



## ARTICLE

# Ancillary Skills and Law School Success

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The law school admissions process identifies a group of people that to a large degree have the same level of academic capability. Most students are clustered around a given set of criteria seen as predictive of law school and professional success, although there are certainly outliers on both ends of the spectrum.<sup>1</sup> But if students are clustered around certain criteria, what makes the difference in each student's ultimate performance in law school?<sup>2</sup>

Obviously, a ton of things, many of them particular to each student, with variables both related and unrelated to law school or even academics. This article assumes that some of what influences a student's ultimate law school performance are "ancillary skills." Ancillary skills are skills that affect performance or address stressors that law students commonly face but are not primarily academic or intellectual in nature. In fact, most of them are physiological, psychological, and organizational. Despite the impact these skills can have on performance, most law students are never advised on the effect they can have or instructed how to use them, outside of a particularly good and caring legal writing or academic success professor.

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<sup>1</sup> See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 *LAW & SOC. INQUIRY* 620–61 (2011).

<sup>2</sup> Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success: A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes*, 13 *J. EMPIRICAL LEGAL STUD.* 205 (2016).

Given the impact these skills can have on performance and how few law students are even aware of them, they warrant more than a sidebar in a lecture. This article seeks to fill that gap, particularly for students of color who often lack mentors in the profession.<sup>3</sup>

A thorough discussion of a variety of ancillary skills is beyond the scope of this article. Instead, this article focuses on three things. First, it provides a definition of ancillary skills and suggests a method for incorporating them into legal writing curricula in a way that has the additional benefit of developing rapport with students, another useful aspect of these skills. Second, the article provides a list of such skills, how each is useful, and some initial resources discussing the scientific base for each skill. The article concludes with two examples of ancillary skills my students have found particularly helpful.

## 1. Teaching Ancillary Skills in the Classroom: Strategy and Benefits

Giving students advice that makes their lives easier has three wonderful consequences. First, students perform better by removing barriers to performance that are otherwise unaddressed by law school curricula. Second, and more important to the discussion at hand, it shows the students that the professor cares about more than how they perform in their legal writing course, which in turn helps build the rapport crucial to teaching legal writing. Third, law students from underrepresented demographic groups often feel isolated and unsupported, particularly those without close mentors from professional disciplines. Presenting ancillary skills in the manner suggested below can mitigate those feelings, although it will likely not eliminate them.

Professors can slip ancillary skills into their lectures in a way that takes only four or five minutes per week. Moreover, the method of slipping in the ancillary skills acts as an additional way to build rapport by being responsive to immediate needs and concerns, an essential aspect of teaching legal writing.

The first step is to be responsive to the students' needs in the moment. Information not relevant to something they need at that moment will just be lost or ignored. Worse, suddenly presenting information to students without some indication of need can backfire by giving the impression the professor is out of touch.

Instead, start each week, or even each class, by making a general inquiry about how the students are doing. This open-ended inquiry gives students the

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<sup>3</sup> Melinda S. Molina, *Role Models: Theory, Practice, and Effectiveness Among Latina Lawyers*, 25 J. C.R. & ECON. DEV. 125 (2010).

opportunity to tell the professor what their needs are in the moment. Student needs will not be the same over the course of a semester. As the semester progresses, many will begin to feel overwhelmed by workload and later anxious about midterms. Then, of course, there are final exams to think of. This cycle repeats in the spring semester, but legal writing courses typically add oral arguments to the stress, and public speaking is one of the most common and biggest fears people have.

Giving students a forum to vent these feelings and validating them goes a long way toward building student rapport. Being responsive to student needs in the moment is another way to show students the professor is listening to them. Doing things that make a person feel listened to is a tried-and-true way to make that person feel valued. Listening to student concerns about things unrelated to legal writing shows that the professor cares about more than how students are doing in legal writing.

Because the challenges of law school are not new, students bring up certain topics every year. "I'm exhausted from lack of sleep." "I'm stressed out about finals." "Speaking in public terrifies me." "I can't keep up with all the assignments." "I'm getting burned out." Because these same issues come up every year, professors can build a re-useable collection of ancillary skills responsive to each issue.

Professors can decide what skills are useful and how they are useful by drawing on their own experience as a student, a practitioner, and a professor. That said, explanations of why and how each skill works should commonly include scientific support and resources for further reading. This takes the perception of ancillary skills by students from the realm of "boring war story" or "random, disconnected admonition" to usable, verified wisdom.

