

Proving the Need for Formative, Well-Rounded Professional Mentorship

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At NYU, every first year student is required each semester to undergo both a rigorous set of Socratic classes and a rigorous and expertly supervised series of simulated collaborative practice experiences. (The series is called Lawyering.)

This is unusual. Indeed, the addition of a Lawyering course to the Socratic curriculum was radical when Tony Amsterdam proposed it more than 25 years ago.

It is also expensive. It requires an unusually low faculty/student ratio. Lawyering is staffed by a team of 16 expert and scholarly practitioners who mentor small teams of students through the execution and critique of increasingly complex professional challenges. Moreover, its active learning methods involve a considerable investment of student time.

Lawyering is especially time-consuming because it is not a how-to course. It involves dissection, practice and critique of a wide range of professional functions, and dissection and critique are every bit as important as practice. The goal of the Lawyering program is to prepare our students for the kind of excellence that is only possible for a professional whose work is more reflective than reflexive. This means that we must work harder to encourage habits of analysis and reflection than to model perfect performances. Our students don't just follow direction, they consider, make and then take the time to analyze professional choices.

Two convictions drive our commitment to this expensive, double-barreled approach to professional education:

First, we reject the theory/practice dichotomy, and

Second, we believe that we should resist what one of my brightest colleagues calls the principle of natural selection of law students.

What do we mean when we say that we reject the theory/practice dichotomy? We mean that

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It is important that we not confuse skills or intelligences with activities. When I refer to a variety of skills or intelligences, I do not refer to the fact that lawyers are called upon to do different things like interviewing, counseling, advocacy and legal interpretation. Lawyers are called on to do all these things, and more, but these are activities, not intelligences. When I say that lawyering draws on a variety of skills or intelligences, I mean that each of these activities requires **intellectual versatility**. An adequate analysis of doctrine may draw as much on the psychology and behavior of the authors of that doctrine it draws on the logic of their reasoning. A successful interview requires logical organization as much as it requires emotional attunement. And so on. We shouldn't use one part of our brain to do "theoretical stuff" and another part to do "practical stuff." We should use all the intellectual resources we have in every dimension of lawyering.

What do I mean by natural selection, and why do we think we should resist it?

The Carnegie Report berated the legal academy for ranking our students rather than helping them to learn. It recommended that assessment of students be **criterion-referenced** and **formative** rather than rank-ordered and summative. The Report associated our tendency to rank rather than to guide with a common, but not universal, belief that student rankings track an underlying distribution of ability. That students “sort themselves” in a process reminiscent of natural selection. The Carnegie authors argued that we relieve ourselves of responsibility for mentoring each student to a high level of competence and content ourselves with pointing out which of our students will prove themselves to have been the fittest from the start. That our assumptions are Darwinian rather than educational.

This Carnegie critique does not do justice to the concerns of our colleagues who attribute lack of performance to an unjustified lack of effort. Requiring that students compete for rankings may motivate them to expend more effort, and they may learn more as a result.

Still, we should take pains to guard against the risk that we and our students will approach professional education with a fixed, rather than a malleable, view of intelligence or skill. For, we have striking evidence from the field of social psychology that students who believe that they are being tested to prove their innate worth learn less well, and often suffer more psychological distress, than students who believe that effort and technique can matter to their success. Whatever we might think about the distribution of innate intellectual capacity among the population as a whole, we have to concede that if we are admitting students responsibly, all of our students are capable of high professional functioning.

This leaves us with certain responsibilities for motivation and conscientious mentorship.

And this brings me to our panel’s topic of institutional and student assessment.

The faculty of the NYU lawyering program tries to practice what it preaches: We try consistently to dissect and critique what we do.

To our great fortune, we have been taken under the umbrella of social psychologist Bonita London’s brilliant “diary study” of law students’ adjustment and learning patterns. Because the London study spans an increasing number of law schools, we are in a position to make comparisons both among courses at NYU and between NYU and schools that do not insist on guided, experiential learning in the first year. We have undertaken not only to test the appeal and general effectiveness of our Lawyering program (complex processes about which I could say a great deal more), but also to test our theories about intellectual versatility and about the value of a growth mindset.

Having in mind the goal of promoting intellectual versatility, we have

- Trained our faculty and teaching assistants in theories of multiple intelligence;

- Designed our curriculum and materials to focus students on the need to develop multiple intelligences; and

- Taken steps to legitimize giving professional attention to intelligences (psychological, performative, linguistic-rhetorical) that have heretofore been neglected in the legal academy.

