

Article Title: Closing the Law School Gap: A Collaborative Effort to Address Educational Inequities Through Free, Asynchronous Tools

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Article Abstract

The legal profession is one of the least diverse professions in the country. According to the latest Profile of the Legal Profession by the American Bar Association, 86% of all lawyers identify as non-Hispanic white individuals. Diversifying the legal profession requires diversifying the law student population, but simply admitting more law students from underrepresented communities is inadequate. To work towards true equity, all students must be given the tools to succeed in law school. A recently developed resource - the CALI Law School Success Lessons, a series of interactive online lessons on how to be a successful law student – was designed with precisely this goal in mind – to enhance equity in law schools. This article explores why and how these lessons were developed, the historical roots and future reach of academic success work in U.S. law schools, and how access to individualized online academic skills instruction enhances equity for first-generation law students. The article also discusses the ways that the lessons use technology to recreate individual meetings between an academic support professor and students, teach students that the first step to improving their performance in law school is through enhancing their metacognitive understanding, and help students transfer both skills and knowledge throughout law school and their legal careers.

Success in law school requires not only a knowledge of the law, but a keen understanding of how to learn and apply the law. An increasing number of law students come to law school without a foundation in this method of learning, and without a support network to rely on for assistance. Thus, the onus is on law schools to provide students with this support. The CALI Law School Success Lessons are one tool that all law schools can use to help level the playing field for first-generation law students by providing free, individualized instruction in law school skills. All law schools and legal educators should take the time to review this lesson series and encourage students to complete them at various points throughout their time in law school - from before orientation to when they are studying for the bar exam.

Closing the Law School Gap: A Collaborative Effort to Address Educational Inequities Through Free, Asynchronous Tools

Introduction

The legal profession is one of the least diverse professions in the country. According to the latest Profile of the Legal Profession by the American Bar Association, 85% of all lawyers identify as non-Hispanic white individuals.¹ Diversifying the legal profession requires diversifying the law student population, but simply admitting more law students from underrepresented communities is inadequate. To work towards true equity, all students must be given the tools to succeed in law school. A recently developed resource -- the CALI Law School Success Lessons, a series of interactive online lessons on how to be a successful law student – was designed with precisely this goal in mind – to enhance equity in law schools². This article will explain why and how these lessons were developed, the historical roots and future reach of academic success work in law schools in the United States, how access to individualized online academic skills instruction enhances equity for first-generation law students, as well as ways the lessons use technology to recreate individual meetings between an academic support professor and students, teach students that the first step to improving their performance in law school is through enhancing their metacognitive understanding, and help students transfer both skills and knowledge throughout law school and their legal careers.

I. Developing Interactive Online Law School Success Lessons

The Center for Computer-Assisted Legal Instruction is a 501(c)(3) consortium of almost all law schools in the United States. "CALI" has been creating computer-based, self-running tutorials for law students since the mid-1970's, and today has a library of more than 1000 lessons that teach the

¹ *Profile of the Legal Profession*, AMERICAN BAR ASSOCIATION (2021), https://www.americanbar.org/news/reporter_resources/profile-of-profession/.

² The authors of this article are the CALI Fellows that designed the CALI Law School Success Lessons, as well as John Mayer, the Executive Director of CALI. References to how the fellowship works, how lessons were designed, or how CALI works are based on the firsthand knowledge and experience of the authors. <https://www.cali.org/blog/2019/07/01/cali-announces-formation-law-school-and-bar-exam-study-skills-fellowship> (last visited Dec 7th, 2021)

law.³ In 2019, CALI received a grant from AccessLex⁴ to convene a “dream team” of Academic Success/Support Professionals to write a series of CALI lessons covering study techniques, learning practices, and other skills needed to succeed in law school.⁵ The CALI model organizes participating faculty into a “Fellowship” in which each professor writes five lessons.⁶ CALI brings the Fellows together to train them in the CALI lesson model and to orient them in the use of the authoring system: CALI Author⁷.

At the Fellows’ early meetings, a taxonomy of topics is brainstormed and Fellows choose the titles of their first several lessons. This allows for sharing ideas and prevents duplicative effort. As the Fellows complete a lesson, it is reviewed by CALI staff, who have decades of experience in how the CALI software medium works.⁸ After the lesson is reviewed by CALI staff, the lesson is then shared with the other Fellows for non-anonymous review and for collective and collaborative idea-sharing. When a lesson is deemed complete, it is sent to the CALI Editorial Board -- a body of law faculty and law librarians -- for anonymous review. Finally, after the Fellows have implemented any suggestions or edits, the lesson is published and marketed through multiple channels for faculty to recommend and assign and for students to utilize. Fellows and reviewers are paid for their test efforts.

CALI lessons are short, rigorous, and focused, each diving into only one topic. Students read explanatory text and are presented with hypotheticals, then presented with multiple questions about their reading.⁹ Often, the path through a CALI lesson is not linear. Rather, the lessons “branch” into related areas of the law depending on the student’s response to questions.¹⁰ This allows the author to be responsive if the student gets easy questions wrong and leads them down a more remedial path. It could also allow the author to

³ *About CALI*, CALI, <https://www.cali.org/content/about-cali>. Last visited Dec 7th, 2021

⁴ ACCESSLEX INSTITUTE, <https://www.accesslex.org/>.

⁵ Scott Lee, *CALI announces the formation of the Law School and Bar Exam Study Skills Fellowship*, CALI SPOTLIGHT (July 1, 2019), <https://spotlight.classcaster.net/2019/07/01/cali-announces-the-formation-of-the-law-school-and-bar-exam-study-skills-fellowship/>.

