The Path to Resilience: Integrating Critical Thinking Skills into the Family Law Curriculum

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A person was on all fours under a street lamp, searching for something. A police officer passing by asked, “Hey, what are you doing?” The person replied, “Looking for my car keys.” The police officer asked, “Did you drop them here?” The person replied, “No, I dropped them in the alley.” The police officer looked baffled by the answer, and seeing the look of confusion, the person said, “But, the light is much better here.”

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I. INTRODUCTION

The opportunity to write and share my teaching philosophy and methodology is to face a daunting exercise. It is relatively easy for me to set goals and objectives for a class and to outline the coverage of a class through the syllabus, particularly if it is a course that I have taught in the past. However, identifying the subconscious and perhaps subliminal messages that are being taught as part of the overt course objectives is a bit more intimidating because it reveals the vulnerability of both the professor and the student.2

On the other hand, to write this article has been a compelling phenomenon. I was not quite clear how essential it was to write this article until a student with whom I shared my outline said to me, “Did you write this?”3 That question alone led me to conclude that it is my personal and professional responsibility to the practice of law and my commitment to the mission pillars4 of Phoenix School of Law (“PhoenixLaw”) to write this article. I also felt compelled to write this article for the students, who are the reasons I teach.

With this article, I enter the academic discourse on teaching and critical thinking. What follows is meant to contribute to the meaning of teaching and learning. It offers a distinct perspective on skills and substance. It reinforces the practice of critical thinking and analysis as a habitual function of lawyers.5 Using Bloom’s Taxonomy of Learning6 and concepts of deductive and inductive reasoning, I discuss the teaching methodology that I

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2 As a law teacher, I want my students to think critically about the substance of Family Law, and I want to stimulate intellectual excitement in those who choose this practice area. Based on the advice of Professor Gerald Hess, a visiting professor at PhoenixLaw from 2005 to 2007, I spend a lot of time thinking about what and how I will teach the subject.

3 I was a bit taken aback by the question, and the reason the question was asked remains perplexing.

4 PhoenixLaw has three distinct mission pillars: 1) an educational experience that is student-centered; 2) outcome-driven programs that yield professionally prepared graduates; and 3) a commitment to serving underserved communities. See About PhoenixLaw, School Mission and Values, http://www.phoenixlaw.edu/about (last visited July 18, 2010).

5 While much of lawyering is problem solving, I want my students to focus more on their analytical skills, which are directly transferable to the practice of law.

6 Benjamin Bloom, an educational psychologist, developed this learning methodology in 1956. Bloom and a group of educational psychologists created the Taxonomy of Educational Objectives, which served as a framework for teachers in primary education for many years. Now, several scholars are looking at it as a tool for enhancing student learning behaviors in law school as well as developing examinations. See generally TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS, HANDBOOK I: COGNITIVE DOMAIN (Benjamin S. Bloom ed., Longman 1984) (1956) [hereinafter Bloom].
use in my Family Law classes. Doing so helps Family Law come alive as a viable practice area in which the skills of lawyering, particularly the skills of writing, analysis, and critical thinking, all play a vital role in ensuring access to justice for Family Law clients.

Finally, the title of this article speaks to the concept of "resilience," because I have learned that although many PhoenixLaw students come to the study of law with a myopic view of the world, the narrowness of their perspectives often presents fresh ideas that create teachable moments. In teaching and practicing Family Law, resilience means flexibility in one's thinking and resistance to forming judgments about the practice area or the clients. For example, in one experiential exercise, a student came to class hot-under-the-collar, because a client "lied" to him. This presented a teachable moment about client relationships and corroboration of the facts. Each teachable moment opens the door to developing best practices in teaching, best practices in lawyering, and opportunities to model the lawyer's commitment to service. The direct benefit of teachable moments is that they create opportunities for the student to learn that rather than choosing where the light seems best, students should explore in those seemingly dark, hidden, or mysterious areas where resilience is most needed to uncover solutions to the legal controversy.

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7 It is important that the students learn in a way that ensures comprehension, not just rote regurgitation of the rules of law.

8 Many of the students often comment on the first day of class, after I ask about their expectations for the class that they do not intend to practice Family Law but are merely taking the course because PhoenixLaw requires it.

9 "Myopic view" should not be interpreted as a negative but should illustrate the need to encourage inclusive thinking. For example, in my first year of teaching Lawyering Process (an intensive research and writing program for first-year law students), when engaging in a discussion on the diversity of practice, a student said, "Professor, I have never lived around African Americans." Another student asked, "Why should I represent someone who does not speak English?" Yet another stated, "I generally believe that once a person is charged with a crime she is guilty."

10 Actually, the "client," a PhoenixLaw administrator and former prosecutor, had a mock criminal record, but the client had indicated to the student that he had no criminal record. The student did not know how to handle a client providing false information about his criminal history. The anger was reactionary; the teachable moment was to talk about not taking the client's side of the story as a personal affront when false information is conveyed but to explain to the client why truthful information is important.

11 Central to learning Family Law is the substantive content and the ability of the student to conceptualize the content by thinking about the application of the law to a fact pattern.
II. THE TEACHING METHODOLOGY OF FAMILY LAW

I know that some PhoenixLaw students dread taking the required course of Family Law with me, because my reputation precedes me. I am known for having high expectations, making taxing reading and writing assignments, demanding adherence to professional and ethical conduct, and assigning exercises that challenge the students to apply the doctrinal content in an experiential way while learning the subject matter.12

For others, the Family Law course is a transformative experience.13 I would hope that the incessant, but mostly gentle, demands that I place on the students have, as Professor Paul Carrington would say, the “redemptive consequences” of conviction to work, survivorship, and interdependence.14 Thus, the challenges posed by the rigor of my Family Law course are meant to have a transferrable connection to the skills necessary to practice Family Law competently.

