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## Making Law Students Healthy, Skillful, and Wise

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## Making Law Students Healthy, Skillful, and Wise

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## I. INTRODUCTION

With this article, we attempt to build on New York Law School's strong record of appreciation and support for experiential learning. In 1992, one of us had the honor of contributing to a New York Law School symposium on lawyering theory.<sup>1</sup> At that time, it was clear to the assembled lawyering theorists that the simultaneous study of law and practice yields a level of professional excellence that can not be attained when these two kinds of study are kept distinct (as they are at many law schools), or worse yet, when the study of practice is neglected (as it can be at schools focused strongly on their identity as research institutions but weakly on their identity as teaching institutions). As a result of our collaboration across the fields of law, language, and social psychology, we now offer a broader hypothesis about the value of professional training that emphasizes legal practice as well as legal principle. We suggest that the experience and well-structured critical analysis of real or simulated lawyers' work are not only necessary to professional excellence, but also important to the learning capacity and emotional health of developing lawyers.

As we have worked at the design, teaching and observation of law school pedagogy, we have come to question the common image of law school as a "boot camp" in which professors deliberately place students under stress to hone the students' competitive instincts and sharpen their debating skills. To be sure, lawyering can be a competitive and disputatious enterprise, but is intellectual proficiency in law school dependent on emotional suffering? More to the point, do the most familiar pedagogical strategies in law school produce the most effective lawyers? We believe these two questions are deeply related and that students become better lawyers when they are focused less on the inherent competitiveness of their work and more on collaborative efforts to develop a range of skills that includes, but does not end with, disputative combat. Today, we suggest that the collaborative experience and well-structured critical analysis of lawyers' work are necessary, not only to professional excellence, but also to students' ability to contain stress sufficiently to manage the complex mental work of learning and using the law.

We draw on observations, experimentation and preliminary empirical research that we began in connection with New York University's (NYU's) Lawyering Program, and continue within NYU's Experiential Learning Lab. Our long-term objectives are: 1) to study law students' learning, professional socialization, and emotional adjustment over the course of their legal studies and beyond; and 2) to design and test teaching methods that will enhance learning and professional development.

We hypothesize that the typical law school regime impedes healthy professional development and fosters student disengagement for at least four reasons:

- It is inherently competitive in that it assesses students according to rank rather than according to achievement toward professional development.

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1. Peggy C. Davis, *Law and Lawyering: Legal Studies with an Interactive Focus*, 37 N.Y.L. SCH. L. REV. 185 (1992).

- It distinguishes and segregates the process of learning law and the process of learning to practice law.
- It encourages a domain-specific, “fixed intelligence” mindset, in that it implicitly or explicitly supports the idea that legal acumen is more the result of inborn intelligence than the result of training and disciplined, thoughtful effort.
- It heightens “social identity threat”<sup>2</sup>—a disabling anxiety that one’s performance will confirm a disparaging or otherwise limiting stereotype about a group with which one is identified.
- It extends the phenomenon of social identity threat by using a curved grading system to create a newly stigmatized low performance group.

Part II of this article will describe more fully these features of the typical law school environment. Part III will explain how we have adapted lawyering pedagogy in conscious efforts to encourage collaboration, link doctrinal study and professional service, encourage a growth mindset with respect to lawyering skills, and mitigate social identity threat. Part IV will report some very preliminary data drawn from students for whom a reasonably typical law school environment was combined with our adapted lawyering pedagogy. These data support and deepen the observation that students compete intensely for academic rank, but they contain encouraging, albeit tentative, evidence about how students engaged with the lawyering course and its pedagogy. Part V briefly suggests implications of our work to date and describes opportunities for further research.

## II. STRESS-PRODUCING FEATURES OF THE LAW SCHOOL ENVIRONMENT

### *A. Competition*

Legal study is a competitive game. Law school matriculation is nearly always the result of years of successful study.<sup>3</sup> Law school classes are likely to be filled with students who are closely clustered in terms of undergraduate grade point averages,<sup>4</sup>

2. The phenomenon to which we refer is more popularly known as “stereotype threat.” *See, e.g.*, Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995). We use the term “social identity threat” to emphasize that vulnerability is not limited to persons who belong to conspicuously stigmatized groups.
3. For example, Professor Linda F. Wightman divided 142 law schools into clusters based on school and student body characteristics. In five of the six clusters, students’ average undergraduate GPAs were above 3.0. The sixth cluster contained only 2.5% or 628 of the 24,862 students for whom undergraduate GPAs were reported. LINDA F. WIGHTMAN, LAW SCH. ADMISSION COUNCIL, BEYOND FYA: ANALYSIS OF THE UTILITY OF LSAT SCORES AND UGPA FOR PREDICTING ACADEMIC SUCCESS IN LAW SCHOOL 6 (2000).
4. For example, according to recent data, at New York University School of Law, the 25th to 75th percentile GPA range is 3.56–3.85, while the 25th to 75th percentile range at Benjamin N. Cardozo School of Law is 3.29–3.72. LAW SCH. ADMISSION COUNCIL & THE ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 181, 517 (2010).

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standardized test scores,<sup>5</sup> and ambition.<sup>6</sup> These similarly qualified and motivated students usually enter a taxing law school environment with a grading system that seems premised on an assumption that the fittest and most diligent will thrive.<sup>7</sup>

The typical first-year law school curriculum will include five or six large-section (75 to 125 students) courses that address the status and development of laws governing such subjects as civil procedure, property, contracts, criminal law, and torts. The typical curriculum will also include one or two (often ungraded) smaller section courses in which students are taught basic legal process, legal research and writing. In more ambitious schools, first-year small-section courses also address basic principles of professional responsibility and more interactive skills, such as interviewing, counseling, fact development, negotiation, mediation, and oral advocacy. In the second and third years, students typically have few course requirements and may choose among a range of large-section, seminar, simulation, and clinical courses organized around subject areas, social or political issues, the law of particular jurisdictions, or particular facets of legal process and jurisprudence.

The journey through law school is both stressful and correlated with increases in depression, anxiety, and substance abuse.<sup>8</sup> Although entering law students report no more (and in some cases fewer) signs of mental distress than comparable groups or the general population, weeks or months into the law school regimen they begin to exhibit alarming signs of emotional distress.<sup>9</sup>

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5. For example, at New York University School of Law, the 25th to 75th percentile LSAT range is 169–173, *id.* at 517, while the 25th to 75th percentile range at Benjamin N. Cardozo School of Law is from 162–166. *Id.* at 181.
  6. *See infra* pp. 23–24.
  7. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS 168 (2007) [hereinafter “CARNEGIE REPORT”] (noting that “first year performance at the majority of law schools is graded on the curve. . . . [T]hose who champion grading on the curve [see it as a means] to identify the best and the brightest in legal theory, analysis, and scholarship”).
  8. *See* Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55 (1999) (“[S]elf-reports of anxiety and depression are significantly higher among law students than among either the general population or medical students.”); Ass’n of Am. Law Sch., *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 41 (1994) (noting that almost 82% of law student respondents had consumed alcohol during the past month, 14% “reported using alcohol 10 or more times during the past month, and 3.8[%] admitted to daily use,” while 8.2% had used marijuana during the previous month, and “[a]most 2[%] . . . reported using marijuana 10 or more times during the previous month”).
  9. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 270–72 (2004) (finding that, in comparison to a sample of undergraduates “entering law students evidenced higher positive affect and higher life satisfaction, as well as higher aggregate [social well being],” but that, by March of their 1L year, “participants experienced large reductions in positive affect, life satisfaction, and overall [social well being], and large increases in negative affect, depression, and physical symptoms”); Alan Reifman et al., *Depression and Affect Among Law Students During Law School: A Longitudinal Study*, 2 J. EMOTIONAL ABUSE 93, 102 (2001) (reporting, based on a longitudinal study of law students, that “before law school the students’ depression levels were similar to general population norms,” but that, “at the end of their first and third years,” the students’ depression levels were similar “to those of individuals who had undergone major life traumas (e.g., death of spouse, marital separation)”).

The notorious levels of stress and other kinds of psychological distress among law students are often, and reasonably, attributed to the typical law school grading and ranking systems.<sup>10</sup> Students are rarely given ongoing feedback designed to inform and guide the learning process. Rather, they are most often graded on (or largely on) the basis of one-shot, end-of-term written examinations. Grades are often allocated according to curves that require fine-grained differentiations and mandate that significant proportions of students be labeled in ways that seem to imply mediocrity. Grades and rank are consequential for the attainment of initial job placements, mentoring opportunities, institutional honors, and institutional support. Relationships among law students are therefore necessarily, and at times bitterly, competitive.

### *B. Segregation*

Langdellian “case method” instruction, the signature pedagogy of law schools in the United States, is often cited as a source of student stress.<sup>11</sup> Introduction of the case method marked a shift from asking students to read, hear lectures about, and digest the contents of treatises. Under the case method, professors first asked students to read strings of related cases and then questioned the students closely about the progress, meaning, and implications of those cases. Professors’ persistent and probing inquiries in Langdellian classes are popularly understood, and often perceived by students, as malicious hazing that intensifies an already too-competitive learning environment.<sup>12</sup> To perceive the case method in this way is to misunderstand it. Christopher Columbus Langdell did not shift from lecturing his students to quizzing them in order to toughen them up through hazing. He made the shift in order to make the learning experience more active and more relevant to professional skill development.<sup>13</sup> Instead of asking students to memorize the law, Langdell asked them to think about it as if they were lawyers—to analyze the law and attempt to apply it to new situations.

