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TEACHING REMEDIAL PROBLEM-SOLVING SKILLS TO A LAW SCHOOL'S UNDERPERFORMING STUDENTS

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INTRODUCTION

This article describes a course called the "Art of Lawyering" developed by the Texas A&M University School of Law to help the bottom quarter of the 2L class develop the critical-thinking and problem-solving skills they should have learned in their first year of law school. Students in the bottom quarter of the class at the beginning of their 2L year are most at risk for failing the bar exam after graduation. The Art of Lawyering gives these students the structural framework necessary to solve problems like a lawyer, improve their performance in law school, and pass the bar exam.

The course, in its current iteration, is remarkably effective, producing a significant increase in students' grade-point averages. This article describes the theory, methods, and resources behind the course, and it includes a detailed lesson plan so that other schools can replicate the course and realize similar success.

I.   DEFINING THE PROBLEM: UNDERPERFORMING STUDENTS WHO FAIL TO MASTER BASIC PROBLEM-SOLVING SKILLS IN THE FIRST YEAR OF LAW SCHOOL.

Some students fail to master basic problem-solving skills in their 1L year. Of those students, some are academically dismissed.[1] The rest languish at the bottom of the class. Historically, at Texas A&M (TAMU) and its predecessor, Texas Wesleyan,[2] the students in the bottom third after their 1L year are the students most likely to fail the bar exam after graduation.[3]

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[1] TAMU dismisses students who fail to achieve a GPA of at least 1.90 in the first semester or maintain a GPA of at least 2.33 thereafter. *See* TEXAS A&M SCHOOL OF LAW STUDENT HANDBOOK 2015–2016 § 9.2, http://law.tamu.edu/docs/default-source/current-students/Stu dent-Handbook.pdf?sfvrsn=2.

[2] Texas A&M University acquired the Texas Wesleyan School Law in August 2013. *See* Martha Neil, *Done Deal: Texas A&M Buys Wesleyan Law School After ABA OKs Sale*, ABA J. (Aug. 12, 2013, 11:02 PM), http://www.abajournal.com/news/article/done_deal_texas _am_buys_wesleyan_law_school_after_aba_oks_sale/. For the sake of simplicity, this paper will refer to both entities collectively as TAMU.

[3] In 2010, TAMU's predecessor commissioned a statistical analysis of the school's graduates who failed to pass the Texas bar exam on the first try. *See generally* MARCEL SATSKY KERR, PREDICTING BAR PASSING FROM ADMISSIONS CRITERIA FEBRUARY 2004 THROUGH

To some extent, the students who comprise the bottom quarter of a given law school are a function of the school's admission standards. Schools whose students have lower LSATs and undergraduate GPAs can expect students with weaker critical-thinking skills. And the weaker a student's critical-thinking skills, the more likely that student is to land in the bottom quarter of the class. Thus, lower-ranked schools that draw less-qualified applicants can expect to have a bigger problem with their students' ability to reason and solve legal problems.

But the problem of underperforming students who cannot "think like a lawyer" is not limited to lower-tier law schools—the problem is even getting worse for higher-ranked schools. The current generation of law students, schooled in the No-Child-Left-Behind era, is as a whole less academically qualified than students who attended law school in the 1970s and 1980s.[4] Further, law school enrollment has plunged in the last three years from an all-time high in 2010 to the lowest level in thirty years in 2013.[5] And applications continue to drop: as of August 2014, applications for fall 2014 fell 8.2 percent from the previous year.[6] As applications fall, so do admissions standards at some schools.[7]

However, students with lower admissions indicators can learn to perform as well on lawyering tasks as students with higher indicators, but imparting those skills requires additional effort on the part of the academy. Thus, even higher-ranked schools need to address the critical-thinking and problem-solving deficiencies of students.

II.   WORKING TOWARD A SOLUTION: "THE ART OF LAWYERING" CLASS

In 2011, after analyzing the school's bar-passage data and determining that students in the bottom quarter of the class after their 1L year would likely fail the bar after graduation, TAMU's faculty voted to create a mandatory, lockstep

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JULY 2010 (on file with author). The analysis showed that nearly half of students in the bottom third of the class by GPA failed the bar exam on the first try. *Id.* at 3, 7.

[4] Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 44–45 (2013) (identifying causes of declining student qualifications).

[5] According to the ABA's Section of Legal Education and Admission to the Bar, 52,488 students enrolled in the 2010–2011 academic year—an all-time-high—but only 39,675 enrolled in the 2013–2014 academic year—the lowest number since 1978. Mark Hansen, *Law School Enrollment Down 11 Percent This Year Over Last Year, 24 Percent over 3 Years, Data Shows*, ABA J. (Dec. 17, 2013, 2:30 PM), http://www.abajournal.com/news/article/law_school_enrollment_down_11_percent_this_year_over_last_year_data_shows.

[6] As of February 28, 2014, 39,334 applicants had submitted 271,556 applications, a 12 percent decline in applicants and a 12.5 percent decline in application from 2013. *Three-Year ABA Volume Comparison*, L. SCH. ADMISSIONS COUNCIL, http://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/three-year-volume-2014.pdf (last visited Dec. 29, 2015).

[7] *See, e.g.,* Jennifer Smith, *U.S. Law School Enrollments Fall*, WALL ST. J. (Dec. 17, 2013, 7:41 PM), http://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/three-year-volume-2014.pdf.

class for such students in their 2L year.[8] The new course received the euphemistic name "The Art of Lawyering."[9] The school offered the course as an elective in fall 2012 and spring 2013; the first mandatory sections were offered in fall 2013.

Offering the Art of Lawyering as an elective for two semesters before it became a mandatory, lockstep class for the bottom quarter served two important purposes. First, it gave the school time to develop a lesson plan and determine (to some extent) what methods worked or did not work for teaching remedial problem-solving skills.

Second, and more importantly, open enrollment for the first two semesters resulted in a mixture of students—many underperforming students (whom the school strongly encouraged to register for the class), but also some of their higher-performing classmates. Comparing the problem-solving skills of students across a spectrum of abilities helped the school identify and target the deficiencies holding back the less-proficient students. In other words, what were the better students doing that their underperforming colleagues were not?

Some students, of course, find themselves in the bottom quarter of the class for reasons unrelated to academic deficiencies: the end of a relationship or the death of a loved one just before exams, chronic illness, and so on. Obviously, the class does not address those problems. But even these students report that taking the Art of Lawyering improved their analytical and problem-solving skills.

While every student is different, underperforming students' academic deficiencies tend to fall into several broad categories. First, they tend to have a poor grasp of the problem-solving process and workflows. A typical comment from underperforming students is, "I know the material, but I freeze on exams because I'm not sure what to do first."

Second, even when underperforming students adequately process a problem and arrive at an answer, they tend to have difficulty expressing that answer in a way that will make sense to a reader in a hurry—that is, a law professor or bar-examiner grading many exams, or a judge wading through a stack of briefs. Though this problem is sometimes rooted in deficiencies in basic writing skills—grammar, syntax, and punctuation—it most often grows from weak organizational skills.

Third, some underperforming students write adequate or even superior essay-exam answers but struggle with multiple-choice exams. Answering multiple-choice questions is not a key lawyering skill, but it is key to passing some law-school courses and all bar exams. In the end, the process used to answer a multiple-choice question is the same as the process used to analyze any other

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[8] *See* TEXAS A&M SCHOOL OF LAW STUDENT HANDBOOK 2015–2016 § 3.6, http://law.tamu .edu/docs/default-source/current-students/Student-Handbook.pdf?sfvrsn=2.

[9] The name "Art of Lawyering" was the brainchild of Everett Chambers, J.D., who at the time was director of TAMU's academic-support program. Mr. Chambers now the Director of Institutional Programs at BarBri, Inc. He was instrumental in creating the Art of Lawyering class and developing its early lesson plans.

legal question; the only difference is the format of the answer: picking the correct answer from a list versus writing an essay to explain the correct answer.

Fourth, most underperforming students have poor time-management skills. If given, say, ninety minutes to answer an MPT-type problem,[10] underperforming students will squander time writing detailed factual summaries of the problem's precedent cases.

Finally, some underperforming students lack the basic skills necessary for academic success. For example, they may suffer from slow reading speed and comprehension, poor note-taking skills, a careless attitude toward following instructions, and extreme procrastination.

The Art of Lawyering addresses all of these deficiencies. Most underperforming students have a combination of deficiencies, and part of the challenge is determining how to help each student on a case-by-case basis.

III. COURSE OBJECTIVES AND METHODS

The ultimate goal of the Art of Lawyering is to identify and remedy whatever deficiencies prevent the students from performing at a higher level. More specifically, the class teaches students to solve problems the way lawyers solve problems, and apply those techniques to law school exams, the bar exam, and, eventually, the practice of law.[11] The class is not strictly academic support; nor is it a rehash of the 1L legal analysis, research, and writing (LARW) classes. But it does combine aspects of both of those classes.