My primary goal while teaching Family Law is to demonstrate that learning the subject is more than a gesture of entitlement akin to the “silver spoon”; it is an opportunity for students to experience the working responsibility of a Family Law practitioner through preparing for class, taking pride in work product, striving for excellence, thinking outside the box, and learning to appreciate the humbling responsibility of representing another human being.15 While students who have a self-determined interest in Family Law tend to be invested in the holistic learning opportunities offered by the class from the beginning of the semester, it is most

12 My reputation precedes me. On the one hand, I have been called hard, unbending, tough, and mean. One student recently wrote that he hoped he never had another encounter with me, other than social, for the rest of his life. On the other hand, I try to maintain the reputation of tough, but fair. Students have praised and thanked me for the contributions I made to their learning process.

13 Many assignments in my Family Law course require the students to role-play as practicing attorneys. Some students absorb the experiential nature of the assignments like a duck takes to water; others find it especially difficult to do so; and still others are just resistant to the process. When students allow themselves to experience the phenomena of being a trial attorney, they have positive reactions: “Thanks for everything Judge Willrich! Too bad I did not take your course long ago. You bring out the best in me.”


15 For example, feedback on an exam may include the words “malpractice alert” or “shall I call the insurance carrier” or “issue a pink slip?”—feedback meant to alert the student that misquoting the law, revealing a client confidence or failing to explain the law properly can result in a justifiable action of malpractice. I have developed a vocabulary of practice-ready feedback phrases that I use in my grading.
remarkable for me to see the transformation of the other students who may have had some hesitancy about Family Law as a practice area. In particular, I like the transformation of those students who may have dreaded taking the Family Law course because of the high expectations of the "mean ol' professor." It is important to have high expectations of all students, to communicate the expectations, and to model high expectations,\textsuperscript{16} and even the students who enter the class kicking and screaming develop the ability to solve problems by understanding the relationship between the law and the facts.\textsuperscript{17} In Family Law, the written and oral assignments, examinations, courthouse experiences, and continuous written and oral feedback offer the students opportunities to improve their legal analysis, critical thinking, and problem solving skills. Through this process, I have made some life-long friends and colleagues of whom I am truly proud.\textsuperscript{18}

I had multiple objectives when developing a methodology to teach Family Law. The first objective was to demystify Family Law. Many students enter Family Law as skeptics and have doubts about Family Law as a meaningful practice area, because they are not interested in the emotional discord between the parties.\textsuperscript{19} My enthusiastic passion for the practice of Family Law is prominent in my delivery of each day's lesson and shines through on class field trips to the courthouse to observe Family Law proceedings.\textsuperscript{20}

The second objective was to lead the student to the well of appreciation and value of Family Law as a viable business enterprise.\textsuperscript{21} I always try to


\textsuperscript{17} Though I would imagine that those students who are firmly convinced that they do not want to practice Family Law leave the class with that firm conviction, at least they have been exposed to an area of law that will give rise to the most frequent questions they receive as a practitioner. I encourage those who cannot perform well for a Family Law client not to take on the responsibility.

\textsuperscript{18} It is difficult to express in words the pride I feel in the former students currently practicing Family Law who have contacted me to discuss case strategy, court procedure, or information from training programs.

\textsuperscript{19} Many students have expressed beliefs that Family Law is a "no-win" practice where the primary role of the lawyer is to be the referee of the disputing couple.

\textsuperscript{20} Students are either organized to go on a field trip to court or are given a court observation exercise, allowing them to go on their own time to observe court proceedings. I also use many real-life examples as problems. I tell my students that I have tried or presided over so many cases that I will not run out of facts from which to construct Family Law fact patterns for use in class or on exams.

\textsuperscript{21} I challenge the students to think outside of the box and point out the many specialties that can be developed. On occasion, I may invite a practitioner to speak in class about why he or she is involved in Family Law practice.
give students opportunities to discuss their beliefs, observations, and feelings as they relate to the topic being covered, while reminding them that their feelings and beliefs may not necessarily have relevance to the client's objective. There is a direct correlation between knowledge of the law and its application, and providing sound legal advice to a client.

I also want the students to appreciate the cultural, sociological, psychological, and economic issues inherent to the Family Law practice. For example, the impact of the current recession has caused domestic violence shelters to see fewer women seeking refuge from violence. In class, we may discuss whether this phenomenon means that there is less domestic violence or some other factor at work.

The third objective was to give students an opportunity to perform in at least one experiential exercise. Students role-play clients, witnesses, lawyers, and bailiffs. Students have to arrange conferences with uncooperative clients: the "weepy-teary client," the "angry client," or the client who wants to direct the litigation. Students may interview clients, negotiate settlement agreements, negotiate parenting plans, conduct mini-trials, argue motions, or conduct Order of Protection hearings. These

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22 Evaluation of student learning includes whether the student is objective rather than judgmental in his or her thinking.
23 For example, one of the exercises in Family Law is to write a client letter. I will ask the student, "How different would your letter be if your client did not speak English?" On one occasion, a student asked, "Why would I represent someone who doesn't speak English?" This was an excellent teachable moment from many perspectives.
24 A student's assessment of an experiential exercise stated:

I like how the exercise was more like being in a real courtroom. By this I mean we had to plan our questioning, be prepared to satisfy the elements, and worry about objections. The Lawyering Process exercise was not at all like a courtroom because it was really just us reading off notes and fielding questions from a judge.

25 I would like to thank all the PhoenixLaw professors, administrators, and students who have willingly agreed to serve as witnesses or litigants in the various experiential exercises over the last six semesters. I want to especially thank Dean Barbara Kaye Miller for her academy award-like performances as the "other woman," the "exotic dancer," and the "scorned wife."
26 Sometimes the only information given to the student is a pink telephone slip with "Client Jane Doe wants to talk to you about a Family Law problem." This type of assignment allows me to assess the student's ability to conduct an interview and whether the student's interview is completed with sufficient information to make a determination of whether to represent the client.
exercises allow the substantive and practical knowledge to be combined for the enhancement of the student's critical thinking.  

