

Explorations in the Classroom: A Book Review of *Secured Credit: A Systems Approach*

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If I taught something that was instinctively interesting to students, like Constitutional Law or Human Rights, my philosophy of teaching might be different. I might employ more traditional teaching methods as well.¹ As it is, I primarily teach commercial law, a topic many students consider about as exciting as filling out a tax return.² Thus, the commercial law teacher's first task is to interest students in the topic.³ I want students to take my classes for both the obvious egotistical reasons, as well as two more legitimate ones: first, because the populations served by my law school could use more well-trained,⁴ commercial lawyers; and second, because every lawyer should be at

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1. I am not sure I would ever use the pure casebook method, with one exam, and no practical application whatsoever. As Jerome Frank once noted, and I tend to agree, "[s]tudents trained under the Langdell system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else. They resemble prospective dog breeders who never see anything but stuffed dogs." Jerome Frank, *Why Not A Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 912 (1933). Karl Llewellyn would certainly agree. See Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211 (1948).

2. Actually, some students do find filling out a tax return exciting, and there is no need to convince them to take *Secured Transactions and Bankruptcy*. They'll already be there, with bells on.

3. When I chose this book, it was recommended by my then-colleague William Woodward, who thought it was one of the best texts he had ever seen. I was choosing a text for the first doctrinal course I would teach as a graduate teaching fellow at Temple University School of Law. In a sense, I was choosing the first doctrinal *course* I would teach as well, because we were allowed to choose the course we would cut our teeth on, within reason. I chose my course in part because of this book, as well as my background as a bankruptcy lawyer.

4. This reference to training may put off some professors, who believe that law school should accomplish theoretical pursuits rather than *just* training. This area of the law is highly technical, however, and the key to doing well in this area of practice is knowing exactly *what* to do, in addition to *why* it should be done. Some might even argue that the "why" doesn't matter, but I think knowing why helps remind one what to do.

least familiar with the process of obtaining a judgment, obtaining a security interest, and trying to enforce these debt protections both inside and outside bankruptcy.

Students are often surprised by how much they enjoy commercial law. Anyone who finds either money or power interesting is likely to see the potential for fun in a class where these issues are discussed. In a capitalist society, "Money Law"⁵ reflects virtually all of our societal values in one way or another, reflects the culture of capitalism at work, and is "Law and Society" in the broadest sense.⁶ While most people find it hard to get excited about secured transactions, this sentiment is not likely to last long if the teacher uses *Secured Credit: A Systems Approach*.⁷

This text has several well-known attributes that have led to its favored position in the world of published secured transactions texts.⁸ The text also has some qualities with which teachers may be unfamil-

5. This is the broad name I attribute to all courses dealing with the direct flow of money and the resulting consequences. Included would be all of the UCC courses, such as Secured Transactions and Sales, as well as Payment Systems, Bankruptcy, Business Associations, Consumer Law, and International Business Transactions.

6. Since money is power in our society, seeing how it is distributed interests liberal and conservative students alike. The bankruptcy priority system is a good example of a system that is value-laden and reflects law and society in a capitalist society. Some creditors, such as those owed child support or recent taxes, are clearly favored over others. The Article 9 priority system also reflects societal values. Because this class is not just about money, it has never become a bastion for the conservative students at the University of New Mexico School of Law. In fact, during the self-help repossession assignment one year, one student adamantly asked, "Doesn't the repossessing creditor at least have to leave a note?" My husband, a former creditor's lawyer, insisted that by the time repossession happens, "they know who took it." A colleague who heard about this exchange thought this idea could inspire a whole new Hallmark Cards series, the "Sorry I Took Your Car" series. One card could say on the outside "some days are better than others," and on the inside, "this is not one of your better days, signed Chrysler Credit."

7. LYNN M. LOPUCKI & ELIZABETH WARREN, *SECURED CREDIT: A SYSTEMS APPROACH*, (Aspen Law & Business 3d ed.) (2000) [hereinafter BOOK]. My philosophy of commercial law also derives from another similar text, *THE LAW OF DEBTORS AND CREDITORS*, by Elizabeth Warren & Jay Westbrook (Aspen Law & Business 4th ed.) (2001).

8. See Kathryn R. Heidt, *Taking A New Look at Secured Transactions*, *Secured Transactions: A Systems Approach*, 96 COLUM. L. REV. 759 (1996); William J. Woodward, Jr., *Empiricists and the Collapse of the Theory-Practice Dichotomy in the Large Classroom: A Review of LoPucki and Warren's Secured Credit: A Systems Approach*, 74 WASH. U.L.Q. 419 (1996). My colleague, Fred Hart, has produced his own excellent in-house materials, which precede this landmark text by about 30 years, accomplish many of the same goals, and, like this text, contain wonderful empirical data. Fred's materials are especially interesting on the subject of the infrequency of repossessions. His materials are much shorter than the book being reviewed here and place a far greater emphasis on statutory reading. As a result, the students spend far more time actually reading the statute than doing anything else. One obvious downside to these in-house materials is that they are not available to the general public. We are talking about making them available to other teachers on-line. These materials would be a wonderful option for teachers who would like to focus on statutory interpretation.

iar.⁹ It is entertaining and humorous, it is well-written to a fault, and unlike most published texts with which I am familiar, it can easily be used in both traditional and non-traditional classrooms, in order to facilitate various learning styles.

These pedagogically well-structured materials build well upon one another and give teachers all the tools needed to create a vibrant learning environment in the classroom. The text contains excellent cases, though these are not the book's focus.¹⁰ Rather, the book is dominated by rich text and problems of varying levels of complexity. It places its subject matter in the larger context of law in general and even life as a whole, something all commercial texts certainly should do, given that commercial law allegedly reflects commercial practices rather than forcing commercial practices to yield to it.¹¹ The text draws clear connections and analogies between its subject matter and other topics and life experiences with which students are familiar. It also has a detailed teacher's manual. In sum, this book makes walking into a classroom both comfortable and exciting, for students and teachers alike.

Part I of this book review discusses and summarizes two prior reviews of this book. Part II discusses how the book successfully provides context and relevance to its highly technical subject matter,

9. Defining characteristics already discussed in prior reviews include the following: 1) the book's problem-based format; 2) integrated subject matter, including traditional Article 9 secured transactions materials, real estate law, treatment of secured claims in bankruptcy, and non-law systems that affect the world of secured credit; 3) use of effective, well-written, concise text, rather than masses of cases, to teach the relevant law; and 4) successful balancing and blending of theory and practice.

10. As the authors explain in the Teacher's Manual:

We chose cases for a variety of reasons. Some are here because the court did a particularly good job of explaining the law or system, some because the facts illustrate well a particular kind of transaction or a recurring problem with the system, and some because they present particularly vivid images of real people dealing with the issues covered in the assignment. Some of the cases provide a basis for Socratic dialogue, but we did not select or edit cases with that in mind. By the second or third year, students should know how to read cases, and more drill on that subject is likely to be tedious for both student and teacher. A large part of what we do in this book is to communicate information that will serve as the basis for problem solving. Cases are an extraordinarily inefficient way to do that.

LYNN M. LOPUCKI & ELIZABETH WARREN, *TEACHER'S MANUAL FOR SECURED CREDIT: A SYSTEMS APPROACH* 7-8 (Aspen Law & Business 3d ed.) (2000) [hereinafter *TEACHER'S MANUAL*]. About 35% of the BOOK is devoted to text. See Woodward, *supra* note 8, at 421.

11. The text also contains rich empirical data and information about the U.C.C. filing system, the world of banking, and the realities of all debtor-creditor relations. Its statistical and other real-world data show students how the law is applied on a daily basis, while providing detailed information about the systems with which the law interacts, such as state, local, and federal filing systems, clerk's offices, and bankruptcy courts.

through the use of pop culture, helpful ordering of the materials, and realistic problem sets. Part III describes some of the many ways this book can be used to provide flexibility in the classroom, from teaching different learning styles to creating additional components to the course grade. Part IV concludes that any teacher of Secured Transactions should strongly consider trying this text.