⁶ *CALI Fellowships*, CALI, <https://www.cali.org/content/cali-fellowships>.

⁷ General information about the CALI Fellows program can be found here <https://www.cali.org/content/cali-fellowships> (last visited Dec 7, 2021) or here <https://spotlight.classcaster.net/2020/01/08/cali-law-school-success-fellows-releases-new-cali-lessons/> (Last visited Dec 7th, 2021)

⁸ Debra L. Quentel, *The origin of CALI’s topic grids*, CALI (June 1, 1999), <https://www.cali.org/about/gridorigin>.

⁹ Calior, *The Making of a CALI Lessonette*, YOUTUBE, (May 31, 2011), <https://www.youtube.com/watch?v=gXIhcgGNK1A>.

¹⁰ *13. Creating branching questions in CALI Author*, CALI, <https://www.cali.org/content/13-creating-branching-questions-cali-author>.

query the student if they answer a difficult question correctly to make sure that they did so for the right *reasons* and were not just guessing.

There were seven members of The Law School Success Fellowship, and together they published thirty-five lessons by the end of 2020. This was done by spending 3 intensive weekends together throughout the year; weekends where the fellows could gather together in person in a conference room and brainstorm ideas together, perfect lesson language and ideas, and generally set up a plan for the big picture. In between these intensive weekends, the fellows and CALI staff would communicate by email and conference calls. By February 2021, these lessons were run more than 34,000 times by over 8,700 law students -- an unprecedented usage for new CALI lessons.¹¹ The Law School Success Lessons can be helpful to students in a variety of situations including pre-law/pre-admission, orientation, as faculty identify struggling students, or after the first semester exams when students despair that they are not “getting it¹².”

II. Historical Roots and Future Reach of Academic Success Work

The CALI Law School Success Lessons were created by faculty with deep roots in academic and bar support (ASP).¹³ This discipline is historically linked with academic equity for marginalized law student populations, specifically Black law students.¹⁴ Academic and bar support departments in U.S. law schools were born out of the civil rights movements of the 1960s, when various policies, including affirmative action, successfully resulted in

¹¹ Statistical analysis of CALI website usage counts run by John Mayer in June, 2021.

¹² CALI receives data on when students access lessons, as well as how they perform. In addition, students can submit comments and questions about the lesson to CALI. These comments and questions are reviewed by John Mayer and other CALI staff. The lessons were published as soon as they were completed in the middle of the school year. 2021-22 will be the first full year and plans are in place to gather data on usage and survey students.

¹³ Abbreviated as “ASP” and variously referred to as “Academic Achievement,” “Success,” “Services” or “Support,” the departmental nomenclature varies from school to school and reflects different institutional perspectives, priorities, and an ever-evolving understanding of ASP work.

¹⁴ See Louis Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 275 n.12 (2011) (citing to/providing a wide-reaching, well-researched summary of scholarly works which support the genesis of law school academic support programs as emerging from affirmative action initiatives of the 1960s, the efforts of Black Law Students Associations, and the diversification of legal education.)

admission of increased numbers of Black law students into law school.¹⁵ However, once in classes, these students tended to encounter an “achievement gap,” which resulted in lower retention and bar passage rates.¹⁶ This gap -- caused by systemic racism and the educational marginalization that flows from such societal bias -- led to wider recognition by law professors and administrators of the need for focused, individualized instruction on core academic skills.¹⁷

Today, many law schools have at least one instructor wearing an “ASP hat,” running summer pre-law orientation programs, holding 1L academic support classes on topics like case-reading, outlining, multiple choice strategy and legal analysis, and/or preparing students for the bar exam.¹⁸ Due to the amount and varied nature of the work, many law schools have more than one such specialist. Individual and small-group instruction are hallmarks of many of these programs, as are non-credit-bearing classes and workshops. Being able to access individual instruction with someone who is not their doctrinal professor lowers the stigma of “not getting it” for struggling students. Academic support programming in all respects, including the Academic Success CALI lessons, can allow students to *self-pace* their learning by opening up chances for “deep dives” into specific skills sets.

Another core feature of ASP—and the lessons created through this Fellowship—is metacognition. Metacognition is a touchstone of ASP

¹⁵ Russell A. McLain, *Bottled At The Source: Recapturing the Essence of Academic Support as a Primary Tool of Education Equity for Minority Law Students*, 18 U. MD. L.J. RACE RELIG. GENDER & CLASS 139, 140-142 (2018), available at <http://digitalcommons.law.umaryland.edu/rreg/vol18/iss1/2>, citing Henry W.,¹ McGee, Jr., *Minority Students in Law School: Black Lawyers and the Struggle for Racial Justice in the American Social Order*, 20 BUFF L. REV. 423 (1971), where McLain offers a wonderfully comprehensive description of this period of history in legal education equity.

¹⁶ Id. at 142, citing Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 158 (1995).

¹⁷ See Id. at 142-143.