Finally, the fourth objective, perhaps the most illuminating for me, was the recognition by the students of the true interdisciplinary nature of the practice of Family Law. Students begin to relate constitutional, property, tort, and contract concepts to Family Law problems. Students are exposed to the implications of criminal law as it relates to domestic violence and child abuse. Students may begin to appreciate business associations issues as they relate to the division of the family business.

These four objectives are interrelated. Combined, they achieve my ultimate objective of improving the students' legal analysis and reasoning skills. I also believe that "[s]tudents must understand that learning to write correctly and persuasively is a skill central to becoming an effective practitioner." Thus, in Family Law—perhaps slightly more than in most other PhoenixLaw upper division courses—I create more writing assignments that provide multiple opportunities to apply what is learned through reading the cases, statutes, and rules and then to determine the law's relevance to the key facts. In each instance students are asked to determine what facts are key to the legal controversy.

Showing up for class and being ready to take it all in is only a small part of the process of learning Family Law. Once in class, the students realize that there is some very "heavy lifting" required in the practice of Family Law. Learning Family Law through critical thinking and writing means understanding the difference between the process of problem solving and the process of analysis. Students are encouraged to use the "tools of the

27 The only drawback to the experiential exercises thus far is that students who have not taken Evidence are not able to fully master the evidentiary proof issues or make objections that are meaningful.

28 The dynamics of Family Law practice essentially compel a student to work with others in other disciplines to represent a client competently.


30 Key facts are those that make a difference to the legal controversy, either in court or out. The seminal challenge when comparing the facts to the elements of the law is to determine what facts are missing. Key facts, when reading a court opinion, are those facts that determined the holding or decision. The next question to ask when applying the principles in a decision to the facts of another case is if a fact were removed and everything else stayed the same, would the holding of the court be the same. If the answer is "no," the fact removed or changed is key.

31 A phrase often used by former PhoenixLaw Dean Dennis Shields meaning that there is a lot of work to be done and we have to roll up our sleeves and get to it.
Students may gain insights to the self-learning process of lawyering. Learning Family Law is not done by osmosis. Substantive exposure plus experiential opportunities are built into the syllabus and are designed to teach students the inter-disciplinary nature of Family Law.

Ultimately, students are able to experience legal analysis as a profound and multi-layered application of the law. Problem solving becomes an inventive and innovative way to begin thinking like a lawyer. In adapting Bloom's cognitive learning levels to Family Law, knowledge of the law is fundamental to being able to apply the law to a set of facts. Experiential exercises allow students to integrate their knowledge of theory, rules, and procedure, and therefore use that knowledge to the benefit of the client.

III. USE OF BLOOM'S TAXONOMY AND CRITICAL THINKING IN THE LAW SCHOOL CLASSROOM

Benjamin Bloom recognized six intellectual levels of learning. The six levels in the triangle below represent the six levels of cognitive recall, or recognition of facts and information. Ascension from the lowest level of "knowledge" requires increasingly difficult or complex cognitive processing to reach the highest level of "evaluation." At each level, Bloom created word associations—a thesaurus of sorts—to help clarify the objective of each level of learning. Teaching Family Law using Bloom's learning levels turns it into an intense legal methods course designed to improve the

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32 For example, in the summer of 2009, the students were divided into trial teams, and each team was assigned a specific substantive area from the fact pattern. The teams were to conduct a direct examination, cross-examination, re-direct examination, prepare a Notice of Appearance, and prepare a written closing argument.

33 Often my answer to a question posed in class is "What is the Rule?" The rules come from the case law, statutes, and procedural rules. Though students do not like that answer (one student made a statement in a class once, "Why don't you just answer my question?"), the student merely does not realize that the question was answered; I just did not give the answer the student expected.

34 One of the first written exercises is the diagnostic client letter. The student is given a fact pattern that involves an ethical issue. Students are asked to write a letter to the client to explain the law. The students are assessed on the letter's format, tone, use of simple English, as well as the accuracy of the interpretation of law and the conclusion that was reached. The letter is expected to include an IRAC type analysis. Therefore, it also measures the ability of the students to perform the analysis by identifying the critical controversy or issue.

35 See Bloom, supra note 6.

36 Id.

37 Id.
students' basic analytical skills. The word associations in the taxonomy are directly relevant to the study of the law, which requires the law student to analyze the words of court opinions, statutes, and rules, and to apply them to the facts presented in exam questions or by a client’s case.

The triangular illustration represents the hierarchy of cognitive learning. Knowledge represents the cornerstone and base of the hierarchy. It is at this phase that the law student “crawls before she walks.” Family Law, like all substantive courses, must be learned. Family law in most jurisdictions is governed largely by statutes. Therefore, to gain the basic knowledge of Family Law, a student has to learn the law as represented by the statutes and as interpreted by court opinions. Knowledge of statutes and case law must be coupled with knowledge of the procedural rules that serve as a guide to the law’s application. Each level in the triangle represents an advanced ascension of erudition and cognitive development.

**Bloom's Taxonomy**

The words associated with the cognitive learning levels are indicated below. The words that define each level represent the cognitive learning process:

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**Knowledge:** arrange, define, duplicate, label, list, memorize, name, order, recognize, relate, recall, repeat, reproduce, state.

**Comprehension:** classify, describe, discuss, explain, express, identify, indicate, locate, recognize, report, restate, review, select, translate.

**Application:** apply, choose, demonstrate, dramatize, employ, illustrate, interpret, operate, practice, schedule, sketch, solve, use, write.

**Analysis:** analyze, appraise, calculate, categorize, compare, contrast, criticize, differentiate, discriminate, distinguish, examine, experiment, question, test.

**Synthesis:** arrange, assemble, collect, compose, construct, create, design, develop, formulate, manage, organize, plan, prepare, propose, set-up, write.

**Evaluation:** appraise, argue, assess, attach, choose compare, defend, estimate, judge, predict, rate, core, select, support, value, evaluate.  