I. A NEW KIND OF SECURED TRANSACTIONS TEXT: A REVIEW OF PRIOR BOOK REVIEWS

When *Secured Credit: A Systems Approach* was published in 1996, it was something of a runaway sensation. It immediately received favorable reviews from two prominent scholars.¹² Professor Kathryn Heidt described it as "revolutionary" in legal education.¹³ She noted that the new text provides a third way to teach Secured Transactions, in addition to the only common methods used to date, the traditional method and the theoretical perspectives method.¹⁴

The other reviewer, Professor William Woodward, claimed that the book successfully exposed the false dichotomy between legal theory and practice.¹⁵ He described the simmering "theory-practice" debate fueled by the MacCrata Report in 1992,¹⁶ which questioned whether law schools were doing enough to prepare students for the practice of law. He noted that the MacCrata Report uncovered a seemingly irreconcilable dichotomy between theory, which interests professors most, and practice, which is what lawyers need to know.¹⁷

12. See Heidt, *supra* note 8; Woodward, *supra* note 8.

13. See Heidt, *supra* note 8, at 759.

14. See *id.* Heidt does not define these methods. I am not sure what the "theoretical perspectives" model would entail but can imagine no reason to teach something as practical and technical as secured transactions from a "theoretical" perspective. There is not much theoretical about it, and if one does not learn to file all the little pieces of paper in the right places, then the theory will never help the client.

15. See Woodward, *supra* note 8, at 420–22.

16. See Section on Legal Educ. and Admissions to the Bar, American Bar Ass'n, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Robert MacCrata ed., West Publishing Student ed. 1992). Woodward also alludes to another debate emerging from the MacCrata Report, namely the potential for teachers who want to teach more practical applications of the law to be stigmatized by the academy. See Woodward, *supra* note 8, at 419–20. I can remember a practice interview designed to prepare me for the law school teaching market. I mentioned in my interview how much I enjoyed using the problem-based teaching method. After my interview, one interviewer told me to avoid mentioning the problem-based method, as it might cause future employers to view me as an intellectual lightweight. It is meaningful that the authors of this book are successful scholars and teach at top ten schools. Both are highly respected in their fields and not the least bit light on intellect, proving that it is possible to both think large thoughts and train excellent lawyers.

17. See Woodward, *supra* note 8, at 419.

Acknowledging that this debate normally breaks down to a discussion of traditional classes versus skills-based courses, Woodward saw this text as a way to provide students with both aspects of legal training.¹⁸ He noted that the book successfully merges sophisticated legal scholarship with a “down to earth,” practice-based focus,¹⁹ thus reducing the gap in the classroom between theory and practice.

Professor Woodward acknowledged that the theory-practice dichotomy is false,²⁰ a fact proven in large part by the success of this book in the classroom. As empirical scholars, the authors look at secured transactions through the eyes of two people who have witnessed them and participated in them, not merely read about them as part of a theory. As the authors confess in the Teacher’s Manual:

We are more interested in the empirical reality of secured credit than myths perpetuated by armchair theorists. To our minds, secured credit is what secured credit *does*.

We think that the reality of the secured credit system is where the truly interesting intellectual questions arise: How does the system work? How do the day-to-day practices of lawyers in the system relate to the law on the books? If we change some aspect of the system, how does it affect the remainder? Who is helped and who is hurt by a particular rule? In what ways are outcomes subject to manipulation through strategy? How often do such manipulations occur? What ethical problems arise for lawyers in a lending system based on legal interests in collateral?²¹

An added benefit in looking at secured credit in this way is that students are not shocked when they leave the comforts of law school and learn that legal problems do not come to them neatly labeled as a “tort,” a “contract,” a “bankruptcy problem,” or a “secured transactions problem.” When looking at the real world, the way an empirical scholar does, traditional legal subject matters often refuse to stay compartmentalized under the neat names we ascribe to them when drawing up course descriptions.²² Traditional legal subject matters cross

18. See *id.* at 420–21.

19. See *id.*

20. See *id.* at 422.

21. TEACHER’S MANUAL, *supra* note 10, at 2.

22. As the Teacher’s Manual explains:

A not-insignificant benefit is the elimination of “edge of world” syndrome from the secured transactions course. In that syndrome, the student traces an Article 9 problem into one of the exceptions in U.C.C. §9-109 whereupon it disappears—not into some other secured transactions course, but beyond the edge of the world known to legal academics. With the systems approach, we can discuss security interests in insurance, bank deposits, and tort litigation, without having to start over from scratch.

over and meld together at times, making it difficult to separate Secured Transactions from Real Estate Law or Bankruptcy Law, or from non-law idiosyncrasies, such as the clerical procedures at a state office.²³ This inability, or unwillingness, to compartmentalize secured transactions, leads to the book's broad context, which covers many doctrinal and non-doctrinal topics relating to secured transactions.²⁴

II. FINDING RELEVANCE: HOW TO AVOID TEACHING THE LAW OF SOCKS

The subject matter of this text undoubtedly challenges the teacher.²⁵ While I find it interesting, I admit that it sounds boring to most students and even to colleagues in the academy.²⁶ In fact, sometimes teaching Secured Transactions can seem like teaching the law of socks—the law of some technical, unrelated area of law that is relevant to nothing of importance. I sometimes ask myself, “Why, again, does it matter if inventory is later used as a fixture and the lender doesn’t notice it for four and a half months?” The authors acknowledge sometimes feeling this way too:

Before we began work on this book, we each went through a period in which we dreaded teaching secured transactions. The students seemed bored and confused; we were frustrated and sometimes hostile. Yet we both believed that the subject matter of this course was inherently interesting and could be fun to dis-

The systems approach also facilitates consideration of several other topics, crucial to an organic understanding of secured credit, that are omitted from traditional courses because they are not found in Article 9. Those topics are covered in Assignment 4 on judicial sale and deficiency, Assignment 12 on the legal limits on what may be collateral, Assignment 25 on certificate of title systems, and Assignment 34 on cross-collateralization and marshaling assets.

See *TEACHER'S MANUAL*, *supra* note 10, at 6.

23. See Woodward, *supra* note 8, at 427.

24. Both prior reviews are excellent and potential users should consult them. This review is written from a different perspective from these prior reviews of this book. It does not focus on theoretical issues, but is written instead to help new teachers, or those considering changing their secured transactions text, to choose a book that will challenge and engage students, and teach them to be the best possible commercial attorneys. Thus, this review focuses more on teaching and learning than on scholarly discourse.

25. The challenge is that it sounds boring. A colleague just asked me what I was typing so furiously. When I told him and pointed to the book, he replied, “no thanks, I’ll wait for the movie.” This subject seems to get no respect.

26. Many of my colleagues do not know what Article 9 is and don’t want to know. One colleague once told me, “I don’t know how you can stand to teach that stuff. I told the administration when I got here that I would teach anything left of money.” Most of this sentiment probably results from two misconceptions, first, the feeling that teaching about money law is really teaching how to benefit money-grubbers, rather than teaching about the power that money wields in our society, and second, an inability to plug this information into the larger world.

cuss—if only the students knew enough to discuss it with us. We set about writing this book to give them the tools they needed to think about and then to talk about secured credit in a thoughtful, meaningful way. This book is in some ways a very personal missive that reflects what we do in our classes. We invite everyone to follow our lead, but at the same time, we have tried to make these materials sufficiently general that they can support many different conversations. We've had fun thinking and writing *Secured Credit*, and we hope that is clear from the book itself.²⁷

Despite the book's very detailed coverage of each topic, the authors consistently remind the reader of the relevance of all those details to the big picture, by keeping the material connected and related to life as we otherwise know it.

By primarily adopting the problem-based method,²⁸ students learn the everyday relevance of each topic. By being asked to apply the law over and over in different contexts, students learn these principles in far more detail than simply by reading and dissecting cases. Their knowledge does not result from mere memorization.²⁹ The book is also set in the larger world of secured lending and the law of other subject matters. With a little popular culture mixed in for good measure, the book makes relevance easy to find by presenting the material in real-life contexts, by teaching things that the students will actually use as real lawyers,³⁰ and by tying the material together with itself and with everyday experiences outside the classroom.

27. TEACHER'S MANUAL, *supra* note 10, at 10–11. The authors' occasional struggle with the inane continues throughout the TEACHER'S MANUAL, as they alert teachers to areas that may need to be further contextualized:

Some people see teaching the filing system as nothing more than a brainless exercise in tedium (one of us held that view for years and could barely be forced to discuss it). As we developed these materials, however, we came to see the filing system as a complex, but not particularly effective, communications device. Examining it from the perspective of the practicing lawyer, we found that it raises fascinating issues of strategy and policy. There is a great deal to think about here.

Id. at 133–34.

28. The book can be used in many other ways as well. See *infra* notes 108–47 and accompanying text.

29. See M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 143 (2001). The textual materials further reinforce the broad purposes of all of the picayune details necessarily covered in this extremely technical area of the law.

