

# Gaming Emperor Law School

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## Dedication

This book is dedicated to my dear mother, Pauline. She is 87. She is healthy and alert. (Recently renewed her driver's license!) She is beautiful, and she is a beautiful person. She enjoys the daily affection of near forty immediate family members, including several great grandchildren.

Over thirty years ago I began instructing law students in the revolutionary science of preparing for and taking law essay exams I had stumbled upon while practicing law. At that time, and not a few times in the interim, my mother would say, "Why don't you become a law professor?"

Apart from not wanting to deal with academic politics, Mom, I think, I hope this book will explain why.

Your loving, eldest. (Of eleven!)

\* \* \* \*

## Preface

***“I learned more about lawyering in a \$75 seminar than I did in my entire \$18,700 first year at Stanford.”***

[Ann Pease, Stanford Law School '95, following a LEEWS program.]

***“If 100 points are possible on my final exam, I’m expecting scores in the range of 25-35!”***

[Remark of University of Georgia law professor to first year class in 2006]

A constructive fraud at law is a deceptive or misleading action, resulting in an unfair advantage, that does not originate from evil intent or fraudulent design. In a similar vein is a “bill of goods,” the secondary definition of which is a misrepresented, fraudulent, or defective article.

Constructive fraud is much too harsh a characterization to apply to the very expensive, 3-4 year educational process a person must normally undergo, post college, in order to be licensed to practice law in America. It is probably also too harsh a judgment to suggest that someone who attends law school is being sold a bill of goods.

However, there is no question but the near 150,000 students attending American law schools, and the 50,000 or more who enter law school each year, in the main do so with the express purpose of being prepared to be lawyers. There is also no question but that they do not receive what they pay for. For no one walks out of any law school in America, degree in hand, qualified to offer services as a lawyer. Certainly not by dint of anything learned in a law school classroom.

OMG!, if I may avail myself of the popular shorthand of tweets and e-mails. Have I just shocked, perhaps offended you, the reader? If you are about to enter law school, or you are thinking of attending law school, or you are the parent, relative, friend, or advisor of such a person, I know you hold the law school to be attended or being thought about in high regard. There is pride in acceptance. There is eager, if nervous anticipation. Someone is going to become a lawyer! It is a very big deal!

It is not my aim in writing this book to dampen this excitement and pride. Not altogether. To the contrary, my aim is to assist in making the law school experience rewarding, all that it is hoped to be. However, eyes need to be opened. There is a high likelihood of ego damage, disillusion, disappointment, boredom, and unmanageable debt afoot in the very near future. This is especially so, if someone proceeds to law school in the wide-eyed, clueless manner of most.

### Introduction

Just because an institution is large and has been in existence for over 200 years doesn't mean it should be immune from criticism, that it is right, or that it shouldn't change. Likewise, that graduates of this institution are illustrious and powerful, including presidents of the United States, most Supreme Court justices, many hundreds of United States senators/congresspersons, and innumerable state and lesser elected officials, judges, lawyers, and CEOs of major enterprises, does not constitute proof of infallibility. The fall throughout history of important individuals, great nations, and empires is the proof of this axiom.

This book was written, as many others have been, to assist law students and those planning to

attend law school. The difference is that all previous advice, without exception, has been shallow -- do's and don'ts, merely helpful. It hasn't gone much beyond advice that has been around, and that has been ineffective for many decades.

This book will go much deeper and break new ground. It will reflect insights derived from law practice. It will reflect over 30 years of personal interaction with literally thousands of law students.

The book will explore and describe the key problem posed by all law schools -- in a nutshell, an exam exercise for which students are woefully unprepared by law school instruction. It will explore and describe the solution to the problem -- a proven effective (for over 30 years!), true science of law essay exam writing and preparation.

This book will explore, as no one has before, what is wrong with the predominant, universal mode of instruction in all American law schools -- so-called "case method." It will describe a unique, revolutionary approach that takes advantage of this, and rather easily.

It will also provide a wealth of background information -- about law schools and the law school experience, about grading, hiring preferences, court structure, legal terminology, law practice, and much more -- that is not provided in any law school, but that is necessary context for law study.

The 200+ American law schools, and their thousands of deans and professors are, without exception, self satisfied and imperious. As a collective, therefore, they will be referred to as "Emperor Law School." "Gaming," of course, means taking advantage, as in taking advantage of current case method instruction in Emperor Law School.

#### The problem

Law school, everyone hears, is "difficult," "impossibly hard." Despite intelligence and studying "harder than ever before in my life," the great majority of law students cannot muster a single "A" grade in first year. Not one! This is so even at top-ranked law schools.

Hard work and "difficult" cannot be avoided. However, "impossibly hard" can. Likewise, "confusing," "frustrating," "intimidating," "boring," "unrewarding," "unfulfilling," and a host of other pejoratives students apply to their law school experience.

Such has not been the case for most of the well over 100,000 law students I have instructed over the past 30+ years. They have hailed from every law school, hundreds from Harvard alone.

Exams in Emperor Law School, and inadequate preparation for exams are the primary problem. Especially in the all-important first year, law school exams will feature an exercise unlike any a student will have encountered previously. It consists, typically, of a complex, made up (hypothetical) fact scenario. The task is to discern or "spot" "issues" -- legal problems in the fact pattern --, and resolve them "as a lawyer." As a lawyer well versed, of course, in the subject area being tested -- contracts law, property law, criminal law, tax law, environmental law, antitrust law, etc.

The exercise is variously called an "essay," a "hypothetical," a "hypo," a "fact pattern," often, inappropriately, a "question." There are normally several such exercises on a typical 3-4 hour final exam. Each is assigned a time limit. The grade on the exam will largely, often exclusively determine the grade for the course. Despite the exam being 3-4 hours in length, time pressure is typically severe

This exercise confuses, intimidates, challenges the smartest, most hard working law student. The primary reason for this, apart from time pressure and unfamiliarity with the exercise, is a jarring disconnect between classroom instruction and what is required to master such exercises.

This disconnect occurs throughout Emperor Law School. No exceptions! It stymies the best efforts of the most capable students. Indeed, not only do upward of 80 percent of law students not receive a single “A” grade in first year; most have no shot at an A!

Not surprisingly, instructions following the exercise are in the vein, “Imagine you are a lawyer;” “Pretend you are a judge;” “You are a senior law clerk;” “You are the lawyer for party X.”

At the same time, the words “lawyer” and “attorney” are rarely, if ever heard in classrooms of Emperor Law School(!). Law students don’t hear, “A lawyer might approach the situation in the following way;” “This is what an attorney might do;” “The aim of a lawyer is;” “From a lawyer’s perspective...”

Yet, every year some 50,000 enroll in Emperor Law School, most for the express purpose of being educated and trained to become lawyers.

As noted, the exam exercise posits a problem-solving lawyer, knowledgeable in (precise!) rules, principles, statutes of the subject tested, normally operating under severe time pressure. Such rules, principles, and statutes are commonly referred to as “black letter law.”

At the same time, law school instruction does little to move students from the academic posture most bring to law school, to something approaching the problem solving mindset and approach of a practicing lawyer.

Law students are often instructed by professors with limited practical legal experience. Indeed, law professors in general tend toward an academic orientation. Many have Ph.D.’s in subjects other than law. This is particularly so at top-ranked schools that set the benchmark for all others. The Ph.D. qualification is considered a desirable attribute in hiring. Rarely is a precise, “black letter” legal rule articulated in class by a law professor.

Again, rarely are the words “lawyer” and “attorney” heard in a law school classroom.

Meanwhile, so-called “case method” instruction is near universal in Emperor Law School. Students read and parse assigned “cases” -- legal opinions rendered by courts. The cases are discussed in class. Such discussion often features the much anticipated and feared “Socratic” Q & A exchange between professor and student.

