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Essay

“X-File” Law School Pedagogy: Keeping the Truth Out There

*Kevin H. Smith**

I. INTRODUCTION

Many lawyers, especially younger lawyers who have grown disillusioned by the practice of law, are leaving practice to become law professors. Although they¹ were exposed to law professors for at least the three years of their law school education, these new teachers may have graduated from law school still a bit befuddled about the purposes behind their legal education and about exactly what it is that law professors do. They still may be confused by the pedagogical methods, including examination techniques, which were employed by their own law school professors.²

Moreover, given their neophyte status, these novice professors may not feel comfortable revealing their ignorance to their more experienced colleagues by asking too many questions about such matters.

In the spirit of public service, I offer this essay to those of you who

* Assistant Professor of Law, Cecil C. Humphreys School of Law, The University of Memphis. B.A. 1977, Drake University; M.A. 1981, J.D. 1983, Ph.D. 1994, The University of Iowa. I wish to thank the several people who reviewed this piece of work, all of whom, for reasons which will become clear soon enough, did not want their names or identities associated with this essay. Any resemblance between the hypothetical professors to whom I refer and anyone, living or dead, who has worked, is working, or ever may work as a law professor is purely coincidental. I want the world to know that all the professors who are associated with this law school work long hours and are wonderful teachers, scholars, mentors, and colleagues. (I mean it.) For those of you who are my colleagues, please don't hold this essay against me when I come up for tenure. Please consider this essay as an honest attempt to examine all aspects of my pedagogy. Finally, in all seriousness, working with students is a tremendously rewarding and enjoyable experience.

1. When a singular pronoun is required, I will use feminine pronouns in this essay. My reason is simple. I find writing using “he and she,” “his and her,” and “himself and herself” to be incredibly cumbersome. Therefore, I have adopted the habit of using all masculine or all feminine pronouns in whatever I write. The last piece that I submitted for publication used masculine pronouns, so I'm using feminine pronouns in this essay.

2. Teaching methods and examination techniques comprise a law professor's formal “pedagogy.”

will be teaching at a law school for the first time. Although this essay does not purport to provide you with everything that you will need to know, it will, I trust, provide you with enough information to guide you safely through your first semester.

A. *Congratulations*

First, congratulations. You've³ beaten the odds and become a law professor. You've been released from the library at your law firm and can breathe fresh air and see sunlight once again. But before you get too comfortable, I must caution you. You've assumed a heavy burden. To a very significant extent, the fate of democracy and human rights now rests on your shoulders.

I will now reveal to you the nature of your obligations. I will then provide you with a variety of practical suggestions concerning how you can meet these duties.

B. *Take Me To Your Lawyers*

Remember when you were, say, ten years old, and you were told on the playground that soon your mother or father was going to take you aside and reveal to you the "facts of life"? Then, one day, it happened. No doubt you were disappointed to learn the subject was sex. After all, in one form or another, you'd been hearing about sex on the playground since you were five or six years old. You probably were disappointed because you thought the "facts of life" were something much more mysterious, much more secret. Well, now that you are a law professor, it's time to tell you the "facts of life" about the job.

However, before we proceed, you must take part in a fifty-year-old ritual. Raise your right hand, put your left hand on a blue exam book, and repeat after me. (Come on. I mean it. It's required by the U.S. Code.) "I do solemnly swear that I will never, ever reveal to another living person, especially to a law student, the contents of this essay. I understand that if I am convicted of violating this oath, I will be forced to return to private practice." Did you say it? Okay. Proceed.

Think back to law school. Several hundred very bright, naive, impressionable, and, generally, nice young adults are dumped into a

3. I obviously have adopted a casual, conversational style of writing for this essay, eschewing the formal, grammatically correct legal writing format that I have expected, and that I will continue to expect, my students to follow. To my future students: You may not cite this essay as precedent for the permissibility of an informal tone or style in your notes, case comments, seminar papers, exams, or other written work. I know that this is a double standard. I also know that life isn't fair.

law school class and told that they need to scratch and claw for class rank in order to be hired by a law firm that will pay them enough money to permit them not to be forced to choose between eating and defaulting on their student loans. This process immediately pits each student against one another. As a result, they consider every other student in their class to be an adversary, an opponent. They live in constant terror of being called on in class. When they are called on in class, they are slowly eviscerated by a professor who keeps asking them questions. As the questions grow increasingly difficult, students realize that they would be better off answering the previous question. They are assigned so much reading that they become deprived of both sleep and meaningful social contact. To add insult to injury, most of the material that they are assigned to read would make even a well-rested individual with a caffeine I.V.-drip drowsy.

For each course, students are forced to cram into their brains everything that they have learned during a fifteen-week semester. Their opportunity to demonstrate what they've learned comes in the form of a single, three-hour examination that contains either a twenty-five page, single-spaced fact pattern or 350 multiple-choice questions. To end the exam experience, they are assigned a grade that bears no relationship to their level of effort or understanding. No matter, it only affects their class rank, which only affects their ability to get a job, which only affects the rest of their lives.

Does it seem to you that law school is part of some sadistic psychological experiment? Well, it is. But, it's okay. It's all for the sake of national, indeed, planetary security.

Despite the diligent efforts of a few brave souls to bring the truth to light, it still isn't widely known that the incident at Roswell, New Mexico did occur. It's not that the government is afraid to tell the public about the existence of life on another planet. It's that the government is afraid to tell the public that the ship that crashed in Roswell was the interstellar version of a leased BMW (with leather interior), that the bodies of the aliens recovered at the site were dressed in business attire, and that the principal artifacts recovered at the crash site were two briefcases containing what scientists and linguistic experts believe to be preprinted legal documents and business cards.⁴ The prospect of a race of alien attorneys is what the government believes the public could not then, and still cannot, handle.

In any event, immediately after the Roswell incident, the

4. The next time you watch the movie *Independence Day*, look at the end of one of the benches on the right in the locked room at the military site. The silver-colored object is a briefcase.

government began a massive program to create “special forces” units to counter the alien attorneys, should they return. Warriors were needed who were crafty, devious, cutthroat, and without conscience or scruples; who could withstand both long periods of constant, extreme anxiety and moments of intense terror without becoming mentally paralyzed or otherwise becoming psychologically disabled; and who could function for years in hostile environments. The government began working with law school deans to design and implement the most large-scale, ruthless, and sophisticated psychological training and screening program in history. *Everything* that has to do with legal education is part of this training and screening program. Of course, none of this can be made public,⁵ lest any remaining alien scouts come to understand what is happening.

Most students who survive the resulting law school program enter the practice of law. Unbeknownst to them, their part in the government’s plan is to create such monumental amounts of useless legal maneuvering, so many mountains of useless documents, and such large amounts of other law-related nonsense that the general population remains too busy to even consider the possibility of an alien threat. And by passing law after law and by promulgating regulation after regulation, the government intends to force average citizens into contact with these attorneys on a sufficiently regular basis such that the general public will become immune to the revulsion and nausea that usually accompanies close encounters of this kind.

The sheer number of attorneys is designed to build an effective reserve fighting force should it be needed.⁶ The adversarial nature of

5. Hence, the oath you took.

6. On a somewhat tangential note: In a stroke of brilliance during one of the emergency meetings immediately after the Roswell incident, a low-ranking military officer made reference to the then-existing Swiss army model in which every able-bodied man between the ages of 20 and 50 was required to be serving in the army or to be an active reserve member. The officer believed that most, if not all, of the adult population of the United States could be turned into lawyers within a short period of time if the government took certain steps. Eventually, the government did the following. First, the size and scope of government was expanded. Big government, with all its laws, regulations, and red tape, dramatically increased the demand for lawyers. Second, the government worked with law school deans to create an adversarial mind set in which attorneys would assist their clients in suing over insignificant matters; this, of course, further increased the demand for lawyers. Third, the government covertly subsidized the establishment of many new law schools in the post-Roswell era, thus increasing the number of training, screening, and recruitment facilities. Fourth, government officials also began working with law school admissions officers to increase the size of law school classes. The government officials knew that this would have the effect of (a) creating an oversupply of attorneys who, in order to support themselves, would have to create useless legal work and (b) causing attorneys to fight like dogs over a bone for business, thus keeping them in a nasty, combative mood. In any event, these strategies

the legal environment, coupled with an oversupply of attorneys and the fight to attain partnership status, is intended to keep lawyers in fighting trim. The government *is* cunning.

The most promising members of every law school class are covertly recruited into elite counter-alien-attorney special forces units. These individuals are selected for their mental toughness, their resilience in the face of constant anxiety or terror, and their ability to survive under the worst possible circumstances. Haven't you ever wondered what happened to the two or three of your classmates who did not finish near the top of their class but did not seem at all phased by the whole law school experience? Didn't you wonder why these people seemed so unconcerned about finding a job with a law firm? And didn't you wonder why there always seemed to be at least one “ex”-military member in every law school class? In this context, the whole law school experience makes sense.

Some of a law professor's work involves keeping up the pretense of assisting law students to eventually engage in a meaningful and societally productive legal practice. Most of what law professors actually do involves studied, sophisticated psychological training and testing of potential recruits—I mean students.⁷ Remember, only the best-of-the-best-of-the-best are recruited!

Remember your oath. You may NOT share any of this information with anyone, particularly with your students. It would spoil the nature of the psychological training and screening if your students knew what you actually were attempting to accomplish. Besides, you'd have to

have created the legal mess that was intended to distract the population, have put average citizens into constant contact with attorneys, and have kept the United States on target to reach the goal of assuring that every adult member of the population is an attorney by A.D. 2050. All we can do is hope that the aliens don't return before then.

7. Apparently, law school does fulfill its function as a training ground for determining whether individuals can withstand long-term, constant anxiety. The rates of depression, panic disorders, general anxiety disorder, substance abuse, and a host of other indicators of stress are significantly higher for law students than for other professional students and for the population as a whole. *See, e.g.*, Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1407 (1997) (providing a comprehensive examination of the literature that demonstrates that law students find law school psychologically and emotionally difficult); Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 J.L. & HEALTH 69, 69 (1995-96) (explaining that law students report high levels of distress in law school); Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 66 (1995-96) (providing that many first-year law students become overwhelmed by “failing anxiety”); Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 595 (1996) (stating that law students consistently reported significantly higher levels of stress than did medical students).

be eliminated.

The truth is out there.

C. *Outlining the Training Manual*

To maintain the appearance of conducting an educational operation, as opposed to a military operation, you will need to prepare for and meet with classes, as well as give and “grade” examinations. In this essay, I suggest how you can effectively advance the goals of the government’s program while maintaining the facade of educating students.⁸

As you will discover, there is no simple checklist to follow that can prepare you for the semester as a whole or for conducting individual classes. Being a law professor involves an ongoing reexamination of your goals and methods, both short-term and long-term. As a result, I must present my advice in a somewhat artificial format, as if the advice could be neatly separated into independent categories. Next, in Part II, I provide suggestions that are focused on semester-long issues, such as the selection of a casebook. In Part III, I provide recommendations regarding how to prepare for individual classes. In Part IV, I examine six different purposes that professors seem to have for their classes, either on a semester-long or an individual-class basis. In Part V, I provide some anecdotes and general advice about a variety of situations that you are likely to confront in the classroom. Finally, in Part VI, I address the preparation, administration, and grading of examinations.

8. There is, unfortunately, a great deal of subversive literature that would have the initiate law professor believe that the goal of a legal education is to assist students in becoming efficient, competent practicing attorneys. Fortunately, the Legal Society Against Teaching (no affiliation with LSDAS and LSAT entrance exam folks) maintains a list of the most subversive of these articles and strongly urges you NOT to read them. The banned articles include the following: Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1 (1996); Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315 (1997); James Eagar, Comment, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1996-97). The Legal Society Against Teaching also urges you NOT to read anything that is referenced in Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 30 GONZ. L. REV. 1 (Special Edition 1994).

II. BASIC ISSUES FOR THE SEMESTER

There are several decisions which you will need to make prior to the beginning of each semester. The first three issues—casebook, teaching methods, and course coverage—are inextricably intertwined. A decision about one issue cannot be made without considering the other two issues. However, for the sake of simplicity, I address them individually.

A. *The Casebook*

The initial decision that you will need to make concerns the selection of the casebook.⁹ I’m not really sure why, but because law professors have been using the case method approach for approximately one hundred years, I guess the doctrine of *stare decisis* mandates that you must as well.

Selecting a casebook is easy. First, call all the major casebook publishers and order each casebook published in the areas in which you will be teaching.¹⁰ Just tell the sales representatives what courses you will be teaching and ask for a “courtesy copy” or “desk copy.” Also, be absolutely sure to order the accompanying teacher’s manuals. If the sales representative tells you that there is no teacher’s manual for a casebook, tell the sales representative where they can put the casebook. Although the sales representative will try not to show it, she will be salivating at the thought of the commission that she will earn if you require 100 students to each spend a small fortune for a casebook.

Second, after you have received the casebooks, line them up in a row. If curiosity so moves you, feel free to look at (a) the coverage of each book as indicated in the book’s table of contents, (b) the order in which the topics are presented and whether that strikes you as sound, (c) what cases, including seminal cases and recent important cases, are included,¹¹ (d) how the cases are edited,¹² (e) whether the casebook

9. I proceed on the assumption that although you were foolish enough to go to law school and practice law in the first place, you are not foolish enough to try to put together your own teaching materials during your first year or two of teaching. Remember, sleep is a *good* thing, at least for law professors.

10. The person in your law school’s law library who is in charge of ordering books for the library undoubtedly has a list of the telephone numbers.

11. When teaching a statutory/regulatory course, you may wish to examine which statutory/regulatory provisions are covered and whether the statutory/regulatory scheme has been heavily amended since the casebook was published. Your work will be minimized if the casebook is current.

12. These considerations include: long versus short, emphasis on procedure and facts versus law, emphasis on policy considerations, inclusion of dissenting opinions to

has many note cases, problems, and comments for the students to consider, and (f) whether the casebook contains any non-case material, such as law review excerpts, as background material to provide useful context. Unfortunately, this examination may result in you selecting a casebook that will turn out to be useful to your students; so, in general, I advise that you suppress your inquisitiveness. I suggest, rather, that you follow my advice for selecting a casebook, as explained immediately below.