30. See Woodward, *supra* note 8, at n. 11, citing the TEACHER'S MANUAL and Stewart Macaulay.

A. *Pop Culture and the Law: The Ultimate Connector*

Joseph Lowman, a leading expert in higher education, finds two elements necessary to exemplary teaching: the ability to create intellectual excitement in the classroom and a good rapport with students.³¹ This book helps teachers achieve both goals, but really excels at the latter. The authors know students and are knowledgeable about pop culture, including its unique language. Thus, they seem to instinctively relate to students. As they proclaim on the first page of the introduction:

We have written this book with an attitude. Legal education has a way of taking simple things and making them seem complex. In this book we have made every effort to do the opposite—to make this complex, technical subject as simple as possible. This is a course for second- and third-year students who have already mastered reading cases. The threshold intellectual task here is to read statutes; the ultimate intellectual task is to see how law functions together with other elements as a law-related system. Someone who masters that task can see law with new eyes—can see better who law helps, who it hurts, what implications it has for planning and transactional work, and how it can be manipulated, for better or for worse, to produce unexpected outcomes.³²

The authors are also familiar with the world in which students and teachers live. The introduction starts like this: "In the movie *Wall Street*, the neophyte stock broker is concerned that what Gordon Gekko proposes is insider trading. Gekko responds, 'Either you're *inside*, or you're *outside*.' That is the way it is with credit. Either you're *secured* or you're *unsecured*.'"³³ The text is replete with other such examples, which are randomly sprinkled throughout the text, waiting to be discovered.³⁴

31. GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 16 (1999).

32. See BOOK, *supra* note 7, at xxxii.

33. *Id.* at xxxi.

34. For example, the authors refer to the secured creditor holding his own Article 9 sale as similar to a vampire watching the blood bank. The authors elaborate on this point as follows: The Article 9 sale procedure may seem like a case of the vampire guarding the blood bank. It is the debtor's property that is being sold. Because Article 9 preserves both the debtor's right to the surplus and the creditor's right to a deficiency, it is the debtor who directly suffers the effects of a poorly conducted sale that brings a low price. The creditor may seem to have no incentive to seek a fair price for the collateral. Yet the secured creditor is given virtually complete control over the manner of sale. Proponents of the Article 9 sale procedure argue that the requirement of a "commercially reasonable sale," backed by the threat to deny some portion of the deficiency,

B. Teaching and Learning Law in Context

The reader of this text is exposed to a broad array of subject matter, all of which relates directly to an understanding of the world of secured transactions and the larger systems in which secured credit operates.³⁵ As the authors explain in the introduction:

To make the whole more understandable, we have throughout this book regarded secured credit as a system, with subsystems that work together to accomplish the system's principal goal. That goal is to facilitate lending, and, by so doing, to encourage desirable economic activity.³⁶

...

gives incentives to repossessing secured creditors to encourage bidding and to seek a market price for the goods. We doubt it.

The threat to deny a deficiency could be a powerful motivator, at least where the expected deficiency was substantial and the likelihood of collecting it from the debtor high. But the threat in revised Article 9 is only to reduce the amount of the deficiency to what it would have been had the secured creditor complied with Article 9.

The secured creditor that knows it won't be able to collect any deficiency because its debtor is insolvent or bankrupt will want to sell the collateral for the highest net price it can get, because that may be all it collects on the loan. But the secured creditor that expects to collect the deficiency from the debtor or the guarantor has little or not incentive to get a good price at the sale. It expects to get its money either way.

BOOK, *supra* note 7, at 104. This excerpt demonstrates that one goal of this text is to clarify material that could take hours to glean from a case, and to allow students to start analyzing problems at a higher, more sophisticated level. This particular excerpt also demonstrates how theoretical and philosophical concepts are weaved through the text, and tied to the most practical topics. Other examples include the discussion of "naked possession," *see id.* at 373, and the "elephant rule," *see id.* at 450.

35. I know some readers will think that because of all this broad context and coverage of other subject matters, some of the basics must be lost. Others will assume that it is not possible to cover all this "context" and also cover the "normal" subjects that we all want to cover. I feel these concerns are unwarranted. As the authors explain, the book is shorter than it would be, even though it covers much more information, because of the judicious use of text. *See TEACHER'S MANUAL, supra* note 10, at 9. I continue to believe students learn more material, more thoroughly, through the use of this book than any other published text with which I am familiar, on any subject.

36. BOOK, *supra* note 7, at xxxii. Professor Kathryn Heidt, one of the former reviewers, claims that the Book may be misnamed because it does not actually use a "systems" approach as that phrase is used in the applied and social science disciplines. The systems approach hypothesizes that in order to understand something, that something must be examined as part of the larger context in which it exists. It must be studied in its larger context, just as a live cell should be studied in the heart or body in which it appears. *See Heidt, supra* note 8, at 763-65. While acknowledging that this approach could be very helpful to legal educators and law students, Professor Heidt claims that this Book does not represent a true systems approach to secured transactions because the authors fail to actually define the outer parameters of the larger system in which secured transactions will be studied. She acknowledges that this does not detract from the book's effectiveness as a teaching tool but is a purely academic problem.

As may already be apparent, the systems approach we employ in this book looks at more than just law. Law is one of the many elements that together constitute the secured credit system. To teach the law without teaching the system in which it is embedded would deprive the law of much of its meaning and make it more difficult to understand. But to teach the whole system requires discussion of institutions, people, and things that are not "law." Among them are sheriffs, bankruptcy trustees, filing systems, security agreements, financing statements, search companies, Vehicle Identification Numbers, closing practices, collateral repurchase agreements, and a variety of other commercial and legal practices.³⁷

This seems so natural that one can hardly imagine teaching in any other way, yet at the time this book was published, providing this broad perspective was considered quite unusual.³⁸

For an example of one of the many contexts provided in the book, the book contains realistic descriptions of secured loans, complete with their documents and their loan approval processes. For most students, this business context is the most important non-law information they gain from the course. On a purely descriptive basis, the book explains the basic types of loans, such as the term loan, the line of credit, floorplan financing, and construction loans. Many Secured Transactions texts take this initial step, and some also provide copies of some loan documents.³⁹

37. BOOK, *supra* note 7, at xxxiv. It is hard to imagine why anyone would ever want to learn this incredibly technical material in the abstract. As the authors explain:

One strength of the systems approach is that it demonstrates the striking similarity of security interests under Article 9 to real estate mortgages, non-Article 9 security interests, and, to a lesser degree, statutory liens. The systems approach transcends the artificial, doctrinal distinction among the various types of secured credit, making it possible to compare the procedures for foreclosure, the formalities of creation, the requirements for perfection, and the rules of priority across the entire range of security devices. We can see how transactions governed by different sets of laws present similar issues and we can explore why different solutions were sometimes chosen.

TEACHER'S MANUAL, *supra* note 10, at 6.

38. See *supra* notes 12–24 and accompanying text.

39. My research assistant and I did a quick review of twelve texts covering Article 9, and found that only five had copies of both financing statements and security agreements. See ROBERT L. JORDAN ET AL., COMMERCIAL LAW 1143–86 (5th ed. 2000), LOUIS F. DEL DUCA ET AL., SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE 35, 39 (1992), ROBERT J. NORDSTROM ET AL., PROBLEMS AND MATERIALS ON SECURED TRANSACTIONS 101, 147, 569–71 (1987), ROBERT L. JORDAN & WILLIAM D. WARREN, SECURED TRANSACTIONS IN PERSONAL PROPERTY 18–21, 47–49, 653–78 (4th ed., 1997), RICHARD E. SPEIDEL ET AL., SALES AND SECURED TRANSACTIONS TEACHING MATERIALS 58–61, 64–66, 142–43, 126–33 (5th ed., 1993). The following text provided an example of a security agreement but no example of a financing statement: ROBERT L. JORDAN ET AL.,

This book goes much further, however, allowing students to experience these loans first-hand. To aid students in seeing the big picture, the authors create two “prototypical secured transactions.”⁴⁰ The first, the sale of a restaurant called Fisherman’s Pier, occurs early in the text, in the lesson on the technical requirements of attachment of a security interest. This deal is simple to understand as presented by the authors.⁴¹ Each step of the sale transaction and related loan is explained to students in detail.⁴² Students can picture what is going on. Additionally, if the teacher wants to emphasize the transactional aspects of the course, he or she can use this sale transaction as a role-play and show which documents and whose money are changing hands as the deal progresses, and even show a financing statement being filed at a remote location.⁴³

Later, in Assignment 15, the authors dedicate an entire lesson to understanding a more complex loan.⁴⁴ In Assignment 15, entitled “The Prototypical Secured Transaction,” Deutsche Financial Services is financing a boat dealer, Bonnie’s Boat World, under a floorplanning financing arrangement.⁴⁵ The students read about Deutsche’s loan approval process,⁴⁶ then carefully review all of the documents involved in a real loan, including a detailed security agreement complete with default and remedy provisions,⁴⁷ a financing statement,⁴⁸ a description

SECURED TRANSACTIONS IN PERSONAL PROPERTY 18–22 (5th ed. 2000). None of the texts had the variety and breadth of documents provided by this text.