Bloom's Taxonomy and the study of law requires intricate, critical, and astute thinking. Both are characterized by the spirit of inquiry and a dialogue that allows the learner to weigh, balance, compare, and contrast, which develops the path to get to the right result: a deductive and deliberative process. When using Bloom's Taxonomy as a teaching or evaluative guide, my objective is to move the student beyond mere problem solving or getting quick results: the inductive and intuitive process. Intuitively, students want to "answer" the question or reach a conclusion based upon the "call of the question." But often the question asked at the end of the facts is not necessarily the actual legal controversy. I teach the students to view the call of the question as a directional anchor. By

40 \(\text{Id.}\)

41 I am very mindful of the expectations of bar examiners in wanting students to spot issues, and therefore the Family Law fact patterns are conceptually challenging and designed to simulate bar exam-like inquiries. Students must learn for themselves that the bar exam does not necessarily test knowledge that directly translates into a practice skill but tests the ability to analyze facts to determine the issue(s) in controversy.

42 Examples of directional anchors are: What argument will husband make to support the reduction in the child support amount allocated to him? How will the court rule on the
solving the problem or reaching a conclusion, the student will miss the ambiguities in the application and meaning of the law revealed through actual legal analysis. Bloom’s approach to critical thinking enhances the students’ cognitive development and their ability to identify the facts or law in controversy, rather than simply answering the obvious question. Cognitive development, as used in this article, means constructive learning rather than reception and repetition. It is the process of encoding material so that, conceptually, the students are able to translate the knowledge into an action, such as interviewing a client, drafting a complaint, or developing an argument based on a legal theory.

The fundamental characteristic of a person educated in the law is his or her ability to engage in careful and reflective thought—moving through Bloom’s Taxonomy to the highest level of sophisticated critical thinking, analysis, and writing. Not surprisingly, Bloom’s Taxonomy is increasingly used in law school curricula and assessment tools. Professor Paul Ferber, for example, has used Bloom’s Taxonomy in his Contracts class. Below are Professor Ferber’s explanations of what each level requires of the student, and I have given an in-class example of a Family Law question that exemplifies each explanation.

Knowledge requires the student to “recall or recognize an idea.” According to Professor Ferber, “[k]nowledge is remembering what was
covered” and comparing it “to the way it was originally encountered in the educational process. . . . This step includes a range of complexity, from remembering simple facts to remembering an intricate theory. The progression is from the specific and relatively concrete to the more complex and abstract.”

An example of a Family Law question requiring a student to demonstrate knowledge is: **What are the elements of a valid marriage in Arizona?** Critical to the student’s understanding is that this is an excellent research question but is not the question that underlies the dispute. The dispute is identified by understanding the facts and the law in controversy. However, this question calls for the student to be able to determine the source from which the answer should come. The student asks herself, “Is this a procedural question that requires consulting the Arizona Family Law Rules of Procedure, or is it a substantive question that requires review of the applicable statutes and/or case law?”

**Comprehension** means “that the student can grasp the meaning and intent of the material remembered.” The three types of comprehension behavior are translation, interpretation, and extrapolation. According to Ferber, translation requires being able to put what one knows into other languages. Interpretation is being able to reconfigure what one knows in a way that makes it more accessible by focusing on the relative importance of ideas, their relationships, and their relevance to generalizations in the original communication. Extrapolation means being able to make inferences with respect to implications, consequences, and effects that flow from knowledge.

An example of a Family Law question requiring a student to demonstrate comprehension is: **Describe the putative spouse doctrine and how its application would support recognition of a void marriage.** Comprehension requires that the student be able to read the materials (cases, statutes, and rules) that pertain to the putative spouse doctrine and grasp the fundamental meaning of the concept to be able to analyze a set of facts. Comprehension of the law allows the student to think in the abstract and apply the law to the facts. Comprehension also allows the student to read in between the lines of court opinions to draw out the nuances of how to apply the rule of law from the case to the facts presented. Students are forced to

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50 *Id.*
53 *Id.*
54 See generally *Id.*
learn and think about the course material so that in the process of synthesis, their application of the law to the facts is sound and competent.

Application means “that the student can select and correctly use the appropriate knowledge to solve a new problem.” Application moves students from their educational conditioning to solve the problem and trains students to look more deeply into the facts to formulate questions that relate to the legal controversy.

An example of a Family Law question requiring a student to demonstrate application is: *In view of the facts provided by Mr. Karimov, will the Motion to Dismiss be granted by the Court?* The key to whether the court will grant the motion to dismiss may be whether the court has the jurisdiction to grant a dismissal. Thus, the issue in controversy would deal with the power of the court, which may in turn be determined by whether the case is pending in federal or state court. Instead of answering the call of the question in an automatic fashion, the students are required to have a response based firmly on their awareness of how the facts control the way the answer is ultimately framed.

Analysis requires the student to do the following:

break down material into its constituent parts and detect relationships among the parts and the way they are organized. Skills in analysis include five specific abilities: (1) to distinguish fact from hypothesis; (2) to identify conclusions and supporting statements; (3) to distinguish the relevant from the extraneous; (4) to determine how one idea relates to another; and (5) to detect unstated assumptions.

An example of a Family Law question that requires analysis would be: *Determine whether the third parties to whom “mother” has entrusted the child has standing to assert in loco parentis status, and if that status can be established, will it supersede “father’s” right to custody while mother is in prison?* This question requires the student to differentiate between the

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55 *Id.*

56 This particular problem involved a motion made in a federal court on issues pending in a state court.

57 *Ferber, supra* note 48, at 5.

58 Many of the examination or even non-examination analysis exercises are based on actual facts. The basis of this question is a case in which mother was imprisoned for a criminal offense. Mother and father were not married, but paternity had been established. Because of domestic violence, mother separated from father, taking the child they had in
fundamental rights of a father versus the rights of third parties who have established a significant relationship with the child. It also requires that the student examine the statutory scheme for the elements of an in loco parentis relationship. The facts assume, as does the law, that father is fit and capable of parenting the child and that it is in the best interest of the child to be with father rather than a third party. The law presumes that father has a fundamental right to his child when mother is incapacitated. The student must then determine whose interest is really at stake.