Led by academically-inclined professors, such instruction is intended to inculcate “lawyerlike thinking.” However, it does little to move students beyond a passive, academic engagement with the law. Most are confused respecting the (lawyerly) perspective and thought process professors seek to elicit and inculcate.

Accordingly, law students take copious notes, much as they did in college and graduate study. Indeed, conventional wisdom in Emperor Law School (abetted by professors) advocates taking “good notes.” The hope of students is to make sense of what confused them later.

However, there is no “later” in Emperor Law School. More cases are assigned, information continues to pile up. In the first term students become overwhelmed and obsessed with preparation for class, lest they be called on. They take more notes.

There is little focus on all-important final exams, although focus on exams should begin the first day of the term. Indeed, law professors typically counsel, “Don’t worry about exams.” (We shall see why. It relates to the disconnect being described.)

[Note. Law students first term typically find that their voluminous class notes are largely useless come exams. The notes are cold. There has been no time to review or make sense of them. Students realize, belatedly, that their focus should have been on learning black letter rules. Note taking in Emperor Law School now falls off sharply.]

The final exam, for reasons that will be explored, requires the engagement, approach, and mindset of a practicing lawyer. However, with nary an exception, law students go into exams with little understanding of what, exactly, it is that lawyers do, and how lawyers think. In particular, they have no notion of how a lawyer might make sense of an impossibly complex, problematic, hypothetical fact scenario, especially under severe time pressure.

This disconnect is the reason even the smartest, most hard-working law students flounder on exams.

#### Perspective on the solution

Most practicing lawyers would agree they learned how to practice law, and how, really, to think and analyze “as lawyers,” only **after** leaving law school. Most would acknowledge that had they known in law school what they learned practicing law, their performance on exams would have been much better.

What lawyers learn in practice that would have made a difference on law school exams is a large part of what I, a one-time practicing lawyer, have instructed for over 30 years. It has enabled students to write significantly better exams than often smarter, equally hard working classmates.

The primary ingredient of my instruction is imparting the critical skill of thinking and analyzing “as a lawyer.” Emperor Law School purports to instruct this via the aforesaid case method instruction. However, it doesn’t work. It didn’t for me, and I had one of the higher Law School Admission Test (LSAT) scores in my (fall, 1969) entering class at top-ranked Yale Law School.

Indeed, looking back over 30+ years, and the many tens of thousands who have attended my live programs, I cannot recall a single law student, whether first year or upperclassman, or any recent law school graduate (taking the class to prepare for a bar exam), who was much good at “lawyerlike analysis.”

Lawyerlike analysis is a skill, a habit of mind and precise thinking, that lawyers acquire to this very day -- by practicing law during an apprenticeship! Just as they did before law schools came into being over 200 years ago! This skill, at least a reasonable facsimile thereof, can be acquired prior to law practice, but only if instructed properly.

Case method instruction utterly fails to accomplish this. Nor does exam-writing advice offered by all others, most of which has been around and has been ineffective for decades. This includes the ubiquitous “IRAC,” which many, including law professors, erroneously tout as a “system,” “all you need to know to do well on law exams.”

[Note: The IRAC acronym stands for Issue, Rule (of law), Analysis (application of law to facts), Conclusion. Understandably, IRAC is received as a revelation, an “aha!” by new, confused law students. However, while helpful, certainly better than nothing, IRAC is but a formula indicating order of presentation of analysis of issues. (I.e., first the issue stated, then the rule, then analysis, finally the conclusion. Some professors want the conclusion stated at the outset of analysis. Then the acronym formula becomes “CIRAC.”) IRAC doesn’t instruct HOW to discern issues in

confusing fact patterns (or define “issue”). It doesn’t instruct HOW to perform analysis. It doesn’t instruct HOW to present analysis concisely. IRAC merely scratches the surface of what can be known, and what needs to be known to enable mastery of law essay exams. Law students, of course, are unaware of this additional knowledge. However, so are law professors!]

My instruction goes far beyond IRAC. The foundation of its success is methods and exercises that impart -- finally! -- the elusive skill of lawyerlike analysis. But there is much more.

Students learn that lawyerlike analysis is not rocket science. It is not innate, as we shall see is believed in Emperor Law School. (An excuse for not effectively instructing the skill!) However, it is very different from thinking most have experienced. (The close, parsing thought process of analysis in mathematics, engineering, hard sciences, and the like, including Talmudic studies and some philosophy, comes close. This offers insight into why students with such backgrounds tend to do better on law exams!)

Lawyerlike analysis must be carefully demonstrated, practiced, and practiced some more. However, it is readily accessible. It is a skill that can be rapidly honed and developed. It reveals a highly engaging intellectual game that can be fun. Acquiring this skill makes law study suddenly much more meaningful, even enjoyable.

More, however, than skill at analysis is needed to exhibit mastery on difficult essay exercises. Students in addition need a system for methodically, yet efficiently dissecting complex, confusing fact scenarios (hypotheticals) to reveal issues. They must be able to present analysis of issues concisely. They must know what, day by day, to take away from assigned cases. (Legal rules, and skill at applying them to new facts!) They must know how to prepare, week by week, abbreviated, 30-50 page course outlines that enable efficient application of the issue-identification approach. And much more.

I do not, and I cannot transform everyone who attends law school into a brilliant legal thinker and exceptional test taker. Abilities vary. However, I can enable anyone capable of finishing college and gaining admission to a law school to do not just well, but very well.

The reason is that I can enable even a law student of average ability to come off an exam page as what every law professor (and bar examiner) wants to see -- a facsimile of a competent lawyer, knowledgeable in the subject matter tested.

Given confusion, intimidation, and resulting ineptness on exams of even the smartest, hardest working law students, this ideal -- reasonably competent lawyer, knowledgeable in the subject tested -- is rarely seen coming off exam pages in Emperor Law School. As a consequence, law professors get excited when they see it. They think, “Aha! I’ve trained a lawyer!” They reward such an effort with a top grade.

As I am fond of saying to live classes, normally instructed in a room of a hotel:

“If you’re capable of finding your way to this room, then you’re capable of lawyerlike analysis. It is the critical skill to be acquired, if you’re going to impress and compete for A’s. The good news is that no one acquires this skill in law school!”

In other words, even the least of my students is likely to do well, simply because clueless classmates, even if smarter and more hard working, by comparison write poor exams.

Returning to the remark of the University of Georgia law professor at the outset. (Expecting scores in the range of 25-35 out of a possible 100 points.) It accurately reflects two constants in Emperor Law School. These constants offer a significant opportunity for advantage.

First, if a mere 35 out of 100 possible points competes for an A (or 45 or 55), then even law students who earn A's typically perform poorly, as measured by normal standards of competence. Second, law professors anticipate mediocrity after a semester of their (presumably excellent) instruction.

Imagine if a student can but minimally overcome confusion, uncertainty, and floundering when it comes to exams. Imagine if a student can score not just 35, but 40, 45, 55, even 85 out of a possible 100 points. Such a student would enjoy a significant advantage over classmates, many of whom may be smarter and equally, if not more hard working.

As I am also fond of saying to students:

“You don't have to write a terrific, even an excellent exam to do well. The good news is that the great majority, even at Yale, Harvard, and Stanford, write relatively poor exams. A reasonably competent, lawyerlike effort will impress and compete for a top grade.”

Recent feedback from one of my students illustrates the point.

A young man took the audio version of my program prior to entering highly-regarded University of Texas School of Law. By his own admission, his LSAT score was mediocre compared with classmates. Yet he graduated “Grand Chancellor” of the class of 2011. Grand Chancellor is the title given to the graduating student with the highest grade point average. His was a 4.13!

Significantly, this person noted that in one class, where 50 points were possible on the final exam, the median score was 12! He scored the top mark of 37.

Any good lawyer will take advantage where she can on behalf of a client. Within the rules, she will game the situation as best she can.

So long as Emperor Law School does not fundamentally alter its current, remarkably uniform and inadequate mode of instruction, it can continue to be taken advantage of. It can continue to be gamed!