Third, select the combination of the thinnest casebook and the fattest teacher's manual.¹³ Be careful, however, for although there is generally a correlation between thickness of the teacher's manual and its thoroughness, you should be certain that the teacher's manual for the casebook you select (a) is current (has the latest cases and the most up-to-date statutory provisions), (b) has step-by-step answers to the note questions and problems (so you can recite the observations and answers contained in the teacher's manual, thus sounding as though you know what you're talking about and actually worked out the answers to the questions and problems on your own), and (c) contains additional hypotheticals and problems with solutions (so you don't actually have to think of them yourself).¹⁴

provide alternative viewpoints, etc.

13. Put the rest of the books, minus the teacher's manuals, on the bookshelves in your office. This will give your office an intellectual aura. Most students will assume that you have actually read the books. Of course you haven't, but it IS impressive looking.

Be certain to lock the teacher's manuals in a desk drawer. This way, students won't discover that they exist and won't suspect that ninety-five percent of what you "know" comes from some teacher's manual. Also, you will have ready access to the teacher's manuals when you need to quickly steal, I mean create, an additional hypothetical or problem (with the solution, of course) for class.

14. Psst. Down here. I can't put this in the text, where non-law professors might read it. (After all, only law professors read footnotes.) The next step is very important. Do exactly as I say. Unless you live right next to the dean, another law professor, or a law student, go over to your neighbor's home or apartment. Plead with your neighbor to order the Gilbert's, Emmanuel's, and the Nutshell for the subject, and the canned case briefs for the casebook. Be sure that your neighbor uses her credit card and that the materials are sent to her house or apartment in a brown paper envelope.

These materials, as superficial as they can be, generally are written by other law professors and can provide a small measure of comfort, basic understanding, and organization, particularly if you are teaching in an area in which you have no practical experience. After all, look what they did for you during your law school days!

Try to avoid taking these materials to the office. If you must do so, keep them locked in your briefcase until you are in your office with the door closed and locked. If you're caught with them, say, "I thought I caught a student reading from one of these damn things in class. I just want to catch her in the act next time."

NEVER, UNDER ANY CIRCUMSTANCES, TYPE SOMETHING VERBATIM FROM ONE OF THESE MATERIALS INTO YOUR NOTES FOR CLASS. YOU MIGHT FORGET

B. *Pedagogical Methods*

Another decision that you will have to make concerns which pedagogical methods to employ. This requires a bit of thought.

If you will be using a casebook, you are more or less wedded to the case-method approach, but you should feel free to take separate vacations from time to time. In U.C.C., tax, and other transactional courses,¹⁵ you might want to hand out problems¹⁶ for the students to work through using the rules and policies contained in the cases or code sections.¹⁷ You can either tailor the problems to a particular case or code section, or you can draft a more comprehensive problem that will force students to synthesize the material.¹⁸ You can also try simulations of practice situations and small-group exercises in drafting documents, jury instructions, or other innovative techniques.

Even when you rely only on cases, you have options. If you're teaching a first-year class, no doubt you will feel compelled to terrorize your test subjects—excuse me, students—under the guise of assisting them in learning how to read cases. You probably feel the need to make sure that the students discuss even the most insignificant and

WHERE IT CAME FROM AND READ IT IN CLASS. THEN AGAIN, MAYBE THE CLASS WOULDN'T NOTICE. RIGHT?

15. For example, business planning.

16. Although a non-lawyer couldn't tell from looking at the average casebook, most attorneys do not spend their entire professional lives picking apart the reasoning of some appellate court opinion or arguing before an appellate court. And, as contrary as it may seem to normal law school pedagogy, you might occasionally want to consider the needs of the 99% of your students who will not become involved in an appellate legal practice.

17. If you are at a loss for problems, pick out and rework hypotheticals from cases and illustrations found in other casebooks. (You'll even have the solutions in the teacher's manual which accompanies the casebook!) You also can download a case from a legal database service and rework the facts a bit.

If you feel really adventuresome, you might divide your class into law firms of three or four people, let them know a week or so ahead of time the cases or code sections for which they will be responsible, have them draft a problem and sample solution, distribute the problem to the class (you keep the sample solution, of course, so you know what the answer is), and have them lead the discussion. If anyone objects to this innovative teaching technique, simply respond, "Collaborative efforts on legal matters goes on in real-world law firms all the time." Once your students hear "real-world," they will think you are doing them a big favor by preparing them for their post-graduation life. Right? What this really does is save you from doing anything other than showing up for class and making a comment or two to let people know that you are still alive. Not that they care.

18. The problem with this approach is that it may give the students too much insight into what your exam will be like, it might result in them learning the material better, and it might make it more difficult for you to draw those arbitrary divisions when assigning grades. Another difficulty with this approach is that it closely resembles what goes on in real life.

irrelevant aspects of each case so that they can learn the language of the law and how to distinguish legally relevant from legally irrelevant information. And who am I to argue with this time-honored teaching methodology? In addition, picking out insignificant and irrelevant aspects of each case is a time-honored and quite effective method of creating enough anxiety and terror to provide a good psychological test for the students and to keep them so confused that they don't learn much of anything. In order to minimize learning and to maximize anxiety and terror, you should be sure, of course, that you offer the students absolutely no insight into such matters as how to dissect cases,¹⁹ the parts of a case, the purpose(s) of each part of the case, or why courts include each type of information in the case.

By their second and third years, students have become more immune to the torture of case-analysis because they have learned—more or less—how to read cases. Therefore, do not feel compelled to dissect and discuss cases in such excruciating detail. Unless it has some direct relevance to what I want the students to obtain from the case, I skip the case's procedural aspects. Unless I want to discuss the practical reasons behind what the parties did, I merely provide a short statement of the legally relevant and essential background facts, and I move on.²⁰ This allows me more time to explore the issues, rules, and underlying policies, as well as their application to hypothetical situations or problems that I've handed out. (And, lest anyone think I'm being too nice, or not doing my part, I ask incredibly picky procedure-related and fact-related questions just enough to ensure that the students remain apprehensive about being called on. As a result of this apprehension, the students will continue to read

19. See generally RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* 17-26 (1990) (illustrating the steps taken to dissect a judicial opinion). I distinguish between "dissecting" a case and "briefing" it. To me, dissecting a case involves the mental process of reading the case and then analyzing in a deep and rich manner each of the issues or sections which normally comprise the sections of a case, as well as how the particular case fits within the overall scheme of the course. Briefing a case involves committing to paper a short summary of the case's legally determinative facts and the student's analysis. I believe the mental process involved in dissecting a case is much more involved and contains much more consideration of the issues raised by a case than what is captured by a brief. I want my students to understand that they should dissect the cases in order to understand them and brief the cases (if only a book brief) in order to record the most important points of their analysis.

20. An example of when I spend a significant amount of time on the facts is when my Business Organizations II course reaches the point in which it deals with mergers. I go through the facts of some cases almost sentence-by-sentence and ask the students to speculate about the reasons behind, and the pros and cons of, the various actions that were (or were not) taken by the participants.

closely and prepare all aspects of the assigned material. I just don't normally waste much class time on these aspects of the cases because there are many more interesting things about which to ask incredibly picky questions.)

You also will have to decide whether to employ the Socratic Method²¹ or a lecture style. The lecture format is out of fashion, except when you have four or five hundred pages of material to cover in the remaining two weeks of class, in which case it is permissible and is indeed even encouraged.²²

Law school is all about analysis. And what better way is there to teach analysis than to use the Socratic Method, which terrifies students so much that they cannot think if called upon and are so afraid of being called on that they cannot concentrate while someone else is speaking?²³ Unlike the lecture approach, which assumes some determinacy in the law, the Socratic Method proceeds on the assumption that there is no certainty about anything; there are only questions without answers.²⁴

21. My bias towards a discussion mode is demonstrated by the description of classes set forth in the previous several paragraphs.

22. Beginning law professors frequently assume that the “case method” and the “Socratic Method” are the same thing. They are not, although they are commonly used together. It is quite possible to lecture about a case. Indeed, as the text suggests, it is almost indispensable during the last several weeks of class during which time you are trying to cover the four or five hundred pages of material that haven't already been discussed. Never fear, my friends; you can still ask the students that random picky question (and skewer them if they don't answer properly) just to make sure that they carefully read all the assigned material and don't rely solely on your lecture or some commercial outline. Asking the random picky question has the serendipitous benefits of heightening anxiety about being called on as you fly through sixty pages a day and of increasing their angst about exams since they will be so busy reading for class that they will not have time to study for exams. And, please, don't be concerned by the fact that they have to read sixty pages per day because you didn't pace yourself throughout the semester. Remember, national and planetary security.

At the same time, the Socratic Method easily can be used for specific or general problems. All you need to do, of course, is ask a series of questions in which you force the student to set forth and then explain and justify her solution to the problem.

23. As I'll discuss in much more detail later in this essay, the Socratic Method is by far the best way to induce anxiety and terror in students. Maybe we owe Socrates more than we realize. Perhaps Socrates was aware of the stories of ancient astronauts and was leaving us—in a disguised form—his methodology for training people to deal with the aliens should they return.

24. I must note, however, that I've never seen a brief employ the Socratic Method. So, I guess there are correct answers, at least when our clients are involved. (After all, we law professors wouldn't be so amoral as to help students learn to convince a court of an untrue proposition of law, would we? What would that do to our moral legitimacy?) In any event, exactly how would a brief based on the Socratic Method be written? This is what I envision:

And, if you ask good questions, students are challenged to think through concepts, cases, statutes, and problems from a variety of perspectives. The Socratic Method also is based on the profound observation that if you (a) ask questions, but provide no answers (even when there are answers or close approximations of answers), (b) confuse people enough by asking unfathomable questions and by never asking questions that tie together the material you are discussing, and (c) terrorize people enough that they can't concentrate in class for fear of being called on, they are bound to go out and buy commercial outlines in a desperate attempt to learn *something*.

To conclude: Pedagogical methods are like tires. Each has a place, but they should be rotated as needed.

C. Course Coverage

New professors sometimes are too optimistic about the amount of material that they can cover in each class. Particularly if they are teaching in an area in which they have practiced, they forget that what they now thoroughly understand was once difficult foreign terrain. Even if they are teaching in a foreign area, new law professors also may not yet fully appreciate that their years of practice enable them to assimilate information and perform legal analysis more quickly and efficiently than they did as law students. With no disrespect intended to students, the phrase "like molasses dripping in winter" frequently describes the speed with which I can move through some complex subject areas or statutory provisions.

There is no bright-line test for determining the number of pages of material to cover, either during the semester or in a class. It is helpful to consult with a colleague who has taught the same course several times, particularly if she is using the same casebook as the one you selected. In any event, it will be helpful if you ask yourself the following questions prior to the beginning of each semester:

1. What are the essential concepts, rules, standards, principles,

Issue Presented:	What do you think the issue is in this case, your Honors?
Rule of Law:	Would you please tell me what rule of law applies to the issue, and why?
Analysis:	Would you please state a plausible reason why my client should win given the rule of law you have identified and the facts of this case? Would you also please state a plausible reason why the opposing side should lose?
Conclusion:	Would you please rule in my client's favor, then rework your analysis to support the decision?

policies, terms, cases, statutory provisions, and regulations to which the students should be exposed throughout the semester? Do I want to provide a survey of the material (which will require a relatively superficial examination of many pages of material), or do I want to heavily emphasize what I believe to be certain core concepts, rules, policies, etc. (which will require a relatively in-depth investigation of a comparatively few number of pages)?²⁵

2. To what extent is there a problem-solving methodology that is unique to this course or to courses of this kind? An example would be the methodology of reading a body of code provisions, such as Article 9 of the U.C.C., and using the provisions to solve complex problems. If there is such a methodology, what is it? What is the best method for conveying this methodology to the students? To what extent do I want to emphasize this methodology by taking the time to work problems (or whatever other method seems appropriate), even if it means sacrificing coverage of some code provisions or cases?
3. What mixture of cases, statutes, regulations, and problems will best convey both the substantive material and methods of legal analysis and problem solving to the students?
4. Will I be dealing with first-year students whose case-reading (or code-reading) skills will, at least during the first semester, be minimal? What about the cases (or code sections) do I want

25. This essentially asks you to consider whether you want to look at the forest, all the individual trees in the forest, a few of the trees in the forest, the leaves on a few of the trees of the forest, etc. The first time a professor teaches a course, all she really wants to do is to get through each class without embarrassing herself. The path of least potential embarrassment is to strictly follow the casebook and teacher's manual, and even preparing that material thoroughly can take a large amount of time. Therefore, there is an understandable urge to work through the course a class at a time and not to think about how an individual class or case or statutory provision fits into the course as a whole.

Teaching is like practice all over again. You'll feel like you know absolutely nothing. First, you may not be teaching in an area in which you practiced. Second, you will discover how your practice settled into patterns which involved discrete issues, not the full spread of issues covered by the course you're teaching. Third, you will have nightmares about all the questions that the students might ask you and that you will be unable to answer. I firmly believe my first semester of teaching was as tough for me as it was for my students.

Please, don't let this feeling of inadequacy on your part color the manner in which you interact with the students. Don't let it cause you to consider how difficult the material must be for them, particularly for first-semester, first-year students. Your job requires you to shunt aside any feelings of empathy.

to emphasize? How detailed an examination of the cases (or code sections) do I want to make?²⁶

Overall, a careful consideration of these matters will promote learning and ensure you have a reasonable expectation of the amount and type of materials which can be covered during a particular class or during the semester.