40. See BOOK, *supra* note 7, at 156–58, 285–307.

41. See *id.* at 156–58.

42. See *id.*

43. I often take the time to do this role-play because it helps the students understand what the documents are for as the course progresses. Nothing in the book suggests that a role-play should be done, however, and I suspect that most teachers just have the students read about the deal.

44. See *id.* at 285–307.

45. See *id.* at 286.

46. See *id.* at 286–87.

47. See *id.* at 288–96.

48. See *id.* at 298. When I was in law school, I remember being unsure what the difference was between a financing statement and a security agreement. It is not surprising that after my first big loan deal in practice, I filed my financing statements in my own file rather than with the Secretary of State. I suspect that this mistake is common. Professor Heidt also notes the importance of providing a copy of the financing statement to students, so students can see what scant information is included on a financing statement. See Heidt, *supra* note 8, at 781.

of a personal guarantee,⁴⁹ and a floorplan agreement.⁵⁰ The documents are actual forms used in real deals.⁵¹

After a short textual discussion of monitoring collateral,⁵² a fabulous problem set teases out floor-checking procedures,⁵³ how to keep the borrower from cheating,⁵⁴ the financial and non-financial reasons for obtaining personal guarantees,⁵⁵ out-of-trust sales,⁵⁶ pulling the plug upon default,⁵⁷ various ethics questions,⁵⁸ calculating interest rates under the complex formula found in the floorplan agreement,⁵⁹ applying the proceeds of sale under a buy-back provision in the agreement,⁶⁰ and finally, how a lender can peacefully and safely retreat from a loan relationship that it no longer finds satisfying.⁶¹

This may sound like a lot to cover in one assignment, and it is. Some of the material is a review of the prior lessons, but the lion's share is new. In any event, after I tackle this lesson in class, which occurs about one-third of the way through my course, the students change. They return after this lesson as young lawyers, steeped in the realities of lending, with knowledge about how the prior course materials fit together. The lesson is realistic and contains many layers of complex legal skill-building techniques. This entire area of law is one about which many lawyers know absolutely nothing.⁶² Thus, students are encouraged that they can learn marketable skills that future employers will value.⁶³

49. See BOOK *supra* note 7, at 297–99. The book would benefit from the inclusion of an actual personal guarantee document as well, given their popularity in today's lending market.

50. See *id.* at 299–302.

51. Students who might otherwise find reading forms to be horrible are more interested when they learn that an actual lender required these exact terms and promises, and an actual borrower agreed to them, too.

52. See *id.* at 303–05.

53. See *id.* Problem 15.1, at 305.

54. See *id.* Problem 15.2, at 305.

55. See *id.* Problem 15.3, at 305.

56. See *id.* Problem 15.4, at 306.

57. See *id.*

58. See *id.*

59. See *id.* Problem 15.6, at 306.

60. See *id.* Problem 15.6(d), at 307.

61. See *id.* Problem 15.7, at 307.

62. Lawyers and even judges often look glassy-eyed when I tell them the subjects that I teach. Many admit that they haven't the foggiest idea what it is.

63. One student told me after this lesson that he was relieved that he was finally learning to be a lawyer and learning something that he could use when he graduated. It is exceptionally rewarding to be able to teach something practical. As the Teacher's Manual states:

Stewart Macaulay once explained to one of us why it was wrong to teach irrelevancies.

Once the students graduated to practice and discovered the irrelevancy of much of what we taught, *everything* we taught became suspect and was thereafter dismissed as

C. Context Through Order and Breadth

The order in which the material is presented, as well as the breadth of the subject matter, helps students become good commercial lawyers and also helps them understand the theoretical underpinnings of secured lending. The book starts by explaining what unsecured debt is and by playfully exploring how difficult it is to collect on an unsecured debt:

Much of law is about liability and the determination of damages. But winning a money judgment for a breach of contract, a tort, a treble damage antitrust suit, or some other kind of case may be only the beginning of the story. One of the authors of this book worked hard on the liability issues of her first trial (a rousing traffic accident in Rockaway, New Jersey, in 1977). At the conclusion of the trial, the judge awarded her client full damages—\$147.58. The defendants left the courtroom sullen and unhappy. The plaintiffs were ebullient. But once the courtroom had cleared and smiles and handshakes had been exchanged all around, the client paused and, with evident embarrassment, asked the truly critical question: “Uh, how do we get paid?” A long, painful silence followed. The clever coauthor-to-be did not have the faintest idea. Because the defendants did not whip out their checkbooks and pay up, it seemed that still more legal process might be required.

Liability may be hotly disputed and parties may litigate vigorously, as they did in the Rockaway car accident. Or liability may be undisputed, as often happens when a debtor borrows money and simply unable to repay. Either way, if no payment follows, the party owed an obligation may find that even after judgment has become “final,” there can be a long and sometimes tortuous process ahead before any money changes hands.⁶⁴

After reading this, even the most checked-out students want to read on. The less-than-inherently-thrilling topic of collecting on a judgment has now been made personal and exciting by the admission that one of the authors, now a Harvard professor, didn’t know how to collect on a judgment when she left law school.⁶⁵

the meanderings of irrelevant people. He speculated that if we really wanted to have an effect on what our students did or thought, we had to teach them about a world they would recognize when they got out there.

TEACHER’S MANUAL, *supra* note 10, at 6.

64. BOOK, *supra* note 7, at 3.

65. It never ceases to amaze me that if a student does not take Bankruptcy or Secured Transactions, he or she does not learn anything about collecting a judgment and does not even

Students are also told here, on the first page of the text, that their other teachers have been keeping something from them, namely that the judgments they are taught to procure in torts, civil procedure, and family law are just pieces of paper, suitable for framing but otherwise worthless without a willing payor. This is a shocking entry to the world of debtor-creditor law.

Thereafter, the authors explain in clear, concise text what unsecured debt is,⁶⁶ and the students read a complex case in which a judgment creditor has to sue a sheriff in order to get him to actually collect on the judgment.⁶⁷ They then do a problem with ultimate context. They are asked to imagine that they just lent \$1,000 to their next-door neighbor so she could buy patio furniture.⁶⁸ Some time has now passed and the neighbor has not paid the money back, although the patio furniture has been left sitting within plain view of the student/lender. Naturally, the students want to simply take the furniture. Unfortunately, because the student/lender did not obtain a security interest in the lawn furniture, this "repossession" would result in the tort of conversion⁶⁹ as well as possible criminal charges. This

know to record a judgment against real estate, which is a cheap and painless way to get paid in many instances.

66. The authors explain in the text that:

Unless a creditor contracts with the debtor for secured status or is granted it by statute, the creditor will be *unsecured*. Unsecured creditors are the *general creditors* or *ordinary creditors* that populate state collection proceedings. They include creditors who contracted for unsecured status, but also creditors such as the tort victims mentioned above, who got their creditor status in circumstances that do not permit prior negotiations. They also include incautious creditors, uninformed creditors, and creditors who were unable for any number of reasons to negotiate for security. If the unsecured creditor has already obtained a court judgment to establish liability, the creditor is a *judgment creditor*, but the mere grant of a judgment does not alter the creditor's unsecured status.

Id. at 4.

67. The case is *Vitale v. Hotel California, Inc.*, 446 A.2d 880 (N.J. Super. Ct. Law. Div. 1982). Professor Heidt claims that the case is too hard for students, second-year students just having left the first-year grilling process. See Heidt, *supra* note 8, at 775–76. Her comment clarifies (as most of us already know) that most teachers stop grilling students on cases after the first year. In any event, I do not agree that this case is too hard for the first day. I want the students to know that the materials are difficult at times but very interesting, and that sometimes this is a necessary trade-off. I think they can handle it, especially when they understand that I do not expect them to brief the cases. I find this case useful for explaining why briefing is not the best use of time, compared to carefully doing the problem sets. If I do want students to pay extremely close attention to a case, I tell them in advance to brief it.

68. See BOOK, *supra* note 7, at 20, Problem 1.1. The problem actually asks them to answer this question on behalf of a third-party client, but I like to have them pretend it is their loan and their \$1,000, to bring the point home.