**Synthesis** "combine[s] separate elements and parts from multiple sources to create a pattern or structure not clearly there before."\(^{59}\) Synthesis requires resourcefulness on the part of the student. It combines writing and reasoning. Initially, students often find it difficult to hone these skills. However, evaluation offers students opportunities to engage in a more sophisticated level of complex analysis.\(^{60}\)

An example of a Family Law question requiring a student to demonstrate ability to synthesize would be: *To what extent do the cases of Woosnam and Barnett establish rules of division for separate property to which the marital community has contributed funds and do they produce an equitable or inequitable result for the spouse who does not have an ownership interest?* This Family Law question illustrates how the students can analyze two jurisdictional approaches to property division—one from a separate property state and the other from a community property state. This question presents an opportunity for the student to use precedent to construct a justification of why the reasoning of each decision is parallel to the other, even though coming from jurisdictions that have different methods of property division. Synthesis binds opinions together into a whole that stands for a rule or an expression of policy.\(^{61}\)

**Evaluation** calls for the student to use "specified criteria and standards to make judgments about the value of ideas, solutions, methods, or other

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common and essentially hiding the child from father. Father filed an action to seek custody, parental access, and child support. While the family court matter was pending, mother was sent to prison. Prior to being incarcerated, mother gave the children to some church friends who immediately took the child out of state and placed her with their son. Father did not know the whereabouts of the child; mother invoked the Fifth Amendment. The court ordered custody transferred to father from the "friends of mother" who had the child. The friends sought legal advice on whether to intervene in the lawsuit because of their "in loco parentis" status.

\(^{59}\) Ferber, *supra* note 48, at 5.


\(^{61}\) Ferber, *supra* note 48, at 5.
materials presented. It is critical that the student be given clear standards to use in making the evaluation.\textsuperscript{62}

An example of a Family Law question requiring a student to demonstrate the ability to evaluate would be: \textit{To what extent are the holdings in Loving v. Virginia and Baehr v. Lewin consistent with the fundamental right of privacy as established in Griswold v. Connecticut?} Each case has significant constitutional implications for defining the rights of citizens in the Family Law context. These cases further solidify the interdisciplinary nature of Family Law and represent repeated exposure for the student to see constitutional principles that have applications outside of the civil rights or Bill of Rights contexts.

Bloom's Taxonomy illustrates the versatility of language. Different terminology is used within each level of cognition to help the student understand the context of her work. For example, critical to the term \textquote{knowledge} are the associated terms \textquote{arrange, define, duplicate, label, list, memorize, name, order recognize, relate, recall, repeat, reproduce, and state.}\textsuperscript{63} When these terms are used in an exam question, the student can rest assured that the question is designed to test her knowledge of the doctrine. Reading comprehension, case briefing, statutory interpretation, and the IRAC method of analysis, both in law school and in the practice of law, are fundamental skills that every graduate of law school should possess.

IV. CRITICAL THINKING AND LEGAL ANALYSIS

Critical thinking involves the ability to recognize assumptions, evaluate arguments, and appraise inferences; it is a continuous process. Critical thinking in the study of law requires logical thinking and reasoning skills. It is a determination of how laws are applied to a set of facts\textsuperscript{64} to create a new interpretation, identify gaps, identify inconsistencies, develop associative thinking, or general brainstorming. Imagine a circle of ideas that are constantly flowing with questions about the facts in controversy, rules of

\textsuperscript{62} Id.
\textsuperscript{63} Bloom's Taxonomy, supra note 39.
\textsuperscript{64} "Key facts" are those that cause the dispute or controversy or are critical to determining the outcome of a case or controversy. For example, in determining the validity of a marriage under Arizona law, key facts would be the issuance of a license, the performance of a ceremony, the performance of the ceremony by an authorized person, and the filing of the license in the county where the marriage ceremony was performed. If any of these facts is missing or are questionable, therein lies the controversy.
law, and how to apply rules to the facts. This is my vision of critical thinking and legal analysis as represented by the matrix below.

For example, suppose the facts are as follows:

Frank and Lisa Flores are expecting their first child. They have learned that Arizona, as well as many states across the country, have enacted statutes that require mandatory screening of all newborn children for certain diseases. Arizona’s statute is found in title 36, section 694 of the Arizona Revised Statutes. The tests are performed without the parent’s consent, and the DNA of the child is stored indefinitely in a state and federal laboratory. The DNA is also sold to scientific research institutions. Mr. and Mrs. Flores are concerned about the privacy interest of their child and the constitutional violations that may be inherent in having their child’s DNA in the government’s possession, as well as in the possession of private research institutions. They want to know the likely outcome of a challenge to the Arizona statute. What do you advise?\textsuperscript{65}

At first blush, and when reading the Arizona statute, a student may assume that there is no privacy violation because of the rational relationship between the statute and the state’s police power to control diseases, oversee the safety of the newborn child and limit the exorbitant expense if a disease goes undetected.\textsuperscript{66} However, the astute Family Law student will first determine the goal of the parents in challenging the statute. Questions should arise such as “Is it the mandatory nature of the statute that is offensive to the privacy interest of the child?” and “Should the parents be given the choice of whether to consent to the test?”\textsuperscript{67} These questions

\textsuperscript{65} The beauty of Family Law is that almost every fact pattern created is based on the real problems of real people. There is no shortage of facts to choose from. This is one of the reasons that I freely release my midterms and finals. The fact patterns are endless. However, as I tell my students as they prepare for finals, “the facts may change, but the law is constant (or remains the same).”

\textsuperscript{66} This is called problem solving, rather than legal analysis. Without any real analysis, the call of the question is answered because of a conclusion from the gut, rather than based on an analysis of the law.