D. Syllabus

The syllabus is frequently overlooked by new law professors. The syllabus is, in essence, a contract between you and your students. Although the students in your classes may look like adults and the overwhelming majority of them will be nice, honest, mature, and hardworking, there are a few students who really are whiny, conniving creatures who are looking to get through law school with as little effort as possible. (Please don't think that I'm too severe. Reserve judgment until I've completed my two stories below.) These students are dangerous because they will take seriously what you teach them about argumentation and the ambiguity of language, but they will do so only when it suits their needs. As a result, you must write your syllabus as if it were a contract in a \$50 billion merger deal. Lest you think I am being too harsh on the little darlings, let me provide you with two examples.²⁷

First: attendance policy. The law school where I teach requires professors to state their attendance policy in the syllabus. Fair enough. I put the following statement into my syllabus one semester: "You are expected to attend class. We are scheduled to meet 45 times during the semester. Any student missing more than 10 (ten) classes during the semester—for any reason—will fail (receive an "F" for) the course."

I thought I was covered. To measure attendance, I had the students sign a roll sheet that was passed around the room at the beginning of class. Well, after one of the students signed the roll, she evidently thought class was a little too simple to engage her obviously superior

26. It is likely you will be able to increase the number of pages you cover per class as the first semester progresses. However, remember that if you intend to go through cases with a fine-tooth comb, even simple terms will require several minutes of discussion. Think back to your days as a first-semester law student. Did you know some of these basic procedural terms, much less the terms related to the substantive law: plaintiff, defendant, appellant, appellee, petitioner, respondent, affirmed, reversed, vacated, remanded, motion for summary judgment, concurring opinion, and dissenting opinion?

27. I have taken *slight* liberties with the facts to protect the identities of certain students and to make my points.

intellect, so she got up and left after about thirty minutes of the fifty-minute class. I told her after class that I considered her conduct to constitute an absence. She replied with a statement to the following effect, "I was there. See, I signed the roll. The syllabus does not say anything about what constitutes class attendance. It does not say that I am unable to leave class after I have signed in. And besides, I stayed for over half the class, so there was substantial performance on my part."

The next semester, I included the following, additional clause in the syllabus: "Once having signed in, you are expected to remain for the balance of class; an early departure, for any reason, will be considered an absence." Then, the problem became the student who sauntered in after fifteen minutes and was too late to sign in before the roll sheet passed her seat. "But I was there! And I stayed for the remainder of the class. Besides, the syllabus didn't state that we had to sign in at the beginning of class." True enough, but pushing that logic to its outer limit would permit a student to walk in after forty-eight minutes and sign the roll. In addition, she had missed almost a third of the class; and my passing around the roll at the beginning of class for the previous ten-or-so weeks had, I supposed, put the class on notice of when the students needed to sign in. But she was correct; I hadn't explicitly covered that point in the syllabus. Anyway, I denied her request and got skewered on the teacher evaluation as "enforcing the attendance policy with the zeal of a bureaucrat."

The next semester I amended the syllabus to include the following: "I will pass around an attendance sheet during class. You will be deemed to be absent if you are not physically present in your assigned seat when the attendance sheet passes your seat. (Just so we understand each other: Anyone who signs in after this point will be deemed to be absent.)" The syllabus arms race about attendance continues to this day in some form or another. I suppose it is a testimonial to the fact that we are teaching them just enough to make them dangerous, at least to us.

Second: The final exam. With the exception of Jurisprudence, every course I teach is a code course to some extent. In an attempt to be nice (and recognizing the practical limitations of attempting to limit what could be written in the code supplement), I put the following statement in the syllabus: "You may bring into the final examination your copy of the Uniform Commercial Code. You may write anything you wish in the Code supplement." Well, silly me. I thought that was clear enough. Come exam time, I discovered that a student had hand-written her entire course outline on paper she had cut down to the size

of the pages of the Code supplement. She tore an equal number of pages from a part of the Code supplement that didn't have to do with our class, and she pasted in the new sheets. Well, of course, I hadn't explicitly told her that she couldn't do that; and, after all, the outline was hand-written, and it did fit in the U.C.C. Well, I just ripped that sucker right out of there. (I may be untenured, but I have limits to the games I'm willing to play.) Now my syllabus sometimes reads: "You may bring into the final examination your copy of the Uniform Commercial Code. You may write anything you wish directly onto the original pages of the U.C.C. supplement. You may not white-out pages of text in the original Code and write on the whiteout.²⁸ Anyone violating the letter or spirit of this provision will be found the morning after the exam floating face down in the Mississippi River." Actually, I only think the last sentence. I don't put it on the syllabus. But it makes me feel better.

In any event, you should spend a bit of time thinking about how the two or three little dears you'll have in every class might interpret your syllabus to their advantage.

III. PREPARING FOR AND CONDUCTING INDIVIDUAL CLASSES

As I will discuss in Section IV, law professors have official and unofficial purposes in mind when they teach classes. The official purposes are devoted to the facade of assisting the students learn to become practicing attorneys. The unofficial purposes are personal to the professor or relate to the government's program. In this section, I focus on the official purposes, and I offer some suggestions concerning how one gives the appearance of preparing for and conducting meaningful law school classes.

A. *Lesson Plan*

Think about the course and the class, and then prepare a lesson plan. To further the government's plan for producing inefficient attorneys who will create monumental amounts of useless legal work, you should not actually assist the students in learning anything useful. You must, however, provide the impression that law school furnishes a useful legal education. All that this really requires is that your students complete your course acquainted with just enough terminology to impress their parents (who, probably, are paying their tuition), significant others, and friends. Your students also should be able to throw around enough buzzwords and legal-sounding phrases to

28. Don't ask.

ensure that they sound like fledgling attorneys when interviewing with prospective employers and sound like effective attorneys when dealing with future clients.

What should you do? I suggest a devious strategy: Think about what you would do if you were serious about teaching and then prepare some type of written lesson plan that includes that strategy. You don't actually need to follow the lesson plan, but it will provide some tangible “proof” of your dedication to teaching, should you need it for tenure or other purposes.²⁹

B. Essential Topics

What general topics should be covered in class? Ask yourself the following questions:

1. What are the essential concepts, rules, standards, principles, policies, terms, cases, statutory provisions, and regulations that the students are being exposed to through their reading? Which of these are so clear from the reading that the students will understand them without the need for class discussion? Which of these are so ambiguous, confusing, or important that they will require some class discussion? Is my purpose to provide a survey of basic material or an in-depth understanding of core material? Are there different lines of authority or

29. Let me digress for a moment. You may end this section worried that teaching isn't your primary goal. After all, at some schools, your students are paying more than \$20,000 per year in tuition alone. You may feel some misguided need to actually provide these students with some knowledge and useful law-related skills and abilities. Don't worry. You don't. Remember that your purpose is to create confusion, anxiety, and terror among the student body, not to teach anyone anything useful. Indeed, teaching students something useful would defeat the government's goal of turning out lawyers who are capable of producing vast amounts of useless and poor-quality legal work in order to occupy the attention of the general population.

The truth of my assertion that no one is worried about your ability to teach can be demonstrated by several indisputable facts: First, teaching experience or ability is not a prerequisite to becoming a law professor. Did the school have you conduct a class as part of the interview process? Second, at many schools, particularly the elite schools which produce judges, law professors, and high-ranking members of the government, law professors are hired because of their ability to, and willingness to, spend all their time producing scholarship that has no relevance to the practice of law. Teaching is the last thing on the professors' minds. Third, legal scholarship which deals with law school pedagogy frequently is treated as second-class scholarship, not worthy of anyone's interest or time, either to write or to read. Finally, if you think back to your experience as a law student, you'll remember that the ability to teach certainly was not expected. Things haven't changed since you were in law school.

So, if you begin to find yourself feeling guilty about following the same tried-and-true classroom methods that your professors used, don't be. Just repeat to yourself: “I'm doing this for the sake of national, indeed planetary, security.”

different interpretations of a statutory provision of which the students should become aware? Are these discussed in a single case, in a principal case and note cases, or should I supplement what is in the casebook?

2. To what extent is there a problem-solving or analytical methodology that is unique to this part of the course? If there is such a methodology, what is it? To what extent do I want to emphasize this methodology? What is the best method of doing so: studying the case, examining the structure of the statute, working problems, etc.?
3. In what practice situations would the issue dealt with in the case or the statute be likely to occur? Why? Can this type of situation be anticipated? Can this type of situation be avoided by pre-planning, by placing language in a transactional document, or by taking similar action? If so, what should be done? When? Where? How? By whom? Are there similar situations or pre-planning steps of which the students should be aware?
4. What mixture of cases, statutes, regulations, and problems will best convey both the substantive material and the methods of legal analysis and problem solving? If problems are a good way of assisting the students in understanding the course material, are the problems in the casebook sufficient? Or do I need to create some and hand them out to the class?
5. How does the material assigned for the class relate to the course as a whole?

C. Organization and Execution

How should you organize and conduct the class? The organization and execution of the class will depend upon the course you teach, the pedagogical style you adopt, the formal and informal purposes of your teaching, and the answers to the questions just posed. To ensure that you integrate all these considerations, I suggest you create a lesson plan that includes the following information:

1. Class # _____
2. Date: _____
3. Pages to be covered: _____
4. Topic(s) to be covered during class:

5. How the topic(s) fit(s) into the big picture of the course, relate to the last class, relate to the next class:
6. Instructional objectives:
 - a. Terms:
 - b. Rules:
 - c. Policies:
 - d. Analytical skills/analytical paradigm(s):
 - e. Practice situations and pointers:
7. Problems and hypotheticals:
8. Instructional methods—lecture, Socratic, problems, etc.:
9. Assignment for next class:
10. Questions to have the students think about for the next class:
11. Problems to have the students work out for the next class:

If you save these lesson plans, it will keep you from having to start from scratch next year—and you’ll have paper in the files to show you cared enough about teaching to go to all the trouble of thinking about these things.

D. Preparation of Questions

Should I write out questions in advance of class? Perhaps I should only if I don’t want to look like a fumbling idiot.

Actually, it depends.³⁰ I used to dissect and write out briefs of the principal cases. I would then write out each question I wanted to make certain I asked, along with answers and follow-up questions. This forced me to think about the cases and to consider in detail the questions I wanted to ask, the answers I hoped to receive, and why I wanted to receive particular answers. Drafting follow-up questions forced me to think about the possible responses I might receive, how students might legitimately look at the case from different perspectives, and how different parties might use the case to support different positions.

The first semester or two I taught each course, I stuck pretty closely to the questions I’d written, and I’d clutch the paper in my hand like a talisman. Now that I’ve taught the courses a number of times, I no

30. I have included in Appendix A some generic questions that are, in some form or another, appropriate for most classes. Don’t let your students have copies of them. It might aid their preparation and understanding of the material. Also, it would certainly reduce the level of tension in your class, which is a bad thing.

longer need to frequently refer to the briefs and questions for the “old” cases. I read them before class and put a “Q” in the casebook at the point in the case to which the question corresponds. I put a number by each “Q” to designate the order in which I want to ask the questions (because it makes sense with many cases to consider the parts in a different order than they appear in the case). Finally, I write a few buzzwords by each “Q” to remind me of the points I want the students to discuss. I still brief and write questions for the new cases that replace the older ones.

When I hand out problems and expect students to provide solutions during the next class, I always write an outline answer that includes a step-by-step, code section by code section solution. As a result, I don’t normally feel the need to write out questions to ask the students. The answer provides the structure for, and the substance of, what I want to accomplish in class. I begin by asking the student how she began her solution, and why. If the student’s solution follows the same steps as mine, I just keep going with “What’s the next step? Why?” or similar questions. If the student’s solution diverges from mine, I first investigate her reasoning for proceeding as she did, then ask, “What about section X? Would it play a role? How? Why?” My goal, of course, is to get her to perceive why my solution is—I would hope—the more efficient and “correct” solution.³¹

When I am working with hypotheticals that are based on cases or code sections, I write out the hypotheticals and an analysis of both sides of the issue. I proceed as I described in the previous paragraph on problems.

E. Answering the Unanswerable

What if I get asked a question I can’t answer? No matter how prepared you are, there may come that horrible moment when—gasp!!—you don’t know the answer to a legitimate question. Personally, I’ve always favored the honest approach. I say, “That’s a very good question. I don’t know. I’ll have to think about it.” It always has been my opinion that I win points for honesty, that despite my admission the students still know that I know much more about the

31. I’m a big believer in understanding the political and policy forces that underlie code sections and common law rules. Normally, I discuss these issues with the students before working through a problem. I’ve found that mixing policy with a problem derails the analytical methodology I want the students to discover. If I want to make a point about how the outcome would be changed if a particular rule were changed, I normally wait until we’ve worked the problem all the way through under the existing legal structure. Again, there’s less confusion that way.

subject than they do, and that I don't add insult to injury by embarrassing myself with a rambling, obviously B.S.-filled answer. After all, students are not stupid. They can tell when their classmates are B.S.ing, and they can tell when the professor is, too.

But if the student persists, you always can use verbal aikido and turn the tables on her by using, as appropriate, one or more of the following questions:

1. "What do you think the answer is, and why?" or, if the morning coffee hasn't kicked in and you're still a bit surly, "Isn't that what you're supposed to tell me? I'm the one getting paid to ask the questions."
2. "What are the best arguments that you could provide on the movant's (or plaintiff's or appellant's or petitioner's) side of the issue?" And then pick on someone else and ask, "How would you respond?" And then pick on someone else and ask, "Do you agree?" And, before long, the original question will have been forgotten.
3. "What does the Code (or case) say about that?" If the student looks confused, as if she is saying to herself, "What Code?" (or "What case?"), then put her in hot water with her classmates by picking on whomever sits next to her (and who likely is, or was, a friend) by saying, "Well, let's bring in Ms. Jones as co-counsel. What do you think, Ms. Jones?"
4. "What's your authority for that proposition?"
5. "What policy would there be for adopting that position? And what would be the best policy argument for adopting the opposite position?"

In other words, you don't really have anything to fear, because you are the master of the domain. Your exalted status as a law professor, combined with the Socratic Method, will permit you to extricate yourself from any situation. These questions also make good, general-purpose questions for class.