A word of caution. Avoid topics that stray into areas best left to other professionals, like medical doctors or psychologists. The types of advice and practices from your commonly available how-to, self-improvement, or healthy living book should be fine.

## 2. Ancillary Skills List

The following tables provide a starting point for possible ancillary skills topics. These skills have been organized into skills related to physiology, skills related to psychology, and skills related to efficiency and organization, although some skills could appear in more than one category. The skills are labeled according to the problem they address. References to support the efficacy of each

skill appear in footnotes. These tables are obviously not exhaustive; many other problems and related skills can be added.

### 2.1. Skills Related to Physiology

PROBLEM	RELATED SKILL
Insufficient time to sleep before waking. <sup>4</sup>	- Wake at the peak of a REM cycle. <sup>5</sup> Avoid waking up in the middle of a REM cycle.
Lack of sleep previous night. <sup>6</sup>	- Stay hydrated the next day. <sup>7</sup> - Stick to high protein foods; avoid carbs. <sup>8</sup> - Be strategic with caffeine intake when there is a morning event or deadline the next day. <sup>9</sup>

### 2.2. Skills Related to Psychology

PROBLEM	RELATED SKILL
Anxiety related to a specific event or deadline. <sup>10</sup>	- Box breathing. <sup>11</sup> - Visit the location of the event beforehand. <sup>12</sup> - Use cognitive behavioral therapy techniques to replace exaggerated negative fears with healthy realistic thoughts and coping strategies. <sup>13</sup>

<sup>4</sup> Lack of sleep negatively affects decision making, cognitive performance, moods, and mental health. See Christopher M. Barnes & Christopher L. Drake, *Prioritizing Sleep Health: Public Health Policy Recommendations*, 10 PERSP. ON PSYCH. SCI. 733, 733 (2015). Sleep-deprived people are found to be less effective in decision-making. *Id.*

<sup>5</sup> See C. M. Shapiro & M. J. Flanagan, *Function of Sleep*, 306 BRIT. MED. J 383–85 (1993).

<sup>6</sup> See Barnes & Drake, *supra* note 4.

<sup>7</sup> See *Shorter Sleep May Cause Dehydration*, HARVARD HEALTH PUBL'G: STAYING HEALTHY BLOG (Feb. 1, 2019), <https://www.health.harvard.edu/staying-healthy/shorter-sleep-may-cause-dehydration>; Nathalie Pross, *Effects of Dehydration on Brain Functioning: A Life-Span Perspective*, 70 ANNALS OF NUTRITION & METABOLISM 30 (2017).

<sup>8</sup> See Rachel R. Markwald et al., *Impact of Insufficient Sleep on Total Daily Energy Expenditure, Food Intake, and Weight Gain*, 110 PROC. U.S. NAT'L ACAD. SCI. 5695 (2013).

<sup>9</sup> See *Shorter Sleep*, *supra* note 7.

<sup>10</sup> See John Montopoli, *Public Speaking Anxiety and Fear of Brain Freezes*, Nat'l Soc. Anxiety Ctr. (Feb. 20, 2017), <https://nationalsocialanxietycenter.com/2017/02/20/public-speaking-and-fear-of-brain-freezes>.

<sup>11</sup> See Michael J. Lauria et al., *Psychological Skills to Improve Emergency Care Providers' Performance Under Stress*, 70 ANNALS OF EMERGENCY MED. 884 (2017).

<sup>12</sup> See Jerome Kagan, et al., *Initial Reactions to Unfamiliarity*, 1 CURRENT DIRECTIONS PSYCH. SCI. 171 (1992).

<sup>13</sup> Larry Cunningham, *Using Principles from Cognitive Behavioral Therapy to Reduce Nervousness in Oral Argument or Moot Court*, 15 NEV. L.J. 586, 601-04 (2015).

