book_chapters/38)

This Book Chapter is brought to you for free and open access by the Faculty Scholarship at UMKC School of Law Institutional Repository. It has been accepted for inclusion in Book Chapters by an authorized administrator of UMKC School of Law Institutional Repository.

## Conquering the Elephant

WANDA M. TEMM

I sit in the stands every spring and watch the horde of smiling faces. The graduates cross the stage, shake the dean's hand, shake the chancellor's hand, and shake the hands of university dignitaries that they never knew existed and who attend perhaps just to enlarge the sense of pageantry. Graduates wear the gowns and hoods that most will never wear again. They grab their diplomas and frequently raise their arms in celebration to the shouts of family and friends. And there are the family and friends congregated *en masse* with equally smiling faces who attend to cheer; to photograph; to embed this moment, this achievement, in the history of their lives.

But the graduates know they are not done. You can see it in their eyes and wary smiles when you greet them afterwards. Often, it is evident in the forced cheeriness when they nervously laugh and say "oh yes, need to take that one more exam." For they know the time has come. The elephant that has been present in the room since the first day of law school is now visibly blocking their path. They must conquer this beast to reach their end goal—the reason they went through the last three years of angst—to practice law, whether to assist the underdog or to take over Wall Street. If they cannot conquer the elephant, they cannot reach their goal. It is that clear-cut. The stakes are that high. And they know it.

I'm watching, too. I watch as each one crosses the stage. As one heads toward the dignitary line-up, I inwardly smile knowing that this particular student is well-equipped to tackle the beast, but tends to get in a tizzy

when the stress piles on. I will need to keep reminding her that she is not striving for an “A.” The next student has done decently in law school and with the right amount of encouragement and hard work will be just fine. Next is the student that I have been concerned about for some time. Perhaps I had him as a first-year student and he just could not seem to handle analysis or his grammar was woefully deficient. Perhaps I chaired the committee that oversaw and decided the readmission after academic dismissal, knowing the student was still at risk for not passing. My anxiety comes and goes as each student crosses the stage. Then, the students want me to meet their families and I assure each one that they will vanquish this beast with hard work and motivation, I know they will do it, and they will be fine. Their family glows with pride.

The elephant is the bar exam. A two- or three-day exam that purports to test many of the skills necessary to practice law. Much discussion about the validity and reliability of the bar exam has ensued for several decades without any major reform in the exam itself.<sup>145</sup> Movement towards a national bar exam has progressed steadily with the advent of the Uniform Bar Examination (UBE). Students who take the UBE can potentially transfer their score to numerous states while only taking one bar exam.<sup>146</sup> Possible reform is another story for another day. The reality for today’s law student is that they must pass the exam as it exists in order to practice law in their chosen jurisdiction.

Every law professor plays a role in preparing students for the bar exam. Analytical skills are the foundation for all lawyering tasks. Analytical skill development begins at orientation and is part of every law school course, trial advocacy team, appellate advocacy team, law journal, in-house clinic,

---

145 The National Conference of Bar Examiners did introduce the Multistate Performance Test (MPT) to replace some of the essays in the late 1990s. The MPT is a ninety-minute question that combines legal analysis with drafting a particular document a law firm partner has requested. This task requires the student to focus on the audience and purpose of the document in addition to synthesizing the law and applying the facts to predict an outcome or advocate for a client. The goal is to have a more realistic assessment of writing skills other than by essay. Two MPT questions are included in the Uniform Bar Examination.

146 Each jurisdiction decides for itself what minimum score it will accept. Each jurisdiction will also do its own character and fitness determination and may set other requirements for licensure such as mandatory Continuing Legal Education courses or another assessment of the particular state’s law. As of 2018, thirty jurisdictions have adopted the Uniform Bar Exam.

externship, and simulation exercise. Writing projects push students to articulate analysis, communicating it clearly and concisely. Attorneys use their analytical skills from the first initial client interview through the completion of the transaction or the end of the litigation. At every step along the way, analytical skills are needed to decide the best course of action to reach the client's goals and then to competently take that action.

But analytical skills are not enough to pass the bar exam. Bar exam preparation is an endurance course requiring intense motivation and hard work to stay on track. An inordinate amount of time is required to prepare. Commercial providers keep a running list of uncompleted tasks for students that is often bewildering and petrifies students so much that they cannot discern, much less finish, the key tasks that must be done.

In the early 2000s, my law school experienced a dip in bar passage rates. A blue-ribbon faculty task force was created to study the issues. Their conclusion: multiple factors impact bar passage—low law school G.P.A., working during the bar preparation period, failure to finish course requirements on time, lack of motivation, lack of finances, anxiety. There is not one major reason why a graduate fails the exam and; thus, there is not one magic cure-all to boost a law school's bar passage rate.