69. As the authors explain:

discussion of the travails of unsecured credit sets up the next lesson, in which students learn that if the creditor had obtained something called a security interest, he or she could grab back that patio furniture immediately upon non-payment. The authors do not wait for students to see the point or in any way hide the ball. Instead they explain:

[i]n this assignment, we examine the legal remedies available to unsecured creditors. These remedies are available to *all* creditors. They are the minimum collection rights guaranteed to anyone owed an obligation that can be reduced to a money judgment. In later assignments, we will use these remedies as a baseline for comparing and understanding the enhanced collection rights that secured creditors enjoy.⁷⁰

Ironically, the pedagogical goal of this text—to provide broad, useful knowledge to students—also results in a much more in-depth understanding of this highly technical and difficult area of the law.

The authors do not teach general concepts by forcing students to sift through endless appellate cases. Instead, the simplest legal principles are set out clearly in the text. In other words, they are simply *told* to students. As the Teacher's Manual states:

One feature of the text may particularly surprise students: we explain the rules. We often spin out the implications of a rule, explain how to read the statutory language, or give examples showing the application of the rule. The intellectual task is not to extract rules from primary materials, but to relate rules to other parts of the system. To get the ball rolling, we have been willing to offer up whatever information we think students will find most useful. The student's work begins with the rule al-

The unsecured creditor's path to payment is narrow. Not only does the law provide procedures for the collection of unsecured debts, it regulates or bars outright many alternatives. Among the remedies prohibited to unsecured creditors is self-help seizure of the debtor's property. (This rule does not prevent the creditor from "setting off" a debt owing to its debtor against a debt owing from its debtor; it merely prohibits the creditor from seizing property for the purpose of creating such a setoff.) In most instances, a prohibited seizure of a debtor's property will constitute the tort of conversion.

Id. at 5.

70. *Id.* at 4 (emphasis added). The rest of the book is about this thing that has now been given context: why one wants to be a secured creditor, how to become a secured creditor, what property to become secured in, how to stay secured, and how to make sure that you beat out other secured creditors. The authors also explain: "[n]othing in this discussion should be taken to imply that debtors seldom pay their unsecured debts. The likelihood of repayment is an empirical question. In fact, evidence suggests that voluntary payment occurs in the overwhelming majority of cases." *Id.* Note the realism in this last statement. The authors want students to see what it is like out there and not to be misled when they get there.

ready in hand. The intellectual task is to use it, manipulate it, evaluate it, and come, by those methods, to understand it. By asking them to apply the same statutory provisions in different contexts, we help the students develop their code-reading skills.

By making the rules accessible, we meet another important pedagogical goal: we give everyone a fighting chance to get something out of the course. Lowering the entry barrier to Article 9 and its related rules by giving the students some basic tools to work with, encourages students to invest in this course by working the problems and participating in the discussions. We think it is no accident that we get very high levels of participation in our classes when we use these materials.⁷¹

These basic concepts, which are not hidden but displayed outright for students, are then used as a jumping-off point from which the students will learn the nuances of secured transactions.

This is not to say that students are not required to read and analyze cases.⁷² To the contrary, they read very complex cases dealing with exceptions to the general rules they have been told, or dealing with subtleties in the statute. Because of the progression from basic text to statutory interpretation, then on to more complex case analysis and finally to realistic problems, students learn more.⁷³ They learn the law in far more depth than would ever be possible simply by reading a few appellate cases and then being grilled on them Socratically.⁷⁴

As the book progresses, the material becomes even more contextualized. After learning about the difficulties of collecting on an unsecured debt and the existence of this thing called a security interest, students are exposed to the one security device with which most are already familiar: the real estate mortgage.⁷⁵ While I admit that I felt unprepared to teach real estate topics in my Article 9 course, due to my lack of familiarity with the subject matter, the lesson's placement really works.⁷⁶ The lesson explains security in a context students un-

71. TEACHER'S MANUAL, *supra* note 10, at 8.

72. I know that many teachers strongly believe that reading cases is the only way to teach legal analysis. This view is under great fire, however, as it should be. See Jacobson, *supra* note 29, at 143.

73. See *id.*

74. See *id.*

75. See BOOK, *supra* note 7, at 27. "The Invention of Security: A Pseudo-History," is about mortgage foreclosure. Real estate remedies are woven throughout with some discussion of Article 9 remedies in comparison, pp. 30-47, then from pages 43-61, 68-90, and 390-407, several other real estate related assignments are found.

76. Fear of these related areas of the law need not overcome a teacher, especially in light of the detailed Teacher's Manual.

derstand.⁷⁷ Their familiarity with security instruments in this context catapults them to the next level and eliminates an experience I have had using another text when three-quarters of the way through the course, some students confessed that they still did not quite understand the purpose of the security agreement.⁷⁸

For teachers who simply do not wish to learn a new area of the law, there is always the option of skipping some of the real estate lessons. I do this with the later real estate materials and see no ill effects.⁷⁹ The book is written so that one can easily skip parts that are not relevant to one's own thinking about what an Article 9 course should cover. There is more than enough Article 9 law in the text to keep any teacher busy for a semester.⁸⁰

Another legal topic that is interspersed throughout the book is bankruptcy law. Some teachers may want to skip this material,⁸¹ either because they feel unfamiliar or just don't think it is important to this course. These portions of the materials can easily be skipped, although I do not recommend it. To me, Article 9's primary relevance is in bankruptcy cases, where security interests are tested for enforce-

77. Professor Heidt also notes the effectiveness of the real estate materials:

The real estate materials are appealing to have available in a course book so that one can draw comparisons between real estate secured credit and personal property secured credit. Students usually have some familiarity with the basics of mortgages. They or someone they know probably own a home. They know that they get a lower interest rate for a home mortgage than on a credit card. They know that mortgages are recorded. They know that if the mortgage is not paid, something called foreclosure is likely to happen. They may have heard the terms "sheriff's sale" or "judicial sale" or possibly even the right to "redeem." I applaud LoPucki and Warren for providing a good, solid overview of real estate backed lending and then using it to show the comparisons with Article 9 transactions. I assign a fair amount of this material in the beginning of the course.

Heidt, *supra* note 8, at 771.

78. Good educational practice requires the teacher to grab students' attention at the students' level. When this occurs, progress can be rapid. As a former boss once told me after I unartfully explained a complex concept to a group of clients, "the train was moving and they were not on it."

79. For example, I do not cover Assignment 33, "Secured Creditors Against Secured Creditors: Land and Fixtures," in my priorities coverage. See BOOK, *supra* note 7, at 608-30. I see no problem whatsoever with picking and choosing based on a particular teacher's interest.

80. See, e.g., BOOK, *supra* note 7, at 693-717, which covers Assignment 37, "Statutory Lien Creditors Against Secured Creditors." This lesson contains as detailed and sophisticated a discussion as I have seen on these liens, which are a hobbyhorse of mine. The assignment even covers liens created under the Perishable Agricultural Commodities Act (PACA), an incredibly powerful lien that is showing up more and more in bankruptcy court.

81. Professor Heidt prefers to teach all the bankruptcy materials together, at the end of her course. See Heidt, *supra* note 8, at 772-73.

ability in the most formidable, yet predictable, setting.⁸² Most legal issues surrounding security interests are only relevant in the context of bankruptcy, or at the very least, insolvency or financial failure. This is true because most businesses and individuals pay their secured debts, and nothing taught in the Article 9 course is necessary. Everyone gets paid, neither creation nor perfection is relevant, and all live happily ever after. Those unfortunate creditors for whom it does not work out this way usually find their position tested in bankruptcy court.⁸³ Thus, including bankruptcy topics in an Article 9 course is critical to student understanding in this area. This book makes the task easy and enjoyable, through its clear progression and detailed Teacher's Manual.

It is not the inclusion of bankruptcy in the book that makes this book's bankruptcy coverage so effective, however. Most secured transactions books cover the basic types of bankruptcies, as well as preferences. This book's bankruptcy coverage is far more integrated. The book is structured to start its coverage with remedies under Article 9, rather than creation of security interests.⁸⁴ It covers unsecured creditor remedies first,⁸⁵ followed by real estate remedies,⁸⁶ and then Article 9 remedies,⁸⁷ including self-help repossession and various forms of secured creditor sales.⁸⁸ The very next lesson covers the automatic stay imposed by bankruptcy, which directly limits the Article 9 remedies just covered.⁸⁹ The lesson explains that the automatic stay is in place upon bankruptcy and the problem set teases this out, but the real focus of the lesson is the standard for relief from the automatic stay.⁹⁰ Again, this makes perfect sense given that this is the single most common litigation to which secured lenders are a party. By now it should be clear that the authors' intent here is not simply to teach general analytical skills. Rather, it is to provide truly relevant knowledge to students, who may soon need it. The book does not elevate practice over theory; it successfully melds both, recognizing that

82. See BOOK, *supra* note 7, at 109 (containing text describing why bankruptcy is important to the subject of secured transactions).