	<ul style="list-style-type: none"> <li>- Spend time visualizing yourself succeeding at the stress-producing event every day as you prepare.<sup>14</sup></li> <li>- Listen to your favorite song that has a fast beat shortly before the event.<sup>15</sup></li> </ul>
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2.3. Skills Related to Efficiency and Organization

PROBLEM	RELATED SKILL
Large amount of studying required	<ul style="list-style-type: none"> <li>- Find the time of day you are most productive. Study your most difficult subject then.<sup>16</sup></li> <li>- Identify the time of day you are least productive. Schedule tasks unrelated to school during this time, like chores or working out.<sup>17</sup></li> <li>- Study in a quiet environment.<sup>18</sup></li> </ul>
Large amount of reading required	<ul style="list-style-type: none"> <li>- Read paper copies of text; avoid reading difficult material on a screen.<sup>19</sup></li> </ul>

<sup>14</sup> See Marilyn E. Gist & Terence R. Mitchell, *Self-Efficacy: A Theoretical Analysis of Its Determinants and Malleability*, 17 ACAD. MGMT. REV. 183 (1992); Debra Austin, *Windmills of Your Mind: Understanding the Neurobiology of Emotion*, 54 WAKE FOREST L. REV. 931, 971-72 (2019).

<sup>15</sup> See E. Glenn Schellenberg, *Music and Cognitive Abilities*, 14 CURRENT DIRECTIONS PSYCH. SCI. 317 (2005).

<sup>16</sup> See Thomas Oppong, *Here's How Working During Different Times of the Day Affects Your Productivity*, THRIVE GLOBAL (2019), <https://thriveglobal.com/stories/heres-how-working-during-different-times-of-the-day-affects-your-productivity>.

<sup>17</sup> *Id.*

<sup>18</sup> See Schellenberg, *supra* note 15, at 317–20.

<sup>19</sup> Lauren M. Singer & Patricia A. Alexander, *Reading Across Mediums: Effects of Reading Digital and Print Texts on Comprehension and Calibration*, J. EXPERIMENTAL EDUC. 1 (2016).

### 3. Three Examples of Ancillary Skills Resources

#### 3.1. *How to Sleep When You Cannot Get at Least 7.5 Hours . . . and Even if You Can*

A person cannot perform well if physically exhausted from lack of sleep.<sup>20</sup> Lack of sleep directly affects a person's ability to think efficiently and accurately.<sup>21</sup> This presents a kind of Catch-22 for law students and lawyers alike. Law school and law practice often require late nights and early mornings; yet law school and law practice also require clear-headed thinking. This makes knowledge about how to mitigate the effects of limited sleep valuable.

No one is going to feel 100% on less than a full night's rest. However, most people can recall a time when they got less than a full night's rest and still felt more rested than they thought they should. Conversely, most people can recall a time when they got a full night's rest, but still felt tired for some reason. There is a science-based explanation, and with practice, it is possible to make use of this phenomenon.<sup>22</sup>

In short, make sure you sleep in multiples of 90 minutes.<sup>23</sup> For instance, after falling asleep, try to wake up at 1.5 hours (90 minutes), three hours (180 minutes), 4.5 hours (270 minutes), six hours (360 minutes), etc. People feel far less tired than they otherwise would if they wake up within 15 or 20 minutes of the end of any one of those 90-minute periods.<sup>24</sup> The converse is also true. People feel far more tired than they otherwise would if they wake up in the middle of one of those 90-minute periods.<sup>25</sup>

Here is why this works. Everyone goes through a repeating, 90-minute cycle when they sleep.<sup>26</sup> At the beginning of the cycle, a person is in a light sleep. As time progresses, the sleeper goes into deeper levels of sleep, from which waking is more difficult. Deepest sleep occurs in the middle of the 90-minute cycle.

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<sup>20</sup> Receiving less than recommended amount of sleep on a consistent basis has negative implications for mental health, physical health, work performance, and safety. *See Barnes & Drake, supra* note 4, at 733.

<sup>21</sup> Sleep deprived people are found to be less effective in decision-making. *Id.*

<sup>22</sup> *See Shapiro & Flanigan, supra* note 5.

<sup>23</sup> Sleeping in multiples of 90 minutes will ensure that you complete the non-REM sleep cycles and wake during an episode of REM sleep that is a much lighter sleep. *Id.*

<sup>24</sup> This is because stages three and four are categorized as deep sleep. Waking up before this occurs will ensure that you are in a lighter sleep from which it is easier to wake. *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

During the second half of the cycle, the sleeper returns to a light sleep. Graphing the depth of a person's sleep during the whole process looks like a sine wave.<sup>27</sup>

As you might have guessed, timing when you wake up is the tricky part. There are two primary approaches. The first is with just an alarm clock. First, figure out the total amount of time you have to sleep. Then, subtract about ten minutes from that amount to give yourself time to fall asleep.<sup>28</sup> Subtract more time if you think you will need more time to fall asleep, but bear in mind that you will likely already be sleep deprived when using this technique. Next, see how many full 90-minute cycles will fit in the remaining time you have to rest. Finally, set your alarm for the number of full 90-minute cycles you have time for plus ten minutes to fall asleep.