Unfortunately, the link between case method discourse and lawyering has been overlooked. Despite its experiential qualities, the Langdellian method has come to symbolize, for students and faculty alike, the theoretical side of a counterproductive but seemingly incessant struggle between theory and practice. Langdellian and

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10. See, e.g., Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229, 243 (2002) (“Many upperclass students are extremely upset by their class rank and are often preoccupied with its impact on their job choices . . . .”); CARNEGIE REPORT, *supra* note 7, at 149 (“Many of the students we met spoke of the demoralizing effect of the competitive atmosphere . . . .”).

11. See, e.g., James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471, 472 (2003) (“Most critics of Socratic teaching [believe] that the method, as currently practiced, inevitably humiliates, intimidates, and silences students.”); Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 519 (1991).

12. Law school stress has also been attributed to other factors, including the pressure to obtain high-paying jobs at large law firms, elitism, and the fact that students’ grades in a course are often derived from a single examination, which they view as having little relation to what they studied in the course or to the practice of law. CARNEGIE REPORT, *supra* note 7, at 184–86.

13. For accounts of the development of the case method, see, Peggy Cooper Davis, *Desegregating Legal Education*, 26 GA. ST. U. L. REV. 1271, 1275–78 (2010).

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seminar classes are understood as *academic* (and implicitly *intellectual*) pursuits, while simulation and clinical courses are understood as *practical* skills training (and implicitly less sophisticated, less challenging, and less lofty).<sup>14</sup> According to this dichotomized scheme, *academic* legal work appears to require more effort and higher-order skills than *practical* work requires.<sup>15</sup>

To think of law school courses as being either about academics or about skills is a mistake. As our description of Langdellian method suggests, all law school courses are dedicated to the cultivation of skills. Professional education should require the cultivation of skills, for to be an effective professional one must go beyond *knowing* things to *knowing how to do* things. Large-section subject area courses taught according to Langdellian method were designed to move legal education beyond the goal of transferring knowledge about the law to the more ambitious goal of cultivating the skill of understanding, interpreting, and applying the law. Simulation and clinical courses continue the cultivation of those skills while also cultivating the skills of understanding and interpreting facts, understanding, communicating and advancing goals, articulating commitments, counseling clients, and advocating in furtherance of client goals or other causes.

Our tendency to dichotomize academic and practical skill is a reflection of our culture and socialization. Gender, race, and class-based stereotypes can lead us to distinguish academic and practical work and to prioritize the academic.<sup>16</sup> That is, we may be primed to think that some skills are higher-order and more complex, and to think that other skills are lower-order and more easily learned. Similarly, we may have theories of mind that make skillfulness in some areas seem more attainable than skillfulness in other areas.

Whatever the cause of this dichotomizing tendency, it seems to produce an unhealthy tracking pattern as distinctions are made between scholarly or academic work and practical and (presumably) more interactive work. Anecdotal evidence reported to us over many years suggests that a subtle tracking process begins with the announcement of first-semester or first-year grades. Students who achieve high grades in their first year seem to be quietly encouraged by faculty members and other advisors to avoid clinical and simulation courses. At the same time, students who receive lower grades in their first year seem inclined, and may be encouraged, to embrace simulation, clinical, and selected seminar courses in which assessment practices are more frequent, more tailored, and more hospitable for those who did not “test well” in large-section settings. We also suspect that there is a separate and less subtle tracking system that sometimes confounds the first: students interested in public interest or public service work may be both encouraged and inclined to

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14. CARNEGIE REPORT, *supra* note 7, at 87–88.

15. *Id.* at 88 (“In many of the schools we visited, students commented that faculty view courses directly oriented to practice as of secondary intellectual value and importance.”); *id.* at 114 (“In the schools we visited, especially the highly ranked institutions with very well-prepared students, it was not uncommon to hear faculty voice deep skepticism about the intellectual value of practice-oriented courses.”).

16. See Peggy Cooper Davis, *Slay the Three-Headed Demon!*, 43 HARV. C.R.–C.L. L. REV. 619, 620 (2008) [hereinafter “*Slay the Demon*”].

gravitate to clinical courses regardless of their grade point averages. This may be so in part because clinical programs have historically (and by the preference of many clinicians) been devoted to public interest and public service practice areas, and perhaps in part because of a mistaken belief that interactive work and “practical skill” are more necessary or useful in the public interest sector than in the private sector.

*C. The Fixed Intelligence Mindset*

Psychological mechanisms can function to exacerbate stress in the competitive and segregated law school environment. One of these mechanisms has to do with students’ and professors’ theories of mind, that is, students’ sense of self-efficacy while performing difficult tasks and professors’ sense of whether most or all of their students are capable of outstanding work. In repeated studies, social psychologist Carol Dweck has found that people learn better when they believe that the things they are learning to do can be done well as a result of practice and effort than when they have in mind that the things they are learning to do are done well as a result of native talent.<sup>17</sup> In her best-known studies, Dweck found that students who were praised for their native intelligence did not do as well as students who were praised for their hard work.<sup>18</sup> Those praised for native intelligence sought opportunities to display their (presumably inborn) proficiency and therefore avoided taking on new challenges. Those praised for hard work welcomed challenges and took pleasure in their efforts to meet those challenges. For students focused on natural talent, difficulty was perceived as a sign of their own inadequacy. For those focused on effort, difficulty was an opportunity to grow. The two states of mind have come to be known as “fixed intelligence” and “malleable intelligence” mindsets.<sup>19</sup>

In using the fixed and malleable intelligence terminology, we do not mean to impose—nor do we think that Dweck herself means to impose—a rigid definition of intelligence. We can hold in abeyance arguments about whether human beings possess a single intelligence quotient or use different kinds of intelligence in pursuing different tasks.<sup>20</sup> All that is required is recognition that in the domain in which a person is working, it can matter whether that person believes their abilities are fixed or malleable. Whether we are trying to learn to sing an aria, paint a landscape,

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17. See, e.g., Lisa S. Blackwell et al., *Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention*, 78 *CHILD DEV.* 246, 246 (2007) (finding that the belief that intelligence is malleable predicted an upward trajectory in grades over the two years of junior high school, while a belief that intelligence is fixed predicted a flat trajectory).

18. See, e.g., Melissa L. Kamins & Carol S. Dweck, *Person Versus Process Praise and Criticism: Implications for Contingent Self-Worth and Coping*, 35 *DEV. PSYCHOL.* 835, 835 (1999); Claudia M. Mueller & Carol S. Dweck, *Praise for Intelligence Can Undermine Children’s Motivation and Performance*, 75 *J. PERSONALITY AND SOC. PSYCHOL.* 33, 33 (1998).

19. See, e.g., Carol S. Dweck, *Messages that Motivate*, in *IMPROVING ACADEMIC ACHIEVEMENT: IMPACT OF PSYCHOLOGICAL FACTORS ON EDUCATION* 37, 41–45 (Joshua Aronson ed., 2002) (discussing the implications of believing in “fixed intelligence” versus “malleable intelligence”).

20. See generally HOWARD E. GARDNER, *INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY* (1999) (offering a multiple intelligence perspective in opposition to the notion of a single IQ).



transplant a kidney, or deliver a closing argument, it matters whether we conceptualize the learning process as a test of talent or a route to mastery.

*D. Social Identity Threat*

According to Dweck's theory of the fixed intelligence mindset, fear that one's inherent worth is being tested blocks enthusiasm for challenge and undermines confidence in the ability to surmount difficulty. Social psychologist Claude Steele's notion of social identity threat operates similarly. According to Steele's theory, fear of confirming a negative stereotype about a group with which one is identified works to the same effect.<sup>21</sup> For example, an elderly person might believe that older people are thought to have poor short-term memory, and as a result might approach a memorization task with disabling anxiety, or might avoid memorization games. Both the person with the fixed intelligence mindset and the stereotype-threatened person experience disabling fear, and both are disinclined to tackle apparent difficulty.

The fixed intelligence mindset and social identity threat may help to explain the alarming state of law students' mental health. Law schools are full of comparative talk about "brain wattage," and there is no reason to believe that law schools are havens from stereotyped thinking. Students are admitted to most law schools primarily on the basis of a test that purports to measure a kind of academic ability, and in law schools, as in all social settings, there are stereotypes about what groups have and do not have particular kinds of intellectual ability. But psychopathology among law students seems too widespread to be explained by these factors alone. We are therefore exploring the possibility that anxiety stemming in part from fixed theories of intelligence and in part from social identity threat is exacerbated and broadened by the risk of a stigmatizing law school rank. Inspired by Lani Guinier's idea that newcomers and misfits in the legal academy are miners' canaries who make manifest conditions that are toxic to all,<sup>22</sup> we are exploring the hypothesis that students disabled by social identity threat or by a fixed intelligence mindset make manifest aspects of the law school environment that can be crippling to all.