¹⁸ Indeed, the bar exam itself functions as a gatekeeper to the legal profession for students who hold non-white, non-wealthy, or other academically marginalized identities. See, e.g., Claudia Angelos, Mary Lu Bilek, Carol L. Chomsky, Andrea A. Curcio, Marsha Griggs, Joan W. Howarth, Eileen Kaufman, Deborah Jones Merritt, Patricia E. Salkin and Judith Welch Wegner, *Licensing Lawyers in a Pandemic: Proving Competence*, HARVARD LAW REVIEW Blog, (April 7, 2020), <https://blog.harvardlawreview.org/licensing-lawyers-in-a-pandemic-proving-competence/>; Oday Yousif Jr., *Commentary: The Bar Exam Is Stained With Inequality And Racism. It Needs To Be Abolished*, THE SAN DIEGO UNION-TRIBUNE, (Dec. 7, 2020), <https://www.sandiegouniontribune.com/opinion/commentary/story/2020-12-07/abolishing-the-bar-exam-bias>; Pilar Margarita Hernandez Escontrias, *The Pandemic Is Proving The Bar Exam Is Unjust And Unnecessary*, SLATE (July 23, 2020), <https://slate.com/news-and-politics/2020/07/pandemic-bar-exam-inequality.html>.

pedagogy that teaches awareness of one's own learning style(s)¹⁹-- and is another critical skill that can help to shrink the educational equity gap.²⁰ All of the CALI lessons incorporate this theory to some extent; they are also designed to teach transferability. Transferability is critical in developing cognitive processing skills that students can use across all law school courses (as opposed to just a single class.) This allows students to mindfully hone skills like multiple choice question strategy, application writing, rule synthesis, or client interviewing, and then transfer these skills across the curriculum. Increased skill in transfer and metacognition boosts overall academic performance over time.

As law schools move away from the model of solely synchronous in-person instruction, the incorporation of robust technological tools for learning is needed to support students outside of the classroom. Online asynchronous tools such as these CALI lessons -- tools that respond and change according to what a student needs the most help with -- enable legal educators to "meet students where they are."²¹ In that sense, they can serve the educational needs of a truly diverse student body in increasingly unpredictable and turbulent times, during which students of color and other marginalized student populations are at increased risk of harm.²²

¹⁹ See Michael Hunter Schwartz, Teaching Law Students To Be Self-Regulated Learners, 2003 MICH. ST. DCL L. REV. 447 at 469-475 (discussing metacognition as an emerging learning theory and subset of self-regulated learning), See also *Id.* at 469 n.76 *citing* Howard T. Everson, A Principled Design Framework for College Admissions Tests: An Affirming Research Agenda, 6 PSYCHOL. PUB. POL'Y & L. 112 (2000) (early work recognizing that "[s]imilarly, recent work in the general area of self-regulated learning, metacognition, and problem solving provides strong evidence to suggest that for students to be successful in college they need to become strategic learners. According to this view, strategic learners are able to take responsibility for their own learning by setting realistic learning goals and using knowledge about themselves as learners as part of their approach to learning."

²⁰

See E. S. Fruehwald, How to Help Students from Disadvantaged Backgrounds Succeed in Law School, 1 TEX.

A&M L. REV. 83, 105-118 (2013) (discussing this connection in Chapter 5 entitled "Helping Students From Disadvantaged Groups Develop Metacognitive Learning Skills", and observing the "[m]etacognitive skills are important skills for law students to have, and a student who has well-developed metacognitive skills will do better in law school than a student who lacks these skills.")

²¹ With recent pandemic-necessitated teaching and learning, students may be facing increased family and childcare demands, unpredictable scheduling, housing insecurity, new or worsening physical or mental health issues, or any other number of intrusions on quiet, focused, high-bandwidth remote study time.

²² See Madaher Tamene, Elleni M. Hailu, Rachel L. Berkowitz, Xing Gao, *Why Black, Indigenous, and Other People Of Color Experience Greater Harm During the Pandemic*, Smithsonian Magazine (September 15, 2020) available at

III. Enhancing Equity for First-generation Students

When discussing diversity, a group that is frequently overlooked is “first-generation students.”²³ According to The Center for First-generation Student Success, a first-generation student is one whose parents or legal guardians have not completed bachelor’s degrees -- they are the first in their families to attend a four-year school and graduate.²⁴ In the past decade, high school graduates whose parents did not attend a four-year university are beginning to enter undergraduate institutions at a high rate.²⁵ This means that many first-generation students are also entering graduate school.²⁶

Not surprisingly, when speaking about diversity and inclusion in law school, first-generation students overlap with underrepresented students of color, as well as those from lower socioeconomic classes. Many first-generation students, therefore, come to law school with considerable hurdles: lower access to finances, lower social capital (i.e., fewer networking connections), lack of exposure to professional norms, and finally, hurdles related to academic preparation, especially when so much of the language used in law school might be brand new to them. Most first-generation students themselves come to law school with concerns surrounding academic success, their career path, building a professional network, and finances and family obligations.²⁷

One of the biggest challenges of first-generation law students is entering their first year with a lack of resources, and often bearing an “achievement gap.” This is true even for first-generation students who were high achievers in the past - they simply have not been exposed to the language of the law or the norms of the profession. This puts them at a disadvantage

<https://www.smithsonianmag.com/smithsonian-institution/why-blacks-indigenous-and-other-people-color-experience-greater-harm-during-pandemic-180975773/>.

²³ Jacqueline M. O’Bryant & Katharine Traylor Schaffzin, *First-Generation Students In Law School: A Proven Success Model* 70 Ark. L. Rev. 913, 913 (2018).

²⁴ FAQ: First-Gen Definition, THE CENTER FOR FIRST-GENERATION SUCCESS, <https://firstgen.naspa.org/why-first-gen/students/are-you-a-first-generation-student>.

²⁵ Jacqueline M. O’Bryant, *supra* note 24.