The Art of Lawyering's basic plan is simple: the students solve problem after problem of increasing complexity. Repetition is the crux of the course's method; the more problems the class can work through, the better. Unlike the five or six problems spread over two semesters in first-year legal analysis and writing classes, Art of Lawyering students write twenty or more memos in a single semester. The memos are shorter and less complex than a full-blown LARW office memo, but brevity means more memos and more opportunities to work through the problem-solving process—and less time grading for the professor.

The Art of Lawyering does not teach doctrinal law (except for the two necessary pieces, criminal law and contract law, which are necessary to the multiple-choice-question part of the class). The problem-solving process is the class's focus. Of course, the problem-solving process can vary wildly from lawyer to lawyer or student to student; there is not one problem-solving *process* but many alternative *processes*. The goal of the Art of Lawyering is not to teach all possible processes or even several, but one: one problem-solving process that will work under most circumstances likely to arise in law school and

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[10] The MPT is the Multistate Performance Test, part of the Texas (and most other states') bar exam. This paper discusses the MPT and in more detail in Part V. *See infra* Part V.B.

[11] *See* John F. Murphy, *The Art of Lawyering Fall 2014F: Syllabus* (2014), https://howdy .tamu.edu/Inside/HR2504/PDFs/SYL_201431_23152.pdf?rnd=10:52:06 (last visited Sept. 10, 2015, 6:27 PM).

on the bar; one process that students can turn to without having to agonize over which process best suits a particular problem.

The problem-solving process taught in the Art of Lawyering has six steps: (1) Identify the issue or the call of the question; (2) Identify the applicable rule or rules; (3) Parse the rule into its component parts—usually elements or factors or a combination of the two; (4) Match the hypothetical facts to the parts of the rule. What part of the rule does a given fact "trigger" or implicate? Students should attempt to "find a home" for every fact; that is, identify the part or parts of the rule that are conceivably relevant to that fact. If a fact has no "home," it is probably irrelevant; (5) Write a rule-based analysis—that is, the parts of the rule should dictate the writing's structure. Discuss one part of the rule at a time, and discuss all of the facts relevant to that part of the rule before moving onto the next; (6) Draw an ultimate conclusion only after completing the first five steps. Writing is a form of thinking, and a conclusion is more likely to be correct if drawn after the bulk of the writing process is complete.

This process is neither novel nor unique. Most lawyers and law students use this process or something very much like it to analyze legal problems, whether consciously or unconsciously. But breaking the process into these discrete steps is a revelation to underperforming students. They know what the goal is, but they do not know how to get there. This step-by-step process gives them a roadmap to reach the destination, a plan they can use to solve practically any legal problem in law school, on the bar, or in the practice of law. The Art of Lawyering works on each step separately and in combination by solving problem after problem until the steps are innate to the students' thought process.

While underperforming students struggle with all six steps, the third and fourth are the most troublesome—largely because the students skip these steps altogether and go directly from identifying the rule to writing an application. Therefore, the Art of Lawyering emphasizes steps three and four. Skilled problem-solvers can often parse a rule and match the facts to the relevant elements or factors. But for underperforming students, performing these steps on paper or a white board—seeing the process instead of merely thinking or talking about it—is crucial. A simple two-column table will suffice. Students write the elements of the rule down one column, and the related facts down the other, like this:

TABLE 1: ISSUE/CALL OF THE QUESTION

Rule	Facts
First element	Facts that trigger first element
Second Element	Facts that trigger second element
Factor 1	Facts relevant to factors
Factor 2	
Third element	Facts that trigger third element

Once the students have the rule parsed and the facts matched with the relevant elements and factors, the chart is an outline for step five, writing the analysis. Students learn to write a separate paragraph or paragraphs for each major part of the rule and the related facts. When finished with that part, they write a brief conclusion, start a new paragraph, and discuss the next part of the rule and its relevant facts. They continue until finished discussing all parts of the rule related to the issue.

Again, this method is nothing revolutionary; it is what successful lawyers, professors, judges, and law students do already. But for underperforming students, learning this process and applying it explicitly can be transforming. It allows them to see and understand what is otherwise a "black box," opaque process and, eventually, master the process themselves.

With regard to writing the analysis, the Art of Lawyering uses the standard CREAC (Conclusion, Rule, Explanation, Application, Conclusion) paradigm. Students are encouraged to omit the Explanation when possible and to always omit the naked facts—facts regurgitated from the hypothetical. Many underperforming students are accustomed to hearing that their Applications lack depth. The problem is usually that they mistake reciting the facts of precedent cases or the naked facts of the hypothetical for analysis. Forcing them to follow the six-step problem-solving process and omit the Explanation does a lot to remedy this problem.

Note that the Art of Lawyering teaches CR[E]AC (without the E, usually), not IRAC (Issue, Rule, Application, Conclusion). The advantage to IRAC, and the reason it is the go-to paradigm for exam writing, is that the writer can start writing the analysis before knowing what the conclusion is. But lawyers do not write that way, and in an age when most students take exams on laptops, they can easily copy the conclusion from the end of an essay to the beginning with a couple of keystrokes. Because CREAC yields a more lawyerly work product, the Art of Lawyering uses CREAC instead of IRAC.

IV. SPECIAL CHALLENGES PRESENTED BY THE ART OF LAWYERING

The Art of Lawyering poses three special challenges for the professor. The first challenge is the most obvious: Because the enrollment is limited to (and required of) the bottom quarter of the 2L cohort, every student in the class is, by definition, one of the worst students in the academy. Everyone wants to teach the best and the brightest; interacting with those students is intellectually

stimulating and generally pleasant. Teaching the students at the opposite end of the spectrum can be a grind. Professors must be prepared to repeat themselves. They must be prepared to spend hours dissecting on paper or a whiteboard a process that can be performed in their head in minutes. They must be prepared to make the same corrections and critiques on the same student's memos again and again until finally, hopefully, the critique sinks in.

But the results can make the effort so worthwhile. The "a-ha" moments; the little epiphanies; the steady progress toward competence, if not excellence; the rise in students' GPA; the grateful students thanking the professors for taking the time to change their academic trajectories. These are the reasons that many professors started teaching in the first place, and the Art of Lawyering pays those dividends more often than most other classes.

The second challenge is the resentment students feel when required to enroll in the class. Many underperforming students refuse to acknowledge that anything is wrong with their academic performance.[12] Further, they feel stigmatized because enrollment in the Art of Lawyering brands them as bottom-quarter students in the eyes of their classmates.[13] TAMU's Associate Dean for Academic Affairs is beset by students trying to get out of the Art of Lawyering at the beginning of the semester. During the semester, resentful students are less likely to make the required effort or participate in class. And at the end of the semester, resentful students will vent their spleen at the professor in their student evaluations.[14]

The professor can do three things to combat seething resentment in the class. One is capitalizing on public relations. Students who profit from the Art of Lawyering—and most do—become goodwill ambassadors for the course. The more they tout the success achieved because of the class, the less future Art of Lawyering students will resent having to take the class. Written testimonials can help. At TAMU, the Associate Dean for Academic Affairs saves

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[12] Indeed, the inability or refusal to self-assess performance is a trait common to most Art of Lawyering students. According to their mandatory self-assessments, many students thought they were keeping up or even excelling in law school right up until they received their first-semester grades. *See infra* Part VI.A.

[13] One way to combat this perceived stigmatization is to open enrollment in the Art of Lawyering to all students while requiring it for the bottom quarter. TAMU considered this approach, but the increased enrollment in the course would require either larger sections—which would inhibit much of the personal professor-student interaction essential to the class—or more sections—which would require more professors willing to teach the class.

[14] I typically receive very positive evaluations in my LARW classes—mostly fours and fives on a five-point scale for various parameters of teaching effectiveness. The first semester TAMU required the Art of Lawyering for bottom-quarter students, the students gave me—by far—the worst evaluations I have ever received, including many ones and twos. One student was frank in his handwritten comments: The low scores he gave me did not reflect my teaching or the class content, but the fact that he was required to take the class at all. Those who plan to teach this class should grow a thick hide. After a complete overhaul of the lesson plan and class methods to the ones described in this article, I received much higher evaluations from Art of Lawyering students.

emails from grateful former students to show incoming Art of Lawyering students who try to wriggle out of the class.[15]

Second, starting the semester with an assessment—an MPT exercise on the first day of class—followed by immediate written feedback and an in-class demonstration of how much more efficiently a lawyer would solve the same problem induces some much-needed humility and reduces resentment. The idea is to quickly change students' attitude from "this is a waste of my time" to "maybe I *can* learn something here after all." Think of the first two classes as "shock and awe": shock at having an "exam" on the first day of class, followed by awe when shown how easy the solution could be if students follow the methods the class will teach in the following weeks. The "awe" part does much to quell resentment.

The third way to combat resentment is to engage every student in every class. Do not let students hide in the back row.[16] Forced participation means tepid participation at first, but even tepid students develop some enthusiasm eventually, and enthusiasm is the bane of resentment.