\* \* \* \*

I may note that I am affiliated with no law school. I have never sought the endorsement or approval of any law school, law professor, or organization. Indeed, as I have frequently remarked to students, “If law schools did what they should, there would be no need for my program.”

Wentworth Miller  
LEEWS founder/instructor  
Coraopolis, PA  
(A blue collar town on the Ohio River, just north and west of Pittsburgh)

\* \* \* \*

# Gaming Emperor Law School

## Introduction

(Background information and context)

As set forth in the *Preface*, this book will be a probing investigation and critique of one of America's great and revered institutions. Namely, the well over 200 American "law schools,"<sup>1</sup> together with their respected deans and professors -- Emperor Law School.

In particular, the failure of case method instruction to train lawyers and prepare students for exams will be investigated. How this has been taken advantage of, and can continue to be taken advantage of, and rather easily, will be described.

By way of orientation, this introduction will present miscellaneous background information and context. It will set the stage. There is much a current law student, lawyer, even law professor needs to know, in order to fully grasp both the problem and the solution. Certainly, there is much someone about to enter law school, or planning to attend needs to know. (Or the parent, relative, friend, advisor of such a person.)

This book will assume relative lack of knowledge respecting law school, the law, the legal profession.

*Inter alia* (Latin phrase meaning among other things.), the case will be made that training lawyers has never been the aim of Emperor Law School. Precisely this inapposite purpose underpins what is wrong with law school instruction.

Recommendations for change will be made.

### Background information and context

As noted, law students typically commence their studies wide-eyed and relatively clueless -- about law school, exams, lawyers, the law, the legal profession.

Entering law students are called "first years," or "one-Ls" (1Ls). One of the signal failings of Emperor Law School is not providing new 1Ls with sufficient background information and context. For example, they are not conducted on a tour of a local courthouse as part of orientation. Nor are they encouraged to visit a courthouse.

Minor confusion and uncertainty respecting unfamiliar concepts -- legal terminology, multi-layered structure of court systems, etc. -- quickly cumulates to major confusion and uncertainty. This leads to lack of confidence, which adversely impacts exam performance.

Indeed, a significant problem in Emperor Law School is that the great majority of law students are essentially defeated months, even weeks into the first term. Certainly, they are defeated following the first set of exams. Few imagine following first term that they are even capable of achieving "A" grades.

We shall leave aside for now the question of whether failure to provide necessary background information is an act of omission or commission on the part of Emperor Law School and its professors. Suffice that my intent is to provide all information necessary for understanding points being made.

Always, this book will seek to provide explanations and necessary context. "Tort," for example, was not defined when your author was a 1L. I shall do so. Also "issue," "cert. denied," "*supra*," "*infra*," "demurrer," and numerous other terms and concepts that are much bandied about and encountered in Emperor Law School, but rarely defined.

(Yes. Students should look up such terms, and many do, ... later. However, often unfamiliar terms are used, discussion moves on, and students are confused.)

I would therefore request that the reader bear with parenthetical definitions, digressions to offer background information. Sometimes explanation will be offered in text as the book progresses. However, so as not to overly disturb the flow of descriptions and points being made, much background information will be presented in footnotes. Indeed, some footnotes will be lengthy.

### **General information about Emperor Law School**

The 200+ American law schools range in size from under 100 students (e.g., unaccredited People's College of Law in Los Angeles<sup>2</sup>), to 3,000 or more students at the four (!) Michigan campuses of (for profit, highly profitable) "The" Thomas M. Cooley School of Law. ("Cooley Law," as of this writing, is opening a fifth campus in Tampa Florida. It is often disparagingly referred to as a lawyer "factory.")

Quite a few law schools -- e.g., Harvard, NYU, Michigan, UVA, Georgetown, George Washington, Fordham, U. Calif. Hastings, American, Brooklyn, New York (the latter not to be confused with nearby NYU) -- have between 1,000 and 2,000 students. Most have between 400 and 900 students.

Completing law school and receiving the *Juris Doctor* (J.D.) degree normally requires three academic years if attending full time, four if part time.<sup>3</sup>

Excepting the several internet-based law schools, the law school experience throughout Emperor Law School is surprisingly similar and constant. There is normally but one building for classes. First year classes, even at very small schools, are large -- 50 to over 100 students. There is a core of American Bar Association (ABA) and/or state bar required courses. Contracts, torts, civil procedure, and a lesser (half course credit) research/writing course are normally taken first term.

(Other required courses are constitutional law [occasionally second term, more often second year], evidence [always upper year], professional responsibility [also upper year], and often property, taken second term or later.)

Law schools, whatever their rank, are full of talkative, type-A individuals, who grew up being told, "You ought to be a lawyer!" Therefore, even lesser schools, reputationwise, are highly competitive.

Law school is also -- no surprise here, I suspect -- very expensive. 2011 average debt of graduating law students approaches \$100,000(!). However, the cost of law school varies widely among schools. Curiously, cost doesn't correlate with school rank and reputation. Nor, tellingly, does cost correlate with size and presumed economies of scale. Many highly regarded, smaller state schools cost far less than lower ranked, much larger private and (highly ranked) state schools.<sup>4</sup>

In the view of your author (and others), the cost of all but certain smaller, public state law schools is unnecessarily high. Students, to put it bluntly, are being gouged! The evidence for this is a finding that many university-affiliated law schools shunt up to a third and more of their tuition/fee revenue to the general university fund. Such a disclosure at George Washington University School of Law some years ago caused outrage among the law students.

The topic of law school as a cash cow will be explored somewhat in this book. We shall see that profit motive, not the need for better trained lawyers, was a primary motive in law schools coming into being. (Law school supplanted self study and apprenticeship as the primary route to becoming a lawyer.)

Emperor Law School is a very big and profitable business, indeed. As suggested at the outset,

law school never had as its purpose the practical training of lawyers. This is a factor explaining the disconnect between classroom, case method instruction, and the practical lawyering requirements of essay-type exams.

Although a new law school seems to open in America every year, it is not owing to a shortage of lawyers. There are insufficient legal jobs to accommodate the tens of thousands entering the profession each year. In particular, there are insufficient high-paying jobs to enable repayment of the debt law students amass.

(For this reason applications to Emperor Law School tumbled over 16 percent in 2011. Moreover, not a few law schools are currently being sued by current and former students for false advertising of employment prospects.)

Only students at the very top-ranked law schools -- Yale, Harvard, Stanford, Chicago, Columbia, NYU ... that's about it! -- can be relatively confident of obtaining a job, no matter their class rank.

Apart from the 25 or so schools at the top of the so-called "top tier" of law schools,<sup>5</sup> only those students ranked at or near the top of their class at lower ranked -- "middle," "bottom tier" -- schools will have a shot at plum, higher-paying legal jobs.

Given that most law students are smart (4.0 college GPAs abound), and most are industrious, it behooves every student to do whatever it takes to gain an edge that translates into high grades and a high class ranking.

### **The daunting math respecting getting all-important "A" grades in law school**

As posited, the most problematic aspect of Emperor Law School has to do with exams and grades. Job and career prospects immediately upon graduation are largely dependent upon grades. Grades are almost exclusively dependent upon exam performance, particularly in all-important first year. Getting even a single "A" grade is key, and extremely problematic in law school.

Indeed, as we shall see, without more insight and guidance than is currently offered anywhere in Emperor Law School, very few of the smartest, most hard working law students at top law schools have even a shot at writing an "A" exam. Exploration of reasons for this (and the solution!) will be at the heart of this book.

(As a lawyer's career progresses, actual ability and performance soon eclipses the recommendation of grades and [although never completely] where one attended law school.)

Respecting the difficulty, even unlikelihood of achieving law school A's, otherwise rational, highly intelligent law students typically ignore a simple calculation -- at their peril.

Do the math!