²⁶ *Id* at 914

²⁷ A survey done by Melissa Hale and Melissa Berry of first-generation law students in 2019 revealed that 62% of respondents worried about academic success, 43% about their career path, 66% about financial concerns, 38% about building a professional network, and 26% worried about family obligations. *See, also*, Jacqueline M. O’Bryant & Katharine T. Schaffzin, *First-Generation Students in Law School: A Proven Success Model*, 70 ARK. L. REV. 913, 920 (2018), . Available at: <http://scholarworks.uark.edu/alr/vol70/iss4/3> (First-generation students are more likely to work part time or full time while attending classes).

compared with their peers, even before they enter orientation. In addition, many students know that they are at a disadvantage, and therefore may also enter law school with a severe case of imposter syndrome,²⁸ furthering their disadvantage. When students enter with imposter syndrome, they will persist with feelings of doubt, creating an even larger achievement gap between them and their peers, even if they are objectively performing well.

Because of this, law schools and legal educators need to help combat this achievement gap long before the first-generation students enter orientation. Many schools have designed summer classes created to give students a head start on law school²⁹. The classes usually include a focus on skills such as reading and briefing cases.³⁰ Although this is a great idea in theory, and does offer opportunities for first-generation students to become acquainted with the language of law, there are drawbacks to using this approach. Often these classes are for law school credit, and thus cost money. Because they are offered over the summer, financial aid and scholarships are not yet available³¹, meaning that students have to pay, on average, \$1,000-\$3,000 for such courses. For many first-generation students, this is money that they are unable to spend. In addition, these courses are typically offered on campus, meaning that the students have to be on campus one to two months earlier than class begins. Both of these realities create barriers to first-generation students, who typically do not have the financial resources or the ability to

²⁸ Imposter syndrome is defined as a psychological pattern in which an individual doubts their skills, talents or accomplishments and has a persistent internalized fear of being exposed as a “fraud.” Joe Langford and Pauline Rose Clance, *The Imposter Phenomenon: Recent Research Findings Regarding Dynamics, Personality, and Family Patterns and Their Implications for Treatment*, Psychotherapy, Vol 30 #3, Fall 1993, <https://paulineroseclance.com/pdf/-Langford.pdf>.

²⁹ A high number of law schools are choosing to implement summer programs which are classes, and thus cost tuition money. To name only a few: The University of the District of Columbia David A. Clarke School of Law *Jump Start* (3 credits), Loyola University Chicago School of Law *Introduction to the Case Study Method and the Basics of Legal Writing* (2 credits), Samford University Cumberland School of Law *Legal Process* (2 credits) and *Public Law Process* (3 credits) There are other pipeline programs that are not classes, so will not cost tuition, but require students to be on camps or in a certain location for the summer. The cost for these varies from program to program, if there is a cost.

³⁰ See. e.g., Summer Law Institute, CUNY SCHOOL OF LAW, <https://www.law.cuny.edu/academics/support/professional-skills-center/summer-law-institute/>, last visited June 1, 2021.

³¹ FAFSA is only available to those enrolled at least part time, so this would not apply to a pre 1L summer. 2021 Federal Student Aid Handbook, chapter 1, enrollment status. https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2020-2021/vol1/ch1-school-determined-requirements#pid_1002532

move to campus months early. This means that the students most in need are the students least likely to be able to take advantage of the summer programs.

The solution needs to be a resource that is free to students, and something that may be utilized in various locations. This is where CALI lessons can become useful, even before students arrive at law school for orientation. Because these lessons are free to admitted students -- and are virtual -- there are minimal barriers for first-generation students, or any other students.

Many of the CALI Fellows designed their lessons with this in mind -- how can we serve first-generation and other diverse students before they even get to campus? Lessons such as “Thinking like a Lawyer” (which allows students to learn what that phrase means before they even step on campus), “Case Briefing” (which helps students feel like they are ahead even before their first assignment, combatting that imposter syndrome), “Common Law Basics” (because professors tend to use terminology and concepts that many first-generation students have never heard), and other lessons on critical components to law school success, such as transferring knowledge and skills across courses, metacognition, and growth mindset, were all designed with the idea that students could complete them after they were admitted to a law school, but before ever starting classes. Many of the Fellows used these lessons this past summer creating lesson links³² and CALI log-in information to send to admitted students with orientation and welcome materials. The overwhelming consensus from the authors’ students was that this made students feel more prepared before stepping on campus,³³ and did wonders to combat challenges like imposter syndrome³⁴.

³² *About CALI Lesson Link*, CALI, <https://www.cali.org/lessonlink>. (last visited [insert date]) (“LessonLink is a CALI tool that allows faculty members to view student scores, completion rates and usage of CALI lessons. Faculty can create a LessonLink with a push of the button - the system then creates a unique web address (or URL) for existing CALI lessons and groups the LessonLinks on a single webpage by the course that they are created for. Each course can have an unlimited number of LessonLinks in an unlimited number of CALI topics.”). Here is another link describing LessonLink <https://www.cali.org/faq/15754> (last visited Dec 7th, 2021)

³³ In Fall of 2020, classes were virtual for most law schools in the United States, so we mean “stepping on campus” in a metaphorical sense.