The final and perhaps most daunting challenge of the Art of Lawyering is the workload on the professor. Keeping up a steady flow of exercises is one hurdle.[17] The much higher hurdle is grading student papers in a timely manner. Even in a class limited to fifteen students, grading two memos per student per week adds up to many hours sweating over a blue pencil and a rubric. Ideally, students should receive feedback on the last project before they start the next project. That means the grading of any given paper must be completed on a very tight schedule—as little as one day, and never more than four days. For professors who teach other classes and have service and scholarship obligations, the time commitment is a huge burden.

There is no real solution to the time problem, but some practices can make the problem manageable. First, limit sections to no more than fifteen students. Fewer students mean fewer papers to grade and less time spent grading. Second, adopt in-class exercises that do not require additional grading. Students should submit written formative assessments for individual feedback from the professor at least once per week, but sometimes the professor can deliver feedback during in-class discussions or after in-class oral arguments in lieu written papers.[18] Finally, keeping up with the workflow is vital. Falling behind on grading makes the burden seem even more onerous, and it defeats the goal of prompt feedback to every student on every assignment.

Thus, while the special challenges presented by the Art of Lawyering cannot be eliminated, they can be managed. Knowing what the challenges are be-

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[15] *See infra* Appendix 3 for two examples of such testimonials.

[16] Students have assigned seats in my classroom, but I require the rows to rotate forward every other class so that students who chose seats in the back row the first week will be in the front row a couple of weeks later.

[17] *See infra* Part V, The Art of Lawyering Toolbox, for sources of ready-made exercises.

[18] *See infra* Part V.F.

fore they arise and having a plan for dealing with them prevents them from thwarting the course's goals.

V. THE ART OF LAWYERING TOOLBOX

The Art of Lawyering draws on a variety of resources and methods to help underperforming students improve their problem-solving skills. The high number of in-class exercises and formative assessments—as many as four per week—demands a ready supply of high-quality materials. The professor also needs to be ready to use tools and techniques that break the problem-solving process into discrete steps so that students can master one step at a time. The following is a description of the most important materials and tools in the Art of Lawyering toolbox.

A. Hill & Vukadin's Legal Analysis: 100 Exercises for Mastery[19]

Cassandra Hill and Katherine Vukadin's *Legal Analysis: 100 Exercises for Mastery* is an excellent source of ready-made problems. It is the only book required in the Art of Lawyering, and it forms the backbone for much of the course.

As the name implies, the book comprises 100 legal analysis exercises ranging from simple to complex, broken into sections on basic critical thinking, basic legal analysis, deductive reasoning, analogical reasoning, and statutory analysis.[20] The problems within a section increase in difficulty from one to the next. Annotated sample answers to the even-numbered problems appear at the end of the text;[21] answers to the odd-numbered problems appear in the teacher's manual, which also includes sample rubrics for the different types of exercises.[22] Because the students have the answers to the even problems, those problems are best assigned as in-class exercises.

The ready-made problems and sample answers in *100 Exercises* greatly ease the burden on the professor. Without this resource, the professor would find it impossible to maintain the steady flow of exercises necessary for student success.

B. Multistate Performance Tests

The Multistate Performance Test (MPT) is a component of most state's bar exams.[23] The test "promises to be 'the best measure of one's ability to perform

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[19] *See generally* CASSANDRA L. HILL & KATHERINE T. VUKADIN, LEGAL ANALYSIS: 100 EXERCISES FOR MASTERY (2012).

[20] *See id.* at xxiii.

[21] *See generally id.*

[22] *See, e.g., id.* at 14, 19–39.

[23] As of 2015, the states and territories that administer the MPT are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District Columbia, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North

as an attorney, and ... the most realistic regarding case situations when compared to the MBE and essay portion of the [bar] examination.'"[24] According to the National Council of Bar Examiners, the MPT requires examinees to

> (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for applicable principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints.[25]

In other words, the MPT tests the same skills emphasized in the Art of Lawyering class. Therefore, MPT problems are an excellent way to assess and develop important lawyering skills in all law students, and especially in underperforming students.

Although the MPT comprises only 10 percent of the Texas Bar Exam,[26] some have argued that the performance of TAMU graduates on the bar exam as a whole has a strong correlation to their performance on the MPT. In other words, students who underperform on the MPT are likely to underperform on the bar exam. For this reason, too, MPT problems are a perfect fit for the Art of Lawyering's goals. Further, the MPT furnishes all the law a student needs to solve the problem. A student need not memorize any doctrinal law to succeed on the MPT. Thus, the MPT emphasizes the same thing the Art of Lawyering emphasizes: problem-solving process and skills.

An MPT problem comprises a "File" and a "Library."[27] The File includes an assigning memorandum from a senior partner that sets out the scope of the assignment, identifies the specific task to be completed (*e.g.*, write an objective memo or draft a persuasive brief), and includes specific instructions for the examinee's work product (*e.g.*, include descriptive headings for each section).[28] The other documents in the File contain all of the facts of the case.[29] These documents include ones a lawyer would find in a real case file, such as letters, wills, depositions, emails, and the like.

Dakota, Northern Mariana Islands, Ohio, Oregon, Palau, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. *Multistate Performance Test, Jurisdictions Administering the MPT*, NAT'L CONF. BAR EXAM'RS, http://www.ncbex.org/exams/mpt#jurisdictions-list-view (last visited Dec. 29, 2015).

[24] Stella L. Smetanka, *The Multi-State Performance Test: A Measure of Law Schools' Competence to Prepare Lawyers*, 62 U. PITT. L. REV. 747, 751 (2001) (quoting Alan Ogden, *Performance Testing in Colorado*, BAR EXAMINER, Nov. 1989, at 19, 21).

[25] *Multistate Performance Test, Preparing for the MPT*, NAT'L CONF. BAR EXAM'RS [hereinafter *Preparing for the MPT*], http://www.ncbex.org/exams/mpt/preparing/ (last visited July 10, 2014).

[26] *Texas Bar Examination: Scoring & Weighting*, TEX. BD OF LAW EXAM'RS, http://www.ble.state.tx.us/ExaminationInfoPage/Grading%20Explanation%20as%20of%20-11-08_pdf.pdf (last visited Dec. 29, 2015).

[27] *See Preparing for the MPT*, *supra* note 25.

[28] *Id.*

[29] *Id.*

The Library contains all of the law relevant to the problem.[30] Documents in the Library may include cases, statutes, regulations, or rules. Some of the Library documents may be irrelevant to the problem.[31] Synthesizing a rule from the Library components and analogical reasoning often play a significant role in solving MPT problems.

Because the skills tested on the MPT closely match the skills practiced in the Art of Lawyering, MPT problems play a significant role in the class. On the first day of class, students solve an MPT exercise that has been modified for length and complexity so that students can complete (or stand a reasonable chance of completing) the exercise in the seventy-five minute class time. The summative assessment is also an MPT problem. Comparing a student's performance on the incoming MPT and the final exam allows the professor to assess how much the student has improved over the course of the semester. MPT problems from prior bar exams are widely available on the Internet—many from the National Council of Bar Examiners' own web site.[32]

C. Multiple-Choice Questions

Although the pedagogical assessment value of multiple-choice question (MCQ) tests in higher education, and especially law school, is subject to debate,[33] MCQ tests are ingrained in law school and the bar exam. Some underperforming students excel at MCQ tests, but most are as bad at MCQ exams as they are at essay exams.

Lack of substantive knowledge—the failure to master the tested subject matter—is the most obvious reason for poor MCQ performance, but it is not the only reason. Herbert Krimmel, a professor at Southwestern Law School, has identified five reasons why students underperform on MCQ exams: (1) test anxiety; (2) using intuition rather than logic to choose answers ("it feels like the right answer"); (3) using logic to narrow the possible choices down to two but then guessing between those two (which Krimmel identifies as the most common problem); (4) giving up on "difficult" questions, *e.g.*, those with a long or complex stem or paired true/false questions; and (5) "buying into dubious 'rules' of test taking," *e.g.*, automatically rejecting all "all of the

[30] *Id.*

[31] *Id.*

[32] *See NCBE Study Aids Store*, NAT'L CONF. BAR EXAM'RS, http://store.ncbex.org/mpt-downloads/ (last visited Dec. 10, 2015).

[33] *See, e.g.*, Karen Scouller, *The Influence of Assessment Method on Students' Learning Approaches: Multiple Choice Question Examination Versus Assignment Essay*, 35 HIGHER EDUC. 453, 453 (1998) (noting research that indicates students are more likely to employ "surface-learning" approaches when preparing for MCQ exams and that "deep learning" is associated with poorer MCQ results); Beverley Steventon et al., *Moving the Law School into the Twenty-First Century—Embedding Technology into Teaching and Learning*, 38 J. OF FURTHER AND HIGHER EDUC. 107, 109 (2012) (recognizing arguments that MCQ tests are mere "memory tests" that fail "to encourage the student to demonstrate competency in applying law to factual situations as well as critically analyzing a set of legal rules.").

above/none of the above" choices.[34] The Art of Lawyering addresses all five problems.