Almost everyone who attends law school, even lower ranking schools, was an "A" student in previous academic life, often a straight-A student. Most who attend law school study hard. Yet, excepting the very few law schools whose grade curve mandates 20-30 percent A's (e.g., University of Pennsylvania, University of Texas), 80 percent and more of hard-working, previous life-long "A" students will not receive a single A first term, even first year. Not one!

This bears repeating! 80 percent and more of hard-working, previous life-long "A" students will not receive a single A first term, even first year. Not one!

(At "UPenn" and "UT" the 20-30 percent requirement will be fulfilled by giving A-'s. No more than ten percent of grades will be solid A's.)

[Note. The grade of A- did not exist in Emperor Law School as recently as five years ago. It came into being as a result of pressure upon law professors to give more A's; and the reluctance of law professors to award an A to other than the very very few exams they deem deserving. That is, exams demonstrating precise knowledge of subject matter, and reasonable lawyering competence. The grade of A-, therefore, now highly prized in law school, is but a sop to mandatory, inflationary grade curves. In truth, an A- is a B+!]

### **One need not attend law school to become a lawyer!**

Most people, including law students and many lawyers, don't know that in many states -- e.g., California, New York, Virginia -- it is not necessary to attend law school before taking the bar exam and being licensed to practice law. One can pursue the "law office study" route. Much as prospective lawyers did before there were law schools (and long after law schools came into being), one can apprentice with an experienced attorney in accordance with rules set forth by the state bar association.<sup>6</sup>

For obvious reasons, this is not taught in Emperor Law School. However, we shall see that supplanting of the apprenticeship/self study route to the bar by law schools speaks directly to what is amiss in Emperor Law School. Indeed, some critics of law schools -- There are many! -- have suggested that a combination of apprenticeship and law school is needed.

Of course, apprenticeship has never left the legal profession. Owing to the failure of law schools to impart practicalities of the trade, lawyers still learn to be lawyers via apprenticeship. Precisely the same as plumbers, electricians, and medical doctors learn the particulars of their trades via apprenticeship. However, legal apprenticeship now comes following, not before admission to the bar, and only after a costly passage through a law school.

The great majority of America's approximately 1.3 million active, practicing attorneys, of course, attended a law school.

### **Implications and effect of limited "A" grades in Emperor Law School**

There is a universal myth in Emperor Law School respecting what is required to exhibit mastery on essay exams. Owing to this myth, the great majority of (former straight-A) law students who don't receive a single "A" blame themselves for their mediocre exam efforts. This is so even at Yale, Harvard, and Stanford Law Schools (YHS).<sup>7</sup>

Indeed, hypothetical-type essay exams are so unfamiliar, confusing, intimidating, challenging, that most law students are relieved, even happy to receive the B's and B+'s that are now the staple grade in most law schools.<sup>8</sup>

These students will also now deem themselves incapable of writing an "A" exam. They will buy into the myth, that professors -- and, very quickly, the students themselves! -- put forward to explain why so few write "A" exams. This myth, notion, idea also conveniently excuses law schools and law professors from fault in not adequately preparing students to exhibit mastery.

Namely, writing an "A" exam in law school requires more than intelligence, hard work, and a high LSAT score. It requires an innate quality, a kind of "genius" for the law and legal thinking, often referred to in law school as "The Right Stuff." Moreover, you either have it, or you don't!<sup>9</sup>

In other words, to flesh out the assumption underpinning this notion, "Great lawyers and legal thinkers are born, not made!" Most in Emperor Law School -- professors, deans, students -- believe this. Students believe this within weeks of starting law school. However, practicing lawyers know better.

A very positive message

I wrote this book to convey a very positive message. Much as the great majority of 1Ls (also 2 and 3Ls), I was confused, bored (but reluctant to admit it), and had the usual difficulty with time-pressured essay exams.

However, I now know better than to fault myself for this. I know better than to believe that astute legal thinking, aptitude for the profession, necessarily manifests itself right out of the gate -- on first term and first year law school exams. Indeed, a very recent study by a law professor confirms this and other points that have been made.<sup>10</sup>

I have been a practicing attorney.<sup>11</sup> I have instructed and interacted with far more law students than any law professor. (Many current law professors have been my students!) I have devoted far more time and thought than anyone to the subject of law school exams, and how to prepare for and write them.

So I know this subject. And what I know, the same as most practicing lawyers, is that performance on law school exams is hardly an accurate predictor of who is going to be a good or great lawyer and legal thinker. Yes, intelligence is required. However, hard work, concern for the client, and especially experience practicing law is what makes good lawyers and great lawyers. In other words, great lawyers (and legal thinkers) are made, not born!

Nevertheless, there remains the problem of law school exams and first year grades. Why do smart, hard-working students, who later become good, even great lawyers, often not get a single "A" grade in the all-important first year? Surely, some fault lies with the student.

Emphatically, "No!" I wrote this book to offer the benefit of 30+ years wrestling with this problem. It will explore and explain how and why fault for near universal poor performance on exams by law students lies with law school teaching.

It is American law schools that are at fault -- all of them, including YHS! It is the pervasive, predominant case method mode of instruction that is at fault.

If law students are at fault, it is only for trusting their school and professors to instruct what they need to know to be lawyers, and what they need to know to perform in accordance with ability and effort on all-important exams. And for this, until now, they cannot be blamed.

Law students (and parents, relatives, friends, advisors of law students who open this book) will now be at fault, if they do not heed the instruction and lessons contained herein.

My aim is to completely erase the confusion and mystery, and empower success.

### **About your author and his program**

Your author is, as noted, a former practicing attorney and graduate of Yale Law School (1977). I am also a Rhodes scholar. For over 30 years I have instructed a program I founded and developed. The program, offered in both live and home-study (audio) versions,<sup>12</sup> is nothing less than an exact science of preparing for and writing a "lawyerlike" response to any and all hypothetical-type law essay exams. (A better response than all but the smallest fraction of fellow law students are capable of!)

"*Wentworth Miller's Law Essay Exam Writing System*," "LEEWS" for short,<sup>13</sup> is unique, innovative, comprehensive, revolutionary. Tested, polished, proven extremely effective for over three decades, LEEWS provides precise guidance in the first minutes and at all times during any and all exams. It also provides day-to-day, week-to-week exam preparation guidance during term.

Although precise in its guidance, LEEWS is flexible enough to be applied to any legal subject, any and all essay-type exam exercises.<sup>14</sup>

In short, LEEWS accomplishes what no other program, and no school or professor in Emperor Law School does. It enables a law student -- any law student! -- to acquit herself as a reasonable facsimile of a competent, practicing lawyer on any exam.<sup>15</sup>

It may be noted that most students/customers of LEEWS are 1Ls. Many, however, are 2Ls, and more and more are prelaw. Occasionally a 3L, or law graduate preparing for the bar exam, does the program. It is never too late to learn what Emperor Law School fails to instruct, particularly where addressing complex, essay fact patterns is concerned.

### **More on (book) content**

How LEEWS manages in a matter of hours to produce a reasonable facsimile of a competent, practicing lawyer for exam and study purposes (follow-up practice needed!), will be a primary subject in this book. It is a complex subject, requiring considerable insight into the world of law school, especially law school exams.

The reader must, in effect, be taken to law school, sit in a first year class, and experience in some measure the confusion and doubt that quickly takes hold. The essay exam format that is the bugaboo of the smartest, most diligent law student must be experienced, pulled apart, and understood.

The chance circumstances and revolutionary insight that led to LEEWS will be described. Also the path to a solution. The disciplined, structured approach to breaking down essays and identifying relevant issues in any hypothetical, that is at the heart of LEEWS, will be described.

This structured approach, and in addition skills that are nowhere else conveyed so well, especially, as noted, “lawyerlike analysis,” are what provide such a considerable advantage.

### **The skepticism factor**

There is extreme skepticism in Emperor Law School, even (especially) on the part of students themselves, that a science of preparing for and writing law essay exams is possible. Reasons for this will be explored.