³⁴ Each author received feedback from their own students that used CALI lessons over the summer. In addition, CALI receives feedback from students on a regular basis about which lessons work and which do not.

answers a question incorrectly, the professor can ask why that student answered the question a particular way. After learning the answer, the professor can work on a specific skill. The professor can follow that skill work with the next skill in a progression toward a mastery of legal analysis. Unscientific statistics at many law schools find students who regularly attend individual meetings out-perform similarly situated peers.⁴³

In recent years, the future of legal education was slowly changing, and then, the COVID-19 pandemic rapidly accelerated the process.⁴⁴ Prior to the pandemic, technology existed to assist students, but technology did not pervade every classroom.⁴⁵ Law schools quickly switched to zoom classes, hybrid models, and some online instruction.⁴⁶ Some law school buildings closed, so students primarily attended law school from home offices, couches, and beds.⁴⁷ The new reality strained academic support professionals' ability to conduct individual meetings as seamlessly as they had before the pandemic. Fortunately, the CALI Law School Success Fellowship produced materials for this situation.⁴⁸

The Law School Success CALI Fellowship produced thirty-five lessons on specific skills to improve student performance.⁴⁹ Students can pull up a lesson any time from any internet-connected device.⁵⁰ The skills range from essay writing to how students learn.⁵¹ Academic support relies on individual meetings, so one major difficulty in creating the lessons was reimagining the individual meeting.

Skill development usually occurs with communication and feedback. Professors can ask a student about their answer structure and make recommendations based on written work in front of the student. The same interaction cannot occur, however, in an online system. The Fellowship

⁴³ The general reference here is to Prof. Steven Foster's work at Oklahoma City University School of Law when comparing number of meetings by students. Students with more individual meetings tend to outperform those with less meetings.

⁴⁴ Anonymous, *COVID-19: How Law Schools Are Adapting*, NATIONAL JURIST (Oct. 22, 2020, 8:22 AM), <https://www.nationaljurist.com/prelaw/covid-19-how-law-schools-are-adapting>.

⁴⁵ "The COVID-19 pandemic disrupted legal education like nothing else before." *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Supra* Section I. Developing Interactive Online Law School Success Lessons

⁴⁹ *Id.*

⁵⁰ *Lessons*, CALI: THE CENTER FOR COMPUTER-ASSISTED LEGAL INSTRUCTION, www.cali.org/lesson.<https://www.cali.org/lesson>.

⁵¹ *Law School Success*, CALI: THE CENTER FOR COMPUTER-ASSISTED LEGAL INSTRUCTION, <https://www.cali.org/category/11-first-year-topics/law-school-success>.

worked tirelessly to go beyond the basic understanding of skills concepts to individualize lessons to help each student – even while working online.

The lesson creation process includes similar activities to developing a class. The Fellows begin with learning outcomes; each student should learn particular information and develop a certain skill. The second step includes outlining the basic lesson. The outline includes the text instruction and questions for each skill. For example, the outline for the CALI lesson on answering multiple choice questions included the general instruction, subparts for each step of the answering process, text instructions for each step, and multiple-choice questions throughout. Students should understand the process of answering multiple-choice questions and be able to perform each step after the lesson.

Problems arise when students start answering questions incorrectly. Skills exercises attempt to develop a specific legal analysis skill, but legal analysis requires evaluating legal issues with applicable rules. Academic Support Professionals diagnose why the student missed a question. Students could miss questions because they did not understand the instruction, did not achieve enough proficiency to answer the question, or do not know the substantive legal doctrine to utilize the new skill. Each of identified diagnoses requires a different response from the Academic Support Professional. Because different responses are needed for different diagnoses, unique challenges are presented when creating self-paced lessons.

The last step of lesson creation attempts to overcome the inability to ask why students answer questions in a particular way. This step involves individualizing the lesson through branching and thorough answer explanations. Branching is an assessment technique where different answers direct students to different questions. For example, question one includes four answer choices: A through D. A student choosing answer A will be directed to question 2. A student choosing answer B is directed to question 1-1. A student choosing answer C is directed to question 1-2, and so on. The idea is to send students to the next appropriate question based on performance on the current question. Branching infuses the individualization that is critical to student learning.

Branching unlocks endless possibilities. The Fellows began branching by brainstorming common mistakes. After brainstorming ideas about common mistakes based on their experience working with students, creators turn the common mistakes into wrong answers for the current questions. The wrong answers are generally answers that the lesson authors have seen students give to similar questions in the past, or that flow from having a common

misunderstanding of the topic. Other wrong answers are also added to the questions to distract from the correct answer. Branching then delves into reasons why students make the common mistakes.

Students make mistakes for many reasons. They may read too fast and miss a fact. They could be distracted or in a bad mood. Those and similar reasons are hard to cure in a lesson. Lesson authors spent significant time considering why someone would choose an answer choice. Those considerations included what doctrinal assumptions are present to choose an answer and what skill is missing that would cause choosing an answer. Just like all law teachers tell students, the critical question is always “why?”.

Two common reasons why students make mistakes are not knowing the substantive law and not having fully developed the skill from the assigned lesson. Not understanding the substantive law is an easy mistake to cure during a lesson. As stated above, the lessons still need doctrine to teach the skill, even though students may not know the doctrine. Two methods to alleviate the knowledge deficit appear in many CALI lessons. First, authors can provide the black letter law either in the question or as a pop-up link. Students choosing a wrong answer based on the black letter law can be directed to that information.

Second, the lesson can also branch to substantive law questions to determine if substantive law is the issue. A student choosing an answer that includes the incorrect rule can be directed to a question about the basic rules. The multiple-choice CALI lesson included this tactic numerous times. For example, a few questions required a basic understanding of Products Liability. Students choosing one of the wrong answers based on doctrine are directed to questions related to products liability rules. The extra questions included numerous explanations of the elements. After answering the additional products liability question correctly, students retry the original multiple-choice question. Branching can, therefore, cure some substantive law misunderstandings.