83. This can be seen by examining the table of contents of any Article 9 book. The vast majority of the cases read in any course come from bankruptcy courts and proceedings.

84. This seems to be a trend of sorts in both secured transactions as well as contracts.

85. BOOK, *supra* note 7, at 3–23.

86. *Id.* at 24–90, with some Article 9 remedies mixed in for comparison.

87. *Id.* at 91–107.

88. *Id.* at 68–90, 91–107, Assignments 10 and 11.

89. See *id.* at 109–31.

90. *Id.* at 116–31, which includes some detailed hypotheticals on which students can practice their rusty math skills, as well as a complex case.

learning *how* to do this is critical, and that learning *why* it is done helps students remember how to do it.

Placing a lesson on the automatic stay in the remedies section of a secured transactions text makes sense. Repossession and state court execution are very often followed by a bankruptcy. This integration of bankruptcy into the Article 9 course presents a realistic, full picture of the world of debt collection.⁹¹ To really complete the picture, the materials go one logical step further by following the lesson on the automatic stay with a final remedies lesson covering the treatment of secured claims in bankruptcy.⁹² It is complex and covers not just calculating secured and unsecured claims in bankruptcy, but also selling collateral in bankruptcy, trustee's expenses, and the treatment a secured creditor can expect in a Chapter 11 or a Chapter 13 case.

Thereafter, starting with Assignment 8, the materials cover the things that most Article 9 books start with, namely, creation and attachment, collateral descriptions, and the concepts of proceeds, products, and other value-tracing concepts.⁹³ The basic attachment materials are excellent and can, as will be discussed later, be taught under a traditional casebook method or with the problem-based method.⁹⁴

The materials then proceed in a fairly predictable manner, covering collateral descriptions,⁹⁵ proceeds, products, and offspring,⁹⁶ bankruptcy value-tracing concepts,⁹⁷ as well as properly calling a default,⁹⁸ followed by perfection, i.e., the filing system,⁹⁹ the exceptions to the

91. *Id.* at 132–54. Without the automatic stay coverage in the remedies materials, students are playing with half a deck. They don't know when to stop.

92. Interestingly, the automatic stay is covered in more detail in this course than in the bankruptcy course. *Id.* at 109–31. This is sensible, given that the bankruptcy course covers all creditors of all shapes and sizes, whereas this material teaches students everything they need to know to represent secured creditors. Much of that representation takes place in bankruptcy court.

93. *Id.* at 155–209.

94. In the past several months, two bankruptcy judges and a real estate colleague all recently confused attachment with perfection and assumed that if a valid financing statement was filed, a security interest was enforceable and perfected. These individuals effectively skipped the attachment analysis and moved directly to filing or another perfection method when working out security interest problems.

95. *See id.* at 177–91, Assignment 9.

96. *See id.* at 192–209, Assignment 10.

97. *See id.* at 210–24, Assignment 11. I agree that this topic is not typical in a Secured Transactions book, and is so detailed that I am often tempted to skip it. Again, this can be done with no problem whatsoever.

98. *See id.* at 247–70, Assignment 13. The next assignment, Assignment 14, covers what bankruptcy does to the right to call a default, a complex but infinitely useful lesson. *See id.* at 271–84.

99. *See id.* at 311–69.

filing rule,¹⁰⁰ maintaining perfection,¹⁰¹ and then priorities.¹⁰² The use of real estate and bankruptcy materials prior to these topics set them up well. In three years of evaluations using this book, no student has ever complained about the bankruptcy assignments or the order of any of the course materials. Some students have called it the best text they had ever read, in large part because it actually interests them.

D. Realist Problems in Bite-Sized Assignments

One of the real advantages of the book is that the reading and assignments are broken down into bite-sized pieces, each of which is designed to fill an hour of class time. The assignments include the realistic and excellent problem sets, but these often need to be pared down in order to fit within an hour class period.¹⁰³ This makes the book incredibly flexible because the teacher can pick and choose between the many problems. All of this is explained to the students in the text:

[w]e have tried to include in each assignment all of the information the reader will need to answer the problems at the end. . . . The most difficult problems often are in a practice setting. Many of them are sufficiently complex to challenge even lawyers

100. See *id.* at 370–89.

101. See *id.* at 427–91.

102. See *id.* at 493–753.

103. As the Teacher's Manual states:

It is always hard to use a new book. The most vexing part is dividing the book into class assignments that are (1) not too long for students to read, and (2) not too short to support an hour of work in class. We have tried to eliminate these concerns for first time users of SECURED CREDIT: A SYSTEMS APPROACH by dividing the materials into 40 assignments, each suitable for coverage in one class period. The typical three hour course will meet 42 times in the semester. At the rigorous pace of one assignment per class (and allowing for a bit of the inevitable slippage), coverage of the entire book will fit neatly to the semester. . . . We have designed the book so that certain assignments can be skipped, and the core of the course can be taught in 27 assignments. Our primary purpose was to accommodate teachers who must cover secured transactions in a two-credit course or as part of a commercial law course that combines secured transactions with other subjects. . . . But we found that the core assignment were [sic] great for those who, like one of us, can't hold even a relaxed schedule. In our bite-sized approach, each assignment carries with it three warranties: (1) there is not too much here for students to read and do for tomorrow's class (provided that you deleted problems from the assignment where appropriate), (2) skipping assigned problems as indicated in this Teacher's Manual, each problem set can be taught in 50 minutes or less, and (3) all of the problems assigned will support at least 50 minutes worth of class discussion. The assignments range from a minimum of about 15 pages to a maximum of about 25 pages (the biggest come early in the semester, before the students have a lot of statutory material to manage). In addition, students are expected to read the related statutes from the statutory supplement and work the problems.

TEACHER'S MANUAL, *supra* note 10, at 9.

who have been practicing commercial law for many years. Our assumption is that each member of the class, working alone or perhaps with one or two others, will find a satisfying solution before class. In class, students will present and discuss a variety of solutions and then attempt to settle on one or two that seem best. The process is not unlike that followed in most large law firms when several lawyers get together for a brainstorming session to formulate strategy for a particular case.¹⁰⁴

The Teacher's Manual explains each problem set in great detail. It explains the exact educational purpose of each problem set as a whole as well as the educational purpose of each individual problem. It also suggests which problems to eliminate if the teacher wishes to spend more time on cases or other things. Thus, the teacher can decide which issues to teach to students through each problem set.¹⁰⁵

The problems are also realistic and fun, so they keep students' interest. For example, Problem 1.2 reads as follows:

The following debt collection story appeared in David Margolick's *New York Times* column, "At the Bar":

Jonesport, Me. . . .

Earlier this summer Bert S. Look, whose family has been catching crustaceans out of this sleepy fishing village on the eastern end of the Maine coast since 1910, was the picture of frustration. For months, he has since explained, a local seafood wholesaler named John Kostandin had owed him nearly \$30,000, and he was powerless to make him pay. The usual legal remedies, he believed, were worthless.

"I could have gone through nine million district attorneys and nine million lawyers and I wouldn't have gotten anything," Mr. Look said. "I was willing to try anything non-violent." So, in the best tradition of Maine lobstermen, who cut the lines on the traps of their disreputable competitors, he resorted to self-help. Actually, he had one helper: a self-styled professional prankster known only as "Deep Homard." (Homard is French for lobster).

104. BOOK, *supra* note 7, at xxxiv.

105. In my three-credit class, I rarely do a full problem set. I have a pared-down syllabus that tells students exactly which problems we will do in class. I formed this detailed syllabus using the TEACHER'S MANUAL, and its detailed advice about what was critical and what could be cut, as well as my own experience and interests. This syllabus will be happily shared with any teacher who would like to see it.

In June, Homard, posing as a friend of [horror novelist Stephen King], called Mr. Kostandin. He said that the novelist, who lives nearby in Bangor, needed three-and-a-half tons of lobsters for his annual lobster bake. Of course, the lobsters would end up with Mr. Look rather than Mr. King; at slightly more than \$4 a pound, they would neatly cover Mr. Kostandin's tab to Mr. Look

Apparently enticed by meeting Mr. King—and the prospect of catering future King shindigs—Mr. Kostandin, accompanied by his wife and 78 crates of live lobsters, drove to Dysert's Truck Stop in Hermon, where they were told, Mr. King would meet them. Told there that the novelist had been detained, Mr. Kostandin left the lobsters behind and headed, via a limousine provided by Mr. Look, for a purported rendezvous with the author at the Panda Garden, a Chinese restaurant in Bangor. By the time he deduced that he had been had, Mr. Look had the lobsters, which he promptly sold.