*E. The Threat of a Stigmatized Rank*

The systems of grading and ranking employed by most law schools lock students in a zero-sum game with wildly lopsided odds. If success in the competition for grades and rank is thought to be defined as ranking within the top ten percent of one's class, then each class of law students enters a contest that ninety percent will lose. A typical curve will by definition place half of all students in the bottom half of an arbitrarily segmented whole. The fear that fixed intelligence theorists have of displaying inherent limitations, or the fear that stereotype-threatened people have of

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21. See generally Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOL. 613 (1997).

22. See generally LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002).

confirming stereotyped assumptions that they are not smart, is heightened by having to face overwhelming odds of “losing” in the race for rank and recognition. We suspect that the resultant stress is at a major factor in law students’ psychopathology. We also suspect that it is a cause of the high levels of academic disengagement so often reported among second- and third-year law students.<sup>23</sup> Finally, we suspect that whether or not a law student doubts her capacity for intellectual growth and whether or not she is stereotype-threatened, the high (and often increasing) odds of “losing” in the race for rank may, over time, put that student at risk for a similar kind of disengagement.

### III. EXPERIENCE AND CRITIQUE: SHIFTING STUDENTS’ FOCUS

We have suggested, on the basis of established social science theories, informed speculation, and preliminary empirical study, that fixed theories of intelligence, identity threat and anxiety about rank combine in the zero-sum competition for law school rank to elevate stress and inhibit learning. Even as we undertake research to test the applicability of our theories about stress and learning in the law school setting, we are testing measures that promise to be remedial. In this respect, we are clinicians who seek the cause of a malady while caring for the malady’s victims.

The NYU Lawyering course has been both a laboratory in which to unpack the causes of dysfunction and stress and a testing ground for new teaching strategies. The Lawyering course is best understood as a year-long sequence of practice experiences and structured reflection on those experiences. It consists of increasingly complex exercises in which students study the elements of a lawyering task (e.g., interviewing, negotiation, brief writing); take on a hypothetical case assignment that involves carrying out the task; engage in collaborative, strategic planning; complete the task; and subject their planning and performance to extensive self, peer, and faculty critique. The immediate goal is structured, carefully sequenced learning. The larger goal is building career-long habits of self-reflection for professional growth.

Although we have identified zero-sum competition, fixed theories of intelligence, identity threat, and skill segregation as stressors in the law school environment, we do not argue here that they can be avoided or altogether removed. Indeed, competition for rank, assumptions about innate ability and theory/practice distinctions seem to be settled fixtures of most law school environments. But if these stressors cannot be removed, they can, we hope, be mitigated. We have therefore worked to create experiential learning environments that will mitigate stress by encouraging collaboration, emphasizing the malleability of lawyering skills, and highlighting relationships between theory and practice. Since 1990, NYU’s Lawyering curriculum has been deliberately structured with these goals in mind:

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23. *See, e.g.*, LAW SCH. STUDY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: KNOWING OUR STUDENTS 19 (2007) (“3L responses to LSSSE indicate that [compared to 1L students] they are not as engaged in their academics and less satisfied with the services law schools are providing.”).

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- To balance the inherently competitive nature of the law school environment (and in response to findings that collaboration mitigates identity threat<sup>24</sup>), we engage students in collaboration and formative, non-competitive assessment.
- To counteract skill segregation, we supplement the case method formats that usually dominate the first-year curriculum by providing intensive quasi-clinical experience and critique.
- To encourage a malleable intelligence mindset with respect to legal skills, we encourage faculty and teaching assistants to measure and record professional growth rather than reward displays of talent.
- In response to theory and research suggesting that performance is boosted when students are using skills about which they feel relative confidence,<sup>25</sup> or skills at which a group they belong to stereotypically excels,<sup>26</sup> we design lawyering exercises to maximize collaborations around projects that draw on a full range of relevant mathematical, relational, logical and performative skills and thereby boost the performance and esteem of the greatest number of students.

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24. See, e.g., Robert E. Fullilove & Philip Uri Treisman, *Mathematics Achievement Among African American Undergraduates at the University of California, Berkeley: An Evaluation of the Mathematics Workshop Program*, 59 J. NEGRO EDUC. 463, 476–77 (1990) (describing a math workshop program that, by creating academically oriented peer groups, successfully promoted high levels of success among African American college students); Uri Treisman, *Studying Students Studying Calculus: A Look at the Lives of Minority Mathematics Students in College*, 23 C. MATHEMATICS J. 362, 368–69 (1992) (describing a successful “anti-remedial” program based on the premise that “success in college would require [students] to work with their peers, to create for themselves a community based on shared intellectual interests and common professional aims”).
25. See, e.g., Chun-Yen Chang & Wei-Ying Cheng, *Science Achievement and Students’ Self-confidence and Interest in Science: A Taiwanese Representative Sample Study*, 30 INT’L J. SCI. EDUC. 1183, 1193–94 (2008) (finding a moderately significant correlation between students’ self-confidence and interest in science (SCIS) and their science achievement (SA), and noting that the data “indicated that SCIS might serve as important inputs in student SA”); Frank Pajares & Margaret J. Johnson, *Confidence and Competence in Writing: The Role of Self-Efficacy, Outcome Expectancy, and Apprehension*, 28 RES. TEACHING ENG. 313 (1994) (agreeing with “prior findings reporting a relationship between confidence in one’s writing abilities and subsequent writing performance”).
26. See, e.g., Gregory M. Walton & Geoffrey L. Cohen, *Stereotype Lift*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 456, 464 (2003) (defining “stereotype susceptibility” as “the performance boost caused by activation of a positive ingroup stereotype”).

*A. Emphasizing Professional Growth and Collaboration*

In the Lawyering course, students do not compete for rank on a final examination. The course is ungraded. Instead of working to produce at the end of term legal analyses that mesh with a professor's expectations, students in lawyering work collaboratively, as if they were lawyers, to address a series of problems. Assessment of student work takes two forms.

First, self and peer assessment occur naturally in exchanges of ideas and arguments as teams collaborate in planning strategies and then interact to execute their plans. Team members planning a negotiation will, for example, exchange and compare ideas about the interpretation of relevant law, and teams negotiating against each other will confront and respond to competing interpretations. Similarly, negotiation planning teams will share and evaluate ideas about rhetorical strategy, and negotiators in the execution phases will encounter, assess, and respond on the spot to competing rhetorical moves.

A second and more focused assessment occurs in critique conferences that are held after each exercise—and after many significant exercise phases—to review and evaluate the choices students have made and the consequences that flowed from those choices. These faculty-supervised conferences follow a framework designed to assure that they track a range of skill sets and analytic methods.<sup>27</sup> The guided critique process deepens students' thinking and learning about tasks at hand; at the same time, it models techniques for career-long self-examination and growth.

*B. Counteracting Skill Segregation*

The Lawyering course is experiential. It requires students to perform tasks rather than learn and discuss rules. A central feature of experiential learning in the law is that it forces the integration of theory, doctrine and practice: a student's comprehension of the doctrine of attractive nuisance will deepen when the student works to counsel newly relocated parents who plan to purchase a back yard trampoline that will lure playmates for their uprooted children. When experiential exercises are properly designed, they teach theory by instantiation: when a student is asked to argue that placing an inoperative military tank in a park does or does not violate a "No Vehicles" sign, the student should be led to engage theories of interpretation, for the argument will necessarily involve issues of statutory intent, plain meaning and statutory function. Experiential learning can therefore be used to counteract tendencies toward artificial segregation of the intellectual and the practical. We have encouraged lawyering professors to seize this opportunity.<sup>28</sup>

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27. See subsection (D) *infra*. Critique guides structured around the lawyering framework are provided as an Appendix, see *infra* app.

28. This aspect of the NYU Lawyering program has been controversial. Peggy Cooper Davis et al., Report of the Special Committee on the Review of the Lawyering Program: Committee Report to the Dean of NYU School of Law 20–21 (February 23, 2010) (on file with authors) [hereinafter "Hertz Committee Report"] ("Some members of the Committee felt that Lawyering should not devote as much attention as it currently does to teaching theories of legal interpretation. . . . Other Committee members feel that interpretation is necessarily central to Lawyering. . . ."). See also *id.* at 15 (recommending that lawyering

*C. Encouraging a Malleable Intelligence Mindset*

We have educated lawyering faculty and teaching assistants about the effects that theories of mind have been found to have on learning. We have also given them opportunities to critique social science literature addressing theories of mind. Finally, we have assigned them the task of monitoring student and faculty expressions of praise or admiration to note when those expressions referenced effort (as in “Sally was well prepared and insightful when she was called on in class today!”), and when they referenced innate ability (as in “Sally is so smart!”). Teaching assistants and faculty were under no orders to encourage a malleable mindset as they interacted with students, but they had the knowledge to do so. The goal was to maximize the chances of creating a classroom culture of effort and self-improvement without impinging academic or intellectual freedom or dictating the form of faculty and teaching assistant interactions with their students. It was left to each professor/assistant team to decide whether to address theories of mind literature explicitly in their classrooms; some did, but many did not.