The Art of Lawyering focuses on process, not substantive knowledge. But to practice the skill of answering MCQs, students need a body of substantive law on which to draw. The MCQ portion of the Art of Lawyering draws on two relatively narrow slices of doctrinal law—larceny and embezzlement from criminal law, and offer and acceptance from contract law. In an early iteration of the class, we required students to use their 1L notes and outlines on these topics as their source of doctrinal law. This was a disaster. The students' notes were inadequate, as one might expect of notes from students in the bottom quarter of the class. Asking students to supplement their notes with commercial outlines did not improve the situation.

In the current course iteration, to ensure all students are starting with the same body of substantive law from a reliable, quality source, we give the students commercial outlines of our own choosing. Many commercial outlines are available to students free of charge from Westlaw.[35] While the outlines vary in quality and the professor will want to curate the collection or direct students to a specific source, they are a good starting place.

The professor also needs a bank of bar-exam-caliber MCQs related to these doctrinal areas. As with MPT problems, MCQs from prior bar exams are readily available online and from commercial vendors, and many questions appear on the National Council of Bar Examiners' website.[36]

A week before the class is ready to begin the MCQ part of the course the professor distributes the outline on larceny and embezzlement to the students. Students should study them carefully and commit the doctrinal law to memory. The class then works through a series of MCQs related to larceny and embezzlement.

The method for answering MCQs that yield the best, most consistent result is simple: students should not look at the choices until they have analyzed the stem and know what the correct choice *should* be. This is contrary to the approach most students take, namely, looking at the choices before reading the stem. The best way to break students of this habit is to give them an MCQ problem with the choices removed. Force them to analyze the problem just as they would any other legal problem. The process is the same. After students have written a short answer to the question, show them the choices. The correct

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[34] Herbert T. Krimmel, *Dear Professor: Why Do I Ace Essay Exams but Bomb Multiple Choice Ones?*, 63 J. LEGAL EDUC. 431, 443–46 (2013).

[35] *See, e.g., 1L Outline Shells for Foundation Law School Courses*, THOMSON REUTERS WESTLAW, https://lawschool.westlaw.com/marketing/display/SG/28 (last visited Dec. 29, 2015).

[36] *See Study Aids*, NAT'L CONF. BAR EXAM'RS (last visited Dec. 29, 2015), http://www.ncbex.org/study-aids/. For example, the Google search query "site:ncbex.org mbe larceny" yields several MBE exams with larceny questions. Substituting "embezzlement," "offer," or "acceptance" for "larceny" yields MCQ questions of the other doctrinal topics of interest.

answer will be the one closest to their own written answer—assuming, of course, the students applied the right legal doctrine to the facts in a logical way. The following is an example of a "larceny/ embezzlement" question with the answers removed:

> Arnold and Bob were cousins. Arnold was a rich man, Bob a poor one. Bob often admired Arnold's possessions—his house, car, clothes, and so on. In particular, Bob admired Arnold's large expensive watch. Bob frequently commented that he wished he had one like it. Arnold was a kind man, and he wanted to please his cousin, so he decided that he would give the watch to Bob for his birthday the following week.
>
> A few days before Bob's birthday, Arnold and Bob were at a family reunion held in a park. Arnold took his watch off and left it on a blanket when he went off to join a touch football game. Bob strolled by, saw the watch, and decided to steal it. He picked up the watch, but before he could pocket it, Arnold returned. When Arnold saw Bob holding the watch, he said, "Bob, I know how much you like that watch, and I have been planning to give it to you for your birthday. Go ahead and take it now." Bob said, "Thank you!" and kept the watch.
>
> What crime, if any, has Bob committed? Explain your answer.

Using the substantive law from the larceny/embezzlement outline, students should immediately realize that the problem triggers the larceny/embezzlement rules and work toward a solution just as they would solve any other legal problem—connect the facts to the elements of the rules and determine whether the facts satisfy the elements:

TABLE 2

Rule	Facts
Larceny is the taking and	Bob picked up the watch
carrying away/asportation	Even the slight movement was asportation
of the another's personal property	The watch is Arnold's personal property
with intent to permanently deprive the true owner.	Bob intended to "steal" the watch, which implies permanence
Embezzlement is the fraudulent	No evidence of fraud
conversion	Bob did convert the watch
of another's personal property	The watch is Arnold's personal property
by a person in lawful possession of that property.	Bob was not in lawful possession

Because the facts support the elements of larceny but not embezzlement, Bob committed larceny. Now, add in the MCQ choices:

Bob has committed:

    (A) Larceny

    (B) Attempted larceny

    (C) Embezzlement

    (D) No crime.

The answer is easy: (A), because Bob's actions satisfy the elements of larceny. Choice (B)—which would confuse some students if they read the choices first—is obviously incorrect because our analysis proves that Bob's actions satisfy *all* of the elements.

The foregoing example was simple; indeed, it is the first MCQ we use in the Art of Lawyering. The questions get progressively more complex, but the process of arriving at the correct answer remains the same.

After working on larceny/embezzlement questions for two classes, students move on to offer/acceptance questions for two classes. The summative assessment for the MCQ part of the course is a MCQ midterm comprising ten larceny/embezzlement and ten offer/acceptance MCQs. Students who struggled with MCQ exams even when they knew the underlying substantive law realized significant gains in their MCQ performance after the Art of Lawyering.

D. The Case Grid: A Graphical Tool to Facilitate Analogical Reasoning

The "case grid" is a tool that facilitates analogical reasoning. Analogical reasoning is a fundamental characteristic of writing briefs and opinions,[37] and many students, especially underperforming students, fail to master this skill as 1Ls. The case grid allows a student (or lawyer, or law professor, or judge) to easily identify similarities and differences between several precedent cases, and between the precedent cases and the facts of the "client" case (the case being analyzed, argued, or decided). These similarities and distinctions form the basis of analogical reasoning.

The case grid is particularly useful in the Art of Lawyering because as a graphical tool it allows a student to see and physically manipulate parts of a problem that would otherwise exist only in the student's mind. Bringing these elements into a visible, tangible medium makes them much easier to manipulate, and it allows the professor to show the students concepts that are difficult to describe in the abstract.

Other professors have devised similar methods of analyzing legal problems by arranging cases on tables or grids.[38] The method described here is different because it specifically addresses the challenges of analogical reasoning when weighing several precedents against the client facts.

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[37] Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 741 (1993).

[38] *See, e.g.*, JOHN C. DERNBACH ET AL., A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD 80 (5th ed. 2013).

1. *The Case Grid: How It Works and How to Use It*

The case grid is a chart that analyzes a single issue. This is important; a case grid that attempts to analyze multiple issues at once is too confusing and cumbersome.

The grid is broken into horizontal rows and vertical columns. The top row lists the names of the cases being analyzed, one case per column. The client case is the last case listed. The left-hand column lists the elements or factors discussed in the cases, plus other pertinent labels like "outcome" or "holding" and "reasoning." The cells where the rows and columns intersect contain the facts from the column's case relevant to the row's factor. A completed case grid—comparing three factors from three precedent cases—looks like this:

TABLE 3

	Case A	Case B	Case C	Client Case
Factor 1	Facts from case A related to Factor 1	Facts from case B related to Factor 1		Client facts relevant to Factor 1
Factor 2	Facts from case A related to Factor 2		Facts from case C related to Factor 2	Client facts relevant to Factor 2
Factor 3	Facts from case A related to Factor 3	Facts from case B related to Factor 3	Facts from case C related to Factor 3	Client facts relevant to Factor 3
Summary of Reasoning (optional)	Summary of Case A reasoning	Summary of Case B reasoning	Summary of Case C reasoning	n/a
Outcome	Case A holding	Case B holding	Case C holding	Client prediction or conclusion

Some cells are empty because not all cases contain facts relevant to every factor of a given rule. When a case does not discuss a particular factor, the cell for that factor should be left blank. Blank cells on a completed case grid also serve as a reality check; if only one of several cases discusses a particular factor, and the cells for the other cases are blank for that factor's row, the factor is probably not important.

The "Summary of Reasoning" row is optional; it is useful in some analyses but not others. A key benefit of the case grid is its flexibility; the writer can add or omit rows as the situation requires.

2. *A Sample Case Grid Using Real Cases*

Now consider a case grid incorporating a hypothetical client case and real precedent opinions. [39]

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[39] This hypothetical's facts and cases are drawn from a memo-writing problem Professor Carol Pauli wrote for our students last fall.

Amy is the pledge captain of a sorority at a North Carolina college where she and Betty are students. Betty, a freshman, pledged the sorority. In late October, Amy planned a pledge event to be held at a state park in South Carolina. There is some evidence North Carolina law enforcement was cracking down on hazing, and a recent article in the school newspaper spotlighted the school's hazing problem and its commitment to stop hazing.

Betty was initially reluctant to attend the event because midterm exams loomed, but she eventually agreed to attend after Amy assured her the event would be "mostly fun." Amy and the other pledges had already left campus, so Betty drove herself to South Carolina.

When Betty arrived at the park, Amy forced her and the other pledges to drink large quantities of alcohol, perform calisthenics, strip and wrestle one another in the mud, and remain in the park all night despite a cold, heavy rain. Eventually, Betty tried to leave the park and return to her car, but she failed. A park ranger found her many hours later huddled under a bush, naked and hypothermic.