Having in mind the goals of providing formative assessment and encouraging effort over resignation to limitations that are perceived to be immutable, we have

- Trained our faculty and teaching assistants in theories of outcome attribution, engagement, active learning and stereotype threat;

Designed our curriculum and materials to focus students on the possibility of growth and the value of well-placed effort;
and

Taken steps to encourage collaborative analysis and reduce competitive performance.

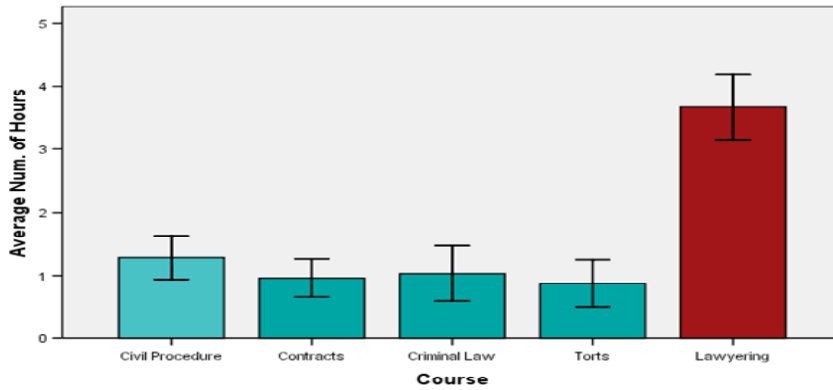
This research is in its early stages. It is too early for us to report across-school data or data taken over the span of students' law school and post law school careers. Moreover, we are still in the process of developing measures to test our theories about intellectual versatility and about the implications of a growth mindset, and to determine whether and how these things can be instilled in a law school culture. But early results encourage us in the thought that our hybrid first year curriculum is worth its cost.

We are beginning to be able to answer questions about the student time costs of the Lawyering program and about our ability to encourage effort over resignation.

On the subject of student time costs, we find that Lawyering demands more preparation time on assignments than our Socratic courses require. Still, we find that our entire faculty engages students in the kind of active learning that goes beyond reading and reflecting and facilitates individualized assessment.

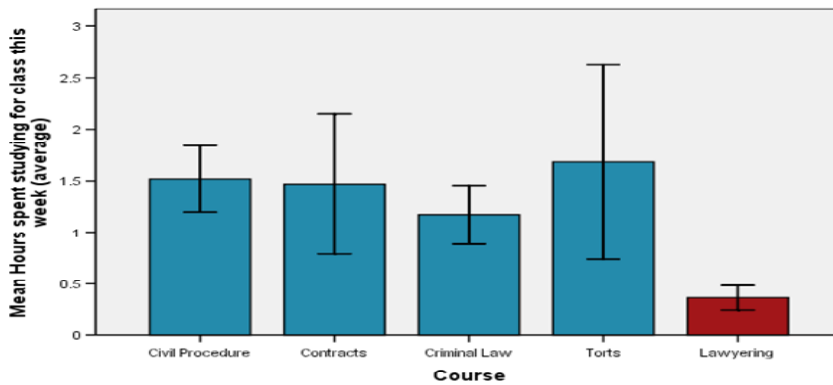
Number of hours spent **preparing work assignments** by course each week