F. What NOT to Do

Now, for the important advice about what NOT to do. My primary purpose is to make your job easier by reducing the thought and preparation that will go into each class. My advice, however, will have the concomitant benefit of exacerbating the anxiety, terror, and confusion that your students will experience. That's OK. Remember, law school is intended to train students to handle anxiety, terror, and

confusion and to permit the government to recruit the best-of-the-best-of-the-best. You're just doing your job.³²

1. This piece of advice is particularly important for those of you who are teaching first-year courses: Do NOT, under ANY circumstances, give your students any assistance in (a) understanding the context of what they are learning, that is, what lawyers do and how the subject matter of the course you teach relates to the real-world practice of law, (b) understanding the purpose of law school, what—besides black-letter rules of law—they should be learning and why, or (c) the purposes behind your use of the case method of study, the Socratic Method, and any other pedagogical method you employ. It would deprive the students of the opportunity to have the same kind of fun you had in law school as you tried to figure out what the devil was going on and what it was you were supposed to be learning.

Think about it. Most first-year students are incredibly naive, unlike you were, of course. They have just spent seventeen years of schooling in a protective, artificial academic environment in which lectures, memorization, and regurgitation were the principal pedagogical and examination methodologies. Then they arrive at law school and immediately are expected : (a) to understand what lawyers do; (b) to understand what skills and abilities in case reading, legal analysis, legal research, and legal writing they are supposed to acquire and why; (c) immediately to be able to dissect cases that seem as if they were written in a different language; (d) to brief cases even though they are never told how to do so or the importance and purpose of each portion of the brief; and (e) to perform flawlessly in front of a hundred or so strangers while being quizzed by a professor who asks questions the students cannot even begin to anticipate.

Because providing relevant information would assist them tremendously in accomplishing their expected tasks and would have the attendant effect of reducing the anxiety, terror, and confusion we are supposed to create, we must avoid helping the students in any way. They must figure everything out on their own. They must be put through the trial of their own errors.

32. As a practical matter, you also have to consider the tenure implications of what you are doing. If your colleagues believe you aren't being rigorous enough or aren't playing your part in the psychological testing program, they won't vote to give you tenure. Therefore, you must avoid anything that smacks of assisting the students in learning something. The students must learn everything on their own. Your job is simply to make their job more difficult. "Spoon feeding" is the buzz word law professors use to describe assisting students in any meaningful way. If a professor mentions to you that she's heard that you "spoon feed" your students, you'd better stop whatever you're doing in a hurry.

I know what you're thinking. Those poor students. Well, you just need to suppress any feelings of sympathy or empathy you may have for them. You're a law professor, after all, not a social worker. Besides, the dean of the law school undoubtedly told the students during orientation that they are in law school to learn to "think like lawyers."³³ This statement unquestionably made clear all sorts of important matters, such as: the nature, purposes, deficiencies, and operation of *stare decisis*; the differences between controlling authority and persuasive authority; inductive reasoning; deductive reasoning; reasoning-by-analogy; synthesis; the internal structure of rules; the differences between rules, standards, principles, and policies; the role of policy in the law; and the nature of law school examinations and how best to study for them. So, not to worry.

2. Never make explicit your goals for any course you teach, regardless of whether your students are 1Ls, 2Ls, or 3Ls. Under NO circumstances give the students a verbal or written list of the knowledge, skills, abilities, or analytical techniques you expect them to acquire during the semester. This would only assist the students in learning, and it certainly would cut down on your ability to waste, I mean take up, class time with a Socratic dialogue about why some piece of information, some skill, or some analytical technique is (or is not) relevant to the course.

And, in a similar vein, you should never begin a particular class by stating the principal purposes of the class, that is, the two or three things that the students should take with them from class that day. After all, if you tell them what you want them to figure out, they just might do so. Nor should you end class by summarizing, or having a student summarize, the major points that were discussed during the day. Again, it might assist the students in figuring out the mess of the material you've just made using the Socratic Method during class.

3. It is well-documented that students learn best when they have a real-world context in which to place what they are learning. It is equally well-documented that most law students have no idea what attorneys actually do or what transpires in the real world, particularly in the business world. Therefore, do NOT describe how the situations you are discussing in class might arise in the real world. And, whatever you do, do NOT provide them with real-world type problems to work on using the cases or statutes you are examining in class.

33. Well, there's a revelation. I'll bet those silly students thought they were coming to law school to learn to "think like plumbers."

4. Students are individuals. They learn in different ways. Some students are visual learners and learn best when material is presented with flowcharts, graphs, time lines, or diagrams. Some students are aural learners and learn best when material is presented in verbal discussion or descriptions. Other students are practical learners and learn best when they have to solve a real-world problem, create a real-world document, or participate in a realistic simulation. Some people learn best when they study and think alone, while others students learn best in a small-group setting. To make sure that you assist and reach the smallest possible number of students, and only those who happen to correspond to your style of teaching, be sure not to present the same information (or demonstrate a particular mode of legal reasoning or analysis) using a variety of formats or techniques.

5. Not only are most cases and statutes crystal clear, but the cases and statutes that you will cover in class undoubtedly relate to each other in a manner that is intuitively and readily obvious. (That is, of course, why it takes a person only six to ten hours to prepare for each class she teaches during her first semester of law school teaching.) Don't you remember the intuitively obvious manner in which all the parts of such courses as Secured Transactions, Commercial Paper, Civil Procedure, and Future Interests fit together into a seamless web? Of course you do. So let the students have the same fun you had in law school. Be sure to never ask them any questions that might require them to think about how the material covered in a particular class relates to "the big picture."

6. Don't bring any energy and enthusiasm to the class. Forget that you are teaching the MTV and video generation. Forget that many of these students have the attention span of a two-year old and the same need to be entertained. Forget that you may be working with really bad material. (If you don't believe the bad material part, try teaching Article 9 of the U.C.C.) Instead of bringing some energy and enthusiasm to the classroom, enter into informal bets with your significant other or your colleagues about how many people you can put to sleep during a class or how soon you will catch someone looking at her watch.³⁴

7. Never assume that a student has prepared for class and has made

34. As I sit here this evening writing this, I feel compelled to point out to the reader that I can take it, as well as dish it out. I taught the first Secured Transactions class of the summer session this morning. The class began at 10:00 a.m. I noticed a student looking at his watch at 10:12 a.m. I swear he was asleep (or at least his eyes were closed for a full five minutes) by 10:30 a.m. That was one ego-boosting experience for me, I'll tell you. But there's always tomorrow.

an attempt to understand the material. Automatically assume any question you are asked in class or any answer to your Socratic questioning that you find to be inadequate is the result of the student being too stupid to understand the material, being too lazy to have read and thought about the material, or being too inattentive to your brilliant and lucid question or explanation. DO be sure to sigh as though you couldn't begin to believe that this person was admitted to preschool, much less law school. And, whatever you do, don't ever appear to shoulder some of the responsibility by saying something like, "I'm sorry. My question [or explanation] might not have been clear. Let me try again."

In a related vein, automatically assume that any seminar paper or other written work that you receive and find deficient results from the student being too stupid to understand the material or being too lazy to make an effort to do the work. Be sure to tell her so. And, whatever you do, don't investigate the possibility that she might not know what is expected of her on the assignment; that she might need the same type of dialogue and input that law professors routinely get from their colleagues concerning their scholarship; or that she might need assistance in better focusing her topic or thesis or research methodology.

8. Never offer any positive reinforcement. For example, never compliment a student for a good job of answering questions or offering a novel insight during class. It might encourage participation and learning by lessening the adversarial atmosphere that you are working so hard to create.

9. Never answer a question directly. Always leave the student confused. Never, under any circumstances, ask, "Did I answer your question?" or "Was that clear?" It might show that you care.

10. If you are teaching a seminar and a student's paper does not measure up to your standards, simply return it without comments and say, "You've got to be kidding. Bring this back to me when you've actually put some work into it."³⁵ If you feel the need to provide written comments, confine them to circling errors in grammar or punctuation. Substantive comments, verbal or written, actually might provide the student with some insight into why you believe the paper is deficient and what is expected of a person engaged in professional-level writing. Therefore, do not make comments about organization, analysis, thoroughness of research, appropriateness of the resources

35. Of course, you should take the same approach if you are supervising an independent research project, law review case comment, law review note, or other written work.

cited, whether the conclusion follows from the analysis, whether the work contains the type of information that a reader would desire, or anything of a similar nature. This would be contrary to the principle that a student must learn everything on her own. You are there to point out her deficiencies, not to help remedy them.

11. Finally, remember that law school is like any other part of life: You end up receiving pretty much what you expect other people to give you. Therefore, have extremely low standards for your students. Don't try to get them to work to their potential and then a bit beyond. They just might do it. And where would we all be then?

In summary: Whatever you do, do not provide any context, structure, basic skills of legal analysis, comments, or encouragement.

IV. THE PURPOSES OF CLASS

To decide how you will teach a particular class (i.e., the pedagogical processes you will use), you must first have a firm grasp on the purpose of each class, that is, what you hope to accomplish in each class. Of course, like all law school professors, you will have both "official purposes" and "unofficial purposes." "Official purposes" are those that are discussed when you talk to students, their parents and significant others, university officials, the dean, and alumni. "Unofficial purposes" are those purposes that really motivate you, that you think about while planning individual classes, and that you occasionally discuss with your colleagues when you are being totally candid.

A. *Official Purpose*

Many people you meet, including first-year students, their parents and significant others, will be curious about the purpose of a law school education and what it is designed to accomplish. Therefore, if you are asked by a non-law professor to describe the principal purpose of a law school education, you should respond—preferably in a condescending tone that carries the implication—"Isn't it intuitively obvious?"³⁶ You are permitted, indeed encouraged, to skip the condescending tone if you are talking with someone who is considering making a nice, big, fat donation to the law school. You also are encouraged to adopt a pleasant, inviting tone if you are talking

36. Remember, we want the general public to become immune to the revulsion and nausea that usually accompanies close encounters with lawyers, which you still are. The condescending tone helps to maintain that obnoxiousness that makes lawyers so well loved.

with someone who wants to create an endowed chair for you by saying, "The principal purpose of a legal education is to help the student learn to think like a lawyer."³⁷ This response both sounds reasonable and is so vague that it covers a multitude of sins.³⁸ Invoking the mantra "to think like a lawyer" usually is enough to end the discussion. If pressed for further details, however, you should mumble something about "helping the students learn legal reasoning" and "preparing students to practice law."³⁹

In recent years, a movement to put pressure on law schools to train law students "to practice law as real-world lawyers" has grown. This movement has been led by two groups: (a) practicing attorneys who assert that law students leave law school unprepared to function in the real world, and (b) recent law school graduates who discover soon after they begin clerking or practicing that by "the ability to think like a lawyer," law professors mean "the ability to think like a lawyer who has left the practice of law, has quickly lost contact with the real world, and does not think practical application is important."

If the purpose of law school were to prepare attorneys to engage in the meaningful and productive practice of law, I might agree with the movement's position. However, the movement's purpose is directly contrary to the government's goal that attorneys create large amounts of useless and inefficient legal maneuvering, documents, and other nonsense to occupy and distract the public. Therefore, the last thing law schools should produce is graduates who are efficient and productive.

In any event, you will sometimes have to endure criticism from members of this movement and do the best you can to maintain the secrecy surrounding the real purpose of a law school "education." My suggestion is that you respond to such criticism by saying, "Law schools, like ALL schools, are only supposed to develop the ability to

37. Never, under any circumstances, respond by saying that the purpose of law school is "to teach the law students to think like lawyers." First, the use of "teach" would be directly contrary to the principal rule of law school pedagogy: Law professors are supposed to so confuse the students that the students have to discover everything on their own. Second, to state, or even imply, that law professors are supposed to "teach" means that law professors would have to take some responsibility if students graduate from law school devoid of a sufficient level of substantive knowledge or the ability to engage in legal analysis and writing. The last thing that we law professors want to do is to assume responsibility for our actions (or inactions).

38. Despite, or perhaps because of, the approximately five thousand law review articles that have been written on the topic, no one knows precisely what "thinking like a lawyer" really means. So you can use the phrase anytime, anywhere.

39. As the next paragraph suggests, there is quite a danger in using the phrase "preparing students to practice law." Use the phrase only if you are desperate.

reason and engage in analysis. Law school is not a highfalutin trade school in which students are taught anything related to the real world. Historically, that has been the job of law firms and practicing attorneys. So why aren't you doing YOUR job?"

B. Unofficial Purposes

Having exhaustively studied various teaching styles and philosophies over the last twenty years, I have distilled a list of six unofficial purposes for law school classes. The first five relate to the personal idiosyncrasies of law professors. I have not listed them in any particular order, as a given professor may be motivated by one or more of these unofficial purposes. The sixth has to do with the government's training and screening program.

Purpose #1: Some professors use class either to demonstrate or attempt to create the illusion of their own academic brilliance. They do this by pointing out—usually in the most condescending tone and often in excruciating detail—the subtleties of the relevant cases, statutes, or problems. The students do not realize that most of these subtleties have been pointed out to the professor either in the teacher's manual or in some treatise that the professor conveniently forgets to credit (lest the students start reading it, figure out what a sham the professor's act is, and discover the source of—and answers to—the hyps which the professor was so clever to “create”).

Some professors put on a better act than others.⁴⁰ In addition to taking on a condescending tone of voice, the really good professors don't read from their notes; rather, they stand still and slightly to the side of the podium, arms crossed with their right hand holding up their chin,⁴¹ and looking up and to the right as if lost in contemplation. Then they make their pronouncement. This pose usually lasts between ten and fifteen seconds, which is just long enough to let them look distinguished and thoughtful, but not so long that they look dull-witted. It IS a fine art.

Purpose #2: Professors who are frustrated performers use the classroom as their stage. I have been able to discern four subspecies of this animal. First, there is the frustrated dramatic actor. The dramatic actor is a Kingsfield-like professor who speaks in dramatic phrases punctuated by pregnant pauses that are intended to allow the audience to soak in the brilliance of the previous statement and to permit the professor to remember her next line and its accompanying

40. See *infra* Purpose #2.

41. They do, after all, have such weighty thoughts.

gesture.