David Margolick, *At the Bar*, N.Y. Times, Sept. 17, 1993, at B8 col. 1. Mr. Look got only \$19,000 for the lobsters. He comes to you for legal representation in collecting the rest. Your first call was to Stephen King. Although the conversation was very scary, it is clear that King doesn't want to be involved. What do we do next?¹⁰⁶

My favorite problem in the book asks the students to imagine that they are a lawyer in practice and fail to attach a collateral description to a client's security agreement, making the security interest unenforceable. The lawyer discovers the mistake while looking through his or her own file, after the debtor is already in bankruptcy. The students must decide what to do: fess up or doctor the file for the benefit of the client.¹⁰⁷ This problem demonstrates how the authors have in-

106. *Id.* at 21 (alteration in original).

107. *Id.* at 174–76, Problem 8.3. In this problem, the student needs to decide what the lawyer should do, and I have them work in groups. One option is to attach the necessary documents now, since this is all within your control. This, of course, would be both lying and cheating. Alternatively, the lawyer/student has to explain the mistake to the client. As the Teacher's Manual suggests for the subsequent problem, 8.4 (TEACHER'S MANUAL, *supra* note 10, at 81), I require the student called upon to make the call himself or herself, with me acting as the client. It is fun, but according to the evaluations, also very meaningful. One student recently told me that she remembers that day in law school the most vividly, especially since someone in the class openly advocated lying and covering up to save face and reputation. Two written evaluations in the Fall of 2001 mention this problem as a turning point in their law school career, and no other problems are mentioned.

tegrated ethics into the Article 9 curriculum, in the context of actual hands-on situations that students might later face.

III. ULTIMATE FLEXIBILITY IN THE CLASSROOM

All of the attributes discussed above make *Secured Credit: A Systems Approach* an excellent text. For me, however, the book's biggest benefit is its flexibility. I like to vary what I do in the classroom from year to year and to find ways to teach to students with non-traditional learning styles and backgrounds. Nothing about this book requires that this be done,¹⁰⁸ although it is written in order to provide a problem-based method of teaching.¹⁰⁹ Its unique compendium of text, statutory interpretation, cases, and problems of varying complexity make it well suited for teaching the material in different ways. Even in our rapidly changing world, this book has no risk of becoming obsolete because it is constantly updated. Its flexibility will allow it to address the needs of future law schools, future law students, and ultimately, future lawyers for years to come.

A. The Casebook Method For Traditional Teachers

Many traditional law students seem to learn well from a traditional Socratic discourse drawn from appellate cases. This is not to say that this method works for every subject, or that it is the best way to teach even traditional students.¹¹⁰ However, if you are a teacher who wants to teach cases in the Langdellian tradition, this casebook can be used in this way. It is not necessary to teach through the use of the problem sets, and most of the cases are superb.¹¹¹ This would be an excellent text out of which to teach the casebook method because the textual material helps set up the cases, which are often complex. There are enough cases in the book to fuel plenty of Socratic discourse, particularly given that the statute also must be taught and read.¹¹² Thus, this problem-based book can be used in many ways, including as a book from which to teach only cases and the statute.

108. See *TEACHER'S MANUAL*, *supra* note 10, at 1-11.

109. See *id.* at 7.

110. See Jacobson, *supra* note 29, at 140. Twenty years ago, virtually all law students were male and white. Today the make-up of the law school class is as varied as the students' learning styles. See *id.* n. 3.

111. There may be times when you will need to supplement with a case or two in areas where most of the material is presented textually, but these times should be rare.

112. I remember both in law school, and when I taught with another teacher before I taught my own course, that it was hard to teach the statute without problems with which to apply it.

B. The Problem-Based Method: The Book's Raison d'Être

Switching to the problem-based method laid out in this text could be a tremendous benefit to teachers who only use the traditional casebook method.¹¹³ If it turns out that you do not like using the problem-based method, it is easy to switch back to the case method of teaching using the same book. This creates a risk-free option for teachers who wish to try something new. The book can also be used to teach just a few problems rather than the whole set, leaving time to discuss cases, statutes, and text, in the abstract as well as in the context of the specific problems.¹¹⁴

I take this approach myself at times, teaching only a portion of the problem set. The problem sets unquestionably develop lawyer competencies in areas in which I want my students to be technically competent. They also pose many theoretical questions, but perhaps not always in the way that I would pose such questions. As a result, the book contemplates that individual teachers will pick and choose among the problems offered in the book.¹¹⁵ In fact, the Teacher's Manual tells teachers exactly what subject each question covers and suggests problems that can be skipped without losing any building-block knowledge that will be needed later.¹¹⁶ The Teacher's Manual

113. The Teacher's Manual explains the authors' reasons for writing a problem-based text: We teach this course by the problem method because we believe that students learn best by hands-on application of their knowledge. Neither reading a code section, nor reading about a code section, promotes understanding nearly so effectively as applying a code section in a variety of contexts. The problems give students the opportunity to apply what they have learned, both to prepare for class and to participate in class discussions.

See TEACHER'S MANUAL, *supra* note 10, at 7.

114. The authors intend that you discuss all of these things, but in the factual context of the problems.

115. See *supra* note 103.

116. For example, see TEACHER'S MANUAL, *supra* note 10, at 134–35, which tells about Problem 16 on priorities:

The first two problems in this set deal with priority. They should be covered lightly and delicately—it is too early to get deeply into the dark mysteries of priority. . . . The diligent creditor who has all the equities on her side loses, making the points that (1) priority is an all-or-nothing concept, and (2) priority can be established quickly and easily. The problem also illustrates the tremendous power of the debtor in a system of consensual security—a flick of the debtor's pen makes one creditor a winner and others losers. This provides an opportunity to discuss who the winners and losers in such a system are likely to be. Problem 16.2 goes for the heartstrings with a sympathetic buyer who doesn't check the filing system because he doesn't know it exists. Our point is that priority is a hardball game in which the knowledgeable players have all the advantages. We hope it will make the students want to be knowledgeable and to think about changing the system. Problem 16.3 is the bread and butter problem of this set. Designed to take well over half the class period, it takes the students through

does the same thing with respect to whole assignments that can be skipped.¹¹⁷

C. Rocking the Boat With Non-Traditional Teaching Methods

Additionally, if a teacher wants to vary his or her teaching methods even more, to attempt to address the students' varying learning styles, or to add more components to the grade, this can be accomplished through the use of this text as well.

Various personal characteristics contribute to students' learning styles, including intelligence, personality and, most importantly, the way a student absorbs and processes information (the "Information Processing Indicator").¹¹⁸ Since one goal of most law professors is to help students master doctrinal or substantive material, professors can achieve this goal by teaching to diverse learning styles in the classroom, and this book can facilitate that goal.

a bunch of problems on where to file and search. The repeating issues are (1) what kind of property we have and (2) where interests against that kind of property are supposed to be filed. Keeping with our approach of examining security in all the contexts in which it arises, some of the filings are in the U.C.C. system while others are not. Problem 16.4 deals with the relationship between filing and searching and is designed to make the process more concrete in the minds of the students.

The problem set is too long for one hour unless the discussions are held sharply in check. If the teacher wants to explore in some depth why we go for a first-in-time, winner-take-all priority system early on, it would be best to cut down on the number of subset questions in 16.3. One way of doing that is to tell the students the answers to some of the questions so they can check their own work, and move on. Problem 16.4 is essential because it gives concrete knowledge of the filing and search processes that will be a building block for understanding other aspects of those processes. In particular, it demonstrates the different functions performed by financing statements and security agreements, helping the students distinguish between the two in their own minds.

We put the priority problems first because that is the order in which we presented the materials in the assignment. Some teachers may prefer to start with 16.3 and 16.4. That way, if they run out of time, they will have covered the key material students need to understand in order to tackle later assignments.

Id.

117. See *id.* at 10–11. There is no question that I prefer the problem-based method, but this book made the decision for me. I have used problem-based books that have contained problems that are both too easy and too hard. The problems in this book have just the right balance, just the right number of onion skins, with something for everyone.