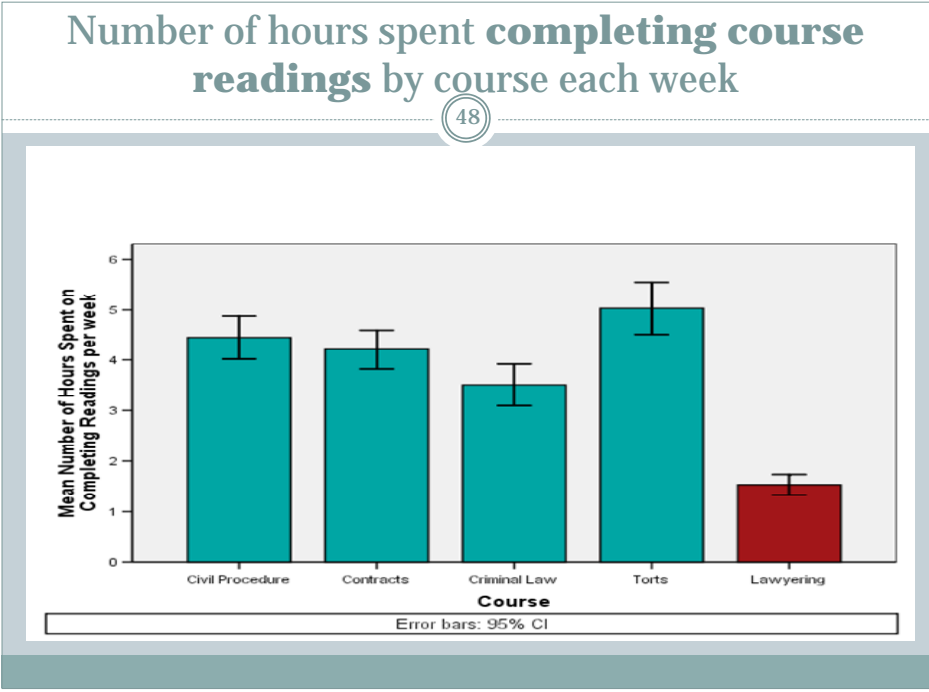
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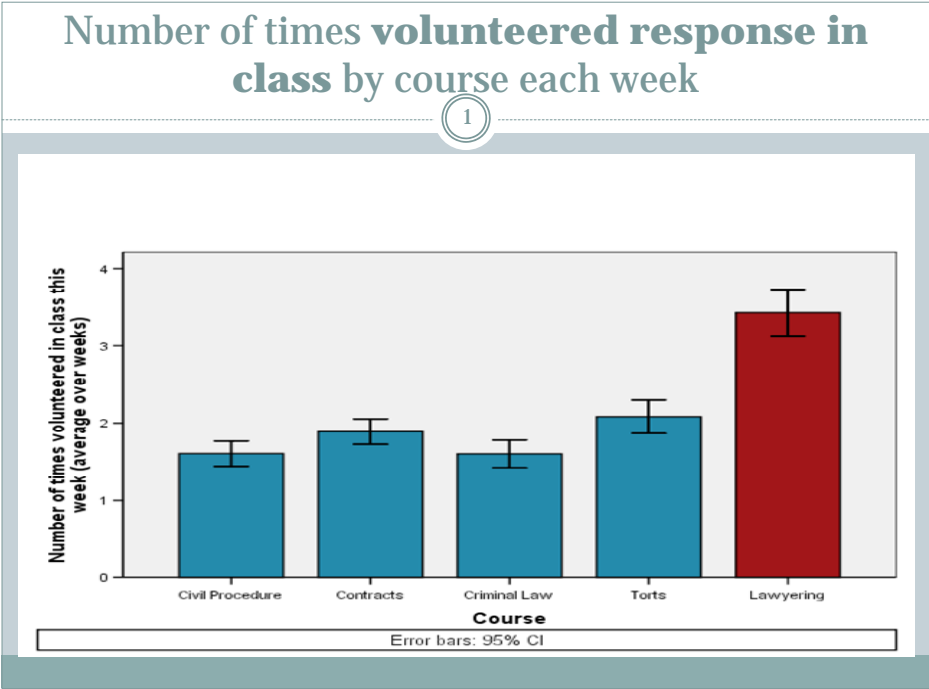
Number of hours spent **studying** by course each week

47





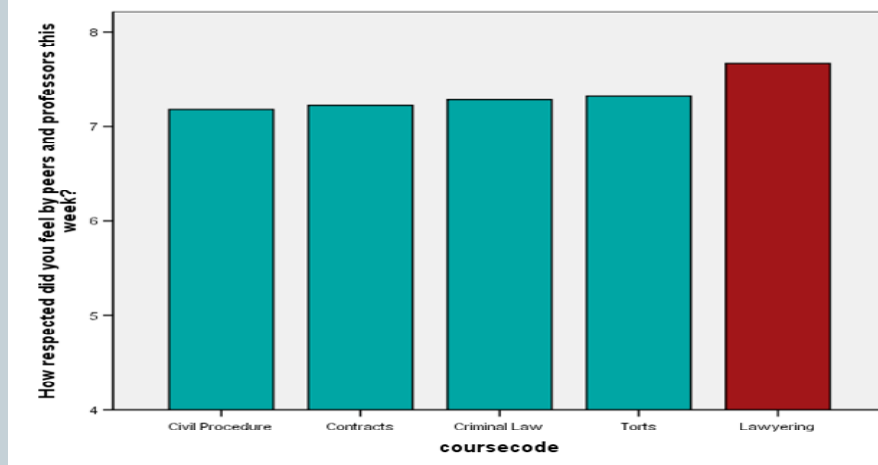
We have reason to believe that Lawyering encourages our students to become active learners in all of their courses.