Second, there is the frustrated talk show host. This breed bounds up and down the side of the classroom to the row in which the person with whom she is speaking is sitting. Unless she is working in a large classroom, she normally doesn't go so far as to stick a microphone in the student's face. And, unless the discussion results in the surprise revelation that the student with whom she is speaking has had an affair with the significant other of the student sitting right next to her, resulting in a space-alien-baby-love-child who looks like Elvis, the professor rarely needs bouncers to come stop a fight.

Third, there is the frustrated comedian. Unfortunately, it is usually immediately apparent why she is so frustrated.

Finally, there is the frustrated (or would-be) courtroom attorney. This type of professor acts as if she is in a courtroom, grabbing the podium or table as if it is the bar separating her from the jury, leaning up against the wall as if she is leaning up against the witness box, or whirling around to confront a student and shout a question at her as if the professor is Perry Mason in a dramatic closing sequence.

Purpose #3: Professors who are health freaks use the classroom as the opportunity for an aerobic workout. These professors, who tend to be younger or severely addicted to caffeine, race back and forth in front of the class at a pace that has to raise their heart rate to 150 beats per minute. Depending on the design of the room, these professors can obtain an extra level of aerobic workout by leaping up the tiers of steps at the side of the classroom or conducting a step workout on the stairs to the podium. While these professors bring energy to the classroom, all the pacing, stepping and running around leaves about half the class feeling dizzy and sick to their stomachs. Also, particularly on warm days, there is a good reason why the students don't want to sit near the front of the room.

Purpose #4: Some professors are frustrated and sadistic big game hunters⁴² who use the classroom to hunt students and psychologically maim them for sport. Many students, even those who are verbal, bright, and prepared, rank being called on in class somewhat lower on their list of desired activities than having root canal work performed without Novocain. Those students with a look of terror, flushed faces, and trembling hands at the beginning of each class are most at risk. Evolution has developed the trait in all predator species which

42. The analogy to the big game hunter may be unfair to hunters, for although they hunt their prey, they also have the good grace to kill it quickly to put it out of its misery. These "big game" professors do not have the same courtesy, as they make their prey suffer for up to 50 minutes.

compels the hunter to pursue the most vulnerable prey. So, of course, it is upon these most vulnerable students that the professor chooses to lavish her attention.

Purpose #5: A professor who has a bit of mad scientist in her will use the Socratic Method in an attempt to condition the students in such a way as to make each student a little mental clone of herself.

Purpose #6: Many, if not most, professors take seriously their responsibility as participants in the government-sponsored psychological training and screening program.⁴³ These professors use a variety of the procedures below to both create class-wide anxiety on a semester-long basis and absolute panic for specific individuals in particular instances. All of them involve using the Socratic Method with some subtle, sadistic twist.

1. Assign sixty pages of reading per day and always discuss the most cryptic and obscure portions of the assigned material. Of course, this will create tremendous anxiety among your students as they attempt to prepare for class. It will create sheer terror for the person upon whom you call. This technique will also ensure that your students read for your class to the exclusion of other classes. In this way, you can heighten your students' anxiety levels in your class and in all their other classes, too. This technique is particularly successful if you can persuade your colleagues to use this same method.

2. For each class, randomly pick the people on whom you will call from the entire class list, so every person is subject to being called on for each class during the entire semester. Thus, being called on one day will not result in an informal exemption for the next several classes. Of course, you should let the students know that you are going to do this. Then, to make certain they believe you, every three weeks or so you should ignore the random selection and call on the same person for two or three days in a row. You will get wonderful class preparation out of those people who can tolerate the continuous tension well enough to attend class.⁴⁴

43. As an aside, the whole process is also a screening for the professors. Although the level of fear created by being called on in class has not changed since you were in law school, this will be your first experience with having to look into students' eyes and inflict this psychological pain upon them. If you can look into one of the Bambi-like faces, racked with terror, and proceed to put the student through 50 minutes of the Socratic Method without a second thought, you are destined for classroom fame. And, if you can do so for several years, particularly in conjunction with the other methods I'm about to describe in the text, you may get a visit from a person wearing a dark suit and carrying a government ID. That race of alien lawyers must also contain alien law professors. There is a special forces unit to deal with them, too.

44. Every semester I give my students two or three days on which they may "pass" by providing me with a written statement to that effect prior to class. I adopted this method

3. Let people hand in written "passes," then call on them anyway under the guise that your question is based on "common sense" or "what we covered a couple of classes ago" rather than anything contained in that day's assignment. See if you can catch them napping because they believe they are exempt for the day. Then, after you've talked with them for ten or fifteen minutes, make a point of refusing to rip up the written pass. Even though they talked in class, they will not be able to "revive" their passes to use them another day.

4. Pick on someone who has been absent for several days, even if you know the person was sick and was not simply skipping class. You know the person will not have a clue what is going on in class, will be petrified with fright, and will do such a horrific job that it will waste everyone's time. You can justify it to yourself by arguing that punishing such people will cut down on absences. (Oh. I forgot. This is part of a psychological test. There need be no justification beyond national security for inflicting such pain and suffering.) Actually, this is a "two-fer" situation. First, you can humiliate the student. Second, you can get her classmates mad at her for wasting their time. This technique is particularly effective if you open class with the following statement: "What we're going to cover today will figure prominently on the final exam. However, due to time constraints, we'll only be able to spend today on the topic."

5. Pick on the person who looks the least prepared and most frightened. This is almost guaranteed to result in an embarrassing performance, thus heightening the overall tension in the class, as well as providing an opportunity to determine whether the specific student can recover from a demoralizing performance.

6. Suppose a student isn't well prepared and, because of this, you become so disgusted with her performance that you move on to another student (being sure to shake your head, mumble something to yourself, and appear to write something down on the seating chart). What will the student think? That you'll call on her next class period?

to cut down on wasted class time and to recognize, as I found out after I became a parent, that try as you might, there simply are some days when you are too tired or too busy to prepare adequately. For those of you who think this misrepresents the real world, I suggest you reflect on the times you made, or received, calls asking for extensions of time due to illness, a death in the family, or other personal matters. In any event, I permit my students to pass a couple of days per semester. There is a downside to this kindness. I place in my syllabus a statement that if a student does not pass, I will consider her to be fully and meticulously prepared. Sometimes, of course, I call on a student who is playing the odds by not turning in a pass although she is unprepared. Well, the student might as well get out the marshmallows, because she is about to be roasted.

Don't. Don't even look her in the eye. Don't look in her direction. She'll have wasted all that time and gone through all that worry about being called on for nothing. Wait three or four class periods, until she's relaxed somewhat, and then call on her. If she does a good job, great. If not, call on her the next class. She'll be thinking you will follow your original pattern and might not be prepared. Enjoy yourself.

7. Confuse the participants in class discussion, as well as the class as a whole, by switching continually and seemingly at random between the student discussants. In a similar vein, do not stay with a person for an entire problem or case; you might accidentally let a line of thought or analysis play itself out from beginning to end. Be sure to switch student discussants at critical junctures in the analysis.

8. Ask completely incomprehensible questions and then berate the student who attempts an answer for her lack of preparation.

9. Don't view mistakes as a natural part of the learning process. Don't view "thinking like a lawyer" as a process that develops over time as a result of gentle questioning which forces students to question their own assumptions and analysis, as well as those of a particular court. Don't ask students why they answered your questions the way they did and slowly have them walk through their previous analysis to discover how it might have been improved, and why. Simply shout, "WRONG! Your client has just been fried because of your incompetence," or "WRONG! You'd better hope your malpractice insurance is paid up."

10. If a student comes into class late, stop talking the minute she enters the door and stare at her while she walks to a seat and sits down, shaking your head the entire time. Next, even if she quietly sat down and did not disrupt the class, throw a temper tantrum in which you yell, and scream about the need for professional decorum and mutual respect for other human beings. Then call on her for the rest of the day, preferably before she has had the opportunity to get her notebook and casebook out of her backpack.

11. Constantly talk about the indeterminacy of the law. Begin your answer to any question which you are asked with, "Well, of course, it depends" However, if a student does not provide a concrete and unequivocal answer, look at her disdainfully and say, "But your client will want an answer. What is it?"

12. See if you can condition the students to act in particular ways. For example, ask a question of the class as a whole.⁴⁵ Then

45. Whenever you ask a question of the entire class, that is, when you have not

immediately say (and it doesn't matter if she really did), "Ms. Jones, you moved your little finger. You subconsciously must want to answer the question." Repeat this with variously gestured body parts—arms, smiles, etc.—until all your students are doing is sitting perfectly still except for taking notes. Next say, "Ms. Green, I notice you are taking notes. What did you think was the most important thing I just said, and why?" Pretty soon, everyone will be perfectly still, not even taking notes. Then ask a question of the class and say, "Ms. Smith. You are being still. Are you bored? Why don't we talk?" Before long you will have them so confused that they won't know what to do.⁴⁶

Although I have no independent confirmation, I've heard that a law professor was able to condition her class both to sit with perfect posture and to do the hand and arm gestures to the Macarena by phrasing her comments and questions in just the right way. To be so gifted.

13. In the weeks immediately prior to finals, repeatedly mention class rank and its relationship to the prospects of the students' eating and being able to pay off their loans after graduation.

14. In the weeks immediately prior to finals, repeatedly mention how you have come to believe grade inflation has gotten out of hand and that you finally plan to do something about it this semester.

You will know you have failed in providing a sufficiently rigorous classroom environment if people actually volunteer to talk and ask questions. Voluntary student participation implies that they are not sufficiently terrified of you and actually may feel comfortable enough in your class to think about the material. Change what you're doing before it's too late.

V. SOME MISCELLANEOUS ASPECTS OF TEACHING

There are some aspects of teaching that don't fit neatly into any of the previous categories. These are the attributes of students and classes that you don't really see as a student. Let me provide a somewhat stream-of-consciousness list:

addressed a question to a specific individual, the entire class suddenly will find what you have just asked is so brilliant that each student must look at her paper and write down your question and be poised for the profound response. According to the latest statistics, 72% of the class has written, "I hope the professor doesn't call on me." The remaining 28% were just making marks on the paper while trying not to pass out from hyperventilating.

46. Just a hint: It is bad for student morale and for credit hour production to attempt this conditioning trick with statements like, "Ms. Smith. I noticed you were breathing. Why don't we talk for a while?"

A. "Passes"

If you allow written passes for the day to be placed on the podium prior to class, the number of passes will increase in direct proportion to the difficulty of the subject matter or the assigned problem, or the length of the reading assignment. Without regard to the difficulty of the material or problem, or the length of the reading assignment, the number of passes will be the highest on the day the dean or members of the Tenure Committee come to observe your class.

B. *Go with the Flow*

Conducting a class requires that you be flexible and learn to go with the flow. It doesn't matter how much you prepare, how detailed your lesson plan is, or how specific your written questions are. It simply will not work out the way you originally planned it to. Sometimes, it's your fault: You will underestimate or overestimate the amount of time it will take to cover certain material; you will let a student's specific question drag you into a fifteen-minute discourse that is interesting to you, but is, to put it mildly, tangential to the course material. Other times, it's the students' fault: The people on whom you call are unprepared (or are as prepared as they can be), but they clearly should be in another line of study; or, some gunner will raise a hand and attempt to show off; or, some knucklehead will raise a hand and ask a question that is so inane that it makes you wonder whether she had even skimmed the reading. (And she probably didn't. Stupid people don't get into law school. Lazy people, who should know better than to ask questions when they are unprepared, do.) Anyway, relax, go with the flow, and remember that the students don't know what you had planned and how far you've deviated from your lesson plan.

C. *Law Review Laziness*

Members of the law review editorial board are almost never adequately prepared for class, particularly during the second semester of their third year of law school. They are either too busy with law review work (trying to get out the issues that should have been published in the first semester) or have accepted offers of employment that are contingent only on them passing their courses and having a pulse at the end of their third year.

D. *Victim of the Day*

If you tend to question a single student for the entire class, I'll bet

an entire month's salary (which, in my case, complies with the state law that no person bet more than \$100 at a time) that when you walk into the classroom the following will happen: people suddenly will become absolutely quiet; everyone will look down at their paper with pens poised as if they can't wait for you to utter something brilliant; and no one will move, cough, or if you look in a bad mood, breathe. Immediately after you have selected the *victim du jour*, all but one of the members of the class will exhale and relax. But this will not be noticed by the person on whom you called. She will have passed out immediately upon hearing her name.

This cloud has a silver lining. It provides a wonderful test of the type of potential attorneys you have in your class. Watch to see if anyone attempts to administer CPR. If yes, you have public defenders or students who are willing to practice public interest law. If no, but they start calculating where her estate will go, you have probate attorneys. Or if they place business cards in the victim's hand, you have a bunch of ambulance-chasing litigators.

E. The Wildcard

There is always at least one student who asks questions or makes statements in class that make you wonder whether she was conceived just a bit too close to a chemical waste site. Because the person volunteers, you can't chalk it up to the terror of being called on. The only explanation I can think of is that because "Nature abhors a vacuum," it was given to this poor student.

F. The Savant

There is always someone who incessantly stares at you like you are the biggest dummy walking the face of the earth, that every point you make is intuitively obvious, and you are wasting her precious time by holding class. Fortunately, this person invariably receives a C- on the final exam.

G. The Gunner

Gunners are no more popular now than they were when you were in law school. (Which is, no doubt, why you weren't as popular during law school as you had wished.) At least once a semester someone inadvertently will say "Bingo!" loudly enough for the class to hear. That person has just won at "gunner's bingo."⁴⁷ You can react in one

47. There may be some of you who were the unwitting subjects of this game, but did not play it. For those of you who are in this category, let me explain the game. It is

of two ways. First, you can give the person a lecture on the evils of non-professional behavior in the classroom. Second, you can ignore it (because it undoubtedly was a spontaneous reaction, not an intentional show of disrespect towards you), catch the person after class, ask if the students bet money on their bingo games, and, if so, ask to join beginning with the next class.