In addition to educating teaching personnel about theories of mind, we designed the NYU Lawyering course’s exercises and materials to encourage a culture of collaborative improvement. Just as we left it to individual faculty members to decide whether to address theories of mind explicitly in their classrooms, we gave faculty members a measure of autonomy with respect to the structure of their critique sessions and the use of course materials. Nonetheless, exercises were prescribed; model materials were provided; and both were structured to encourage a growth mindset.<sup>29</sup> We structured exercise critiques to focus on precise descriptions of choices and effects (as in “I noticed that when you tolerated periods of silence the client was more forthcoming.”), rather than on qualitative judgment (as in “That was a fabulous [or terrible] interview.”).<sup>30</sup> Background readings emphasized planning and highlighted choice points,<sup>31</sup> and critique guides focused on choices and consequences rather than on outcomes.<sup>32</sup>

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professors proceed cautiously in teaching theoretical legal indeterminacy to take into account concerns on the part of some faculty that such instruction may be having the effect of confusing 1L students).

29. Variability in faculty approaches and in their receptivity to fostering a growth mindset may explain preliminary findings from the studies directed by Professor London, *see* discussion *infra* Part IV, that students did not report a statistically significant difference in the extent to which they focused on skill development rather than displays of ability in lawyering and the extent to which they did so in their other courses. Students were asked to rate their goals on a scale in which a value of 1 was assigned to “learn new skills regardless of my performance,” and a value of 10 was assigned to “demonstrate my intellectual skills through my performance.” The mean across all the courses was 3.69 with a standard deviation of 2.41. Unfortunately, we are not now able to compare these results with those from a school that does not make explicit efforts to encourage a growth mindset.

30. *See infra* app.

31. *See* ANTHONY G. AMSTERDAM, PEGGY COOPER DAVIS & ADERSON BELLEGARDE FRANCOIS, *LAWYERING BY THE BOOK* chs. 2–12 (2009–10) (breaking lawyering tasks into component parts and addressing choices to be made at each point).

32. *See supra* notes 16–17 (describing categories used for planning and critique); *see also infra* app. (utilizing categories for planning and critique).

Following progressive learning theories championed by our colleague, Jerome Bruner, we maximize opportunities for student collaboration, not only because collaboration facilitates mastery,<sup>33</sup> but also on the theory that collaboration would mitigate competitiveness. We are aware of research indicating that collaboration mitigates social identity threat,<sup>34</sup> and we suspected that it would also relieve some of the anxiety of competition. Students are almost always assigned to plan in teams, and most exercises are collaborative in some or all of the implementation phases. Critique meetings are also collaborative, providing a structured mix of faculty, peer and self analysis of each student's work.<sup>35</sup>

#### D. Integrating Analytic Tools

In order to maximize the chances that each student will work both in zones of relative confidence and in areas that are more challenging, we took pains to see that—and to make clear that—each exercise required the use of a full range of practice skills. We did this by establishing a two-part, problem-solving framework for a) identifying the component parts or elements of a practice task, and b) engaging the range of skills required to manage each component part.<sup>36</sup> Within this framework, students are first taught to differentiate four kinds of work that are required to tackle a legal matter:

- *Setting goals* that take account of relevant interests and risks;
- Identifying and *interpreting* relevant rules;
- *Discovering and interpreting* relevant facts; and
- *Managing human interactions* in pursuit of set goals.

Students are then introduced to five analytic tools that are necessary to do this work:

- *Rule-Based Analysis*: recognizing, correcting, and avoiding fallacies, and seeing alternative logical structures in reasoning from rule to result.
- *Institutional and Socio-Cultural Analysis*: recognizing and addressing the structure, characteristics and motivating forces within institutions and the informal rules and habits of thought that influence large and small cultures.

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33. See Anuradha A. Gokhale, *Collaborative Learning Enhances Critical Thinking*, 7 J. TECH EDUC., Fall 1995, at 22. See also JEROME BRUNER, *THE CULTURE OF EDUCATION* 56 (1996) (“Understanding is fostered through discussion and collaboration . . .”).

34. See, e.g., Fullilove & Treisman, *supra* note 24; Treisman, *supra* note 24.

35. See *infra* app.

36. For a fuller description of this framework, see NYU Sch. of Law Experiential Learning Lab, *The Lawyering Method*, NYU LAW, <http://www.law.nyu.edu/experientiallearninglab/methods/lawyeringmethod/index.htm> (last visited Sep. 25, 2011).

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- *Psychological Analysis*: recognizing and addressing the interpersonal and intrapersonal forces that affect human decisionmaking, behavior, and interaction.
- *Rhetorical Analysis*: understanding, countering, and making strategic uses of narrative, language, and other means of communication, and
- *Role Analysis*: defining the reach, limits, and responsibilities of the lawyer's role.

Law schools tend to cultivate rule-based analysis but to neglect the other four modes.<sup>37</sup> Providing an intellectually versatile, practice-oriented approach to legal education corrects this tendency in an effort to produce well-rounded practitioners. We predict that it will also mitigate identity threat by creating comfort zones for students who excel at modes of analysis that have not been prized in the traditional law school setting.<sup>38</sup>

### IV. PRELIMINARY RESEARCH FINDINGS

NYU's Experiential Learning Lab is a partner in empirical studies of student adjustment and engagement in law school. In research directed by Bonita London (the London studies), quantitative data from structured questionnaires and qualitative data from open-ended diary narratives have been obtained from first-year law students at NYU and at other competitive law schools. These data were obtained prior to, or at the start of law school, and daily or weekly over the course of the first few days and weeks of the students' transition into law school. Through this preliminary research and a series of additional studies, we hope to identify elements in the law school curriculum and culture that facilitate learning, and to gain a better understanding of the levels and sources of student stress. We are looking for factors that affect students' theories of mind in the law school setting; factors that trigger, and mitigate, social identity threat; and correlations between social identity threat or theories of mind on the one hand, and academic and professional thriving, professional values, and feelings of efficacy on the other.

Details of the London studies varied at different schools, but the overall format was similar across schools. The NYU surveys, for example, proceeded as follows: Students were offered a nominal monetary payment to participate in the baseline questionnaire; in addition, chances to win a popular electronic device were offered for participation in weekly longitudinal surveys. The baseline questionnaire, which opened for enrollment approximately two weeks before the start of first year classes, not only

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37. See *Slay the Demon*, *supra* note 16 at 621–22 (discussing the logical focus of the iconic doctrinal Socratic classroom and the lack of focus on other lawyering skills, which are typically addressed in non-mandatory simulation or clinical courses).

38. The NYU Lawyering method is particularly effective at encouraging intellectual versatility, because it takes pains to make clear that that each mode of lawyering analysis is applicable to every kind of lawyering work. See NYU Sch. of Law Experiential Learning Lab, *supra* note 36.

requested basic demographic data, but also probed the students' emotional states, their social, academic, and career histories and their expectations concerning law school and legal practice. Students provided self-reports of their LSAT scores, undergraduate grade point averages, and undergraduate institutions. They also responded to questions designed to measure their general levels of undergraduate engagement (e.g., whether they frequently attended professor office hours, studied with groups, etc.), their perceptions of the structural and environmental factors that contribute to their learning success, their expectations of success within law school, and their life and career goals following law school. In addition, students responded to questions designed to measure their self-perceptions, their levels of anxiety, depression and alienation, their sensitivity to rejection based on gender and race, and their theories of intelligence. Finally, students wrote a brief open-ended narrative of their expectations of what law school would be like. Across two cohorts of approximately 430 students (a total of approximately 860 students over two years), 288 students responded to the baseline survey. In the longitudinal surveys, students were asked to report each week concerning their activities and experiences in law school, and measures were again taken of their self-perceptions, their levels of anxiety, depression and alienation, their sensitivity to rejection based on gender and race, and their theories of intelligence. Students responded at declining levels to the weekly surveys.<sup>39</sup>

The research is in an early phase, but we have made preliminary findings that will inform the development and further testing of our hypothesis that theories of mind and states of identity threat combine with features of the law school environment to generate unproductive levels of student stress. We describe five of those findings here, one (from background surveys taken at NYU law school) about students' performance expectations and the other four (from weekly surveys taken at NYU after first year classes had begun) about law students' 1) allocation of work time and their perceptions of 2) the extent to which they felt respected, 3) the quality and 4) the usefulness of their work across courses.

#### *A. Performance Expectations*

As we began to analyze the background survey results, we attempted to quantify and document levels of rank-related stress among the responding first-year students. As a first step, we looked to students' reported expectations with respect to class rank. When students were asked to indicate where they believed they would rank academically at the end of their first year in law school, the response options ranged from the "Top

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39. Seventy-two students completed the weekly survey in week one, ninety-two in week two, eighty-four in week three, fifty-six in week four, sixty in week five, and sixty-eight in week six. After week six, the participation rate dropped below fifty students. The declining participation rate in this study may reflect the demands of completing a study for minimal incentive throughout the semester. Incentives, such as integration into the course requirements, prize raffles, and payment, have been successfully used to promote sustained participation in similar semester-long longitudinal studies and should be used in refined trials of this study. See, e.g., Bonita London et al., *The Influences of Perceived Identity Compatibility and Social Support on Women in Non-Traditional Fields during the College Transition*, BASIC & APPLIED Soc. PSYCHOL. (forthcoming).