Mistakes from not having a particular skill are harder to remedy in a lesson. The first question is what skill is needed to help the student answer the question correctly. Is it reading comprehension, but the lesson focuses on exam writing? If so, branching could cause a short lesson to morph into the never-ending law school skills blackhole. No one would ever finish a single lesson because everyone can improve on at least one skill in law school. The lesson would likely never be published because it would turn into a “Choose

Your Own Adventure” book with enough information to rival a Constitutional Law textbook.⁵²

Academic skills-related mistakes can be cured using limited branching, however. Authors consider whether another easier question should be provided or if proceeding to the next question suffices because the skills are emphasized in the next question. Branching works well when additional easy questions are provided, and more advanced students can skip those questions if the easy questions are only on a branch when students miss questions. As opportunities for branching increase, so does the need for individual instruction for each student.

Branching could also lead to rabbit holes upon rabbit holes, so the other mechanism to individualize the lesson occurs when the Fellow can guide the student through the use of thorough answer explanations. Answer explanations deepen learning when composed thoughtfully. All professors have seen poorly written answer explanations that focus on the narrow issue and rule. The explanation gives the correct rule, applies it to the facts, and explains the conclusion. Those steps are necessary but insufficient explanations. The rule-based answer explanation only helps students who missed the question due to lack of substantive knowledge. Students missing the question due to lack of skills will not further develop those skills just from knowing the rule.

A thorough explanation should include numerous parts. The rule-based analysis should be a component of the explanation, helping students understand the law. The explanation should also discuss any assumptions needed to address the legal issue. The best explanations discuss specifically why an answer is wrong. They can indicate why the fact in the answer is not dispositive and provide examples. A case briefing lesson, for example, teaches students about case holdings. A common error that students make when pulling a holding from a case is writing a broad holding when the issue is narrow. The incorrect broad holding answer could include significant information about why broad holdings are inapplicable in the current situation. Too many students cannot explain why certain answers are wrong. Thorough answer explanations can help students choose correct answers and know why other answer choices are wrong. These kind of answer explanations would often be provided in an in-person meeting where the

⁵² See R. A. Montgomery, *CHOOSE YOUR OWN ADVENTURE: The Abominable Snowman* (2006) (A popular book series that allows readers to make decisions. The book then directs the reader to a certain page based on the decision. There are twenty-eight different endings in the Abominable Snowball iteration); see also Noah R. Feldman & Kathleen M. Sullivan, *Constitutional Law* (th ed., 2019) (textbook is over 1800 pages).

academic support teacher would have an in-depth conversation about why a student chose an incorrect answer.

Legal education is constantly changing, and academic support continually adapts to the new environment. One major tool for Academic Support Professionals and all legal educators is Law School Success CALI Lessons, which were designed to provide more individual feedback through branching and thorough answer explanations.

V. Metacognition as a First Step to Improvement in Law School

When the Fellows began to design discrete lessons for law students with an eye toward areas where 1Ls struggle, Fellows found it necessary to go back to the root causes of student underperformance in law school. Often, students do not know enough about *how* they learn and their strengths and weaknesses to understand which lessons will be helpful and how to gauge their improvement. Academic Support Professionals often hear comments from students such as, “I’m bad at multiple-choice questions...” “I can’t write well...” or “I’m terrible at Fed Civ Pro...” These comments are frustrating because more often than not, students are not “bad” at any one task in general—they simply have strengths and weaknesses that impact performance.

The Fellows quickly coalesced around the idea of starting the Law School Success lessons with guidance on metacognition, which demonstrates to students how to understand and evaluate how they learn--and where and how they can improve their learning. According to Merriam Webster, “metacognition” is the “awareness or analysis of one’s own learning or thinking processes.”⁵³ The goal behind metacognition is to become an expert learner. “Expert learners attribute their successes to personal learning competence, to their successful and persistent implementation of their learning strategies, and attribute their failures to correctable causes, such as errors in strategy selection, implementation errors or insufficient practice.”⁵⁴ That means, if you can understand what you did well and where you can improve, you can become an expert learner. Students who are successful at metacognition -- that is, students who are more aware of their skills as learners—are better able to assess and improve their learning process.⁵⁵ Good

⁵³ Metacognition, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/metacognition?src=search-dict-hed>. (last visited 12/15/2021).

⁵⁴ Michael Hunter Schwartz, *Expert Learning for Law Students*, 75 (2005).

⁵⁵ Patti Alleva & Jennifer A. Gundlach, *Learning Intentionally and the Metacognitive Task*, JOURNAL JOURNAL JOURNAL J. LEGAL EDUCATION EDUCATION EDUCATION EDUC.. 710, 719 (2016).

use of metacognition would also allow students to pinpoint where in the analytical process they went awry. This, in turn, also assists ASP and faculty in instructing students on how to make corrections. The ability to successfully use metacognitive strategies translates to better performance in law school, which leads to better grades, better class ranking, better career opportunities, and a more meaningful impact as a lawyer.

The idea of improving how one learns makes sense, but showing people how to accomplish this goal is far from simple. Many law students -- particularly those who are first-generation⁵⁶ -- do not have a strong support system to turn to for help with this task. Thus, stepping back and providing tangible strategies to help students essentially learn more constructively is a critical first step that must be undertaken before students can be shown how to improve specific skills such as answering multiple-choice questions or writing strong essays.