The question is whether Amy violated the Federal Interstate Kidnapping Act.[40] Specifically, we need to determine whether Amy "unlawfully inveigled" Betty into traveling to South Carolina.

Research finds the following potentially relevant cases:

- *United States v. Hughes*:[41] "Unlawfully inveigle" means the kidnapper used deceit to lure a victim into compliance with the kidnapper's wishes.[42] Hughes told the victim he knew a friend of hers and would drive her to see the friend.[43] When the victim got into Hughes's truck, he drove her to a cemetery across the state line, where he beat her savagely.[44] Held: Hughes inveigled the victim.[45]

- *United States v. Macklin*:[46] A child ran away from home and later encountered Macklin, a drifter.[47] Macklin made a vague promise about giving the child a bike after traveling to New York City, but made no other representations to the child.[48] The two traveled cross-country together.[49] The child, unharmed, later decided to return home.[50] Held: Macklin did not inveigle the child.[51] The court

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[40] *See* 18 U.S.C. § 1201 (2012).
[41] United States v. Hughes, 716 F.2d 234 (4th Cir. 1983).
[42] *Id.* at 239.
[43] *Id.* at 236–37.
[44] *Id.* at 237.
[45] *See id.* at 242.
[46] United States v. Macklin, 671 F.2d 60 (2d Cir. 1982).
[47] *Id.* at 61.
[48] *Id.* at 66.
[49] *Id.* at 61–62.
[50] *See id.* at 63.
[51] *See id.* at 67.

also reasoned that the child's attraction to Macklin's vagabond lifestyle did not constitute inveiglement.[52]

• *United States v. Boone*:[53] Boone falsely told his victim he owned a marijuana farm in a neighboring state.[54] The victim agreed to go with Boone to the marijuana farm, and Boone drove them across the state line in the victim's car.[55] When they reached the place where Boone said the farm was, Boone robbed and killed the victim.[56] Held: Boone inveigled the victim.[57]

• *United States v. Wills*:[58] The victim witnessed Wills commit a burglary.[59] Wills later lured the victim from Virginia to Washington, D.C. with the promise of a nonexistent job opportunity.[60] The victim drove himself to D.C. and was never seen again.[61] Held: The defendant need not accompany the victim across state lines to be guilty of kidnapping by inveiglement.[62]

• *United States v. Garza-Robles*:[63] The victim, a drug dealer, lost a large shipment of marijuana.[64] Garza-Robles, a member of the drug cartel that owned the lost drugs, told the victim he needed to travel to Mexico to explain the problem to the cartel boss.[65] The victim knew that something worse than merely "explaining" awaited him in Mexico, but he went anyway because he knew the cartel would otherwise kidnap or kill his family.[66] Held: The victim was not inveigled, but he was "seized by fear" (a statutory alternative to "inveigle").[67]

This example uses five precedent cases and the client case. Many law students, and especially underperforming law students, will have difficulty inducing and synthesizing a coherent rule for what constitutes inveiglement and identifying significant analogies between the precedent cases and the client case. The case grid makes these processes much easier. A complete case grid for this problem appears in Appendix I.

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[52] *Id.* at 66.
[53] United States v. Boone, 959 F.2d 1550 (11th Cir. 1992).
[54] *Id.* at 1552.
[55] *Id.* at 1552–53.
[56] *Id.* at 1553.
[57] *See id.* at 1557.
[58] United States v. Wills, 234 F.3d 174 (4th Cir. 2000).
[59] *Id.* at 175.
[60] *Id.*
[61] *Id.* at 176.
[62] *Id.* at 178–79.
[63] United State v. Garza-Robles, 627 F.3d 161 (5th Cir. 2010).
[64] *Id.* at 164.
[65] *Id.*
[66] *Id.* at 167.
[67] *See id.* at 167–68.

From the case grid, several relevant significant points emerge:

- Inveiglement requires an attempt at deception, and the deception must succeed.

- Like Boone, Hughes, Wills, and Garza-Robles, Amy attempted to deceive Betty; she said the initiation would be fun, but she knew (because she planned the event) that it would be painful and humiliating.

- The fact that Betty drove herself to South Carolina is irrelevant; lack of accompaniment does not affect the outcome.

- The real question here is whether Amy's deception succeeded, as in *Boone*, *Wills*, and *Hughes*, or whether it failed, as *in Garza-Robles*, because Betty knew—maybe by virtue of the school paper—that a sorority initiation in the woods at night would not be "mostly fun."

- Amy's best counterarguments are (1) Betty knew something bad was likely to happen and (2) Betty was drawn to the event by the allure of the "sorority lifestyle," as the child in *Macklin* was drawn by the allure of the vagabond lifestyle.

- The first counterargument merits serious consideration, but the second is likely to fail because *Macklin* is distinguishable: Macklin, unlike Amy, did not attempt to receive the victim.

- On the whole, the case is more similar to *Boone*, *Hughes*, and *Wills*, but Betty's testimony about what she thought was going to happen makes or breaks the case.

Developing this bullet list into a working outline is a very short step. Indeed, the bullet list is an outline on which a writer could easily frame an analogical analysis of Amy's case. It is, of course, possible to get to the same point without using a case grid, but the case grid makes it much easier to keep track of the important parts of the precedent cases, to compare those cases to one another, and to compare them to client facts.

Students who struggle with analogical reasoning receive the case grid as an epiphany, a revelation that makes something that was almost hopelessly difficult for them approachable and solvable. As such, the case grid features a prominent role in the parts of the Art of Lawyering that require analogical reasoning, especially the MPT problems and the problems from the analogical reasoning section of the Hill & Vukadin book.[68] The professor should introduce the case grid early in the semester. The second session—when the class dissects the MPT from the first class[69]—is ideal.

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[68] HILL & VUKADIN, *supra* note 19, at 85–175.
[69] *See infra* Part VI.A.

E. Frequent, Timely Feedback

Solving many problems is by itself not enough to raise the skills of under-performing students. These students need feedback and critique on every exercise, and they need it before they undertake the next exercise. That means the professor must be prepared to read and critique student memos with a very short turnaround time. Assuming students write two out-of-class memos per week, the professor will have at most three days to grade and return each batch of memos so the students can ingest the critique and make appropriate modifications on the next memo. The grading burden can seem crushing, especially if the professor falls behind and the ungraded assignments start to pile up.

Two practices assure grading efficiency. First, a good rubric makes the chore of assessing a particular batch of memos much less daunting. If the grader knows exactly what a good answer should and should not include, identifying the successes and deficiencies in a student's answer takes much less time. As noted above, *100 Exercises* includes sample answers in the text and teacher's manual; the answers make creating a solid rubric a trivial exercise (one that can be farmed out to a competent teaching assistant).[70]

Second, the grader must stay focused on the skills the Art of Lawyering teaches: parsing the relevant rule, pairing the elements or factors with the relevant facts, and so on. The grader may have difficulty overlooking poor grammar and word choice, among other things, but those are issues collateral to this class. The grader must focus on the big picture and let the small stuff go—or refer the student to another resource that helps with those deficiencies, like a campus writing-center or the Purdue O.W.L.[71]

F. Oral Arguments

In addition to out-of-class student-written memos, the Art of Lawyering tackles in-class exercises, usually one per class. Brief oral arguments (two to five minutes each) provide a way for the professor to assess student performance on these in-class exercises when the students lack the time to write a full-blown answer.

Short in-class oral arguments serve several pedagogical purposes. First, they force "quiet" students to stand up and speak before their peers—a vital lawyering skill that many law students fail to master (or sometimes even try) before graduation. Second, arguments allow the professor to provide immediate, targeted feedback to the speaker. The feedback is personalized to the speaker, but it is also publicized to the other students, who can learn from their colleague's successes and failures.

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[70] *100 Exercises* also includes generic rubrics the professor can customize for any given assignment. HILL & VUKADIN, *supra* note 19, at 17–19.

[71] The Purdue Online Writing Lab provides free instruction on grammar and punctuation and self-graded online assessments. *See generally Purdue Online Writing Lab*, PURDUE U., https://owl.english.purdue.edu/owl/ (last visited Dec. 29, 2015).

Third, oral arguments require students to "bring their A-game"—to try their hardest to avoid the pain of public humiliation. Because the students do not know who will argue a given case until the professor calls a name, every student must be prepared. While the first advocate is speaking, every student must take notes, because no one knows who the professor will call on to make the counterargument. Finally, in-class arguments allow the professor to critique and evaluate the students without the burden of reviewing yet another set of memorandums. The arguments are not a complete substitute for written memos; the students need the frequent, individual feedback that a professor can provide only on written memos. But oral arguments provide a good supplement to out-of-class memos and in-class discussions by allowing the class to work through even more problems. Again, repetition is key.