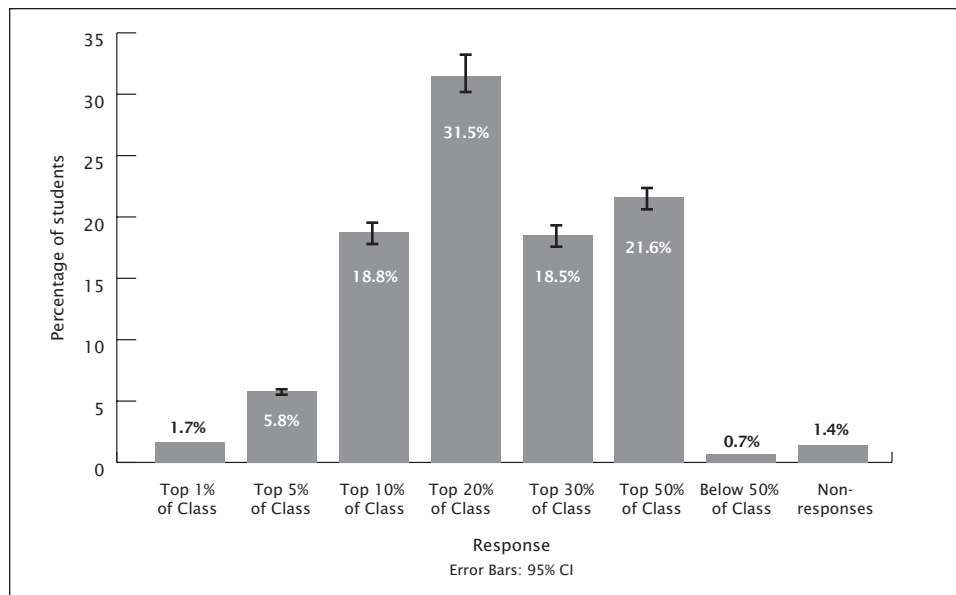


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1% of the class” to “Below 50%” of the class, with four categories between these extremes (see Table 1 below). The students expressed some modesty—or some tendency to cluster at the mean. Only 1.7% predicted that they would be in the top one percent of their class. Nevertheless, only *two students* (0.7%) expected to be in the bottom half of the class, and a majority (58.7%) expected to be in the top twenty percent. More than three-quarters (77.4%) of these students, nearly all of whom had superior undergraduate academic records predicted that they would be in the top thirty percent.<sup>40</sup> Responses to this question are not the best reflection of the range of student expectations, for, as we have said, respondents were given only one option at and below fifty percent, and we know that the clustering of options can skew

**Table 1**<sup>41</sup>

Where do you think you will rank academically after your first year at law school?



40. Interestingly, the expectations of rank did not differ by gender (men: mean expected rank=4.29 (standard deviation=1.32), women: mean expected rank: 4.27 (standard deviation=1.24);  $t(290)=0.13$ ,  $p>.90$ ).

41. Bivariate correlation analyses reveal that those law students who felt a greater sense of alienation during the first week of law school (e.g., lower sense of fit, welcome, comfort), and greater discomfort with their peers were more likely to have predicted a lower law school rank for themselves when they responded to the background survey. (overall alienation:  $r=0.19$ ,  $p<.01$ ; peer discomfort:  $r=0.12$ ,  $p<.05$ ). We are investigating whether there is a relationship between identity threat and anticipatory feelings of alienation.

survey results.<sup>42</sup> However, despite the restricted options, these preliminary results are tangible evidence of incoming students' sense of their ability to thrive in law school and somber predictors of the disappointments that surely await them. New analyses and studies should tell us whether there are correlations between rank expectations and theories of intelligence, identity threat, and stress levels.

### B. Time Allocations

We hypothesized that intense competition for grades and rank would lead law students to devote more time to courses in which they received grades than to courses in which they did not receive grades. We knew that students had frequently reported in teaching evaluations that the lack of a grade incentive caused them to devote less time to lawyering than they thought was warranted. We also had a great deal of anecdotal evidence that first-year students were advised by second- and third-year students to guard against letting the simulation series drain time that could otherwise be spent on the graded, subject-area courses that affect class rank. We therefore expected that students would report spending less time on lawyering than they did on the subject-area courses.

Given the longitudinal design of the weekly surveys, students reported ratings for each of their courses multiple times. Therefore, not only were we able to compare participants' ratings for different courses in any particular week, we were also able to examine how participants' ratings for each course changed over time. However, a few important caveats regarding the interpretation of the data remain. First, as mentioned earlier, as some participants dropped out of the study each week, our sample size became gradually smaller. Given the positive relationship between reliability and sample size, the mean ratings for earlier weeks should be regarded as more reliable than those for later weeks. Here, we will report results for the first six weeks. Second, in this as in other diary or longitudinal studies, those who chose to participate and who remained in the study for a longer duration may be qualitatively different from those who dropped out of the study over time. Thus these data, especially those from weeks five and six, may oversample students who are more inclined to participate in the study. Finally, whereas lawyering, civil procedure, and contracts were taken by all students during their first semester, torts and criminal law were not. A majority of students were randomly assigned to take torts and the other students were randomly assigned to take criminal law. Therefore, sample sizes were considerably smaller for these two courses, especially criminal law, than for the other courses.

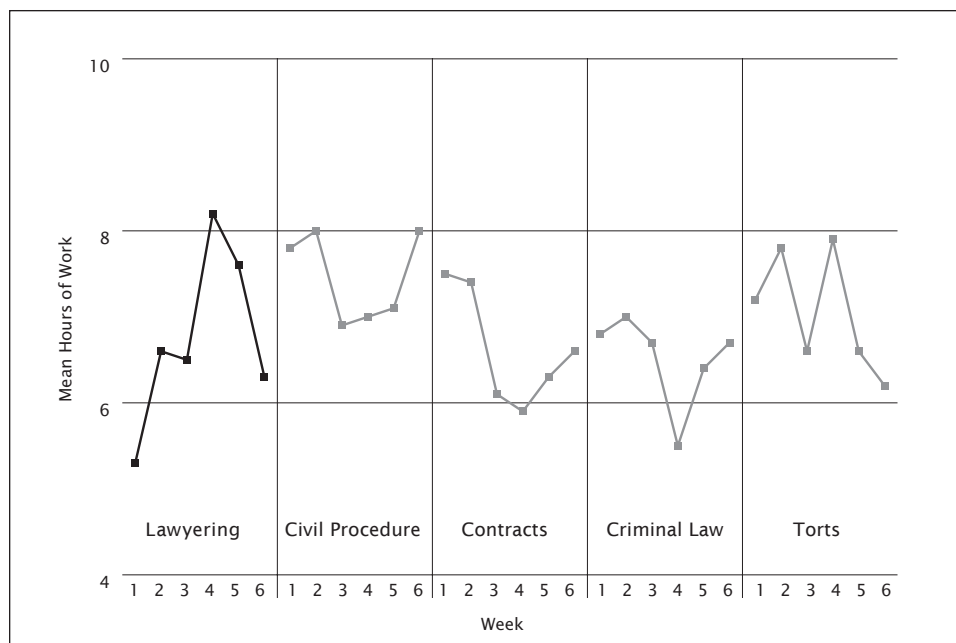
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42. See Norbert Schwarz, *Self Reports: How the Questions Shape the Answers*, 54 AM. PSYCHOLOGIST 93, 95-96 (1999) (suggesting that the format and range of response alternatives might systematically affect a respondent's answer). For example, in one study respondents were asked to report how many hours of television they watched every day. When the alternatives ranged from "up to ½ hour" to "more than 2½ hours," 16.2% of respondents reported watching more than 2½ hours. However, when the alternatives ranged from "up to 2½ hours" to "more than 4½ hours," 37.5% of respondents reported watching more than 2½ hours. *Id.* at 97-98. This result may partly be explained by people's preference for the middle alternatives among those presented to them. See, e.g., Itamar Simonson, *Choice Based on Reasons: The Case of Attraction and Compromise Effects*, 16 J. CONSUMER RES. 158, 161 (1989).

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In order to assess time allocation by course, at the end of each week we asked students to estimate the number of hours they spent on each of the following activities for each of their courses: preparing work assignments alone, completing readings, studying for class, studying for an exam, and meeting with workgroups/classmates. We computed a composite variable consisting of the sum of these estimates for each course per week to reflect the total number of work/study hours devoted to each course (see Figure 1).

**Figure 1. Time Allocation (hours) by Course**



Based on the raw allocation of time, in the first two weeks, students reported devoting the greatest number of hours to their civil procedure course and the smallest number of hours to their lawyering course.<sup>43</sup> In week three, the differences between

43. We conducted a repeated-measures analysis of variance (ANOVA) to compare the three courses taken by all students—lawyering, civil procedure, and contracts. Cohort was included in the analysis as a between-subjects factor to examine whether the same pattern applied to both the 2007 and 2008 entering classes. In week one and in week two, there were significant differences among hours spent on these three courses. In week one,  $F(2, 240) = 22.2, p < .001$ . More specifically, the 2.53 hours of difference between lawyering (on average, 5.24 hours) and civil procedure (on average, 7.77 hours) was significant ( $t(240) = 4.91, p < .001$ ), so was the 2.22 hours of difference between lawyering and contracts (on average, 7.46 hours) ( $t(240) = 6.24, p < .001$ ). In week two, there were also significant differences among hours spent on these three courses,  $F(2, 188) = 3.95, p = .02$ . The 1.16 hours of difference between lawyering (on average, 6.57 hours) and civil procedure (on average, 7.73 hours) was significant ( $t(188) = 2.17, p = .03$ ), so was the 0.72 hours of difference between lawyering and contracts (on average, 7.29

lawyering and the other courses were not significant. Then we noticed a substantial increase in raw hours devoted to lawyering during weeks four and five. During those weeks, on average participants spent more hours on lawyering than on the other courses, although only one difference was statistically significant (between lawyering and contracts in week four). The likely reason for this increase in lawyering hours was that during this time most students were completing their first extended written assignment in lawyering—drafting the argument section of a brief. Note that weeks four and five did not represent a lasting trend: in week six, the hours devoted to lawyering dropped back to a level comparable to the first three weeks.