\textsuperscript{67} Additional questions include: “Should the parents be able to control the use or distribution of their child’s DNA?”; “If stored indefinitely, could the DNA be given to juvenile justice or criminal justice institutions for use to curtail delinquency or criminal activity in violation of the Fourth Amendment?”; “Does the government have the right to release DNA of newborn children to entities that have no relationship to the original purpose
illustrate the flow of ideas or questions that a client’s legal problem should engender in the astute law student, law graduate, or attorney. The flow of questions for the Flores problem may be illustrated as follows:

I have developed a matrix that illustrates the cognitive process of analysis: all of the questions that should arise when evaluating the facts versus problem solving, giving an immediate answer to the call of the question. The analysis includes consideration of any public policy reasons for enacting a statute, whereas problem solving is mechanical, and focuses on the text of a statute or rule. As Professor Richard Neumann states that, “[w]ords are merely symbols for concepts, and that interpretation is the art of seeing through the words to locate the ideas represented.” In teaching analysis in Family Law, I expose the students to the art of interpretation through deductive and deliberative analysis. Learning “consists of a designed, managed, and guided experience.”

Students in Family Law are also required to assume a professional role in order to learn the complex skills of advocacy by performing tasks associated with representing a client based upon a set of hypothetical facts. Professor Stuckey says that this type of learning experience involves a continuous, circular four-stage sequence of experience, reflection, theory,
and application. Experiential learning allows students the opportunity to be actively involved in their own education.

A. Willrich’s Matrix of Critical Thinking and Legal Analysis

The Matrix of Critical Thinking and Legal Analysis (“the Matrix”) illustrates the various cognitive realms that are used interchangeably in legal analysis. Deductive and deliberative thinking are generally rule-based. This represents the legal concepts of stare decisis and precedent. The application of the rule provides a basis for determining, through analysis and application of the rules to the facts, the outcome of the legal dispute. In this form of analysis, the major premise is based upon the applicable rules. The minor premise is found in the facts or evidence. The analysis to reach a conclusion consists of logically determining the sound assumptions to apply the rules to the key facts. The conclusion, then, consists of the answer to the question the issue raises after applying the rules to the facts, which leads to the answer to the call of the question. Deductive and deliberative analysis is simply the IRAC (issue, rules, analysis, and conclusion) method. It is also the formulation of the questions as illustrated above in the Flores case.

73 Id. at 166.
74 Cf. id. at 167. In my Family Law class, I provide these experiential learning opportunities for students.
75 See supra text accompanying note 65 (describing Flores hypothetical).
Inductive and intuitive thinking are reliant on informational cues that can be misleading or lead to uncertainty in the outcome. A novel question, or one of first impression, falls within the inductive and intuitive model. Thus, public policy determinations, or injecting emotions based on morality, good and evil, and right or wrong often contribute to the conclusion reached. Every aspect of the practice of law involves either deductive and deliberative or inductive and intuitive thinking. Novice legal writers often overuse the inductive and intuitive model and underuse the deductive and deliberative model. The first place the students begin to see the manifestation of the deductive/deliberative process is in writing exam answers for law school.

There is a distinct resistance by students to use this process of analysis. When grading, the questions that run through my mind about the analysis process are: “Is IRAC too difficult of a process?”; “Is it because the IRAC method of analysis is not taught consistently or uniformly throughout PhoenixLaw?”; “Is there some non-conformity or oppositional defiance being exhibited by students?” The answer to these questions is more than likely unique to each class. However, in the Family Law classes that I have taught, I know that each class represents a microcosm of the world, and thus I can conclude that to some students, learning IRAC can be difficult, especially when this way of thinking is not a part of the pre-law school educational process. To other students, IRAC is a natural way of thinking.

The autonomy of the legal academy allows law school teachers to develop various methodologies for teaching the substantive, procedure, and skills portion of the law. Some professors use IRAC, IREAC, or CRAC. I tend to shy away from teaching students to reach conclusions first in their analysis. I firmly believe that a true conclusion, one that answers the call of

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76 In one Family Law class several semesters ago, an exam question concerned a woman whose parents had to choose her sex at birth because she was born with both types of genitalia. Rather than analyzing the constitutional and fundamental right of the parents to make that choice on behalf of a minor child, the majority of the class determined that the marriage was void because it was between members of the same sex. This conclusion without legal analysis led to erroneous analysis on the remaining issues.

77 Each semester, I provide illustrations of how to answer the questions posed on the Family Law examination. In most instances, the questions call for a straight IRAC analysis on either a single or a multi-issue problem. No matter how specific the instructions are, I still have students who choose the inductive and intuitive method of answering the question, as opposed to the deductive and deliberative analysis that it requires.

78 “IREAC” is an acronym for issue, rules, evaluation, application, and conclusion. “CRAC” stands for conclusion, rules, application, and conclusion.
the question, cannot be reached without going through the formal process of analysis.

Finally, students will resist the urge to merely conform to everyone else. Law school insists that ethics and professionalism are core values to competent representation and conformity to professionalism and its behavioral norms are inherently expected in every class. This creates an attitude in some students to resist the training process.  

Despite the behavior of resistance, it is critical that students appreciate that the relationship between analyses illustrated in the Matrix, Bloom's Taxonomy, and IRAC are the major ingredients to the recipe for competently practicing law.

B. Interrelatedness of Bloom’s Taxonomy and the Matrix to IRAC

IRAC is a tool that allows students to establish a logical and consistent form of thinking and writing out legal analysis. Using IRAC to analyze and evaluate fact patterns also improves a student’s skill of synthesis. In other words, legal analysis should include points from a number of cases rather than from just one case. It is more than cherry-picking the holdings of a case and throwing them in analysis for good measure. Applying IRAC is writing in multiple paragraph form, where each paragraph represents one theme, theory, or idea. Analysis is using the applicable rule and the cases interpreting that rule to determine the outcome.

One common mistake that novice legal writers make when citing to cases is to cite the holding without giving the reader any idea of the facts, issue, or reasoning of the court.  

I require my students to identify and explain how and why the case the student is citing relates to the facts being analyzed. I ask the students to identify what distinguishes the case presented from the facts of the case assigned. I encourage them to look closely at the reasoning of the court in the cited case to determine how to apply that interpretation to the facts being researched. The conclusion is a definitive statement of what the student believes the outcome will be. I advise them “do not be Wimpy,” because there are no hamburgers forthcoming on.