Ironically, even though you probably were a gunner in law school, as a professor, you find them to be a major pain in the behind. As much as you may appreciate their intellectual curiosity and the fact they actually prepare for class, they continually disrupt you, appear to think they know more than you, and sometimes make veiled, disparaging remarks about the other students, which is, after all, your job.

H. Laptops

Laptop computers have introduced a new way for students to ignore class, particularly if the professor does not call on students at random. When students started bringing laptops to class, I thought it seemed like a good idea. The students could take notes at a faster speed than by hand and could cut and paste the notes into an outline. The miracles of modern technology.

Well, how naive was I? One day, about fifteen minutes into a Secured Transactions class, I noticed that three or four students seemed transfixed by the computer screen of a fellow student. Now, I am not a graduate of MIT, but I knew that unless these three or four students had eyesight like that of an eagle, there was no way they could be reading normal-sized print on the screen. Something was up, but I didn't know what. So I called on a student several rows behind

quite easy to play and sometimes is the only thing that makes a boring class bearable to the students. Prior to class, the participants submit to the referee a list containing the names of three students the player believes will volunteer to speak in class. The referee puts her signature on the card in order to authenticate it. (That is, so one of the participants does not change her list to include the first three people to raise their hands. I know it seems hard to believe that a future attorney would do something like that!) As gunners volunteer, their names are crossed off the lists on the individual bingo cards. The first person to cross off the three names on her list wins. (The referee keeps an official list which reflects the order in which the gunners volunteered.) The game is played for fun, cash, or beer. Variations of the game include trying to guess who will volunteer first or how many times a particular gunner will volunteer during a single class.

A variation of this game occurs in classes in which there are no gunners. (I know the odds of this happening are low. But sometimes the professor doesn't take questions or is so boring that even gunners fall asleep.) It operates like the variations of gunner bingo. The participants predict things like: How many times will the professor clear his or her throat? Use a particular word or phrase? Call on a member of the class? Or digress and tell a thrilling story about her days in practice?

these students and over their left shoulders. I started into a hypothetical in which I asked the student to physically do something, take off her watch I believe, as a “prop” for a secured transaction problem. My errant students were distracted by the unusual action on my part and turned around to watch the student on whom I had called. I immediately—and quietly—walked up the aisle “behind” them to discover that the student with the laptop had a game of solitaire on the screen of her computer. I pretended not to notice as I engaged the student on whom I called in the remainder of the hypothetical. It is fair to say that I, too, would have been distracted by the solitaire game if I had been sitting in class. It is fair to say that I, too, would never again have played solitaire in class after the series of questions I asked the laptop owner soon thereafter. I never raised my voice. I did not give any lectures. But laptop computers and decks of cards—as personal property—figured quite heavily in the hypotheticals I later asked. Because her face turned as red as a heart or diamond, she apparently got the point.⁴⁸

I. Required Versus Elective Courses

Students tend to react differently in required courses than they do in elective courses, courses which the students are, in theory, taking because they are interested in the subject matter. During the first year, most courses are required. The students are generally so traumatized by the whole experience and so scared of being called on that they are always prepared, even if they are completely bored by the class. It is the second-year and third-year students in required courses about whom you need to worry. These people long ago resigned themselves to their class rank. Beyond a certain point (called passing with a high enough grade point to get credit for the course), they really just want to get through the course. They will prepare the minimum amount possible in all classes in which they do not have a true interest, taking into account the perceived probability of being called on, the penalty for taking a pass, and the punishment inflicted by the professor if a person is called on while only marginally prepared. They are very rational little calculators.

J. Enrollment

Each professor would like to think that high enrollment in her elective courses is a result of her marvelous personality, her interesting classroom presentation, and the perceived importance of the subject

48. The facts in this subsection have been altered slightly to protect identities.

area to the students' careers. And, to a small extent, these factors may influence enrollment. To a much larger extent, however, the courses fill as a result of unrelated factors: (a) whether the subject is required on the bar examination (positive relationship); (b) the amount of work required (inverse relationship); (c) whether the distribution of grades is skewed towards high grades (positive relationship); (d) the number of permitted absences (positive relationship); (e) whether the professor calls on people (negative relationship) or lectures (positive relationship); and (f) the time when the course is offered (which has an impact on the decisions of students with day care problems, who clerk and need blocks of time, and who simply want to sleep late).

The numbers game is played by professors too. Professors teaching electives want enough students to enroll to justify holding the class, but not so many students that it will take more than a few hours to grade their exams. Also, the faculty member is afraid that if the class does not meet the minimum number of students, she will be required to chair the admissions committee, or worse yet be appointed interim associate dean. Therefore, the professor will manipulate the factors set forth in the previous paragraph in order to achieve a class size that is large enough to avoid any negative consequences, but at the same time, small enough that the exams can be graded in a couple of hours. Professors can be rational little calculators, too.

VI. EXAMINATIONS

Everybody loves the current exam system. It is so much fun. And, of course, as everyone agrees, it is the soundest method of permitting the students to demonstrate what they know, their ability to engage in legal analysis, and their ability to write. The only course of action that might improve the process would be to scrap the whole undertaking, put the students through three to four weeks of torture on the rack, and let a computer assign them random grades. Although these alterations might improve the efficiency of the process from the professors' points of view, the students probably wouldn't notice much change.

Things probably haven't changed much since you were in law school. Today's students love exams just like you did. They love the opportunity of having three hours to demonstrate everything they learned all semester long about the substance of some area of the law and legal analysis in an all-or-nothing, pressure-packed situation that is weighted in favor of people who can read like Evelyn Woods and write like a stenographer. And once they can take elective courses, students love the fact that although they might diligently prepare all semester long, due to exam scheduling decisions that are out of their

control, they may be required to face the pleasant prospect of taking three or four exams on consecutive days. (And, of course, we law professors remember how we felt as students under similar circumstances. We thought it was the best way to demonstrate what we knew. We also appreciated the fact that it also gave us the opportunity to demonstrate our ability to survive sleep deprivation,⁴⁹ function under sustained stress, and write when our hands cramped up during our fourth three-hour essay exam in four days.)

From the comments of students immediately before and during the exam process, one might get the impression that we professors love giving these "instruments of torture."⁵⁰ If the truth be known, professors hate writing exams, grading exams,⁵¹ and drawing essentially arbitrary lines that separate students and assign them grades that may have a significant impact on their professional lives. Many professors also hate the fact that if they were given sodium pentothal they would admit that although their hypotheticals loosely approximate real-world problems, there are substantial differences between what it takes to succeed on a law school exam and what it takes to be a good practicing attorney. Law school exams take on great importance, but are a very imprecise measurement tool of what it takes to be a good lawyer. (Then again, one never knows when a client is going to pop into your office and quiz you to see whether you possess sufficient knowledge of the substantive law and sufficient ability in legal analysis to represent her. But it never once happened to me during all my years of private practice.)

If you have been out of school for more than five years, there is a new trend in law school examinations: multiple-choice exams. As a result, professors utilizing this form of examination can now avoid the drudgery of grading one hundred essentially identical and equally

49. I know I'm a whining bleeding heart. We all know—now that we're law professors—that if the student has studied all semester long she will know the material, not need to review it for more than an hour or so immediately before the exam, and will not be at all nervous about taking the one exam in the course. Sleep? No problem.

50. I am quoting a student of mine from this spring semester's Secured Transactions class. She changed her characterization of the exam after it was over, at which time she referred to it as a "very fair instrument of torture."

51. Exams are Karma in action—nature's way of saying "what goes around comes around." All semester long, law professors have been harassing those poor, dear students. Now it is time for revenge. Just when you, the professor, are exhausted from the semester and the students are going off on vacation, you get a foot-high stack of blue books to grade. In any event, by the time you are done grading, the spring semester or summer school has begun. So much for the concept that going into teaching gives you time off. Then again, it is highly unlikely you will get much sympathy from the students if you complain to them about how tough your life is.

horrific essay exams⁵² by giving multiple-choice questions. All they need to do to justify their decision is to say, "This way, you'll have the opportunity to practice for the multi-state bar exam."

On the subject of using multiple-choice questions, I'm still undecided. Except in Jurisprudence, which is all essay, my exams this academic year were approximately fifty percent multiple-choice questions and fifty percent essay questions. I do believe that some types of material, such as priority disputes under the U.C.C., can be tested quite effectively using multiple-choice questions. And I do think I can test some nooks and crannies of statutory provisions more effectively with multiple-choice questions than with essay questions. However, I believe essay exams more accurately test the ability to engage in the type of issue identification, organization of issues in a logical progression and matching to relevant rules of law, arguing in the alternative, fact analysis, etc., that I had to do during the memo-writing stage of my practice career. And, at times, it strikes me as a bit bizarre that I spend the entire semester telling students there is no right answer, then expect them to pick one on a multiple-choice exam.

A. Psychological Testing of Students

As long as the exam process is part of the government-run psychological testing program, you might as well both have as much fun as you can with exams and make the exam as interesting an experience for the students as possible. My exhaustive study of exam procedures has allowed me to compile the following methods that some professors use to torment their students at various stages of the exam process. These methods worked well on me when I was a student, and they apparently haven't lost their considerable effectiveness.

1. Spend the entire semester using the Socratic Method to examine the nooks and crannies of cases or discrete statutory provisions. During each class, be sure to skip the forest and look at a tree, a branch on the tree, a twig on the branch, a leaf on the twig, a vein on the leaf, then a small segment of a vein. Especially when dealing with first-year students, give the impression all semester long that you

52. It IS demoralizing to grade the exams. First, they soon begin to run together. You can't remember whether it is the exam you are currently reading or the previous one which made some point. Second, when you have to read what was written, it is brought home to you how ineffective you were as a teacher. On multiple-choice exams, your students may get low scores, but at least you don't need to read that, "A single person may form a general partnership by filing a Certificate of Partnership with the Secretary of State." Just hand me a razor blade, please.

really are interested in such minutiae. THEN, on the final exam, test them on something totally different. Give the students long, intricate hypothetical problems that test their ability to synthesize the material (see the forest) and solve complex legal problems by spotting individual issues embedded deep in complicated and convoluted fact patterns that bear little resemblance to real life,⁵³ arrange the issues in a logical sequence, recall a large number of rules of law, apply the rules to the facts while arguing in the alternative, and write on demand. In other words, teach them one thing and test them on another. See how they laugh, particularly during the first semester of their first year. And, of course, don't tell them that is what you are going to do. It would spoil the fun, and it might give them a chance to study in an appropriate manner for the test.

Under no circumstances inform the students that almost every major study has shown that in addition to not testing students over what they've been taught all semester, you probably also haven't been teaching or testing them on the skills and abilities that they will need in a legal practice.⁵⁴ These skills and abilities include the following: legal research, how to interview a client, how to conduct factual investigations, client counseling, negotiation techniques, how to do anything remotely related to the real-world practice of litigation or alternative dispute resolution, how to handle complex legal tasks, how

53. Thinking back to my Civil Procedure I exam:

A car carrying four passengers (all of whom, miraculously, live in different states (State A-State D)) is traveling east through State E when it collides with a truck traveling west through State F. The truck is based in Canada, and the driver is Canadian; however, the truck is owned and the driver is employed by a company which is incorporated in and which has its principal place of business in State G. The accident occurs precisely on the border of State E and State F (that is, the bumpers of the car and truck meet exactly at the border). However, in an odd twist of fate, the forces involved in the collision cause the car and truck to come to rest in State F and State E, respectively. At this point, a spacecraft from Mars happens by, and one of the occupants attempts to administer first aid while the spacecraft is hovering 10 feet off the ground (with the spacecraft being positioned so half of it is located over State E and half of it is located over State F). What state, planet, and/or time-space dimension have/has personal jurisdiction, subject matter jurisdiction, and venue?

One gets so many of these problems in practice, doesn't one? And, of course, this hypothetical bears a striking resemblance to exactly nothing that was done in class all semester long. That's OK. Students learn best when they have to figure things out on their own, preferably on the spur of the moment. Right?

54. Not to be a party pooper, but I didn't have that many clients, opposing counsel, or partners in my firm who wanted to sit down and conduct a group discussion of some appellate decision or who came in one morning to administer a multiple-choice or essay exam to me.

to draft documents, and how to think creatively about anticipating legal problems and solving them once they occur.

If you tell students about the significant differences between what you've been teaching them, what law school exams test, and what they actually will be required to do in practice, they might rebel. They might ask some rather tough questions about the distributive justice issues involved in awarding goodies like class rank and law review membership (and the jobs that go along with them) to people who scored well on examinations whose relevance to the real world is marginal, at best.

2. If you teach one section of a multi-section first-year or second-year course, be sure to arrange with the other professor or professors to use totally different grade distributions. In order to be totally fair to your students, flip a coin to see which section will have the better grade distribution.

3. Especially if you are an untenured faculty member, be sure to demonstrate your devotion to rigorous academic standards. No matter how well the students do, apply a low grade distribution. In other words, do not assign grades according to the quality of the examinations; assign grades according to a rigid distribution designed to ensure that the mean and median grades in your class, as well as the distribution of grades, make you look like you are devoted to high academic standards. This will impress your colleagues. But, of course, should the whole class perform poorly, you are duty-bound to flunk them all.

4. Spend almost the entire semester covering one hundred pages of casebook material. Then, with one week remaining in the semester, assign approximately 400 pages of casebook material. This strategy works even better with the following statement: "Now that we've investigated the basic principles, I want you to see some of the exceptions to them and some variations on the general themes. So please read pages 101-400 for the next two classes. I can tell from our class discussions up to this point that you all have an exceptionally good understanding of what we've covered so far. Therefore, I'll be emphasizing the new material on the exam."

5. Tell the students that the exam is open book and that they may bring in "their non-commercially prepared outlines." Then, the last day of class tell them that "their" non-commercially prepared outline means that they must have prepared it themselves. They may not bring in any outline prepared by other members of the same class, prepared in conjunction with other members of the class, or prepared in previous years. And say, "I'll be having my secretary check to make

sure the work is in your handwriting."