G. *Miscellaneous Tools & Resources*

1. *Reading Speed Assessment*

Many underperforming students are slow readers. Several websites, such as "Ace Reader," offer free reading speed and comprehension assessments.[72] Requiring students to test and report their reading speed on the website's highest reading level yields a fair assessment of the number of words per minute each student can read and comprehend. Professors should consider requiring students who scored less than 75 percent on the comprehension portion to report their speed. Students with especially low scores—under 200 words per minute—may be referred to student services for further evaluation.[73]

2. *Rule Synthesis Module*

Students often struggle with rule synthesis. Synthesis is a significant aspect of the MPT, and students need to master this skill.[74] MPTs provide an obvious way to practice, but students need easier synthesis problems to use as intermediate stepping-stones. *Teaching Rule Synthesis with Real Cases* by Paul Figley[75] provides those stepping-stones. Figley explains how to teach synthesis by starting in a simple, non-legal context and progressing to synthesis using re-

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[72] *Free Online Speed Reading Test*, ACE READER, http://www.acereader.com/freespeedread ingtest/ (last visited Dec. 29, 2015).

[73] One Art of Lawyering student struggled to complete timed-writing exercise. Given unlimited time, he could write a solid essay. After performing poorly on a reading-speed assessment and following up with additional evaluation, he discovered that he had a previously undiagnosed learning disability. He received an exam accommodation from the law school, and his grades improved dramatically.

[74] *See* Diane F. Bosse, *The MPT: Assessment Opportunities Beyond The Traditional Essay*, 80 B. EXAMINER, Dec. 2011, at 17, 19.

[75] *See generally* Paul Figley, *Teaching Rule Synthesis with Real Cases*, 61 J. LEGAL EDUC. 245 (2011).

al cases.[76] His article includes a client hypothetical that the Art of Lawyering uses as another writing assignment and formative assessment.[77]

3. Cornell Notes

Underperforming students generally have atrocious note-taking habits. Some take too few notes during class, while others attempt to transcribe the entire lecture. Almost all bottom quarter students report that they spend little to no time reviewing their notes on a regular basis. Many are surprised to hear that retrospective reflection and review should be a part of their weekly study habits. And their notes reflect this deficiency; rarely does anything in the notes suggest the student reviewed, condensed, and synthesized the material from the casebook and class lectures.

Cornell Notes is a way to redress this problem. Cornell Notes was developed in Cornell University's education department by Walter Pauk almost fifty years ago.[78] In essence, Cornell Notes divide the blank page into three areas—two vertical columns, with the right column twice the width of the left, and a page-wide blank area at the bottom of the page.[79] Students take notes while reading or during lecture in the larger, right-hand column. Sometime after class, students write in the left-hand column "questions to help clarify meanings, reveal relationships, establish continuity, and strengthen memory."[80] In the space at the bottom of the page—ideally at the end of each week—students summarize the notes and explain to themselves how this week's notes fit in with what the course covered in the prior weeks.[81] Thus, Cornell Notes encourage students to outline as the semester progresses, rather than waiting until the end of the semester for one marathon outlining session.

VI. THE COURSE IN DETAIL

This section describes the Art of Lawyering class in narrative format, from the first day of class to the final exam. A class-by-class outline of suggested assignments and topics appears in Appendix II.

A. Start with a Bang: The First Week

Students start solving problems from the first minute of the first class. "Welcome to the Art of Lawyering. Get out your laptop or a pen and paper. You have seventy-five minutes to complete this assignment." As soon as the

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[76] *See id.* at 251. The cases all involve pedestrians slipping on banana peels. *See generally id.* The lesson-plan sections of this article therefore refer to them as "the banana-peel cases."
[77] *See id.*
[78] *See* WALTER PAUK & ROSS J. Q. OWENS, HOW TO STUDY IN COLLEGE 262 (11th ed. 2014).
[79] *See* Jenni Donohoo, *Learning How to Learn: Cornell Notes as an Example*, 54 J. OF ADOLESCENT & ADULT LITERACY 224, 225 (2010).
[80] *See* PAUK & OWENS, *supra* note 78.
[81] *See id.*

class period begins, the professor distributes an MPT-style problem, which the students have seventy-five minutes to complete. The bar exam allows law school graduates ninety minutes to complete a full-blown MPT. To give second-year law students a reasonable chance of writing a complete answer in seventy-five minutes, the problem is scaled back to a single issue and fewer authorities.[82] Even then, many students will not complete the assessment in the time allotted.

This first day MPT serves as an incoming assessment against which to chart students' progress over the course of the semester. And an exam on the first day of class—with no warning or time to prepare—informs the students that this course is different from their other classes, and in some ways more rigorous.

The professor should have the incoming assessment graded before the second class. The students' papers should be thoroughly marked up—every structural or logical flaw revealed, every grammatical error corrected. A heavily marked paper serves two purposes. First, it lets the students know how lawyers and judges will review their work after graduation—to a level of scrutiny and skepticism, even criticism, that some students have never experienced. Second, it shocks some of the "I don't belong in this class" students into the realization that maybe they can learn something after all.

The rapid turnaround on grading the assessment also sets the tone and pace for the rest of the semester: Students will receive constructive written feedback within two days, sometimes sooner, on every memo they write. Students will incorporate that feedback into their memo, which will fall due within a couple days. And so the submission—feedback—reflection—submission cycle continues, hopefully with continuous improvement, throughout the semester.

The second class is essential for getting students to swallow their resentment and buy into the course after realizing what they can learn from it. In the second class, the professor should quickly dispense the standard logistical preliminaries (or skip them altogether) and jump right into a class discussion on solving the incoming assessment MPT. The discussion should be a preview of the techniques the class will review during the coming semester: extracting and synthesizing rules from multiple authorities, using the case grid to induce the rule and set up analogical reasoning, breaking the rule into its component parts, analyzing one factor or element at a time, using the CR[E]AC paradigm to structure the answer, and mastering time management and reading comprehension skills.. By previewing the techniques, the professor can "wow" the stu-

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[82] For example, the 2009 Jackson v. Franklin Sports Gazette, Inc. MPT problem with the last case omitted yields a problem solvable in seventy-five minutes. *MPT-1: Jackson v. Franklin Sports Gazette, Inc.*, WASHBURN U. SCH. OF LAW: B. EXAM https://blogs.washburnlaw.edu/barexam/files/2015/05/MPT-Wkshp-1-File-1-Jackson-v-Franklin-Sports-Gazette-7_2009-2.pdf (last visited Dec. 29, 2015). A rubric and model answer are available at *The MPT Jackson v. Franklin Sports Gazette, Inc. Grading Materials*, YUMPU, https://www.yumpu.com/en/document/view/25060718/jackson-v-franklin-sports-gazette-inc-grading-oregon-state-bar (last visited Dec. 29, 2015).

dents with a sense of what they can learn from the course, a sense of how much more efficiently a brain can work through a problem when trained to think like a lawyer.

The professor should also lead a discussion on what skills the MPT tests— *e.g.*, reading speed and comprehension, following instructions, working with multiple authorities, time management, and so on. The Art of Lawyering covers every skill tested on the MPT, and students need to hear that at the outset.

After the second class, students rewrite their incoming assessment answers to incorporate what they learned from the second class's discussion. The professor should tell them to take all the time they need to make their answer as letter-perfect as possible. The resulting memo will serve as a second assessment, one that shows how much they learned from the class discussion, how well they can write when not under time pressure, and whether they lack basic grammar and punctuation skills. Students suffering from the latter problem should be referred to the school's writing center or otherwise tutored outside of the Art of Lawyering class.

In keeping with the course's goal of immediate, constructive feedback, the professor should mark up the papers for return as quickly as possible. Students who demonstrate significant improvement should receive modest praise. The professor should also distribute the rubric used to assess answers and a model answer to the problem—ideally a model answer written by the professor under the same seventy-five minute time limit imposed on the students. The idea is not to "show off," but to show what is possible using the techniques the class will cover. This also conditions students to compare their answers to the model answers so they can start to develop self-assessment skills.

Also after the second class, students write a "Why I Am in the Art of Lawyering" essay. Essays should detail their best and worst grades in law school, what prevented them from performing at a higher level, and how they plan to claw their way out of the bottom quarter. Students are surprisingly forthcoming, and their essays help pinpoint particular problems, the solutions to which can be incorporated into class discussion if relevant to several students, or broached during office hours otherwise. The essay also serves as a third incoming reference point—an assessment of how well students can express themselves when writing something other than the solution to a legal problem. This may spur additional referrals to the writing center or other resources for remedial writing assistance.

B.   Weeks 2 Through 7: Skill-Building and Reinforcement Through Repetition

Between the first week of class and the first midterm in the seventh week, the students solve a series of increasingly difficult problems. This is when the Hill/Vukadin book provides its greatest benefit as a source of ready-made problems. Many of the problems are short enough for students to outline an answer in twenty to forty minutes (writing a complete, coherent answer takes longer— much longer for some). The book begins with short problems set in a non-legal or quasi-legal context (*e.g.*, Should a parent allow her children to go swimming

today? Should a police officer give a ticket for littering to someone who threw a banana peel on the grass?).[83] Those problems are ideal for reinforcing the fundamentals of problem solving—identifying the rule, breaking the rule into components, and identifying analogies—without getting tangled up in the law. The first eight problems[84] are short enough to get through two or three in a single class. The ninth and final problem[85] is an excellent opportunity to teach rule induction and analogical reasoning. Students write an answer to the ninth problem outside class and then, as with the incoming assessment MPT, discuss it in class and rewrite their answers based on their evolved understanding of the problem-solving processes involved.