As the faculty was trying to reach a consensus on what to do, a certain curmudgeon on the faculty decided that he knew what to do about it and was just going to do it. He decided to have refresher lectures on topics. But he also recognized that skill development—taking essay and multiple choice-style questions—was critical. He stopped by my office and asked me “to grade a few essays.” That started me on my path towards identifying my passion—teaching, coaching, counseling, and helping students prepare for and pass their chosen bar examination. To date, I have taught more than fifteen hundred students how to prepare for the bar examination, I have graded their essays and MPTs, I have worked on strategies and tactics to attack questions in each specific topic, I have created mind-maps<sup>147</sup> to assist in issue identification and memorization of rules, and I have tried to keep their anxiety at a healthy level.

Each student has her own story. Certain similarities emerge, but many have unique experiences. I choose some of these stories to share here and

---

147. WANDA TEMM, *CLEARING THE LAST HURDLE: MAPPING SUCCESS ON THE BAR EXAM* (2d ed. 2018).

to convey to each bar prep class to reinforce the lessons I want them to learn:

- \* preparing step-by-step to see how these early steps are then used at crunch time;
- \* practicing essay skills to learn how to structure an analysis and to go step-by-step through an analysis, ensuring sufficient detail in their rule statements and in their application of the rules;
- \* avoiding procrastination;
- \* dealing with anxiety, which is often crippling;
- \* taking the necessary breaks to maintain emotional health and to deal with stress;
- \* taking care of physical needs to be in the best shape possible on test days; and
- \* dealing with personal crises that arise.

#### DEALING WITH “NORMAL” STRESS

In my over fifteen years of teaching bar prep, I have seen all kinds of crises. First, everyone experiences some form of stress. When it reaches a peak—that feeling you have incurred massive debt for a legal education to reach your goal of becoming a licensed attorney that is all for naught due to the bar exam—predictable reactions occur. These “normal” reactions include anxiety, sleepless nights, panic, crying, sobbing, etc. At the beginning of each bar prep season, I forewarn my students that it will come and it’s perfectly normal. It’s not a question of whether they will experience heightened anxiety, but a question of when. Continuing to study in a state of heightened anxiety is virtually worthless. My tried-and-true remedy? Take a break from studying. Take regular breaks, including a day off every few weeks. Bar preparation is a marathon, but long-distance runners have scheduled breaks in their training and bar students should, too. That break must be a true break—no thinking that they should be studying. Instead, spend time with family and friends, enjoy the latest movie, or play that round of golf. Then, when they hit the books again, the nerves will be calmer.

Other students have crippling anxiety. While I have a counseling degree and training, I know enough to know when I am in over my head. I

refer students for professional help. I tend to focus on traditional anxiety treatment, such as counseling. But I have had two students who sought a rather non-traditional method—hypnosis. Both students had failed the exam at least once. Both felt their anxiety was a major factor in their performance. Traditional counseling had not worked for them. Each student's counselor recommended hypnosis. Now, I am a true skeptic of hypnosis. But each student experienced immense relief. Part of their experience was how to deal with stress while they were studying and the other part of their experience was on dealing with the stress during the exam itself. Both passed the exam with a sizeable margin. I am still a skeptic; but hey, it worked for them!

One year, long after the results were posted, I asked my students to share with me how they got through their stress. I was inundated with responses. Here are just a couple.

- \* I told myself that I wasn't alone in how I was feeling. That probably 75 percent of people were feeling exactly the way I was feeling. That the feelings of being overwhelmed, stressed, and defeated were not unique to me. Then, I thought of all those people in years past [who] must have felt this way as well, but stuck with it and passed the bar exam. I also thought that if I didn't pass the bar exam and that was the biggest problem I had in my life, that I was one lucky individual who will just have to figure out another plan of attack.
- \* I can vividly recall feeling like there was no way that I was going to pass. I even remember the subject I was studying (Property). My wife suggested that I take a break, but the thought of taking a break and losing out on valuable study time made me more stressed. So, I spent several hours frozen by stress, where I wasn't studying but wasn't relaxing either. Then I remembered you said that it was okay to take a break. I took the rest of the day off and just relaxed.

My words of wisdom are: It's okay to take a break. If you're feeling stressed and overwhelmed, you won't be able to study effectively. Don't try to tough it out—that will probably only make things worse. Instead, take the rest of the day or evening off. Relax. And come back the next day fresh.

DEALING WITH PERSONAL CRISES UNRELATED  
TO PREPARING FOR THE EXAM

These personal crises run the gamut from relationship issues, babies, illness of themselves or others close to them, to the death of a loved one. One student simply could not handle the death of his dog. At first, I could not understand why this was having such an impact. I realized then that this student really had no other support system. He had been a loner in school and did not have family nearby or that were particularly understanding of the intense study necessary for bar preparation and its resultant stress. I could empathize then. I suggested delaying the exam and he decided to take it and failed. He passed the second time.