6. Spend all semester emphasizing the theory or policy considerations behind the law. For example, spend the semester emphasizing the "law and economics" perspective that you believe drives the law in automobile negligence torts. Then write the following in the exam instructions: "Because a lawyer must deal with the law as it exists, do not make any arguments which raise theoretical or policy concerns. Focus only on the 'black-letter' law."

7. In a similar vein, spend all semester taking a legal realist or critical legal studies approach in which you tell the students that there are no rules of law, only outcomes of cases. Then expect them to know the rules and only the rules for the exam.

8. Put a sample question on reserve that is so difficult that even you can't answer it. They will be weeping even before they arrive for your exam.

9. When you are writing your exam, be sure to leave out critical facts. For example, in a question in Secured Transactions, be sure to leave out the order and timing of the filing of financing statements. To accompany this omission, you must, of course, put the following statements into your exam instructions: "You may not under any circumstances ask me any questions during the exam," and, "You may not assume any facts." Although effective for essay questions, this technique works particularly well for multiple-choice exam questions.

10. Before you hand out the exam, tell the students they should have no difficulty completing the examination in the allotted three hours. Then hand them an exam with either twenty-five pages of single-spaced fact patterns or sixty pages of multiple-choice questions.

With respect to the essay examination, tell the students you want them to cover every aspect of the IRAC formula. Be sure the test includes every single issue you covered during the semester; cram so much into the exam that the students can't identify, much less set out the rules relating to or engage in any analysis of more than a quarter of the issues. And, of course, have issues spread throughout the exam with no particular order to them.

Of course, you should NOT tell your students that it took you five days to write the exam. And you absolutely should NOT tell them that it took you ten hours to outline the key for the exam.

11. If you don't feel like spending time writing a long exam, make it an essay exam that asks one open-ended, totally ambiguous, and essentially meaningless question. For example, try something like, "Civil Procedure: Why?"

B. Rules to Follow in Writing Essay Exams

In the previous section, I provided you with a few suggestions concerning how to set up, write, or give an examination that complies with the spirit of the government's psychological screening program. In this section, I provide some basic rules for writing examinations that are intended to make your life easier or to promote your own goodwill that might carry over into the tenure process (which may include some student evaluation component). These are indispensable, inviolable rules. I learned these rules through a combination of the gentle suggestions of my colleagues, bitter experience, and bitter students.

1. Do NOT try to make your examinations humorous. I know you were deadly dull all semester long and want to be remembered for your wit. I know you have psychologically tortured each member of the class on at least two or three occasions and feel as if you should make it up to them by making the exam as pleasant an experience as possible. I understand your professors wrote "humorous" exams. (If you remember, you didn't find them to be nearly as humorous as your professors probably thought they were. As I reflect on my law school career, I don't seem to recall a single time I busted a gut laughing during an exam. Looking at my grade, yes. But not during the exam.) You should not try and write a humorous exam for the following three reasons.

First, unless you are a professional comedy writer, whatever you write probably will not be that funny. Second, material, material, material. Material is everything in comedy. And when you get right down to it, there is precious little that is funny in the law. Think about it. When was the last time you broke out in hysterical laughter while reading the U.C.C. or reading about some poor soul who was maimed for life as the result of a toxic waste spill? Face it. Lawyers dress like undertakers for a reason.

Third, students have absolutely no sense of humor when it comes to exams. If it weren't illegal, they'd just as soon shoot you as take your exam. Think back and remember things from the students' perspective. Just imagine that you are some poor schmuck who is on the borderline between staying in school and flunking out. Are you going to sit there yucking it up during the exam that is going to determine your future? I don't think so.

Think about the setting. The students haven't slept in about ten days or showered in five. They are sitting in a room with one hundred equally-stressed out and smelly people, half of whom seem to be chomping on gum loudly enough to drown out an airplane, and the

other half of whom seem to be part of an experiment to see how long clothing can go without being washed. The air conditioner unit has picked this day to decide to take a vacation, the windows are bolted tight, and the temperature is headed toward a record high. And to top it off, right before the exam they discover that the Coke machine is empty. This is not a prime audience for comedy.⁵⁵

2. You cannot make the exam too easy. I'm not saying students are stupid. They are not. I'm not saying all students are lazy. With a small number of exceptions, they are not. And, I'm not saying that the essay question on an Environmental Law exam should be like Barbara Walter's question to Nancy Reagan, something like "If you could be a tree, what kind of tree would you be?" But there is something about taking an examination, particularly in the second week of exams or in the second semester of the third year of law school, which brings out the recessive, lower primate genes in every student. I'm not certain how it is physically possible, but every semester the students' brains start crashing two weeks before the rest of the students' bodies.

I swear I have asked questions on exams for which I have given the answer in a handout that I permitted the students to bring in to the test, and I still had a quarter of the students get the answer wrong. At first, I thought it was my teaching. Then I spoke with my colleagues and with professors at other schools. This is a universal phenomenon.

Writing a simple test will simplify your grading. There is nothing more time-consuming, mentally draining, and discouraging than grading one hundred essays that result from a question that is too difficult. Either the answers are long and totally disorganized or they are illegible due to the tear stains on the blue books.

I know you're worried about grading if you make the test easy. Don't be. No matter how simple the exam is, you will get a good distribution of scores, and you will be able to differentiate between people according to their knowledge of the material and their capacity to engage in legal analysis and writing. You will be able to assign grades.⁵⁶

55. Trust me on this one. My first semester, I thought I would try and write a humorous exam. I worked feverishly for a week trying to and, I might add, succeeding in writing an exam that seemed hilarious to me and some of my colleagues. The first words spoken to me by a student after the exam were, and I quote, "Is it my imagination or was there not a single relevant fact in the first two pages of the first essay?"

56. There is an opposing point of view that argues that the professor should write a demanding examination that tests the students on the most difficult concepts and the most obscure rules. The justification appears to be that if the students can answer these questions, they must know the points on which the vast majority of class time was spent. Although there is some merit to this position, it does have a significant problem

3. You give it, you grade it. And what's written in the blue books expands to fill the time allotted. In my first two years, I thought I'd be Mr. Nice Guy and give the class four hours to take an examination which I thought could be finished well within three hours. So I explained that I didn't want them to be subjected to the same kind of time pressures and stress I had felt during law school exams. Being the competitive people they were, most of them wrote for the entire four hours. Per Rule #2, much of what they had to say was irrelevant. Do the students and yourself a favor; limit the amount of time they have to write.

4. In your first several years, allot twice as much time as you think it will take for you to write the exams. It takes much more time than you think to craft an examination question that is unambiguous and that contains an appropriate number of issues with the proper amount of facts. A good shortcut if you get stuck for time is to find an obscure case and toy a bit with the facts.

C. Methods to Use in Grading

I currently believe the best approach to grading is to write an outline of a sample answer that is five to seven pages long and that contains the entire IRAC spiel. I assign a maximum number of points to each issue, rule, and analysis and put the point assignment on a one-page summary. As I go through the exam, I write the appropriate number of points at the spot in the blue book where they are earned. I sometimes add a few discretionary points for inventive but plausible arguments, good organization, and similar things. I then total the number of points.

If a student wants to see how I graded her exam, I show her the outline of the sample answer, the point sheet, and her exam answers. After seeing the sample answer and comparing it to their answers, most students feel thankful they passed.

I believe my colleagues all use a similar method. Of course, there are different perspectives on grading, and there are other methods used by professors around the country. They include the following:

1. Weight of the ink. On the assumption that those students who wrote the most had the most comprehensive analysis, some professors grade by the weight of the ink on the exam. They have their research assistant take every blue book (which, at least in theory, are of identical weight) and have each one weighed by a sensitive scale in the

associated with it: It is difficult to obtain a decent grade distribution when every student receives zero points on the exam.

chemistry department. The exams are rank-ordered by the weight of the ink, and grades are assigned accordingly. This is a very precise method of measurement and can be used to fashion grade increments down to—depending on the scale—.00001 of a gram. You can obtain a good grade distribution this way, and it is difficult for students to argue with the precision of the measurement.

2. For professors who are not so fastidious and want a quick measure of performance, penmanship can be used as a method of grading. The theory here is based on the assumption that students are (a) capable of judging their own level of understanding and (b) capable of altering their penmanship accordingly. Those individuals who have good penmanship deserve good grades because they were so confident of what they wrote that they wanted the professor to be able to read it. They receive an "A." Those individuals who have illegible penmanship obviously were not very confident about their performance and tried to hide how little they knew and how poor their analysis was. They deserve a "C." And the remaining students, those with average penmanship, receive a "B."

3. Some people use the time-honored "stairs" method.⁵⁷ I don't, but not because it is less accurate than these other methods. It simply is too messy, and at my age, I'm too lazy to bend over to pick up the blue books.

4. Non-subjective, mathematical methods are the wave of the future. Students have been complaining for years about the subjectivity of grading. I have been testing three methods that would remove my subjective perception from the grading process. I emphasize that I have not yet relied on these methods, but I find a high correlation between the grades I assign after reading the exams and the grades that are assigned using these methods.⁵⁸ In light of the statistical correlation, I am thinking of simply using one of these methods beginning in the near future.

First, I have used a random number generator. I assign each number from one to ten to a corresponding grade step. Then, for each test, I have my computer's random number generator select a grade.

57. The "stairs" method is simple. Find a flight of stairs with as many stairs as there are steps in your school's grading system, from A+ to F. Beginning at the bottom landing with A+, assign a grade step to each stair. The higher up the flight of stairs, the lower the grade. Stand at the top of the stairs. One-by-one, toss each exam into the air. Watch where the exam falls and assign it the grade which corresponds to the step on which the exam lands. The "weightier" exams will travel farther before falling, whereas the "lightweight" exams will fly high in the air and flutter down gently onto one of the higher steps (and therefore be assigned lower corresponding grades).

58. I'm just kidding. I sweat bullets to make sure my grading is fair and accurate.

Quick, efficient, and I'm not biased by handwriting, wording, or any of the other factors about which students complain.

Second, when my daughter was younger, she had a board game with a spinner containing the numbers from one to ten. I simply pasted a grade step over each number and let 'er rip.

Finally, I experimented with a promising new technique this past semester that combines numerology, higher mathematics, and the students' anonymous exam numbers. The methodology is simple. I add up the digits in the anonymous number and plot a distribution from the highest resulting number to the lowest number. I then divide the resulting distribution into ten equal sections and assign grades from high to low. Because the students can select their own anonymous numbers, they actually have input in the grading process, unlike the random number generator and game board spinner methods. Take three hypothetical students and their anonymous numbers: Student a = 197, Student b = 265, Student c = 317. Applying my methodology, the distribution is A for Student a ($17 = 1 + 9 + 7$), B for Student b ($13 = 2 + 6 + 5$), and C for student c ($11 = 3 + 1 + 7$). As you can see, having a "lower" anonymous number is not a barrier to receiving the highest grade. And if you don't tell the students you are using this method, they will not pick anonymous numbers which will maximize their grades.

5. Extra credit. Although I never have been a big fan of extra credit points, I award a one-step bump-up for either tear stains or some statement at the end of the last bluebook like "Now that the exam is over and you've assigned your grades, I want you to know how much I loved your course. It was the best course I've taken in my entire life."

D. Miscellaneous

There are several things about exams that I must mention, but which don't fit neatly anywhere else. In no particular order:

1. Beginning law professors tend to be young and relatively fresh from the law school experience, returning to the fold after only a few years of real-world practice. Therefore, they tend to identify with the students. As a result, many beginning law professors put themselves in an impossible situation. On the one hand, they want to write a good, tough test in order to please their colleagues. On the other hand, they want to be loved by their students. The result is that the beginning law professor, particularly in the first semester, stands outside the exam room waiting for the students to come out and shower her with compliments about the exam like, "That was the best

exam I've ever taken!" or "Thank you. That was so fun!" And she is devastated when the students emerge and do not seem particularly interested in chatting about the exam. Instead, they make a curt comment like, "Have a good vacation." Then they go down the hall to wait for their friends. If she is lucky, the professor will get an "I thought it was fair."

I have two observations about this situation, my friends. First, this may be the first time it really sinks in, but you're on the other side of the podium now. Second, no matter how much you try, how fair you are, how pleasant you make the experience, exams stink.

2. Do not write comments on the exams. First, writing comments on the examination, that is, providing feedback, might provide students with the opportunity to learn something about exam-taking, legal analysis, and the substance of the law. If a majority of students learned how to take an essay exam, it might undermine the essentially arbitrary nature of the process. Class rank would be thrown into chaos. Further, if students actually learned something about legal analysis and the substance of the law by reviewing the way in which they spotted issues, structured their arguments, selected rules, and applied those rules to the facts, this would be pedagogically sound. This result is totally out of the question. Students must be forced to guess why they performed well or poorly, just as they were made to guess about the purpose of law school, what went on in your classes all semester, what would be on the examination, and how they should answer essay questions.

Second, because no one has written meaningful comments on an exam⁵⁹ in approximately one hundred years,⁶⁰ the odds of any given student coming to your office to review her exam are close to zero.⁶¹ Also, these odds decrease exponentially with the number of semesters the student has been in law school. I have yet to have a second-semester, third-year student run right back after graduation to review her exam.

59. If the professor gets frustrated enough, she'll write the occasional "I can't believe someone would say this!" or "This really stinks!" or "Hello, anybody at home?" But such comments don't really fall into the "useful feedback" category. They fall into the "makes the professor feel better" category.

60. We owe a great debt to these visionaries who recognized that if they did write comments, students might develop the habit of coming to their professors to review their exams. Not only did these visionaries save us the time that we would have devoted to writing comments, but they ensured that we wouldn't have to put up with actual, in-person student contact. On behalf of law professors everywhere, I thank you.

61. The one exception to this statement is in full-year courses, such as Torts I and Torts II in the first year, particularly when students are required to pick up and review their exams. In this situation, comments are appropriate and helpful.