As a result of this skepticism, most students/customers come to LEEWS via word-of-mouth. A friend, a relative (of late, on occasion, a parent who took LEEWS!), an upperclassman, a lawyer, a judge, sometimes a law professor (many of whom took LEEWS as 1Ls), says, “You have to do it!”

This book is intended to dispel, once and for all, the understandable skepticism. It will show how such a science is possible and describe it. It will show why Emperor Law School and its minions have not only not discovered this science, but have never attempted to discover it. Further, they don’t want to discover it!

### **The myth of “innate genius,” “aptitude for the law,” “The Right Stuff” exposed**

I have noted the near universal notion in Emperor Law School that successful handling of essay exams requires an intangible, innate aptitude or genius for legal thinking, The Right Stuff. I have noted that this idea is subscribed to by law professors, and quickly adopted by law students. (Law professors typically got A’s in law school. They are pleased to think themselves possessed of innate genius and aptitude for legal thinking. Indeed, it is an almost irresistible conceit.)

We shall see that, as also noted, this notion serves as an excuse for failure to properly instruct students. It also discourages efforts by students to seek improvement following the disappointment

of first term and first year. Having accepted the verdict, dictated by confusion and floundering on exams, that they lack inner genius and aptitude for the law, The Right Stuff, most law students resign themselves to also-ran status in second and third year.

As I hope this book will demonstrate, this is unnecessary, as well as unfortunate.

Acquisition of requisite skills and approaches to do not just well, but very well on law essay exams is within reach of anyone of reasonable intelligence. Recall my remark to students in live programs, "If you can find your way to this room [typically, of a hotel], then you are capable of lawyerlike analysis."

Reasons for the myth will be explored. It will be laid to rest.

### **A journey into the world of Emperor Law School**

There follow several quotes that I feel suggest something is amiss in instruction provided by law schools. Also, that a solution that takes advantage of this deficiency exists. I feel these quotes provide an instructive introduction to a journey into the world of Emperor Law School, and how and why, respecting essay exam performance, law schools may be so easily taken advantage of -- gamed, if you will.

This journey will be based upon your author's more than thirty years of interaction with many thousands of law students, from every American law school. It will be based upon my single-minded attention these many years, to the subject of how to enable students of even average ability to master a most vexing and challenging examination format.

To those who take this journey, it should prove surprising and eye-opening. This will include readers planning to attend law school, their parents, relatives, friends, and advisors. It will include current law students, law professors and administrators. It will include any, including lawyers and judges, who surmise, not without good reason, that something is amiss in the manner in which future lawyers are prepared (or not prepared!) for the profession, and who are concerned about the heavy debt burden being imposed upon future lawyers.

In the end, the journey should prove most encouraging for those who take the lessons of the book and of my program to heart.

### **A few telling quotes**

(Once again:)

"If 100 points are possible on my final exam, I expect scores in the range of 25 to 35."

[University of Georgia law professor to first year classes, circa 2006.]

"My torts professor said there were 200 possible issues on her last exam. The person who got the highest grade identified 60."

[1L, fall 2010.]

"I wasn't going to come. I made that choice last semester. Three weeks ago I ran into one of the A's in my class, and I was surprised to find that 7 of the 10 A's attended LEEWS. Needless to say, I signed right up!"

[Art Jarrett, Temple '91]

[Note. Art raised every grade a full point and made dean's list.]

(Once again:)

“I learned more about lawyering in a \$75 seminar than I did in my entire \$18,700 first year at Stanford.”

[Ann Pease, Stanford Law School '95, following a LEEWS program.]

“I’ve already started recommending [LEEWS] to people. I ended up at the top of my class last year, made law review, and have interviews, callbacks, and offers from the best firms in the country. Studying definitely played a large role, but the help from LEEWS was invaluable in aiding that study. I came to Cornell from a school that was not a top tier undergrad. To do so well is a testament to LEEWS, and how it helps you sift through the multitude of material and get to the meat professors want to see on an exam. I fared far better than I ever expected. Thanks so much.

[Sean Akins, Cornell '07]

“No question about it!”

[Typical response of a practicing lawyer, if asked whether, if he knew what he knows now (years into practice), it would have made a difference as a law student.]

So what is it that lawyers know that law students don’t?

### **Definitions**

“Gaming,” among many definitions, and as used in the title of this book and the instant context, means exploiting a deficiency so as to gain advantage. Thus, one might game the tax code by exploiting loopholes, or game casino odds by counting cards.

“Emperor Law School,” once again, refers to the multi-billion dollar industry of some 250 American law schools, and the over 10,000 deans, professors, and administrators of those law schools.

“Emperor” alludes, of course, to the familiar children’s fable. The central tenet of this book is that Emperor Law School lacks clothing, in the sense of universally failing to offer instruction adequate to enable students to perform as competent, knowledgeable lawyers on exams. And this can be taken advantage of.

Much as its counterpart in the fable, Emperor Law School is oblivious to this shortcoming.

As noted, the appellation also reflects a certain imperiousness of law schools in the person of their deans, administrators, and especially professors. Most notably, this imperiousness is reflected in Emperor Law School’s cavalier placement of blame for the results of its shortcoming on law students, and Emperor Law School’s seeming imperviousness to change.

### **In sum**

This book throws down the gauntlet. Law schools must alter their instructional approach, or continue to be gamed!

Whew! A lot of background information and context, indeed! However, assuming information in the many, often lengthy footnotes has also been digested, the reader is now well-armed, ready to proceed to the investigation of the problem, and also the solution.

\* \* \* \*

1. Many law schools call themselves “colleges” of law. A few call themselves “law centers.” (E.g., Georgetown, Houston, LSU, Touro [Long Island, NY], Nova Southeastern [Fort Lauderdale, FL] Universities.)

For purposes of this book, all will be termed “law school.” All will be grouped under the umbrella, Emperor Law School.

2. The number of American law schools actually approaches 250! In 2011 alone no fewer than seven law schools opened or announced they will open. (Paul Pressler School of Law, Shreveport, LA [to open in 2012]; Concordia U. School of Law, Boise, ID [fall, 2011]; Belmont U. College of Law, Nashville, TN [fall, 2011]; U. North Texas Dallas College of Law [2014]; Indiana Tech U. School of Law, Ft. Wayne, IN [2012]; Thomas M. Cooley Law School [4th Michigan campus in Ann Arbor in fall, 2011; 5th campus in Tampa, FL in 2012].) Somewhat over 200 are “approved” or “accredited” (or provisionally approved/accredited) by the American Bar Association (ABA). The ABA is the chief umbrella and oversight body of the legal profession. Along with state bar associations, it sets and oversees law school standards. It is the national accrediting body for American law schools.

**Unaccredited (nor provisionally accredited) law schools:** Most are in California, where graduating from an accredited or provisionally accredited law school is not a prerequisite to taking the bar exam and becoming licensed to practice. (Students at such schools, unlike those at accredited law schools, have to take a minimal competency exam at the end of first year -- so-called California “baby bar.”) Such schools tend to be small (100 students or less), less costly, typically part time, with evening and online courses, and accommodate an older, working student population. Such schools lack prestige. Their students tend to have difficulty with the challenging California bar exam. (First time bar pass rate in the 35 percent range, versus 60 percent for first time taker graduates of accredited law schools.)

Your author’s impression, having instructed many students from these schools over the years -- e.g., Humphrey’s College of Law, Northern California, California Southern, San Francisco, Lincoln, Monterey, John F. Kennedy Schools of Law, etc. --, is that instruction at such schools is adequate. (Insofar as any instruction in Emperor Law School is adequate!) Students are eager, motivated, intelligent. However, they are busy with work and families, and somewhat insecure respecting academics, compared with younger students at traditional, accredited law schools. This, plus the same inadequacy of case method instruction in imparting lawyerlike thinking and ability to cope with law essay exercises, puts them at a greater disadvantage respecting the confidence factor needed going into a bar exam. Those who take LEEWS seem to do fine respecting not just studies at school, but the bar exam.