Relationship issues may even venture into sabotage. A student's spouse threatened to leave her every semester or so throughout law school, not coincidentally around finals. He bumped up his manipulation during bar prep. He had access to her phone and kept checking her texts. He questioned everywhere she went and who she was meeting. Apparently, he thought she was being unfaithful. He locked her out of the house and took the children to his parents without telling her where they were. He filed for divorce days before the bar exam. During this entire time, she tried to focus on the tasks she needed to accomplish each day. While not all tasks were completed, she focused on the most important ones and had a good support system with friends. She passed and kicked him out of the house!

A married couple had worked at the same large law firm before going to law school. They decided that she would go to law school first while he supported her. Then, he would go to law school, while she supported him. She did a federal judicial clerkship for two years and then was an associate at that same large law firm. He was a summer associate for that firm and then was to be an associate after the bar exam. They would be working in the same section of the firm, but for different partners.

The wife was a high-strung individual throughout law school. A perfectionist, she always had high anxiety and frequently sought assurance. During bar prep, she was a regular visitor to my office. His personality was not exactly the opposite, but he differed in significant ways. More laid-back and extroverted, he made many friends and was a leader in everything he did. While she did well in school and was in the top ten, he was number one in the class every semester with seemingly much less effort and definitely with much less anxiety.

About ten days before the exam, she suggested that he take a break and they go to a restaurant. She then dropped the bomb. She was filing for divorce. He was to move out of their townhome immediately. He must find another job and not come to the firm where she was practicing. Oh, and she was keeping the dog. He was stunned. He did not see it coming, although he later admitted things had been rocky. All of her demands meant changes not only to his vision of his life with her, but to his career. He immediately sought advice. My advice was to tell her that he would address all of these issues after the bar exam. He was not moving out. She could, if she wanted. He was going to the same firm. He was going to keep the dog. They'd discuss the townhome later.

He was on the roller-coaster of emotions that many individuals experience while divorcing or during the breaking-up of a long-term relationship. He swung back and forth from concentrated studying to sobbing. The blessing—he had a wonderful support system. Not only a group of friends that rallied around him, but family with whom he could talk about everything. He was a daily visitor to my office. He pondered whether to postpone taking the exam. I encouraged him not to. While I don't like to think about relationships as a win-lose proposition, I did tell him that not taking the bar exam at all meant she succeeded in sabotaging his career. I reminded him that even though he was number one in the class, he had still done every single task I had asked of him and the only thing he needed to do was to memorize as much law as he could and try to do that in one-hour increments. Try to focus for one hour and then take a break to deal with emotions.

Later, he told me that studying for the bar in those last ten days is what kept him going. While he had the potential to ace the exam and be the top scorer in every category, he did not score extremely high, but he did pass the exam with a significant margin despite everything that had happened. He did move out of the townhome as they agreed to sell it and split the equity. He did start at the firm and he did keep the dog. He learned very quickly that she was being unfaithful with a partner in the firm. Unfortunately, the partner was in the office next door to the student's—no doubt the reason his wife dropped the bomb when she did. He stayed with the firm about nine months before he left for a position in another city. We keep in touch and he's doing great with a job he loves and a family he adores.



Illnesses and death affect individuals so differently. For one, the death of a grandparent is devastating emotionally and for others it seems a brief interlude of grief with that grief not impeding their study. Illnesses vary as well, from a cancer diagnosis to sudden surgery for appendicitis. Whether those students take the exam depends on their individual needs and goals, whether a delay would completely forestall those goals, and the timing of the illness/death. A surgery in the first couple of weeks is quite different from surgery the week before the exam. The key to passage for these students is whether they have been preparing step-by-step before the event happens. If they have, they are usually fine. If not, then I may recommend delaying. They don't necessarily take me up on it, but I don't hesitate to give that advice if it is warranted.

#### DEALING WITH EXAM DAY CRISES

These are my game day instructions:

Be prepared. Have everything together and ready to pick up and go that morning— photo identification; any bar paperwork required to get in the room; laptop; power cord; pens, pencils, and ear plugs (unless prohibited or the board of bar examiners provide for you); a sweater or light jacket in case the room is cold (if allowed); and anything else you might need that is allowed. Leave your cell phone in your hotel room or car. You don't want to have to run back to your room or car to get something. Your heart rate will sky-rocket and you won't be as calm when the exam starts.