Third, if you have done your job correctly all semester, you have so intimidated your students that they would sooner forego any meaningful feedback than risk being subjected to a Socratic discussion in your office in which you ask them questions about how and why they composed the boneheaded answers they wrote in their blue books. They will simply defer to your arbitrary grading rather than avail themselves of another opportunity to demonstrate their unworthiness.

Fourth, after the first year, the feedback exercise would be pointless, anyway. Even if students did learn something about taking exams, most of them are so far away from the magic “top ten percent” that whatever they learn will make no real difference in what really matters for making law review and finding a job: their class rank. So what is the point of the students learning about their deficiencies? Their self-esteem has suffered enough from the whole class rank experience, anyway. And, given the perception of the essentially arbitrary relationship between a grade and the student’s understanding of the material and the ability to engage in meaningful legal analysis,⁶² reviewing the exams and getting your sagacious advice on how they could improve these skills strikes most of them as a monumental waste of time.

Finally, if you actually took the time to write meaningful comments—that is, what was done correctly and what could have been done better—you would spend approximately one day per exam.

Being the bleeding heart I am, however, I have taken one or more of three approaches as a compromise between “meaningful” feedback and none at all. Prior to the exam, I always place on reserve in the Library a handout in which I discuss, with examples, what I believe constitutes a good essay answer and a bad essay answer, and why. The semester following the exam, I schedule office appointments with whomever wants to review her exam, and I go over the exam sentence by sentence. Finally, if I sense a desire for one, I hold a general session in which I go over the exam.

3. There will be some students who do not measure up to the psychological stress that you have placed on them. Once they complete the first year and discover they are not in the top twenty

62. Come on now. Didn’t you think exactly the same thing when you were a student? Of course, now that you are in charge of writing and grading the exam, the examination given in your course has become the finely honed assessment tool it always has had the capability of being, and it is objectively and fairly applied to provide an exacting and accurate measurement of students’ understanding of the substantive material and ability to engage in legal analysis. If only the students would realize this.

percent or so, they will realize that they have been consigned to employment in a mid-size to small law firm, that they will never make law review, and that they will have to spend the rest of their lives making excuses for why they did not finish at the top of their class. As if this isn't enough, many of these students have had their self-esteem shattered because they are no longer big academic fish, even in the small-sized pond of an average law school. Stifle your urge to feel sorry for them. And whatever you do, don't tell them that beyond getting the first job, grades don't really reflect one's ability to practice law. Don't tell them that exams test a range of skills that have little to do with the real world. Don't worry. After five years of law practice and \$50,000 or so of psychotherapy, they'll figure all this out for themselves, anyway. Why spoil the fun by telling them now?

VII. CONCLUSION

In this essay, I've tried to give the beginning law professor some insight into the purposes that animate her job, as well as some insight into law school pedagogy. This includes some practical actions that the novice law professor should and should not take.

As you can see, being a law professor carries with it heavy responsibilities. It requires a tireless sense of devotion and compassionate interaction with the students. For those of you who are capable of meeting the challenge of working in this noble profession, I wish you the best of luck in your professional endeavors.

In the best Socratic fashion, I leave you with a parting question: Doesn't it strike you as ironic that the very people who attempt to assist students in learning to become lawyers and practice law are the very people who bailed out of the practice as soon as they could find a job teaching?

Ms. Jones. What do you think about that? And why?

APPENDIX A

QUESTIONS FOR CLASS

The specific questions which you will ask the student with whom you are talking will depend upon a multitude of variables. In this Appendix, I offer some generic questions, that is, questions which can be reworked slightly in order to become applicable to a variety of situations.⁶³

- A. Questions to use with cases. (These questions are in addition to the standard questions, which include: What is the procedural overview? What are the legally determinative facts? What is the first legal issue? What did the plaintiff/appellant/petitioner argue? What did the defendant/appellee/respondent argue? What is the fact-specific holding? What is the general rule of law applied by the court? From where did the court create or select that rule? How did the court reach that particular interpretation of the rule? How did the court apply the rule as interpreted to the facts of the case? What additional factors played into the court's reasoning, including policy concerns?)
- * What did you get from this case?
 - * Why is this case in the casebook? What is it intended to demonstrate about legally determinative facts, practice situations, rules, policies, methods of applying rules to facts, etc.?
 - * If the court created a new rule, why did it feel compelled to

63. Most of the questions in this Appendix are my own. However, I must give some credit to the late Marc Grinker, a fine gentleman who taught at Chicago-Kent College of Law. Approximately eight years ago, while Marc and I were both teaching at Chicago-Kent, he gave me a sheet of paper with approximately twenty questions on it. I typed the questions into my computer and have been adding to and modifying them ever since. I long ago lost the sheet of paper Marc gave to me, but some of the questions in this Appendix are adaptations of, and perhaps some phrases are direct quotations from, that original list. So, if you think the question is a good one, then consider it to have been derived from Marc's list. If you think the question is not a good one, it is probably one of mine, or a poorly worded adaptation of one of Marc's questions. One last thing. I seem to remember Marc saying that he had gotten some of the questions on that sheet of paper from someone during the time he was teaching legal methods at Hofstra, but that the author of the questions was not teaching at Hofstra. So, if there is someone else out there to whom I owe some credit for the original formulation of the questions that I have adapted over the last eight years, I hereby acknowledge you. Same rule: You are connected only with the questions that any reader likes; I take responsibility for the rest.

do so?

- * If the court selected from among competing lines of authority, what were those lines of authority? Why did the court choose the line of authority it selected? How would the outcome of the case (and the answer to any of the questions below) have been changed if the court had selected one of the other lines of authority?
- * If the court selected from among competing interpretations of a given rule, what were those other interpretations? What theory or theories of statutory or linguistic interpretation, legislative history, or other information gave rise to those competing interpretations? Why did the court follow the interpretation it selected? How would the outcome of the case (and the answer to any of the questions below) have been changed if the court had selected one of the other interpretations of the rule?
- * Were there other equally plausible applications of the rule, as interpreted, to the facts? If so, what were they? Why did the court apply the rule as it did? Did the court seem intent on reaching a particular result?
- * Does the court present us with a workable standard? If you were a practicing attorney, would the standard set forth in this case permit you to advise your client with any certainty?
- * Assume for a moment that there is no rule dealing with the matter set forth in the facts of the case. What should the rule be? Why?
- * To what types of situations does the rule set forth in the case apply?
- * To what type of real-world problems does the rule set forth in the case apply?
- * In light of this case, how could you pre-plan a given situation/transaction to avoid legal difficulty?
- * Who is benefited by this rule? Who is burdened by this rule?
- * What are the positive aspects of the rule/policy? What are the negative aspects of the rule/policy?
- * When you reached the point at which the court concluded

setting forth the facts, based on your sense of policy and justice, which party did you believe should have prevailed? Why?

- * When you reached the point at which the court concluded setting forth the facts, based on the way in which the court phrased the facts, which party did you believe was going to win? Why?
- * How is this case similar to (or different from) *X v. Y*? (This question can be used with general facts, legally determinative facts, issue, specific holding, general legal rule or principle, policy underlying the rule or principle, the method of applying the rule or principle to the facts, the general reasoning of the court, or any other factor of the case.) What do you think accounts for the similarities (or differences)?
- * Given the facts, general rule or legal principle, and its underlying policy, is the court's decision correct? Why or why not?
- * How does this case relate to the overall structure of the course?
- * How does this case relate to the previous case? How does this case relate to the next case?

B. Questions that are particularly applicable to statutes and administrative regulations and interpretations.⁶⁴

- * Does the particular statute establish a rule, a standard, or a principle?
- * Does the statute present a workable standard? If you were a practicing attorney, would the standard permit you to advise your client with any certainty?
- * Assume for a moment that there is no statute dealing with the matter. What should the rule be? Why?
- * To what types of situations does this statute apply?
- * To what types of real-world problems does the statute apply?
- * In light of this statute, how could you pre-plan a given

64. For the sake of simplicity, I'll assume it is a statutory standard unless the question requires the involvement of an administrative agency.

situation/transaction to avoid legal difficulty?

- * Who is benefited by this rule? Who is burdened by this rule?
- * What is/are the policy/policies that animate the rule?
- * What are the positive aspects of the rule/policy? What are the negative aspects of the rule/policy?
- * Is the regulation promulgated by the administrative agency true to the letter and spirit of the underlying statute? Why or why not?

C. Questions that are particularly applicable to working with problems handed out in the previous class.

- * What is your conclusion?
- * Let's start at the very beginning. Is there some overarching rule, standard, principle, or policy that controls the solution of the problem? What is it? Why and how does it control the solution?
- * Let's start at the very beginning. What is the first step in your solution? Why did you start at this point? What made you think that was the first issue? What is your authority for the resolution of the issue? Why do you believe that is the proper authority? How did you find that authority? How did you apply the authority to the facts of the problem that relate to that issue? Why did you apply the authority in that manner to the facts of the problem that relate to that issue?
- * What is the next step in the solution? (And, for each step of the problem, repeat the questions set forth immediately above.)
- * What steps, if any, could have been taken to pre-plan the situation/transaction to avoid the problem or any related legal difficulty?⁶⁵

D. Questions that focus on policy and practical concerns and that can be used with cases, statutes, or regulations.

1. Questions that focus on the underlying problem that

65. This question is applicable when the problem with which the student is dealing involves a problem in the sense of a legal difficulty and is not just a “what-would-happen-given-the-facts-and-law” problem.

generated the need for a rule or legal principle or case.

- * What is the nature of the perceived problem? What problem did the plaintiff believe was sufficiently important to warrant expending her time and money and emotional energy to litigate? What problem did the legislature or regulatory entity perceive was sufficiently important to warrant a statutory provision or regulatory rule?
- * Why was it perceived as a problem?
- * By whom was it perceived as a problem?
- * Who was being harmed by the situation that was perceived as a problem? Why and how? Who was being benefited? Why and how?
- * Who was in control of the situation? Who had the information, power, resources, etc.? Why?

2. Questions that focus on the creation of the rule.

- * Who created the rule: court, legislature, or administrative agency?
- * To what extent has there been any court involvement in the making of the rule? How? Why?
- * Is court involvement appropriate in this situation? Why or why not?
- * Would the involvement of the legislature or an administrative agency be more appropriate in this situation? Why or why not?
- * Would a market solution be better than a solution imposed by a governmental institution, whether it be the courts, the legislature, or an administrative agency? Why or why not?

3. Questions that focus on the interpretation, application, and effect of the rule.

- * Will the case/statutory provision/administrative rule discourage (or encourage) the undesirable (or desirable) conduct in the future? Why or why not?
- * Has the rule been written in such a manner that people can easily understand it? comply with it? tell what the outcome of the rule's application will be in a

particular situation?

- * Has the interpretation of the rule by the court (or administrative agency) been written in such a manner that people can easily understand it? comply with it? tell what the outcome of the rule's application will be in a particular situation?
 - * Has the rule been written (or interpreted) in such a way that courts will be able to understand and consistently apply it?
 - * Who interpreted the rule: a court, an administrative agency?
 - * What, if any, legislative history, official comments, or other materials were available to assist in the interpretation? How were they used? Were they accurately used? Were they accorded the proper amount of weight?
 - * Does the rule vest too much power in the hands of the courts, that is, is the rule so general, so vaguely worded that the outcome in a particular case will depend upon the political, social, or economic predispositions of the member(s) of the court that seeks to interpret and/or apply the rule in future cases?
 - * Does the creation, selection, interpretation, and/or application of the rule in this particular case seem to be motivated by the court's (or the members of the court's) political, social, or economic predispositions?
4. Questions that focus on the economic impact of the case or rule.
- * What is the economic impact on the parties to the case? How have the parties been economically impacted?
 - * What is the economic impact of the rule on society as a whole? Which particular aspects of society will be affected? In what way? Why?
 - * What are all the economic benefits of the rule? What are all the economic costs of the rule?

- * Which is greater: the economic benefits of the rule or the economic costs? Even if the economic costs exceed the benefits, should the rule remain for social or justice reasons? Even if the economic benefits exceed the costs, should the rule be changed for social or justice reasons? Explain.
5. Questions that focus on the social impact of the case or rule.
- * Which individuals or groups in society are benefited or burdened by the case or rule? Why? How?
 - * Does the case or rule tend to promote societal change or to reinforce the status quo? Why? How?
 - * How does—or does—the rule reflect existing political, social, economic, or other forces in our economy? in our society? in our government?
 - * Does the rule tend to support individual liberty? governmental power? collective interests? something else? What? Why? How?
6. Questions that focus on normative issues.
- * What remedy is being given or enforced? By whom? Against whom?
 - * Does the remedy that is being enforced have a reasonable relationship to the problem? to the party's responsibility for creating the problem? to the problem that would be created if the party were permitted to act?
 - * Is the remedy that is being enforced proportionate to the problem? to the party's responsibility for creating the problem? to the problem that would be created if the party were permitted to act?
 - * Is the remedy being enforced against the class of individuals and entities best able to prevent the harm or problem that gave rise to the remedy?
 - * Is the remedy being enforced against the class of individuals and entities best able to afford having to comply with, or pay for, the remedy?
 - * Is the rule just? What do you mean by just? What is your standard? Why or why not?

- E. Some general questions to use in class.
- * What do you think the answer is, and why?
 - * “What are the best arguments that you could provide on the movant’s (or plaintiff’s or appellant’s or petitioner’s) side of the issue?” And then call on someone else and ask, “Do you agree? Why or why not? Are there any other arguments you would make? What are they? Why would you make them?” And then call on someone else and ask, “What do you think are the weakest aspects of these arguments? Why?” Then call on three people and go through this procedure again from the other side. Then, when all six students have gone through their arguments, ask a seventh student for her view of which side is correct and why.
 - * In response to any statement in which a student is offering an opinion about what a rule is or what an outcome would or should be, ask “What’s your authority for that proposition?” or “What does the Code [or case] say about that?”
 - * What policy would there be for adopting that position? And what would the best policy argument be for adopting the other position?