The other way to time your wake up is with smartphone apps specifically designed to wake the sleeper at the end of the last 90-minute cycle before the sleeper has to wake up. These apps monitor your movement to see when you are in your lightest sleep. Several are available.<sup>29</sup>

Two closing notes. First, some of the apps for timing wake ups work poorly with memory foam beds.<sup>30</sup> Second, this technique can be used even when you have enough time for a full night's rest to wake up faster and more clear-headed, generally.

### 3.2. *How to Deal with Performance Anxiety*

Performance anxiety is anxiety associated with an upcoming activity that is performance based, particularly when that performance is done in front of other people.<sup>31</sup> Two common sources of performance anxiety are exams and public speaking, two things law students do frequently. Consequently, techniques to deal with performance anxiety are valuable. One such technique is box breathing.

Box breathing is a technique used to reduce anxiety and refocus the mind in stressful situations.<sup>32</sup> It is used by doctors, nurses, top athletes, and even Navy

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<sup>27</sup> A sine wave is simply a waveform that moves up and down periodically.

<sup>28</sup> The average person takes 30 minutes to fall asleep. Shapiro & Flanigan, *supra* note 5.

<sup>29</sup> Apps like Sleep Cycle, Sleep Time, and Pillow.

<sup>30</sup> Movement is harder to detect with a memory foam bed, which may lead to inaccurate results.

<sup>31</sup> Ian Ayres et al., *Anxiety Psychoeducation for Law Students: A Pilot Program*, 67 J. LEGAL EDUC. 118 (2017).

<sup>32</sup> See Lauria et al., *supra* note 11, at 884–90.

SEALs during their legendary training and selection process and during field operations.<sup>33</sup> Box breathing taps into the parasympathetic nervous system to trigger the mind to calm down.<sup>34</sup> Here's how it is done.<sup>35</sup>

First, blow all the air out of your lungs. Second, breathe in for a count of four seconds and completely fill your lungs. Third, hold your breath for four seconds. Fourth, blow out for four seconds, and make sure you blow ALL the air out of your lungs. Last, sit with all the air out of your lungs for a count of four seconds. Repeat three to four times in a row, about four times a day. Re-evaluate your anxiety level after each session.<sup>36</sup> This technique requires practice, so practice before you actually need it. Dizziness is common when first using box breathing, so sit down when used.

### 3.3. *How to Study More Efficiently and Remember More of What You Read*

It is easy to see how comprehending ten percent more of what one reads would be valuable to a law student. Reading material printed on paper instead of on a screen does exactly that for the reader.<sup>37</sup> Unfortunately, students who have grown up reading mostly digital media (“digital natives”) strongly prefer reading in a digital format. These digital natives also incorrectly think their reading comprehension is better in a digital format.<sup>38</sup>

Most law students today qualify as “digital natives.” A law student’s performance depends on mastery of often complex and nuanced concepts. Although this phenomenon has not been studied in law students, the complex and nuanced nature of various case facts and legal concepts likely correlates to a need for the detailed reading best done in print.

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<sup>33</sup> See Erin Bunch, *Navy SEALs Use a Technique Called ‘Box Breathing’ to Relieve Stress and So Can You*, WELL+GOOD (Apr. 4, 2021), <https://www.wellandgood.com/box-breathing>.

<sup>34</sup> It does this by slowing down your breathing to relax, which then increases your oxygen intake and releases tension while it stimulates the vagus nerve (the longest nerve in the body, which starts in the brain). *Id.*

<sup>35</sup> Caveat: consult your doctor first before attempting box breathing if you have a medical condition related to breathing, like asthma.

<sup>36</sup> After doing this technique for approximately five minutes, one should be calmer and able to think more clearly, which should lead to lower anxiety levels. *Id.*

<sup>37</sup> Singer & Alexander, *supra* note 19, at 10.

<sup>38</sup> *Id.* at 3, 5–6, 11–12.