When teaching students about metacognition, legal educators can start this process with simple strategies such as those that help improve time management. For example, many first-year students do not understand how much time they should spend on class prep each week (i.e., 2-3 times the weekly credit hours). Additionally, they often do not effectively and efficiently use the time they do spend studying. When they spend less time -- or study inefficiently -- they wind up being unprepared for class, which leads to poor class engagement and ultimately poor course performance. So, simply helping students create a detailed calendar -- one that takes into account all the other tasks they have to accomplish in the day (e.g., commuting, eating, outside work, caring for children or other family members) -- can be a very useful tool. Although this solution seems obvious, many students do not realize the importance of the schedule, and they often need help creating one.

Another important feature of metacognition exercises is that they help students self-assess their work. Without the ability to pinpoint one's strengths and areas for development, it is incredibly difficult to improve one's performance. In the end, it becomes the student's obligation to become a better learner. Students must own the learning process -- they cannot "outsource" it.⁵⁷ That means, students cannot rely on commercial outlines, colleagues' notes and outlines, and premade flashcards. They must learn how to put the pieces of the course together -- and step back periodically to make sure they are "getting it." Professor Louis Schulze recommends that, in addition to synthesizing the law one learns each week and building one's

⁵⁶ See *supra* Part III..

⁵⁷ Louis N. Schulze, Jr., *Using Science to Build Better Learners: One School's Successful Efforts to Raise Its Bar Passage Rates in an Era of Decline*, 68 J. Legal Educ. 230, 239 (2019).

outlines, students “objectively self-test,” using multiple-choice questions, CALI questions, and other resources to test one’s knowledge and find weaknesses.⁵⁸

Ideally, a student would get this kind of assessment guidance through their professors. However, too often, students move through the educational system without the kind of feedback they need to improve in areas where they are weak and maximize their strengths. Traditionally, this lack of guidance has often worsened in law school, where law courses have often provided summative rather than formative assessments.⁵⁹ It is important to note that ABA Standard 314 attempts to change this traditional teaching methodology by requiring law schools to use “both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”⁶⁰

Without formative assessments (or comprehensive feedback on those assessments), students may not realize that they are struggling (or how they are struggling) until it is too late and they receive the only grade in the class -- on their final exam. It is critical that those professors who offer formative assessments provide prompt feedback to ensure that students have ample time to improve their performance.⁶¹

A strong academic support team will try to identify these struggling students early in their law school career and intervene early, working with students through classes designed for struggling students and one-on-one meetings. However, many schools lack the staff and resources to adequately intervene. Additionally, many students, particularly in light of COVID-19 restrictions, feel isolated from professors and classmates.⁶² As a result, students may not know how to reach out for help or take advantage of academic success help that is available⁶³.

The CALI Law School Success Lessons offer students targeted assistance that promotes better understanding and performance in law school. The metacognition lessons in particular give law students a sense of how to learn

⁵⁸ *Id.* at 240.

⁵⁹ Julie Ross & Diana Donahoe, *Lighting the Fires of Learning in Law School: Implementing ABA Standard 314 by Incorporating Effective Formative Assessment Techniques Across the Curriculum*, 81 U. Pittsburgh L. REV. 657, 661 (2020).

⁶⁰ *Id.* at 660-661.

⁶¹ Rogelio A. Lasso, *A Blueprint for Using Assessments to Achieve Learning Outcomes and Improve Students’ Learning*, 12 *Elon L. J.* 1, 29 – 32 (2020).

⁶² Victoria Sutton, MPA, PhD, JD, *Law Student Attitudes about their Experience in the COVID-19 Transition to Online Learning*, SSRN-id3665712.pdf, p. 3 (July 31, 2020).

⁶³ The general reference here is to Prof. Nicole Lefton’s work at the Maurice A. Deane School of Law at Hofstra University. Prof Lefton is a co-author of this article and CALI Law School and Bar Exam Study Skills Fellowship recipient.

better, how to gauge their individual learning style, strengths and weaknesses--and ultimately, how to take steps to improve their performance.

VI. Helping Students Transfer Knowledge and Skills Throughout Law School

The CALI Law School Success Lessons enhance law school learning by providing individualized instruction on particularized academic skills, as well as by providing students with a bird's eye view of what they need to do to succeed in law school. This overview helps students understand that there are methods, structures, and components of doctrinal understanding that they can transfer across courses, and from law school to law practice. This ability to transfer skills and knowledge is a critical component of success in law school and as a lawyer.⁶⁴

Too often, students see each doctrine and each course as entirely distinct from one another. Unfortunately, this mindset makes learning more difficult. Seeing connections among doctrines -- as well as across legal and academic skills -- enhances student learning by providing students with a framework for understanding the legal system, and how to learn in law school. The CALI Law School Success Lessons use examples from a variety of doctrines to help students see that there are methods to learning the law -- and analyzing the law -- across doctrinal areas. Ultimately, students will carry this ability to transfer knowledge and skills with them into practice as lawyers are lifelong learners. Graduates will enter jobs and be expected to teach themselves a great deal, and therefore legal educators must help students figure out how they learn best, in order to set them up for success in the workplace. The CALI Law School Success Lessons demonstrate to students both that they will use the same skills and processes throughout their law school courses, such as outlining, case briefing, fact identification, outlining, legal analysis, rule synthesis, notetaking, growth mindset, maintaining focus, as well as that these academic skills are also transferable to the practice of law.

One of the best ways to learn and remember something is to connect it to something that one already knows.⁶⁵ Once that connection has been

⁶⁴ John D.Bransford, Ann L.Brown, and Rodney R.Cocking, *How People Learn: Brain, Mind, Experience, and School: Expanded Edition Chapter 3. Learning and Transfer*, NATIONAL ACADEMY PRESS (2000). . <https://www.nap.edu/read/9853/chapter/6>.