3. In addition to traditional full and part-time programs, some few law schools conduct classes year round, enabling graduation in two years. A few (e.g., Thomas Cooley in Michigan [and soon Tampa, Florida]) conduct a week-ends only course of study, accommodating parents and working people, enabling weekly commutes to school for some at considerable distance.

**The J.D. degree:** It perhaps bears noting that the Juris Doctor or J.D. degree, awarded upon graduation from law school, dates back only to 1971. Previously, law school graduates were awarded a bachelor of laws degree -- LL.B. The J.D. came to be awarded -- in America, not most other countries! -- as a means of giving greater status to law graduates, particularly in comparison with medical doctors, and to a lesser extent Ph.D.’s. Lawyers could now also claim to be a “doctor of laws.” Few lawyers ever do so. No one says, “Hello. I’m Doctor Jones, attorney at law.” But they could! Nor is the word “doctor” used in attorney advertising. But it could be! Such are the petty conceits and concerns of professions and professional schools. (At least law schools.)

4. Yearly tuition and fees range from a mere (approximate) \$10,000 per year in 2011 for in-state residents at some fairly reputable law schools (e.g., universities of Arkansas, Mississippi, West Virginia, Wyoming, Montana), to a \$25-35,000 range for the majority of schools, to a \$40-48,000 range for top-ranked law schools. To this must be added books, food, housing, and living expenses, ranging, depending upon location, from \$13-23,000, according to law school estimates published in the ABA/LSAC (Law School

Admission Council) *“Official Guide to ABA-Approved Law Schools,”* 2011 Edition. Economists would also add the (considerable) cost of employment deferred and/or foregone while attending law school.

Of course, published sticker prices are often discounted by grants, scholarships awarded to enrollees with high LSAT scores (A factor in U.S. News rankings! See footnote following.), scholarships awarded later to students with high grades (often substantial), etc. Nevertheless the price tag will be high -- \$60,000 to over \$200,000!

5. **Law school rankings** (at length): Some two decades ago the national magazine, *U.S. News & World Reports (USNews)*, published an edition ranking American colleges and universities from top to bottom in terms of overall quality, cost, reputation, etc. In a nation obsessed with Who’s Number One?, this edition proved highly popular. *USNews* then began issuing annual editions ranking not only colleges and universities, but graduate schools, medical schools, business schools, and, of course, law schools. (Only the 200 odd ABA accredited/approved law schools.) *USNews* now ranks different kinds of hospitals and other American institutions. Who knows where it will end? (Cities, beaches, and amusement parks are ranked. Perhaps hog and chicken farms, prisons?)

Never mind the validity of the criteria on which rankings are based (which are carefully ferreted out, often decried, criticized, bemoaned, and then adjusted to by institutions being ranked). If an institution tops the *USNews* rankings, reputation is enhanced, applications skyrocket. If an institution ranks low, it scrambles to fare better the following year. Presidents, deans, boards of trustees of colleges, medical schools, law schools, hospitals, any institution ranked by *USNews* or some other source, are now judged according to year-to-year performance on all-important *USNews* or other rankings.

There are four *USNews* ranking divisions or “tiers” for law schools, some 50 schools in each. “Top” or “first tier” refers, of course, to the top 50 law schools. “Bottom” or “fourth tier” is now a pejorative, a dungeon to escape. (The 20+ un[ABA]accredited law schools, again mostly in California, are not ranked, not in the conversation.) The expressions “top tier,” “second tier,” “lower tier,” respecting not just schools and hospitals, but most anything that can be ranked, including individuals, cities, presidents, athletic teams, have now entered the American lexicon to stay.

Not surprisingly, consistently at the top of the top tier are the law schools of such reknowned universities as Yale (perennially No. 1), Harvard, Stanford (perennially 2 and 3), Berkeley, Columbia, NYU, Chicago, Pennsylvania. Closely following these schools, more or less interchangeable in the minds of law students, prospective law students, law professors, lawyers, judges, and observers of legal education, are Northwestern, Georgetown, Duke, Cornell, and such state university law schools as Michigan, Virginia, Texas, UCLA.

Below the coveted “top 25” are tens of reputable law schools, such as those (in no particular order) of the states of Minnesota, Wisconsin, Iowa, Illinois, Indiana, Ohio, Georgia, Kansas, Nebraska, Missouri, Florida, Alabama, New Jersey, and on and on. Suffice that within the top tier, within the “top fifty,” and indeed within the top one hundred and fifty, jockeying is fierce to rise in the *USNews* rankings, and certainly to avoid slipping. The day the *USNews* ranking of law schools issue comes out must needs be a day of elation and relief, or gloom and despair among law school deans and trustees.

**Pernicious effect of rankings:** Prospective applicants swear by *USNews* rankings. Having discovered criteria upon which law school rankings are based -- student/faculty ratio; LSAT scores; percentage placed in (law-related) employment nine months following graduation; etc. --, deans of lower tier schools scramble to improve their school scores on such criteria, and thereby climb the critical *USNews* rankings. Deans of upper tier schools likewise scramble, lest their school fall in the rankings. (YHS jockey to occupy the top spot.) “Reputation in the profession and among lawyers and judges” being one of the ranking criteria, many law schools have taken to distributing glossy, expensive brochures touting newly

established disciplines, a new building, interdisciplinary approaches, overseas law study programs and relationships, etc.

A suspect, but predictable development in the last 15 years or so has been scholarships offered to students by (mostly) lower tier law schools, based solely on high LSAT score. In other words, to boost the average LSAT score of its entering class, and thereby its *USNews* ranking, some law schools are willing to lure students with the offer of scholarships, based solely on a student having a high LSAT score. It seems to matter little whether such applicants have a low college gpa.

Your author has had many such students attend LEEWS. They are typically from 4th tier schools, in danger of losing scholarships following mediocre performance on first term exams. There are currently lawsuits against law schools -- e.g., Golden Gate College of Law in San Francisco --, alleging false advertising and inducement, and challenging the (rather typical) practice of taking away merit scholarships following less than stellar first year exam performance and grades. A number of reputable law schools -- e.g., Villanova, University of Illinois -- have been found to, or have voluntarily admitted to fudging post-graduation employment figures. A New York Times front page article of January, 2011, described how “flipping burgers in a fast food joint” is counted as “employment” in some law schools’ calculation of “employed” nine months after graduation.

Are members of Emperor Law School now, in effect, teaching to the test? Is fudging figures and scrambling over rankings violative of ethics, in a profession where ethics are paramount, and schools are required to instruct a course in “professional responsibility?” Is the *USNews* tail wagging the Emperor Law School dog? Is a poor example being set for would-be lawyers?... Yes to all of the above! To use a current expression popular among the younger set, duh-h!

**Your author’s take on rankings:** The difference between one and 200 is very slight in terms of teaching quality and what students come away with. To be a law professor is such a cushy, attractive position, that fourth tier schools can hire all YHS grads if they choose. (They do not, probably because they are very much married to locality. My impression is that many of their hires, who face much less, if any of the burdensome pressure to publish scholarly articles and books, are local, influential, former and current practicing lawyers, prosecutors, judges. Such hires strengthen a lesser law school’s position in the community and state, and provide hiring pathways for graduates to local and state courts, law offices, corporations, etc. Many professors at lower tier law schools are part-time or “adjunct.” They also, as we shall see, have far more experience actually practicing law than those at top tier schools!) The difference in tiers is reflected, largely, in the qualifications of students admitted, and the career options upon graduation. The difference among schools within a tier is negligible in most respects.

Of course, my view, and the thesis of this book, is that the teaching -- case method across the board! -- throughout Emperor Law School (including unaccredited schools) is severely lacking. Neither Yale Law School, nor any law schools down to the lowest tier effectively train lawyers, or even, as many profess to be their mission (when criticized for not providing practical training), “lawyerlike thinking.” All, therefore, are ripe to be taken advantage of. All are ripe to be gamed. Indeed, they deserve to be!