Although with some temporal fluctuations, the overall raw number comparisons reported above were consistent with our hypothesis that students would spend less time on an ungraded course. If we aggregate the data from the first six weeks, participants devoted less time to lawyering (on average, 6.35 hours per week) than to each of the other courses—civil procedure (on average, 7.55 hours per week), contracts (on average, 6.93 hours per week), criminal law (on average, 6.69 hours per week), and torts (on average, 7.26 hours per week).<sup>44</sup> However, these comparisons seemed misleading in light of the fact that lawyering was not only ungraded but also carried significantly fewer credit hours than did other first year courses. During the semester that these data were collected, the ungraded lawyering course carried 2.5 credit hours. All of the remaining courses were not only graded, but they also carried a greater number of credit hours. The civil procedure course carried 5 credit hours, and the torts, criminal law and contracts courses each carried 4 credit hours. We adjusted the time students reported spending on each course to account for the number of credit hours each course carried (see Figure 2).

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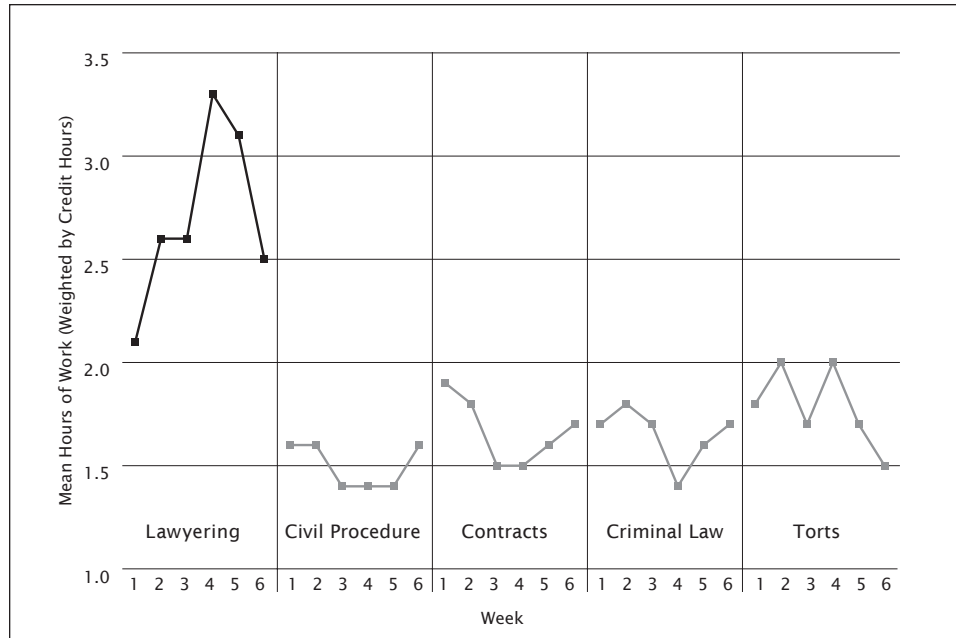
hours) ( $t(188) = 2.24, p = .03$ ). The difference between civil procedure and contracts was not significant, and neither was the interaction between cohort and courses.

We then used paired-samples t-test to compare lawyering with torts and criminal law, respectively. (To compare more than two variables, one single ANOVA with follow-up pairwise comparisons is preferred to separate t-tests. However, because torts and criminal law were not taken by all students, it would be infeasible to include them in the same repeated-measures ANOVA.) In week one, participants who took torts spent significantly fewer hours on lawyering (on average, 5.27 hours) than on torts (on average, 7.23 hours) ( $t(96) = 4.96, p < .001$ ); participants who took criminal law also spent significantly fewer hours on lawyering (on average, 4.99 hours) than on criminal law (on average, 6.83 hours) ( $t(29) = 2.60, p = .01$ ).

There was a marginally significant interaction between cohort and courses,  $F(2, 240) = 2.73, p = .068$ . This interaction mainly reflected the fact that 2007 students, but not 2008 students, spent significantly more hours on civil procedure than on contracts. As to comparisons between lawyering and the other courses, both cohorts showed the same pattern of results.

44. The difference between lawyering and criminal law was not significant, but the differences between lawyering and the other courses were all significant. Although aggregating data across weeks yields informative overall results, there are some limitations with this method. Most notably, the responses given by the same participant across time are not independent of each other. For example, a student who tends to study for ten hours a week during week one will likely study for nine or ten hours a week during week two. Therefore, averaging across individuals and across time does not account for the natural relatedness of responses within individuals, but rather treats each data point as independent of the others. Furthermore, those participants who remained in the study for a longer duration were overrepresented in the overall comparisons relative to those who dropped out of the study early.

**Figure 2. Time Allocation (hours) by Course, Weighted by Credit Hours.**



Based on these data, in each of the first six weeks, students reported spending more time per credit hour than on their other courses. For example, from week two to week five, participants spent significantly more time per credit hour on lawyering than on each of the other courses. Two caveats are warranted. First, although we took pains to assure that the questionnaires were not associated with the lawyering course, it is possible that those who stayed in the study were people more likely to spend time on lawyering. Future studies should control for this possibility. Second, there was no final exam for lawyering and the course generally ended about two weeks before the other courses. Thus, in the last few weeks of the semester, most students spent little or no time on lawyering, and in the mean time increased the hours devoted to the other courses in preparation for the final exams. Therefore, lawyering’s disproportionate time allocation would no doubt be less dramatic if we were to examine data across the full semester rather than data from the first six weeks. Nevertheless, that students devoted a disproportionate amount of time to lawyering relative to the credit hours it carried is, we think, all the more striking in light of the fact that the lawyering course is ungraded and therefore can have no effect on a student’s class rank or grade point average.

We find, then, that law students, who face a zero-sum grading game with considerable optimism and ambition, nonetheless devote a substantial amount of time to an ungraded lawyering course that has been designed to mitigate competition,

to focus on professional growth, to address identity and stereotype threats and to integrate students' thinking about theory and practice.

### C. Voluntary Participation

To further assess students' engagement with the lawyering course, we asked them to indicate how many times during the past week they volunteered answers in each of their courses. Given the literature suggesting that students (particularly those who feel disenfranchised from the law school culture and their professors and peers) may silence themselves (i.e., not speak up, volunteer, engage in discussion) in the public and often threatening forum of law classes,<sup>45</sup> we anticipated that participation rates would be low, and that they would be lowest in the much larger (roughly 100-person) subject area courses than in the much smaller (roughly 30-person) lawyering classes. We also were aware of, and could not control for, other factors (e.g., teacher approachability, accessibility of materials, teaching formats) that could affect participation levels. We hoped, however, that the measures taken to create a more collaborative environment in lawyering would make voluntary participation in that class regular and notably more frequent. For each course, participants reported their weekly volunteering rates on a scale ranging from "none" to "more than 5." In the following analysis, "more than 5" times was treated as 6 times.<sup>46</sup> Figure 3 shows the rates of voluntary participation in the first six weeks. There were marked differences between lawyering and the other courses. Except for weeks four and five<sup>47</sup> the weekly rates of volunteering in lawyering were all over 2.5 times a week. In comparison, the weekly rates of volunteering in the other courses were often under once a week. Most pair comparisons between lawyering and a non-lawyering course showed significant differences.<sup>48</sup>

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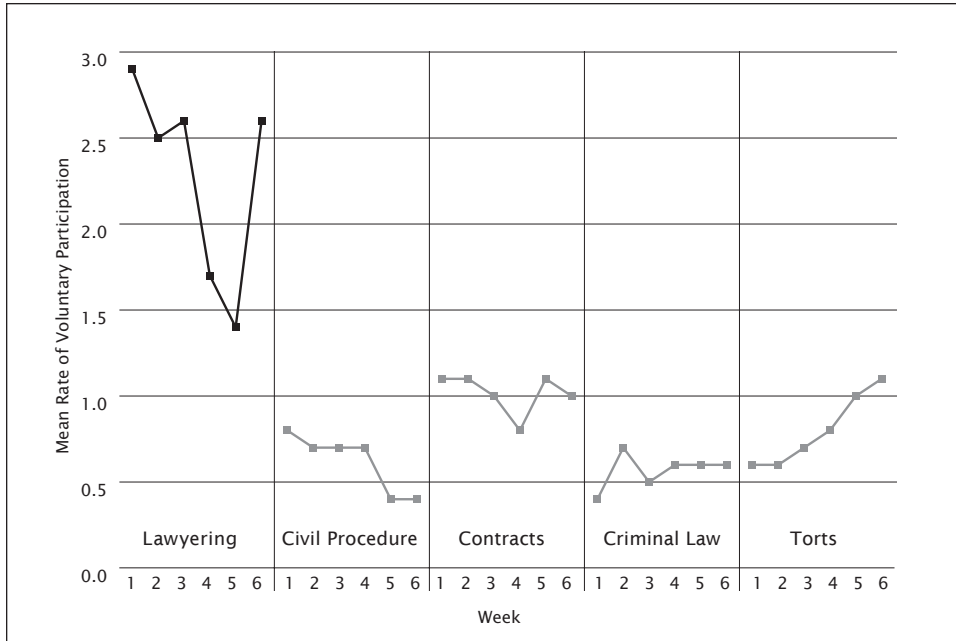
45. Bonita London et al., *Gender-based Rejection Sensitivity and Academic Self-Silencing in Women*, J. PERSONALITY & SOC. PSYCHOL. (forthcoming).