A colleague had a potential disaster occur. He was waiting in line to be let into the room. Everyone was tense, naturally. That tension swelled when an applicant collapsed and seemed to be having a seizure. Some applicants just stepped over him. Others motioned for the bar staff to assist. He could feel his own heart rate increase. As my colleague got to the front of the line, he was not allowed into the room and was told to step aside and wait. He waited until everyone else was in the room and then they started the exam! He wasn't in the room! What was happening? He nearly fainted. The proctor told him his law school failed to submit some paperwork and he would not be allowed to take the exam. The examiners had sent him a letter at his parents' address and his parents had been out-of-town. He asked to speak to a supervisor and then had to track her down in another part of

the hotel. She let him take the exam in a separate room and she gave him the full time to take the exam. He was given a warning that the paperwork must be received within a few days. He then had to calm his heart rate before he could start. This is less likely to occur with online registration and submission of paperwork, but the lesson is clear. Don't give up. Try to be calm and wait for a final word from someone with the authority to give it.

Another colleague experienced a calamity that would have sunk most people. His car broke down and he was staying with friends. The friends would not be there to take him anywhere on the days of the exam. Public transportation was available, so no problem. He waited and waited at the bus stop. No bus. He started running towards the conference center, even though it would take him about three hours to run the entire way. But he saw a bus on the horizon. He ran faster, but just missed it. He watched it and tried to catch up, but again failed. He finally caught a different bus that would drop him off at a stop a few blocks away from the conference center, but he still took it. He arrived at the registration line literally nine minutes before the exam began. Soaked, out of breath, unkempt, and needing a shower, he must have been a sight. He received quite a lecture, but was allowed to take the exam.

He sat across from a woman who was panting and sweating more than he did. She was nine months pregnant and her water had just broken. She ultimately left with EMTs after about two hours. With all that had happened, he kept on going and found a peace within himself for the rest of the exam. He decided that he had the power to choose how to react and respond to this situation. He decided to keep pedalin' because what was the worst thing that could happen? Many things in life are much worse than failing the bar exam.

#### HAVING A MANTRA HELPS

I tell my bar prep students that having a mantra can help deal with stress because it keeps you grounded and not worried about failure. Here are a few that have worked for others:

- \* I kept reminding myself that the exam was only testing to ensure I have basic competency. I only need to be proficient. If I put in the time and learned the foundational basics, I would be able to make it through.

- \* When I felt like I wouldn't pass the bar, the one thing I would repeatedly tell myself was "I can do this. I put in the hours. I studied. I can do this."
- \* Just keep on going. If you don't quit, you'll win!
- \* I kept telling myself that I worked hard and did everything I was supposed to do. Thousands of people passed the bar before me and thousands will pass in the future; I will pass, too.
- \* When I was feeling like a failure, I would stop studying and put in a motivational movie. My favorite choice was one of the Rocky movies. In *Rocky Balboa*, Rocky says to his son "It ain't about how hard you hit, it's about how hard you can get hit and keep moving forward . . . that's how winning is done."
- \* "Trust the process." By trusting the process of studying, no task was too big. By narrowing my focus on the next task or study tool in the process, success was inevitable.
- \* If you take the bar exam seriously, you will pass.
- \* I had to stop and remind myself that I did not HAVE to take the bar, I GOT to take the bar. There are many people, even classmates, who were not going to get that opportunity. I used it as a tool to keep myself motivated and appreciate that the hard work was also a privilege.
- \* I really am not going to die if I fail. Failure was always a motivating factor, but never a paralyzing influence because I had my friends around going through it with me.
- \* Failing isn't the end of the world, my wife will still love and support me, my family will still love and support me. I will be able to take it again.
- \* When I was really feeling sorry for myself (thank you Property questions) I just thought of all of the worse things that people go through. The hardships that other people overcome, like cancer or divorce or a disability. And it really just helped to keep things in perspective. In the grand scheme of life this is 2 days and if other people can battle through MUCH worse things, then I have NO reason whatsoever to get down on myself, complain, or think negatively.

- \* One day on a break from Property questions that I had just bombed, I watched this really uplifting video about a developmentally disabled boy and his dog named Haatchi. I actually cried and afterward was mad at myself for getting down on myself about a test. Any time I had any doubt after that I just thought about that video and realized I could do this and just kept moving forward.
- \* From a repeat taker, “Am I a victim, or am I a survivor?”

Teaching bar prep students has been immensely rewarding. The teaching dynamic is drastically altered as the teacher is not the ultimate evaluator. The teacher is now a coach. A coach teaches skills, motivates players, builds a sense of team, encourages her team when they are down on themselves, and kicks butt when appropriate. And that is what teaching bar prep is all about. It is a team effort—us versus them. I tell every single class that my goal is for each of them to achieve their goal. Their goal is to practice law and that requires passing the bar exam. I strive for each of them to do just that.