The class typically works through four problems a week—two outside of class, for which the students write complete answers, and two more inside of class, for which the students merely outline their answers in the interest of time so that the class can discuss the problem in the same class period. On the in-class problems, after students work individually to outline an answer, the professor either guides the class in dissecting the problem or calls on students to present short oral arguments.[86] Problems 10 through 30 in *100 Exercises* are all deductive-reasoning problems that provide plenty of opportunities to practice the six-step problem-solving method described above.[87]

In the seventh week, students take the first midterm exam. The midterm should be a problem similar in complexity to Exercise 29 in *100 Exercises*, bearing in mind that students will have to complete this problem during the normal class period.

C. Weeks 8 Through 10: MCQs and Analogical Reasoning

After the first midterm, the class works on multiple-choice questions and analogical reasoning. For the MCQ portion, the professor must provide the class with outlines on narrow selections of doctrinal law (or tell the students where to find good outlines). The Art of Lawyering uses the law of larceny/embezzlement and offer/acceptance. The class works though several MCQ questions—usually with choices removed—per class session. MCQs without choices also make good short-essay questions. After writing an answer, students must choose the MCQ choice that best matches their answer.

Meanwhile, students continue to work on written problem solving, now advancing to the analogical reasoning problems in *100 Exercises* (exercises 35 through 64 involve analogical reasoning of increasing complexity).[88]

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[83]   HILL & VUKADIN, *supra* note 19, at 3–10.
[84]   *Id.*
[85]   *Id.* at 11–12.
[86]   *See supra* Part V.F.
[87]   *See supra* Part III.
[88]   *See* HILL & VUKADIN, *supra* note 19, at 85–175.

In the tenth week, students take the second midterm. This is an MCQ exam over the larceny/embezzlement and offer/acceptance rules covered in class.

D. Weeks 11 Through 14

In weeks 11 through 14, the class focuses on rule synthesis and the most complex problems of the semester—full-blown MPTs. The rule synthesis module is based on Paul Figley's *Teaching Rule Synthesis with Real Cases* article, and students write a memo on the banana peel hypothetical set forth in the article.[89]

With the MPTs, the class returns to the place where it began. Students write two MPT answers out-of-class, and they work through two or three more in-class. Having the students re-do the MPT they answered on the first day of class can show how far the students have come.

The final exam is a full-blown MPT problem. The professor should allow the students more than the standard ninety minutes allowed on the MPT. Two hours is appropriate, but a more difficult problem may justify a longer time.
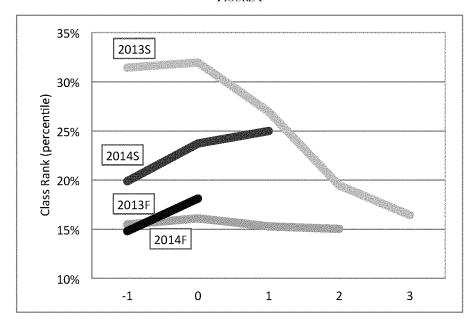
VII. OUTCOMES

The Art of Lawyering, in the iteration described in this paper, has had a significant impact on the students who have taken the class. Class rank determines whether students are required to enroll in the Art of Lawyering; therefore, this paper uses class rank to gauge the Art of Lawyering's effect.

The following chart summarizes the average class rank of Art of Lawyering students by semester:

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[89] *See generally* Figley, *supra* note 75.

FIGURE 1

The y-axis represents class rank by percentile (the lower the percentile, the lower the average class rank of the students in that semester's Art of Lawyering class). The x-axis represents semesters relative to the semester in which the students took the Art of Lawyering. Thus, "-1" is the semester before Art of Lawyering, "0" is the semester of Art of Lawyering, "1" is the semester after Art of Lawyering, and so on. For example, "-1" on the "2014S" line shows that for students who took the Art of Lawyering in spring 2014, the average class rank at the end of the fall 2013 semester was in the twentieth percentile. This chart represents data through the fall 2014 semester.

The spring 2013 Art of Lawyering students saw a modest boost in class rank the semester they took the class; after that, their average rank fell precipitously (part of that fall is because the higher-performing students eventually graduated, leaving their lower-performing and lower-ranked colleagues behind). The fall 2013 class saw a similar modest boost the semester they took the class, followed by a gradual decline over the next two semesters.

The spring 2014 Art of Lawyering students—the first class taught using the methods described in this paper—saw a much greater boost in class rank, and their average rank continued to rise in the semester following the Art of Lawyering. The fall 2014 class—again taught using these methods—realized an almost identical gain in class rank. Note that the fall 2014 class comprised three sections, one taught by the author of this paper and the other two taught by other professors. Thus, not only did the fall 2014 class replicate the spring 2014

class's success; other professors, using the same lesson plan, achieved similar results.

Two conclusions flow from these numbers. First, the course structure and lesson plan deployed in spring 2014—and the one described in this article— was significantly more effective than the lesson plan used in spring and fall 2013. Second, the increase in class rank appears to be persistent for students taught under the current lesson plan, whereas the increase was short-lived under the prior iteration.

Thus, as an early intervention for underperforming students, the Art of Lawyering is a success, at least as reflected by average class rank. And the methods and lesson plan described in this paper were more effective than earlier iterations of the Art of Lawyering class.

One of the Art of Lawyering's goals is to improve the bar-passage rate among students in the bottom-quarter of the class after the 1L year. Whether the course has succeeded on the metric is so far unknown. Students who took class in spring 2013 were part-time students, and most of them have not graduated and taken the bar exam yet. Thus, confirmation of the Art of Lawyering's effectiveness in terms of bar passage lies in the future.

But for now, using class rank as the measure of success, the Art of Lawyering in its current form appears to be having the intended effect, and that effect is replicable from one semester to the next and by different professors. Thus, other schools wishing to improve problem-solving skills among their underperforming students may achieve similar results by following the methods described in this paper.

APPENDIX I — CASE GRID FOR "INVEIGLEMENT:" DID AMY INVEIGLE BETTY?

TABLE 4

	Hughes	Macklin	Boone	Wills	Garza-Robles	Amy/Betty
Attempted deception?	Yes	No	Yes	Yes	Yes	Yes
Nature of deception	Promised to drive victim to visit friend	Minor; defendant made vague promise about bicycle.	Promised to take victim to nonexistent marijuana farm	Fake job offer	"Just talk" to drug cartel boss about loss of drug shipment	Amy said the initiation would be "mostly fun," but she knew it would be painful and humiliating
Deception succeeded?	Yes	n/a	Yes	Yes	No	Arguably; but the newspaper article suggests hazing practices are common knowledge
Accompanied victim?	Yes	Yes	Yes	No	Yes	No
Reasoning		"Attractive lifestyle" is not inveiglement		Accompaniment not required (in the 4th Circuit)	Victim saw through the deception, but "seized by fear"	
Outcome: Inveigled?	Yes	No	Yes	Yes	No	??

APPENDIX II — WEEK-BY-WEEK LESSON PLAN FOR THE ART OF LAWYERING

The following lesson plan maps out the Art of Lawyering for a fourteen-week semester. "Hill/Vukadin # *x*" refers to exercises in *Legal Analysis: 100 Exercises for Mastery*. The exact sequence of assignments is not terribly important; for example, a class could skip some of the easier, early-on exercises

in favor of more complex exercises later in the semester. What is important is maintaining a constant cycle of submission—feedback—reflection—submission over the course of the semester.

Because prompt feedback is a crucial part of the Art of Lawyering, note well the short time between when students submit work and when the professor returns graded work, and schedule submission dated accordingly. Do not return graded papers until the end of class; otherwise, students start reading comments and stop paying attention.