46. This is necessary to calculate means and conduct other parametric analyses. At the same time, truncating the maximum rate also alleviates the problem that a few extreme outliers may have disproportionate influence on the mean.

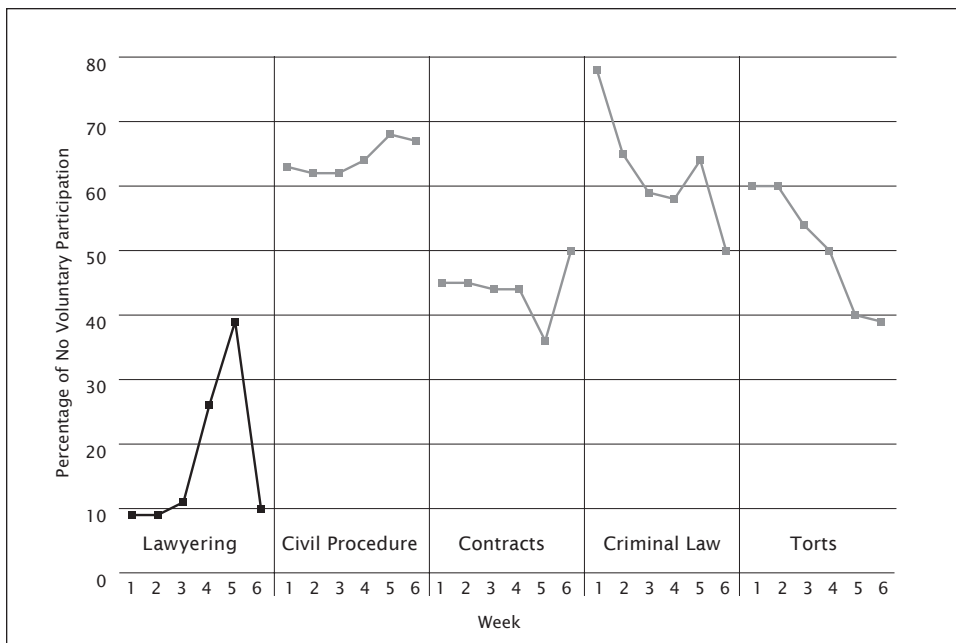
47. The drop in volunteering over these two weeks corresponds to an increase in study time reported above. A likely reason is that students did not meet in class as often while they were completing their first major written assignment.

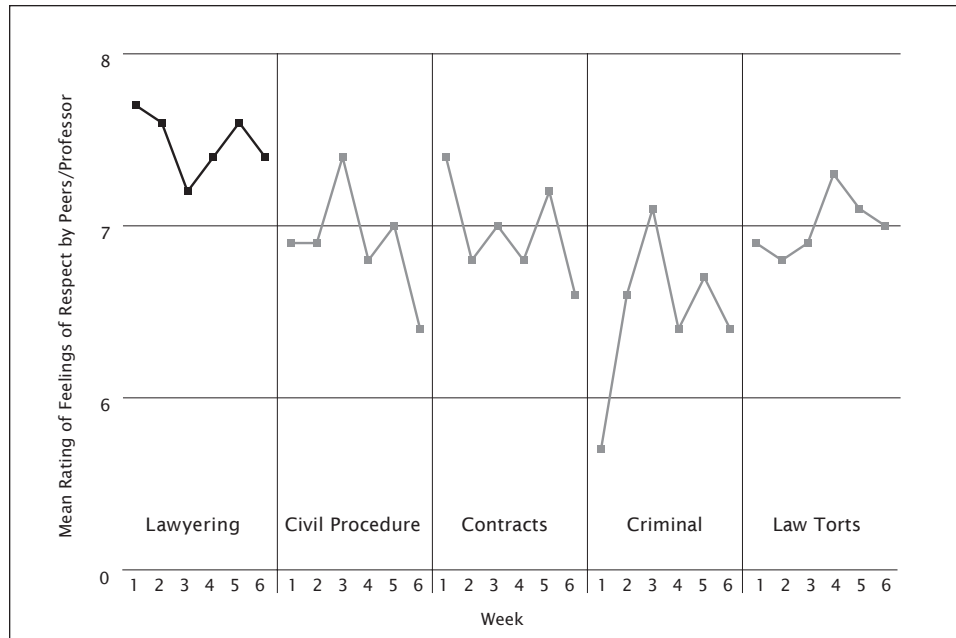
48. For example, for week one, we first conducted a repeated-measures ANOVA on the three courses all students took. Overall, there were significant differences among lawyering, contracts, and civil procedure,  $F(2, 238)=97.8, p<.001$ . There was no interaction between courses and cohort. Specifically, participants volunteered significantly more frequently in lawyering (on average, 2.89 times) than in contracts (on average, 1.14 times) ( $t(238)=10.3, p<.001$ ) and in civil procedure (on average, 0.79 times) ( $t(238)=11.5, p<.001$ ). We then conducted paired-samples t-test to compare lawyering with torts and criminal law, respectively. In week one, participants who took torts volunteered significantly more frequently in lawyering (on average, 2.98 times) than in torts (on average, 0.57 times) ( $t(96)=13.0, p<.001$ ); participants who took criminal law also volunteered significantly more frequently in lawyering (on average, 2.61 times) than in criminal law (on average, 0.42 times) ( $t(35)=7.12, p<.001$ ).

**Figure 3. Reported Rate of Volunteering by Course**



**Figure 4. Percentage of Participants Who Did not Volunteer by Course**



**Figure 5. Mean Rating of Feelings of Respect by Course**

These results suggest that lawyering did provide a comfort zone in which students participated without being called on to do so. This suggestion is strengthened when we compare the percentages of students who did not volunteer at all in different courses (see Figure 4). Except for weeks four and five, only about 10% participants did not volunteer in lawyering at all each week. In comparison, in the other courses, the weekly non-volunteering rates often exceeded 50%.

#### *D. Feelings of Respect*

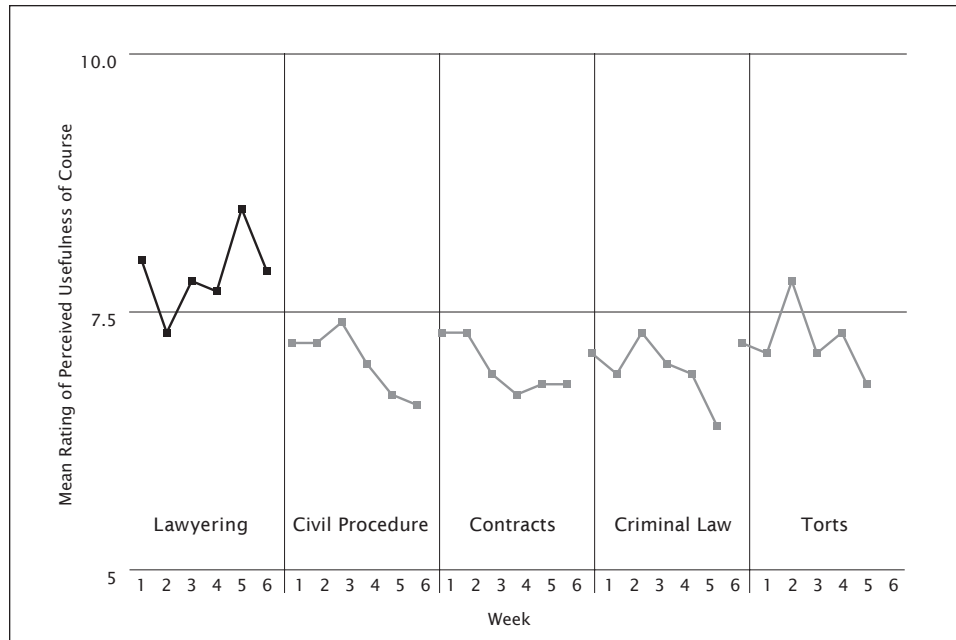
To test our success at creating within lawyering an atmosphere of respectful appreciation of the skills and insights that each student brings to collaborative enterprises, we asked students, “How respected did you feel by your peers and professors in this course [this week].” Participants<sup>49</sup> responded on a scale ranging from (1) Not at All to (10) Very Much. Figure 5 shows the mean ratings in the first six weeks. In almost every week,<sup>50</sup> participants reported the highest mean feelings of

49. Due to the researchers’ omission, participants in the 2008 cohort were asked this question only for criminal law but not for other courses.