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79 Examples of resistance include students who refuse to conform to the formatting of assignments; students who refuse to format their exam in a manner directed by the professor; and students who want to answer a question by throwing in everything including the kitchen sink in an answer, rather than thinking through the analysis to get to the legal controversy.

80 I loathe parenthetical writing. It seems that parenthetical references to the holding of cases is more commonly used in reported court opinions, which in my opinion signals to lawyers that it is appropriate to do so in their briefs.
Tuesday when the wrong conclusion is reached. Using IRAC to analyze a legal problem allows the students to present the claims that can be made for and against application of the rules and to then predict how a court will resolve the issues.

The IRAC method has clear analogies to Bloom’s triangle. The “i”ssue in the IRAC method represents “knowledge and understanding” in Bloom’s triangle. Knowledge and understanding of the facts or law in dispute will help the students recognize, define, explain, or identify the factual or legal controversy. The “r”ules of the IRAC method represent “application” in Bloom’s triangle because rules determine how the law operates, is applied, used, or employed. “A”nalysis in IRAC represents “analysis and synthesis” in Bloom’s triangle. Analysis requires appraising, examining, questioning, testing, formulating, designing, and developing how the rule of law will apply to the facts. The “c”onclusion in the IRAC method represents “evaluation” in Bloom’s triangle. The conclusion predicts or estimates the outcome. When IRAC is properly used to evaluate a set of facts, the outcome is deductive and deliberative. It is focused on one issue at a time. It is reflected in a clear and concise written analysis.

To illustrate this point, I often ask students to IRAC a court opinion. Students learn that the process of analysis is the same even in the format of a court opinion. This exercise allows students to become aware of how the process of analysis is a continuous course of action, replicated by the circular nature of the Matrix. It allows students to use their intuitive and inductive reasoning skills to think outside of the box or look for novel arguments for or against the application of the law, and yet also to realize that the deliberative and deductive processes are key to applying the rules of law to the facts.

V. TRANSFORMATION OF THE FAMILY LAW STUDENT THROUGH THE EXPERIENTIAL EXERCISE

It is often difficult for a student to really glean what it means to be a Family Law practitioner without actually experiencing the process of client representation. By design, the experiential exercise covers a topic that is

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81 See Wimpy, http://www.popeye.com (click the “Characters” link, then scroll-over and click on the “Wimpy” character (the one in the suit eating the hamburger)). Wimpy or J. Wellington Wimpy was a character in the cartoon Popeye the Sailor Man created in 1929. Wimpy is a hamburger-loving moocher who would “gladly pay you on Tuesday for a hamburger today.” Id.
82 A typical experiential exercise is for students to be divided into trial teams and instructed to conduct a settlement negotiation and draft a settlement agreement. The impact
under current consideration. Students are required to read the cases associated with the topic in the course book, read the applicable statutes, and translate that into the role-play. When possible, the exercise is conducted in the courtroom-configured classroom. The idea is to make it as realistic as possible. Everyone is required to appear in courtroom attire. Very little instruction is given regarding the personality of the judge, lawyers, clients, and witnesses. Minimal directions are given with regard to the presentation process. Students are given time limits for each component of the exercise.

After an experiential exercise in which students had to either establish the grounds for, or defend against, an entry of an Order of Protection, I received positive feedback from the students. Two students' comments are as follows:

I wanted to give feedback on the experiential exercise. Overall, I thought it was a great idea and I really liked being able to do a courtroom exercise as I have not done any since [Lawyering Process]. My only suggestion for improvement would be to provide mini-training sessions before the activity to go over courtroom etiquette, what to expect, etc. I don’t know if it would be possible, but providing a brief demonstration would also be helpful. I felt unprepared because I have never done something like this and I had Evidence over a year ago. Having a better understanding of the procedure would have made it easier. But, learning by doing is the easiest way for me to learn and I still enjoyed the exercise even if I felt unsure of what was of such an exercise can be far reaching. For example, one student’s summer clerkship at a local law firm included a first assignment of negotiating a settlement agreement. The student wrote, “I knew what to do and how to do it because of your class.”

83 I really do not want the Family Law class to become a “trial advocacy” or purely skills class, so I have generally not provided any advance instruction in evidence, trial preparation or goals and objectives of direct or cross-examination. Part of my assessment of the students is to determine what, if any, other resources the students may use to find out what it is they are supposed to do. A non-empirical estimate is that about twenty-five percent “shoot from the hip,” with minimal preparation, and the other seventy-five percent have varying levels of preparation.

84 For example, in the Order of Protection hearing, no opening or closing arguments were allowed. The students were paired; one “attorney” had to conduct a direct examination and the other had to conduct a cross-examination. There was no rebuttal, direct, or re-cross. The time limits were five minutes for direct and three minutes for cross. The issues of the problem were limited so that there was just enough for the students to grasp what was expected in this type of hearing.
going on. I loved the experiential exercise. I was very grateful to have the opportunity to do the exercise because I felt like it was a chance to redeem myself, and prove to myself that trial work may in fact be something I can do. If not for this exercise I might have left law school believing that I should never be in court—that I should plan and structure my life to avoid the courtroom. I know though, that would not be the right thing to do. So, thank you again.

I enjoyed getting to do cross [examination] because I have not done cross before; there was nothing that I didn’t really like. At first, I thought it didn’t make sense that we had to be there to watch everyone else’s turn, but I actually think it was a good learning experience to watch others. The exercise could be improved by giving us some in-class time to prep with our witnesses. And I would like more hearing type exercises—I have done lots of “interviewing” in my classes, but haven’t had as much work on mock trial/hearing type exercises and would like that. What I liked was the hands on experience that we received doing this mini-trial/hearing. I am not on moot court (although I tried out and did not make it) and therefore do not get the experience of going in front of a judge to know the correct procedure to go through. It was awesome and I would absolutely love to do it again. With that said, it is really hard to say what I did not like. I guess I did not like the fact that it was only a one-time thing. I guess we should do this sort of “hands on” experience more often. Practice ready is our motto; we should do more practice ready things like this. The exercise could be improved, of course, by just adding more issues to the facts; for instance making it more detailed and therefore longer. I felt that the three minutes that I had for cross were EXTREMELY too short and therefore did not get the chance to prove my point. Other types of exercises that I would like to do would be more “in court” trials just as this. Maybe a divorce or child
support hearing. Thank you Professor, I really do enjoy your class.  