**Implications for this book:** Emperor Law School, as is all of American higher education for that matter, is a business, a very big business, and should be viewed that way. Big money, power, and prestige is involved. There are no angels here, no unsullied icons beyond criticism and reproach. Let the examination and critique begin! If an advantage is to be had, if gaming the system is possible, then there is no fault in that. It is as all-American as mom and apple pie.

6. How and why law school came to supplant apprenticeship as the primary route to becoming an attorney will be explored in this book. It goes far in explaining why law schools do such a poor job training lawyers. It shows that the training of lawyers was never the purpose of law schools. Moreover, possibly it

can't be.

If one is interested in becoming a lawyer as a second career, perhaps merely as an avocation or hobby, or if one plans to work in the family firm or the same firm where one is currently employed in a non-lawyer capacity (as a paralegal, for example), the non-law school, apprentice route to becoming an attorney might be explored (with the state bar association). One will not have the Juris Doctor or J.D. degree, and whatever cachet that might imply. However, having passed the bar exam and successfully applied for a license, one would indeed be a lawyer. The cost savings would be substantial.

7. Nitpicking, we shall see, is the very essence of the lawyer mindset. Nitpickers and critics, of whom there doubtless will be many, may point out that YHS (Yale, Harvard, and Stanford Law Schools) no longer award letter grades. Not since fall, 1969 at Yale. Not since fall, 2008 at Harvard and Stanford. However, I instructed hundreds of Harvard and Stanford law students prior to 2008. I can attest to the frustration of these uber-smart, hard working students over not receiving a single A first year (which was the norm for over 80 percent!), and, significantly, their finding of fault with themselves. Since fall, 1969, from second term on at Yale Law, "honors" grades have been possible. Very few, including your author, managed to achieve "honors" on essay exams. The point is that few A's are awarded in Emperor Law School. Moreover, students blame themselves for this. I was delighted to receive a "high pass" on an essay exam.

8. **Grade inflation:** Significant grade inflation has occurred in Emperor Law School over the past 10-15 years. Not so much as in American colleges, where 50 percent of grades are now A's (!!). However, 20-30 years ago, as I sometimes remind students, it was not uncommon in a law class of 100 for there to be no A's, or just a few, 27 F's (!!), and the majority of grades C's. Indeed, an expression conveyed to first years was still afoot: "Look both ways. One of you will not be here next year." LSU was the last law school to make a practice of flunking a full third of the entering class. It stopped doing that only about ten years ago. Somewhat earlier, students at Loyola University New Orleans College of Law reported that "all B's" put them in the top ten percent of the class!

It is instructive to note that the significant decrease in the number of D's and F's given in Emperor Law School roughly coincided with yearly tuition and fees per student exceeding \$20,000(!). As I sometimes remark to students to assure that, despite their fear and confusion, there is little likelihood today of getting below a grade of C, "Once tuition and fees exceeded \$20,000 per year, law schools took note. The attitude, understandably, became, 'Why would we flunk anyone out?!'"

Today 70 to 80 percent of grades at most law schools are in the B- to B+ range. There has been a grades arms race of sorts. In order that their students be able to compete for jobs with graduates of law schools awarding higher grades, schools such as U. Dayton (OH) School of Law, which traditionally imposed a "C" curve, have raised the curve to an average B or B-.

Nevertheless, despite grade inflation, even today at most law schools, as noted, no more than 10-15 percent of grades are A's. (Up to 20-30 percent at some few schools, such as UPenn and UTexas. However, the majority of A's will be A-'s, a grade that did not exist in law school five years ago.) There will be a similar number of C's. Doubtless for the reason suggested, very few grades today are D's and F's.

**More severe grading at lower tier schools:** Curiously, higher tier law schools have spearheaded inflation. As I like to remark to students, "The only thing difficult about Yale, Harvard, and Stanford is getting in! Once in, it is near impossible to fail." Perhaps I should add that getting A's at YHS is also difficult.

Lower tier schools have always graded more severely, and still do. One likely reason is that, as we shall see, lower tier schools employ professors with (much) more experience as practicing lawyers. Such persons, coming from a world where the verdict is win or lose, A or F, are likely less forgiving of mediocrity. (As are bar examiners.) In the practice of law, mediocrity means failure! Another reason is a desire, perhaps given more license prior to the steep rise in tuition and fees, to weed out weaker students who might

eventually compromise a school's bar pass rate. Bar pass rate is an important factor in *USNews* rankings. Also in advertising for lower tier schools. (This still seems to be a factor at schools, such as Thomas Cooley, that admit most any who apply, then flunk students out even in their final year [after funning up a significant debt tab!].)

**The transfer factor:** It has been noted that the higher ranked the law school, the more plum job opportunities will be available. Another likely reason lower tier schools grade more severely is fear of students with high grades transferring out. Many of my students have done just that. Anecdotally, students at the top of their class have transferred from Nova Southeastern U. Law Center to Duke Law, Chicago-Kent to UMichigan, Golden Gate (SF) (in 1981, my first year of offering LEEWS!) to Boalt Hall (UC Berkeley), Thomas Cooley to Northwestern and Washington U. (St. Louis), South Texas to UTexas, and UTexas to Harvard. Four in one year transferred from University of Tulsa to Georgetown U. Law Center. (Of five who attended a live LEEWS program first term in Oklahoma City. I found this out the following fall from the one who stayed [and became my rep], when trying to recruit a rep at Tulsa Law.) Likewise, several from Hostra Law one year transferred to Georgetown. (Highly ranked Georgetown, with some 2,000 students, many in a large night division, that accommodates federal employees who wish to become lawyers, has the largest entering second year transfer class in the country.) A student who finished first in her class at tiny Ohio Northern U. Law transferred to Ohio State Law, despite being offered a full scholarship to stay.

**Scholarship money for A's:** My advice to students who do well at lower tier schools is to weigh the benefit of staying and parlaying "A" grades into scholarship money. Employers know that lower tier schools grade more severely. Local and in-state firms are eager to pluck top students (gradewise!) from local, lower tier schools. (Note. For public relations reasons respecting clients, national [so-called "biglaw"] firms usually prefer that their lawyers hail from top-ranked schools. They normally do not recruit from below the top 25.)

I recall three first term 1Ls from bottom tier Oklahoma City U. Law, who ordered my audio program together. (No extra books!) They huddled over the program one fall weekend. (At a hunting cabin, I was advised. Per usual, I was seeking a rep the following fall.) They finished first, second, and the third a few places lower in their class after first year. Each could have transferred to higher ranked (and much cheaper!) Oklahoma U. Law. All elected to stay upon receiving scholarship offers. Full tuition/fee scholarships for the top two, a partial for the third. What an investment! (Perhaps \$40-50 per student at the time. And not much more today.)

9. One of the most comprehensive investigations of time-pressured law essay exams, and why some do well and others don't, was conducted in 1988 by the late University of Kansas School of Law professor, Philip C. Kissam. Toward the end of a 70-page, somewhat abstruse treatise, entitled, "*Law School Examinations*," and exploring the "deep mystery" of "blue book" success\* (Vanderbilt Law Review, Vol. 42, No. 2 [March, 1989]), Professor Kissam concluded that, "the exercise of examination productivity [professorspeak, meaning doing well on exams], especially in view of the speed required [alluding to typical time pressure], appears to involve **a significant degree of natural talent.**" (At p. 459. Emphasis supplied.) (Aha! Something innate contributes significantly to exam success!)

In this regard, see also footnote 5, following.

\* **Of "bluebooks," and to type or write exams:** No more than ten years ago, exams were written long hand in so-called "bluebooks." Today, most responses are typed into software on laptops. Bluebooks were literally blue-covered booklets. (Sometimes beige, green, yellow, etc.) Students today are normally given the choice of writing exams long hand, or typing. LEEWS advises typing, unless one can write faster than one can type. Apart from being faster, neatness counts.