TABLE 5

Week	Day	Plan
1	1	Initial assessment: Students complete MPT in class. The MPT should be modified to allow a reasonable chance of completion in the 75-minute class period.
	2	Professor must have initial assessment graded before class begins. Topics: Into to Art of Lawyering; working through the initial-assessment MPT; introduction to the problem-solving process and the case grid. Return MPT answers at end of class. Assignments: (1) Students must rewrite and submit revised answers before the next class. (2) Students must write a self-reflective "Why I am in the bottom quarter" essay and submit before the next class.
2	1	Professor must have MPT rewrite graded before class. If students improved, say so. Read the "bottom quarter" essays before class. Topics: Common themes on "bottom quarter" essays. Work Hill/Vukadin # 1, 2, 3, 4, 5 (as time permits) in class. Assignment: Hill/Vukadin # 9 due before next class, and students to bring sample doctrinal-class notes from prior semester to next class.
	2	Professor must have Hill/Vukadin # 9 graded before class. Topics: Work through Hill/Vukadin # 9, emphasizing the case grid to induce the rule and set up analogies. Discuss common deficiencies in students' Hill/Vukadin # 9 drafts. Assignment: Students to rewrite Hill/Vukadin # 9 and submit before next class.
3	1	Professor should have Hill/Vukadin # 9 rewrites graded before class and have reviewed students' sample class notes. Topics: Cornell Notes. Work Hill/Vukadin # 10 in class. Assignment: Hill/Vukadin # 11 due before next class. Take Cornell notes for one week; submit sample in week 4, class 2.
	2	Professor should have Hill/Vukadin # 11 graded before class. Topics: Review Hill/Vukadin # 11; work # 12 in class. This is a good time to start in-class oral arguments. Assignment: Hill/Vukadin # 15 due before next class.
4	1	Professor should have Hill/Vukadin # 15 graded before class. Topics: Review Hill/Vukadin # 15; work # 14 or 16 in class. Assignment: Hill/Vukadin # 17 due before next class Professor should meet with every student individually this week or next outside of class time. Expect meeting to take 20–40 minutes each.
	2	Professor should have Hill/Vukadin # 17 graded before class. Topics: review Hill/Vukadin # 17; work # 18 in class. Assignment: Hill/Vukadin # 19 due before next class. Online

		reading-speed assessment to be completed by week 5, class 2; email results to professor.
5	1	Professor should have Hill/Vukadin # 19 graded before class. Topics: Review Hill/Vukadin # 19; work # 20 in class. Assignment: Hill/Vukadin # 21 due before next class.
	2	Professor should have Hill/Vukadin # 21 graded before class. Topics: How to be an active reader and increase reading speed and comprehension; review Hill/Vukadin # 21. Assignment: Hill/Vukadin # 23 due before week 6, class 1.
6	1	Professor should have Hill/Vukadin # 23 graded before class. Topics: Review Hill/Vukadin # 23; work 22 in class. Assignment: Hill/Vukadin # 25 due before week 6 class 2.
	2	Professor should have Hill/Vukadin # 25 graded before class. Topics: Review Hill/Vukadin # 25; work 26 in class. Assignment: Hill/Vukadin # 29 due before week 7, class 1.
7	1	Professor should have Hill/Vukadin # 29 graded. Topics: Review Hill/Vukadin # 29; work Hill/Vukadin # 30 in class Assignment: Hill/Vukadin # 31. Distribute (or tell students where to find on Westlaw) larceny/embezzlement outline.
	2	Midterm 1. Students have 75 minutes to solve a problem similar in length and complexity to Hill/Vukadin # 29. Assignment: Memorize larceny/embezzlement outline. For both larceny and embezzlement, list five ways in which the doctrine might be tested on a MCQ test. In other words, if the students had to create the test themselves, how would they test their own ability to apply these rules?[90] Bring to class next time.
8	1	Professor should have Hill/Vukadin # 31 graded. Topics: Review midterm problem. Discuss Hill/Vukadin # 31. Discuss larceny/embezzlement law and the ways it might be tested. Teach strategies for success on MCQ, emphasizing that the essential process is the same as for essay questions. Work through one or more MCQs with answers removed. Assignment: Hill/Vukadin # 33, due before week 9 class 1.[91]
	2	Professor should have midterm 1 graded. Topics: What went right, what went wrong on midterm 1. Review more MCQs.

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[90] Students should be able to anticipate some of the MCQ questions that will be discussed in class or will be on the midterm. The point of this exercise is to show students that reflecting on law outside of class, as opposed to merely trying to memorize rules, will allow the students to anticipate the questions a professor will ask during class or on an exam. Cornell Notes facilitates this kind of reflection, and halfway through the semester is a good time to re-emphasize this skill.

[91] The Hill/Vukadin problems are longer and more complex from this point forward. Assigning more than one per week creates a grading logjam.

		Assignment: Distribute offer/acceptance outlines (or tell students where to find them). Students should list five ways offer/acceptance/mailbox rule might be tested; bring to next class.
9	1	Professor should have Hill/Vukadin # 33 graded. Topics: Review Hill/Vukadin # 33. Discuss offer/acceptance and how it might be tested. Work through one or more offer/acceptance questions with the answers removed. Assignment: Hill/Vukadin # 35, due before week 10, class 1.
	2	Topics: Work through additional offer/acceptance problems. Assignment: Hill/Vukadin # 37, due before week 11, class 1.
10	1	Professor should have Hill/Vukadin # 35 graded. Topics: Review Hill/Vukadin # 35. Review larceny/embezzlement, offer/acceptance. Practice MCQ test and review. Assignment: Hand out rule-synthesis cases; read and brief for week 11, class 1.
	2	Midterm 2. MCQ exam covering larceny/embezzlement and offer/acceptance.
11	1	Professor should have Hill/Vukadin # 37 graded. Topics: Review MCQ exam. Will take much of class. Review Hill/Vukadin # 37. Begin rule synthesis module. Assignment: Banana-peel memo due before week 12, class 1.
	2	Topics: Finish rule-synthesis module. Introduction to MPT & MPT strategies. Assignment: Assign an MPT problem;[92] due before week 13 class 1.[93]
12	1	Professor should have banana-peel memos graded. Topics: Review banana-peel memo. Work through part of an MPT in class.
	2	Topics: Finish in-class MPT. Assignment: Assign MPT problem # 2; due week 14 class 1.
13	1	Professor should have practice MPT #1 graded. Topics: Work through MPT problem #1; begin another in-class MPT. Assignment: Assign MPT problem #2; due before week 14 class 1.
	2	Topics: Finish second in-class MPT.
14	1	Professor should have MPT # 2 graded. Topics: MPT # 2.
	2	Topics: Whole-course review. Student evaluations.

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[92] Practice MPT exercises are readily available on the Internet. *See NCBE Study Aids Store*, *supra* note 32.

[93] MPTs take much longer to grade than the Hill/Vukadin problems; grading more than one MPT per week is not a realistic goal.

| 15 | Final exam. The final exam consists of a single MPT-type problem. Because the students are 2Ls, not graduates, they should have more than 90 minutes for the exam. Two hours is generally appropriate, but a particularly difficult MPT may justify more time. |

APPENDIX III — STUDENT TESTIMONIALS

The following excerpted emails are testimonials to TAMU's associate dean for academic affairs from students who achieved significant academic gains, which they attribute to the Art of Lawyering. Emails like these do a lot to combat the natural resentment students feel when required to take the class.[94]

Testimonial 1:

> I know many of my peers decided not to put much effort in to the Art of Lawyering course because they were upset that they were required to take the class due to their grades. If these students put effort in to the class, as I did, I believe that they would have gotten amazing results. My first two semesters of law school, my GPA averaged around a 2.65. This past semester I received a 3.31 GPA and, in addition, received an *A* in Constitutional Law. I know that these grades were reflective of the material and information I learned from the Art of Lawyering.
>
> Several students spoke about how they were upset about being placed in the class because they knew that their grades were reflective of how much time they spent studying, not that they did not know how to study or how to answer questions, etc. This class did not necessarily require me to study more, but taught me how to study more efficiently, how to answer multiple choice questions in the most effective way, and how to answer short answer and essay questions to the best of my ability. I felt more confident walking in and out of exams this semester and my grades improved significantly because of the Art of Lawyering course.

Testimonial 2:

> I was a student in Professor Murphy's Art of Lawyering class during Spring 2014. I expressed to Professor Murphy how happy I am that I was told I had to take this class. I'll be honest; when I first received the email that I was required to take Art of Lawyering due to my standing I was very upset. I believed that I should not be there. Really and truly, I believed I was a better student than that. The first couple of weeks of class, I probably spent most of that time pouting and still upset that I was in that class.
>
> It took me several weeks to realize that I was in Art of Lawyering because I NEEDED to be in Art of Lawyering. When we started looking at how to step up our answer to essay questions, I realized just how wrong I was. During exams, I would just start writing with no road map or direction. Professor Murphy showed me how to step up my answer for each and every answer I will encounter during my finals. This was a priceless lesson because in the world of a law student, the only thing[s] that matter[] are your final exams.

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[94] *See supra* Part IV. *See also* E-mail from Sara Bonau, student of author, to Dean Maxine Harrington (Sept. 3, 2014, 9:55 PM) (on file with author); E-mail from Christian Chanel Rafie, student of author, to Dean Maxine Harrington (Jan. 20, 2014 12:35 AM) (on file with author).

Not only did he show us the CREAC method to set up our answers for our finals but he also helped us master multiple-choice questions. The method that he teaches to read the question first and then move on to the problem makes multiple choices easier to understand and answer. When you figure out the answer even before you look at the questions, it cuts the time and anxiety of completing multiple choice questions in half.

I cannot believe that it took me till the end of my finals to realize how much Art of Lawyering helped me. I was more confident going into my finals and I felt organized and prepared. The lesson taught in Art of Lawyering can be used in each in every subject. I understand how student believe that they are better than the class or that they do not deserve to be there but they are wrong. Honestly, the lessons and explanations taught during this course should be something each and every student should experience. I am thankful that Professor Murphy pushed each of us to open our eyes to a new way of thinking and approaching each obstacle we face during law school. I am also thankful to have these new skills that will help me throughout my last year and 1/2 of law school and most likely my career after that.

I hope my words have shined some light on the benefits of this course and on the professor who helped me along the way. I am happy to share my experience and my growth.