Student feedback is essential to ensure that evaluative metrics are available to determine the value added to the class by the experiential exercise; however, it is equally valuable to determine whether the students are living and breathing the analysis process. In the first student comment above, I responded by telling the student that it was purposeful not to give a demonstration or to teach evidentiary principles. The primary question I asked the class at the conclusion of the hearings was “what did you do to prepare?” While I was met with many “deer in the headlights” type stares, several students volunteered their preparation process. What was dramatically absent from their preparation was reading the law; looking at manuals or texts on trial preparation or processes; going to watch an Order of Protection hearing; or asking the professor any questions. Only a few students emailed me or called me to ask any substantive or procedural questions, and the only question asked in class was whether I expected the students to dress in court attire. Many of the students found the inconsistencies in the facts and asked questions about them. Most of the students struggled with the form of direct and cross-examination questions. Students were unsure of the proper form of objections and when to object. At the conclusion of the exercise, I provided a few tips and several textual references on preparation and courtroom practice. Many have expressed a desire to do more exercises for the remainder of the semester.

Students did demonstrate a deeper level of analysis in the way that they approached the presentation of the evidence or the defense. Though none had been coached to develop a “theory of the case,” it was clear from the presentations that many had done so. I would surmise that the students did

85 I have captured the comments of the students verbatim, with some minor editing. These were the first two responses received from a recent experiential exercise. The assessment from the students is valuable.
86 One student remarked that she watched a hearing on YouTube. Another stated that he had gone to the Supreme Court website. And many stated that they just talked amongst themselves.
87 One student did email to find out if he needed to go buy a suit.
88 Not all students who are in the Family Law class have taken Evidence, though Evidence is a prerequisite for the class. The fact that some students have not taken Evidence places them at a distinct disadvantage. Students often request waiver of the prerequisite because of scheduling issues.
89 Unfortunately, the need to cover the remainder of the substantive materials precludes another experiential courtroom exercise.
not recognize they were going through the process of knowledge, comprehension, application, analysis, synthesis, and evaluation or that in the presentation of the case they had to identify the seminal legal issues by a process of analysis. They just intuitively did it. In the experiential exercises, students are simultaneously using the tools of IRAC, Bloom’s Taxonomy and the Matrix deduction and deliberative analysis. It was enjoyable to see the seamless transference of analysis in their thinking about the case to thinking about their performance during the hearing. Regardless of the level of experience among the students, they performed well.

VI. CONCLUSION

When I attended law school, there were no PC’s or laptops; we worked with the IBM Selectric typewriters and carbon paper. We did not have “smart” boards or even “white” boards. We did not have cell phones. We did not have Westlaw, TWEN, or LexisNexis. You may think, “OMG, she must have gone to school at the turn of the 20th Century,” but I graduated from law school in 1982, and in twenty-eight years, the digital age of rapid communication and movement of massive amounts of information has increased our ability to respond more rapidly to the needs of our clients.

Often for the law school professor, the technological skills and needs of the modern-day student represent a steep learning curve. Most students have been using computers since grade school. Most students participate in many of the social networking outlets, and many students rely on second-hand sources to obtain primary research. Even so, there are elements of my law school training and education that I try to preserve in order to prepare my students for the professional, intellectual, and moral challenges that require competence in their analysis and evaluation of a client’s facts to determine the options for resolution.

Recently, I was in PhoenixLaw’s library looking for case law for a project. A student came into the room to say hello and asked, “What are you doing, Professor?” After explaining the project, and why I was first using the annotated statutes, the student said, “Wow Professor, you have been holding out on me. Why didn’t I know about this?” My response was to encourage the student to stop by my office to discuss ways to improve the student’s research methods.

But in my mind, I was asking myself, “Why did this upper-level student not know about the annotated code?” Is it because we are so invested in teaching electronic retrieval methods that we overlook the value in teaching the best way to interpret a statutory provision is to go to the annotated code itself? The students should be made aware that the value of knowing
manual research may seem less efficient but in many instances, it is more accurate.

In Family Law, students are encouraged to look at the annotated code and its pocket parts. Often I will ask a student, “What is your source for that conclusion, counselor,” suspecting that the student has neither looked at the statute nor the case law annotations. I want to drive home the point of having a source for the conclusion, assumption, and presumption. I want to drive home the point that the most important part of legal analysis is finding the rules of law applicable to the facts.

In this article, I have tried to provide a glimpse of how I teach Family Law using a methodology that cognitively requires critical thinking about the facts and analysis of the application of the law to determine the legal controversy. I have presented a methodology that appears to be successful in helping some students have a transformative experience in understanding the nature of Family Law, understanding its interdisciplinary correlation to other substantive areas, and using the process of analysis in the presentation of facts in an experiential learning exercise.

Nevertheless, I consider the formulation of the Matrix and the use of Bloom’s Taxonomy in teaching Family Law a work in progress. Perfecting this methodology means finding ways to ensure that students are not shortcutting the analytical process and making assumptions about the goals of the client, whether presented as a hypothetical set of facts or the “real deal.” I am grateful to all my students who have contributed to my thoughts about the process of analysis and teaching it in a way that makes sense. Moreover, as I continue with this work in progress, I will also continue to call upon my students and use my observations and theirs to improve the presentation in my classes. After all, though the light may seem better under the street lamp than in the alley, it is in the alley where a lawyer must go to discover the legal controversy presented by a set of facts. The “heavy lifting” of factual and legal scrutiny is walking along a path of resilience where critical thinking about the facts and the law is the only weight available.