50. The only exception was week three, in which the mean rating for civil procedure was higher than that for lawyering.



Figure 6. Perceived Usefulness of the Course



respect in the lawyering course, although the differences between lawyering and the other courses were not always significant.<sup>51</sup>

### E. Course Usefulness

Finally, we asked students to rate how useful each course was each week, on a scale ranging from (1) Not at all to (10) Extremely.<sup>52</sup> Figure 6 shows the mean ratings in the first six weeks. In most weeks,<sup>53</sup> participants reported lawyering as the most

51. For example, for week one, we first conducted a repeated-measures ANOVA on the three courses all students took. Overall, there were significant differences among lawyering, contracts, and civil procedure,  $F(2, 106)=6.83, p=.002$ . Specifically, participants reported significantly higher feelings of respect in lawyering (with mean rating of 7.81) than in civil procedure (with mean rating of 6.83) ( $t(106)=3.47, p=.001$ ); participants also reported higher feelings of respect in lawyering than in contracts (with mean rating of 7.33), but the difference was only marginally significant,  $t(106) = 1.89, p = .07$ . We then conducted paired-samples t-test to compare lawyering with torts and criminal law, respectively. In week one, participants who took criminal law reported significantly higher feelings of respect in lawyering (with mean rating of 7.75) than in criminal law (with mean rating of 6.00) ( $t(27)=3.41, p=.002$ ); participants who took torts also reported higher feelings of respect in lawyering (with mean rating of 7.70) than in torts (with mean rating of 6.90), but the difference was only marginally significant,  $t(29) = 1.92, p = .07$ .

52. Due to the researchers' omission, only participants in the 2007 cohort were asked to report perceived course usefulness.

53. The only exceptions were week two, in which the mean rating for contracts was slightly higher than that for lawyering, and week three, in which the mean rating for torts was the same as that for lawyering.

useful course, although the differences between lawyering and the other courses were not always significant.<sup>54</sup>

## V. IMPLICATIONS

As we have said, it was clear at the time of New York Law School's 1992 symposium that lawyering theory could light the way to more expert and successful legal practice. We have now developed a lawyering pedagogy that is not only informed by lawyering theory but also responsive to well established theories about stress and learning. This new pedagogy positions students to be active, reflective, and collaborative. It asks them to strive for the development of malleable skills rather than the display of raw talent. It creates a context for giving focused attention to the broad range of intellectual skills required for practice. And it provides students with regular, structured, formative feedback.

In 2010, a committee of the law school's legislative faculty endorsed lawyering as an important and successful experiential program for first year students.<sup>55</sup> At the same time, the law school increased its efforts to provide advanced experiential learning opportunities in the second and third years. While the first year has been the subject of this study, new research and experimentation are underway to cultivate simulation courses in the second and third law school years. Enriching course offerings and integrating simulation exercises into courses that range from securities practice to family practice will allow us to test the relationship between subject-specific simulation courses and professional performance after graduation.

Our work continues. NYU's new Experiential Learning Lab will continue to mine the data we have and cautiously take guidance from it as we test our methods in new contexts. We will also welcome opportunities to share our methodology and to test new versions at other schools.<sup>56</sup> Our ongoing work will explore in more detail whether this pedagogy serves to reduce overall stress, to mitigate or defuse social identity threats, to promote intellectual versatility, and to encourage a culture of cooperative self-improvement. We are encouraged by the evidence that despite the

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54. For example, for week one, we first conducted a repeated-measures ANOVA on the three courses all students took. Overall, there were significant differences among lawyering, contracts, and civil procedure,  $F(2, 110)=5.03, p=.008$ . Specifically, participants reported that lawyering (with mean rating of 8.05) was significantly more useful to them than both contracts (with mean rating of 7.29) ( $t(110)=2.54, p=.01$ ) and civil procedure (with mean rating of 7.16) ( $t(110)=2.67, p=.01$ ). We then conducted paired-samples t-test to compare lawyering with torts and criminal law, respectively. In week one, participants who took criminal law reported that lawyering (with mean rating of 8.32) was significantly more useful to them than criminal law (with mean rating of 7.07) ( $t(27)=2.66, p=.01$ ); participants who took torts also reported that lawyering (with mean rating of 7.77) was more useful to them than torts (with mean rating of 7.17), but the difference was not significant,  $t(29)=1.49, p=.15$ .

55. Hertz Committee Report, *supra* note 28, at 30 ("The Committee has suggested some important changes to the Program, but none which calls into question its value as a flagship program of which the Law School is justifiably proud.").

56. Fellowship opportunities are described on the NYU Law Experiential Learning Lab's Web site, *Fellowships*, NYU LAW, <http://www.law.nyu.edu/experientiallearninglab/fellowships/index.htm> (last visited Oct. 2, 2011).

## MAKING LAW STUDENTS HEALTHY, SKILLFUL, AND WISE

inherent competitiveness of their environment, first-year law students gave significant attention to an ungraded experiential course designed to balance their more competitive studies with collaborative exercises focused on building a broad range of professional skills. In this course, students volunteered more freely, felt more respected, and appreciated the usefulness of their studies.

## APPENDIX

INTERPRETING LAW AS AN ADVOCATE  
MEMORANDUM OF LAW CRITIQUE GUIDELINES

*“Criticism, as it was first instituted by Aristotle, was meant as a standard of judging well; the chiefest part of which is, to observe those excellencies which should delight a reasonable reader.”*

1674 DRYDEN Pref. State of Innocence Wks. 1821 V. 106

“Knowledge emerges only through invention and re-invention, through the restless, impatient, continuing hopeful inquiry [we] pursue in the world, with *the world, and with each other.*”

Paulo Freire

Collaborative critique is a fundamental teaching method of the Lawyering Course. The process of self and peer critique has two purposes: the first is to challenge yourself and your critique partners to reflect on the work product at hand, identify areas for improvement, and apply lessons learned to future tasks; the second and equally important purpose is to cultivate the professional habit of critically evaluating every task you perform as a lawyer.

It is rarely easy to receive critique of one’s work, especially from a peer; and, often, it is even more difficult to give it. But it may help to bear in mind that the objective of critique is improvement and that the spirit of academic and professional criticism lies in tempering scrupulous, even difficult honesty with constructive, compassionate intent. This means being detailed and descriptive rather than vague and judgmental. It means, in other words, going beyond generalized thumbs-up or thumbs-down judgments to provide precise accounts of what you found in the work and how it affected you.

With that in mind, please come to the critique session having carefully scrutinized your critique partner’s work as well as your own, and having prepared a thoughtful, guided critique of both. **Please bring to the critique session three (3) copies of your written responses to the questions posed in the critique guidelines.**

## CRITIQUE GUIDELINES

1. **Finding Authority, Analyzing Legal Rules, and Articulating Interpretations:** *One of the functions of the Lawyering Course is to help you cultivate methods for finding authority, analyzing legal rules, and articulating these rules into coherent legal interpretations.*
  - How broad (fact-denuded) or narrow (fact-filled) are the relevant legal rules identified by the author?
  - What narrative of the law is contained in the author's memo?
  - Describe at least three of the author's uses of authority or citation that caused you to have confidence or doubt about the author's legal interpretation.
  
2. **Developing & Applying Facts:** *One of the functions of the Lawyering Course is to help you cultivate methods for developing and applying facts.*
  - How does the author highlight or obscure facts in the application of the rules to the facts?
  - What narrative of the facts is contained in the author's memo?
  
3. **Identifying & Responding to Desires:** *One of the functions of the Lawyering Course is to help you cultivate methods for identifying, responding to, and reconciling (when possible), or choosing among (when necessary) the lawyer's own desires, and those of the client, decisionmakers, and other lawyers.*
  - Did you see evidence that the author's goals or desires affected his or her interpretation of relevant authority?
  
4. **Analyzing & Managing Interactive Dynamics:** *One of the functions of the Lawyering Course is to help you think strategically about lawyers' written and oral interactions.*
  - Did you see evidence that the author conformed to or departed from the conventional language, style, and organizing structure of a legal argument?
  - What evidence is there in the argument that the author took account of the institutional position, and personal characteristics of the decisionmaker the author aimed to address?
  - Describe at least three of the author's uses of language that caused you to assign a distinct persona to the author.
  
5. **Defining & Meeting Professional Roles & Responsibilities:** *One of the functions of the Lawyering Course is to help you think critically about the lawyer's roles and responsibilities.*
  - Did you see evidence that the author misrepresented relevant authority?

6. **Critiquing Peer & Self:** *One of the functions of the Lawyering Course is to provide vocabularies and methods for evaluating your own work and that of others.*
- Were you able to identify in the author's memorandum a rule statement, rule proof, application, and conclusion?
  - Were you able to identify in the author's memorandum narrative elements like steady states, troubles and efforts at redress?
  - Were you able to be descriptive and precise rather than judgmental and general in your comments about the author's work?
  - Describe at least three specific areas in which your critique of the author's work caused you to reevaluate your own.