Those who choose to write, in my view do so because they fear the clarity of typing. (Confused

rambling nonsense is more apparent!) A LEEWS grad will have nothing to hide! Some few professors still require that exams be written long hand. (If computer systems crash, as sometimes happens, an exam may have to be written long hand.) As of this writing, bar exams are in a period of transition from bluebook to computer software responses.

10. The January, 2012 issue of *The National Jurist*, a monthly magazine for law students, contains an article entitled, "Is a great lawyer born or made." The author, one William D. Henderson, professor of law at Indiana University School of Law -- Bloomington, collected "examples of lawyers with sterling credentials [including top law school grades] who failed to develop a significant practice, and those with less impressive pedigrees who ended up becoming the national experts and lynchpins of their organizations." Citing and relying heavily on the research of one Carolyn Dweck, cognitive psychologist at Stanford, and author of the 2006 book, "Mindset: The New Psychology of Success," Henderson, predictably, gets professorial and academic, speaking of "self theories," and "fixed mindset" versus "growth mindset."

However, his conclusion, and the point he makes is that success is the product of ability, hard work, and "the single best predictor of high performance" -- "fearlessness." He defines the latter as "willingness to take on difficult tasks and not be worried about failure or being judged by others." He suggests that fixed mindset types may be talented (and achieve top grades in law school), but they "prefer activities that validate their abilities," and "shy away from tasks that provide the world with evidence that they lack talent." Growth mindset types, on the other hand, "believe they can acquire important skills, knowledge and abilities through effort. So floundering at a task is not failure -- it's learning."

Henderson suggests at the outset that the reader answer "whether the following statement is true: 'A lawyer's skill set is determined primarily by innate ability -- you either have enough or you don't.'" He disagrees with this notion, and with "a persistent narrative in American culture that attributes great success to innate ability." He finds that such a notion "does not align very well with the underlying facts." Citing Dweck, he points to achievements of Edison, Darwin, Mozart, (and, at length, a long time successful trial lawyer, whom he interviews), as "not flashes of brilliance," but the "product of years of focused labor and learning, which are the habits of the growth mindset." [Precisely your author's 30+ years conducting his program and this book?!!]

Certain of Professor Henderson's other remarks bear repeating. One speaks to the insecurity of incoming law students. To wit (oft-used expression in the law, meaning that is to say, namely):

"Many law students spend their first year fearing that they might be the admissions mistake. I was one of them. The only feedback you get is what can be gleaned from the student-professor dialogue. In turn, everyone uses this information (if you can call it that) to handicap their likelihood of making law review or otherwise getting the grades needed to get the most coveted jobs. The whole process seemed very binary: Am I smart enough to be a successful lawyer, yes or no?"

Another remark speaks to the failure of Emperor Law School, and its emphasis on grades, to measure what is required to be a successful and effective lawyer:

"Since law school, I have always been amazed by the propensity of lawyers and law professors to over generalize from academic performance. There are so many facets to effective lawyering that are never touched on during law school -- interpersonal skills, team work, client communication, resilience, leadership, the ability to follow and many others -- and so many years of focused effort ahead just to obtain the requisite technical skills and knowledge to become a true expert." [I.e., skilled lawyer in one's field.]

11. Your author passed the July, 1977 New York State bar exam, and was admitted and licensed to practice through the Second Department of New York in the spring of 1978. Following graduation and the

bar, I entered the Kings County (Brooklyn), New York, district attorney's office in August 1977. I was a prosecutor -- assistant district attorney -- for several years, mostly doing appellate work. In 1980 I made the somewhat unusual switch from criminal to civil litigation as an assistant United States attorney for the Eastern District of New York -- Brooklyn, Queens, Long Island, Staten Island, Westchester County. I did that for several years, handling numerous cases. I am a member of the New York Bar (retired status), and the Westchester County, New York, Bar Association.

Since engaging in LEEWS full time in 1983, I haven't practiced law, *per se*. I don't have clients. However, once a lawyer, always a lawyer! I vigorously contest traffic tickets. I organized neighbors, and oversaw two successful legal challenges to the property tax structure of Allegheny County (Pittsburgh and surrounding communities), my home since 1989. (The solo practitioner we hired outlined extensive [and expensive] "discovery" to be conducted [meaning obtaining information from the county]. I saved a lot of time and money by pointing out there were no factual, only legal issues. Therefore, we could [and did] move for "summary judgment," twice.) I recently successfully defended a trademark challenge from a major corporation. (It was a 3-year litigation that went all the way to the Federal Circuit Court of Appeals for the District of Columbia circuit.) It is sometimes good to be a lawyer in America!

12. The day-long (7+ hour) program, including book, is \$135 as of this writing. Group rate discounts can reduce cost to \$110. (E.g., 3-6 group rate = \$120.) The slightly longer audio program, including book, priority shipping, and additional materials (vinyl container, audio CDs, diagrams) is \$175. This is less than the cost of a new "case book!" (I.e., textbook.) (Note: I recommend getting used copies of all law books, even if slightly out of date. The discount can be as much as 80 percent. Enterprising upperclassmen conduct used book fairs at most law schools at the beginning of fall term.) For additional information about the program, including free conventional exam writing/preparation advice, attested results and reactions of nearly 1,000 students from over 190 law schools, guarantees, observations, advice, and much more, visit [www.leews.com](http://www.leews.com).

13. Rhymes with "lose." Yes, an unfortunate association that not a few law professors and others have been happy to make over the years. It has been reported to your author that professors hold up an advertising flyer and say, with pointed sarcasm, "lose your money with LEEWS!" I prefer to think and say, "Win with LEEWS!"

14. Numerous editors-in-chief of "Law Reviews" (law school publication open to top ten percent of each class) took LEEWS in first year, including those at such schools as Stanford and Columbia. When quite a few 1Ls from Washington U. Law took my live St. Louis program in the fall of 2001, I was curious to know how many made Law Review. (Possibly 30-40 attended. However, this was still less than 20 percent of the entering class.) I discovered, matching class list with the masthead, that fully 50 percent of members of Law Review at "Wash U." (or "WULaw") in 2003, including the editor-in-chief, took LEEWS as 1Ls(!). A similar investigation at the time revealed 25 percent of my students were on Law Review at Duke. Years ago, when present-day Quinnipiac University School of Law (CT) was University of Bridgeport School of Law, of eight who attended LEEWS following a less than stellar first semester, five finished 1, 2, 3, 5 and 6 in their class at year's end, and transferred to higher ranking schools. (Knowledge of this prompted 67 "UB" 1Ls to descend on the NYC live program the following fall.) LEEWS grads consistently receive the American Jurisprudence (AmJur) award for the best exam in the class, and finish first overall in class rankings. Law professors often query LEEWS grads, "How did you know to sue this party?," "How did you learn to do this?"

What LEEWS accomplishes and the secret to its success is simple. LEEWS effectively bridges the gap I have noted -- chasm, really -- between overly theoretical, academic law school teaching, and the practical, goal-oriented, law-as-a-tool-to-assist-my-client focus and approach of a practicing attorney. As noted, LEEWS, in a nutshell, achieves what law schools -- all of them! -- do not. It turns academics into

junior lawyers, into law students who finally “get it.” That is, they understand what lawyers do, and how a practicing lawyer might think and approach a legal problem solving exercise. This, plus a system for attacking and dissecting any and all essay-type exercises; the ability to present analysis concisely (roughly one paragraph per issue); and several other skills and insights that Emperor Law School doesn’t come close to instructing.

15. Your author is aware, of course, that both men and women are lawyers, judges, law students, etc. Indeed, half and more of students in most law schools today are female. (The figure approaches 75 percent in Russia!) However, so as not to disturb the flow of text, “he” and “she” will be used interchangeably.