And we have reason to be optimistic that we are encouraging self-confident collaboration and reducing resignation.

Feelings of **Respect by peers and professors** by course each week

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In addition, we are beginning to see some success in engaging our students in the self-conscious development of intellectual versatility. The following is an example taken from one of my Lawyering classes:

Periodic Assessment Grid

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LAWYERING DIMENSION	PROGRESS/AGENDA FOR DEVELOPING ANALYTIC, PSYCHOLOGICAL, LINGUISTIC, AND PERFORMATIVE INTELLIGENCES		
	INTERPRETING LAW AS AN ADVOCATE	DEVELOPING AND INTERPRETING FACTS	INTERPRETING LAW AS A COUNSELOR
<p>Finding Authority, Analyzing Rules, and Crafting Interpretations</p>	<p>Finding authority was probably the least difficult aspect of this assignment as we were given a closed set of cases with which to work. We were given plenty of time to work with the cases and spoke about them often, so when it was time to analyze the rules I felt pretty confident with my grasp of them. Crafting a cohesive interpretation was definitely the toughest part, as it took some skill to portray the rule in an accurate way most favorable to my client. It was a challenge to write the rule in a way that was faithful to the prior holdings, not to what I wanted them to be based on the facts cited in the complaint.</p>		

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Developing & Applying Facts	<p>This became significantly easier once a rule was deduced. The development stage was pretty clearly laid out in the complaint so there was very little fact finding. The application was obviously the much trickier part. Unlike the rule development, however, I think applying the facts gives you a little bit more latitude to write persuasively. There's definitely no room for misrepresentation but I think the key is to take the facts and show how they fit into the rule, even if they're not exactly the same as the prior holdings. The skill is smoothing out the jump from rule to facts so that it looks seamless without deviating from what actually happened in the case.</p>		
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	<p>I think I did a pretty strong job at writing effectively from my client's point of view without stepping too far into the narrative. For example, the complaint cited three plane incidents in Manhattan so, in the context of applying them to a foreseeable standard, I wrote that there were no</p>		

<p>Identifying & Responding to Desires</p>	<p>fewer than three incidents. I also tried to play up the human element of this situation without making it into too big of a sob story. I tried to draw a line of sympathy without straying too far from my argument that the law was actually on my client's side.</p>		
<p>LAWYERING DIMENSION</p>	<p>PROGRESS/AGENDA FOR DEVELOPING ANALYTIC, PSYCHOLOGICAL, LINGUISTIC, AND PERFORMATIVE INTELLIGENCES</p>		
	<p>INTERPRETING LAW AS AN ADVOCATE</p>	<p>DEVELOPING AND INTERPRETING FACTS</p>	<p>INTERPRETING LAW AS A COUNSELOR</p>
<p>Analyzing & Managing Interactive Dynamics</p>	<p>I think I stuck elements of my own style into the narrative to make the case jump off the page a little bit more. This is a situation in which you've got a sympathetic plaintiff and a potentially negligent defendant so I think you've got to play that up a little bit. Inserting one or two catchy phrases or devices can make the argument more persuasive and can demonstrate, just like using proper citations, your writing skill and understanding of what's going on in the case.</p>		

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Defining & Meeting Professional Roles & Responsibilities	<p>At first glance I thought I fulfilled my professional responsibilities quite well. I thought I represented the cases properly and came up with a rule that was appropriate based on the case law. It was only after I received comments on my first draft that I realized I did not come close to satisfying my professional responsibility. I'm beginning to see just how technical legal writing is and that you can't get away with writing a sentence unless it's cited (and cited properly). There were so many times when I thought it was evident where I was getting my information from but, of course, it's not evident unless I cite. This is one aspect that I'm going to have to work harder at as I continue in the course.</p>		

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Evaluating Peers & Self	<p>Hopefully my partner will agree with me, but I think I did an effective job of evaluating his work. I think my comments were constructive and helpful and I complimented what I thought he did well and pointed out what I thought needed improvement. For me, the best part was evaluating my own work based on my criticisms of Quan's work. I definitely saw things that I needed to improve in my own argument after thinking critically about his. I enjoyed this part of the process because I was eager to get feedback on my own work and incorporate criticisms and suggestions into my final draft.</p>		