⁶⁵ Marlieke Van Kesteren, *What You Already Know Is The Key To Learning New Things*, THE GUARDIAN (January 9, 2016),

made, it becomes easier to use the new information, because you are connecting it to something that you already understand. Making these connections is called transfer.⁶⁶ Students transfer knowledge vertically (e.g., from one topic in criminal law to another such as from homicide to theft crimes, or from Contracts 1 to Contracts 2), or horizontally from course to course (e.g., from criminal law to contracts). They can also transfer academic and lawyering skills from class to class, and client to client.

Transfer is something that most people do every day. For example, when you are young, you learn to look both ways before you cross the street. You use the same basic street-crossing skills – with appropriate adjustments -- whether you are crossing a small one-way street, a two-way street, or a six-lane highway. You can also use those same skills when you are crossing railroad tracks or a busy hallway in a shopping mall. You can master all of those different circumstances, because you have basic crossing skills.

The same is true for transfer in law school, where there are common themes across areas of law that students can identify. For example, law students might discuss the objective test – or the reasonable person standard – in Criminal Law, Contracts, Torts or other courses. They might discuss foreclosure in a class on Real Property, Real Estate, Mortgages, Uniform Commercial Code, or Secured Transactions. They might discuss the concept of good faith throughout various courses such as Contracts, Secured Transactions, and Real Property. Although the particular rules that arise in each case are somewhat different, having students recognize that there are common ways that the law works can help them situate new concepts within these frameworks, and make it easier to learn and understand new concepts.

For the CALI Law School Success Lessons, the practices law students must engage in when learning are transferable across courses. Learning in law school is different from learning in other disciplines; -- ⁶⁷ considerable time is spent in doctrinal classes reading cases for the purpose of pulling out rules and understanding the court's reasoning. Yet, exams require a different skill -- applying the law to an entirely new set of facts, often using policy and theoretical perspective to bolster arguments. In order to succeed, students must develop a method of learning that works for them. This will include skills such as reading and briefing cases, synthesizing rules, taking notes in

<https://www.theguardian.com/education/2016/jan/09/what-you-already-know-is-the-key-to-learning-new-things>.

⁶⁶ See, e.g., John D.Bransford, Ann L.Brown, and Rodney R.Cocking, *supra* note 42.

⁶⁷ Ashley Wilson-Rew, How Hard is Law School? 5 Differences Between Law School and Undergrad, UNIVERSITY OF BUFFALO SCHOOL OF LAW, (August 6, 2018). https://www.law.buffalo.edu/blog/5_differences_between_law_school_and_undergrad.html

class, creating and organizing study materials, writing out responses to hypothetical fact patterns in IRAC⁶⁸ format, and practicing multiple-choice questions. Students will also need to develop methods of approaching problems such as interpreting the text of a contract, the section of a constitution, or a statute or regulation. Interpreting legal texts requires looking at plain language, looking at precedent, and researching history in order to determine the drafters' intent.

Students will use these transfer skills as attorneys as well. Lawyers in practice must interview and counsel clients, engage in legal analysis, make predictions, and prepare for negotiation, trial, or oral argument. They do not do this entirely anew each time - lawyers become better advocates by reflecting on each task they undertake and incorporating the lessons they learned the next time they engage in a similar activity. Even though each client and situation are different, the skills that attorneys use when they engage in their work are transferable across cases. If students develop a habit of reflecting on their learning and connecting what they learn to other things they already know, they will be more successful students, and more effective attorneys.

One method for helping students to transfer knowledge and skills in law school is to have them keep a learning journal.⁶⁹ A learning journal can be a great reflection tool to help students understand their own learning more broadly. They can keep notes and tips for themselves about their process of learning -- what is and is not working,, and what they will adjust going forward. The learning journal does not have to be a traditional diary entry; it can be a flow chart, mind map, table, or other visual representation of how concepts fit together. This process of reflection makes connections between knowledge and skills more explicit, and is a critical component of metacognition,⁷⁰ aiding in creating clarity and ultimately enhancing understanding and retention.

The CALI Law School Success Lessons provide students with the opportunity to view their law school experience holistically, instead of only seeing things class by class, as they work through academic skills lessons that utilize examples from across the law school curriculum. This, in turn, helps them to transfer knowledge and skills across their courses. Students are able to do these lessons anytime, anywhere, as many times as they would like. Thus, students can create an individualized academic success program that

⁶⁸ IRAC stands for Issue, Rule, Application/Analysis, and Conclusion, and is the framework students must use to answer nearly all law school exam answers and the skeletal structure of all legal documents.

⁶⁹ Marianne Stenger, *10 Ways to Improve Transfer of Learning*, INFORMED (May 11, 2017), <https://www.opencolleges.edu.au/informed/features/10-ways-improve-transfer-learning/>.

⁷⁰ See, supra V. Metacognition as a First Step to Improvement in Law School

can target their areas of deficiency, leading to increased success in all of their courses.

Conclusion

Success in law school requires not only a knowledge of the law, but a keen understanding of how to learn and apply the law. An increasing number of law students come to law school without a foundation in this method of learning, and without any support network that can assist them with this task. Thus, the onus is on law schools to provide students with this support. Without support, there cannot be equity in access to the legal profession. The CALI Law School Success Lessons are one tool that all law schools can use to help level the playing field for law students by providing them with free, individualized instruction on law school skills. All law schools and legal educators should take the time to review this lesson series and encourage students to complete them at various points throughout their time in law school, from before orientation to when they are studying for the bar exam.