118. See Jacobson, *supra* note 29, at 145.

1. Teaching for Different Learning Styles

Under the Information Processing Paradigm of learning styles,¹¹⁹ there are five categories of learners: Verbal, Visual, Oral, Aural, and Tactile/Kinesthetic.¹²⁰ Hardly anyone falls into one category only; most of us learn best when material is presented in several different ways.¹²¹

Most law students are primarily verbal learners, learning best by reading written texts.¹²² In fact, excellent reading skills predict good law school performance better than any other skill, including good writing skills.¹²³ A large and growing minority of law students learn best through visual learning techniques, and most law students get some benefit out of visual aids.¹²⁴ Some law students learn best by verbalizing their understanding of the law, and again most students benefit by some verbalization of their ideas.¹²⁵ Finally, some students learn best through tactile/kinesthetic touch or movement,¹²⁶ and in the law school setting role-plays can help those with this learning style. Few people learn best aurally, by merely listening to someone talk.¹²⁷ This is interesting in light of evidence that the true Socratic method, though still paid lip service, has been largely supplanted in law school by the lecture method.

Personality is another characteristic that affects learning style, the most well known measure being the Myers-Briggs Type Indicator.¹²⁸ Myers-Briggs breaks students down into four different personality categories: Extroverted, Introverted, Sensing and Intuitive.¹²⁹ Law students do not necessarily fall into one Myers-Briggs category most frequently, but instead disperse within the four categories.¹³⁰ Person-

119. I made this name up, based on M.H. Sam Jacobson's insightful article about learning styles, in order to easily distinguish this theory from personality indicators such as the Myers-Briggs personality trait paradigm. *See id.*; *see also infra* notes 128–37 and accompanying text.

120. *See Jacobson, supra* note 29, at 151–57.

121. *See id.* at 144–45. Varying the method of presenting information and allowing for different forms of student interaction can help students to better learn legal skills. This is because legal skills cannot be learned through memorization. *See id.*

122. *See id.* at 151.

123. *See id.* at 151 n.49.

124. *See id.* at 151–54. Some minority students reportedly learn best in this way, and given the time children now spend in front of televisions and computers, this learning style is purportedly on the rise. *See id.* at 160.

125. *See id.* at 151.

126. *See id.* at 155–56.

127. *See id.* at 155 n.61.

128. *See HESS & FRIEDLAND, supra* note 31, at 8.

129. *See id.* at 8–11.

130. *See id.* at 8.

ality traits do not necessarily bear on how an individual learns or processes information and are less relevant to law teachers in determining how students learn best.¹³¹ Even so, learners from the different personality categories often prefer different classroom formats.¹³²

Extroverts prefer small group activities, fieldwork, and problem solving.¹³³ Introverts like to know the questions you will ask them in advance, favor the problem-based method over Socratic dialogue, and like to work through problems on their own with plenty of time to polish their work.¹³⁴ Sensing types like computer-assisted exercises, other visual aids and step-by step instructions, which they can follow to a tee.¹³⁵ Intuitive types like to look at the big picture, enjoy small group work and particularly appreciate an opportunity to be creative and inventive in solving problems.¹³⁶ The point is that all these types of learners can make superb lawyers. Since everyone learns a bit differently, some teaching methods may be more helpful to some students than others. The best way to reach the largest number of students is to vary the teaching methods used within a given class.¹³⁷

Reading and discussing statutes, cases, and problems directly feeds the learning styles of verbal and oral information processors. All legal texts facilitate these two learning styles to some extent.¹³⁸ Used traditionally, this book will reach verbal and oral information processors.

For the visual learners, as well as sensing types under the Myers-Briggs model, the book contains some fabulous visual aids, including all the loan documents discussed above.¹³⁹ The teacher can draw out the transactions and loans described in the problems, much like one would diagram a case. I often use huge Post-It® pads to diagram complex transactions or questions, because unlike board drawings, we can save them and use them again. I sometimes use the Post-Its® to draw pictures of the various forms of collateral as well, or to have the

131. See Jacobson, *supra* note 29, at 149.

132. See HESS & FRIEDLAND, *supra* note 31, at 9–10.

133. See *id.* at 9.

134. See *id.*

135. See *id.*

136. See *id.*

137. See Jacobson, *supra* note 28, at 142.

138. None of the Myers-Briggs learning indicators seem particularly well suited toward the traditional Socratic method, but it obviously works well for certain students in any event.

139. See *infra* notes 44–50 and accompanying text. See also spider advertisement, BOOK, *supra* note 7, at 266, and foreclosure notice, *id.* at 78.

students draw the collateral for the loans we'll discuss before class starts.¹⁴⁰

The book itself is incredibly visual and literal in its language as well. At one point the authors explain how the cereal you ate for breakfast could very well have security interests all over it. As the authors say, "yuck!"¹⁴¹ One of the best visual aids in the book is the bank ad that has a huge picture of a black widow spider on it.¹⁴² The ad claims, "Shortly after mating, the black widow spider eats her mate. Sadly, many business banking relationships don't last much longer."¹⁴³ The idea here is made clear, in the context of a lesson on lender liability, for both visual learners and all others. Visual learners are common enough in law school that it makes sense to cater to them more than we do, and in a variety of ways, not just by diagramming a case or putting words on the board. This book makes it easy to cater to visual learners, as well as verbal and oral learners.

Role-play exercises help students of various learning styles to learn, most notably Tactile/Kinesthetic learners, and extroverts and sensing types under the Myers-Briggs model. Members of certain minority groups, particularly some Native American groups and others, learn particularly well through movement and tactile touch.¹⁴⁴ Extroverts and sensing types under Myers-Briggs appreciate group exercises, of which role-plays are one type. Everyone, regardless of their background, appreciates variety in the classroom and an occasional chance to get up and move around the room, or to do a role play in which they have a distinct purpose from other students or groups. Some people like to act, some like to sing, and everyone likes variety in the classroom.

The book facilitates the use of role-plays and other non-traditional classroom exercises because it is complex and varied, and because it has great problem sets. Virtually any problem can be used as a classroom role-play. In their current forms, all can be used as short role-plays. The Teacher's Manual details how this can be done, if a teacher so desires, and it even suggests times when the teacher should play the client when calling on a student.¹⁴⁵ For more complex

140. Believe it or not, this causes some students to show up early so they can play with the markers and show off their drawing skills. It is amazing how much this helps some of them to actually visualize concrete subject matters.

141. See BOOK, *supra* note 7, at 201.

142. See BOOK, *supra* note 7, at 266.

143. *Id.*

144. See Jacobson, *supra* note 29, at n. 4.

145. See, e.g., TEACHER'S MANUAL, *supra* note 10, at 81-83.

role-plays, the teacher can embellish the facts a bit and assign roles to students in advance. The problems can also be used to do in-class negotiations. The possibilities are endless. As suggested above, one can also use the book's detailed loan transactions, such as the Fisherman's Pier sale, to show students who gets what out of the deal and who ends up with the documents at the end of the day.

The lesson discussing collateral descriptions can be supplemented with a game that teaches collateral descriptions better than any tool I have seen. Correct understanding of terminology in this area is crucial as misunderstandings result in all sorts of analytical mistakes in creation, perfection and priorities analysis. I devised a game called "collateral jeopardy" from this book's coverage of descriptions of collateral.¹⁴⁶ Teams of students, which ultimately are quite competitive, must identify the category in which an item falls under Article 9. After playing the game, they beg to play it again, which we do not do. By then, they know inventory from equipment.

In summary, this book works well when used in a number of ways, from traditional case study and Socratic dialogue, to the use for which it was specifically designed as a problem-based text, to non-traditional teaching styles and methods aimed at varying teaching methods to address different learning styles.

2. Providing More Frequent Feedback and More Grade Components.

In addition to helping teachers to facilitate non-traditional learning styles, the book also can be used to create additional components to the grade. Basing an entire course grade on one exam is not educationally sound,¹⁴⁷ regardless of how convenient we teachers find it. Students are provided with no feedback on their ongoing learning in the course, and teachers also remained uninformed about how well students are learning the subject matter.¹⁴⁸ Neither group is able to learn from their mistakes. Moreover, because all assessment methods have deficiencies, a teacher can limit the shortcomings by varying the assessments used in a particular course.¹⁴⁹ This also allows a teacher

146. See BOOK, *supra* note 7, at 177-91.

147. See Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463, 464 (2001). As Professors Hess and Friedland note, providing prompt feedback to students on their progress is one of the primary principles of good educational practice. See HESS & FRIEDLAND, *supra* note 31, at 15-16.

148. Sergienko, *supra* note 147, at 465.

149. See *id.* at 464-65. See also Paul T. Wangerin, "Alternative" Grading in Large Section Law School Classes, 6 U. FLA. J.L. & PUB. POL'Y 53, 53-54 (1993); Greg Sergienko, *Practicing What We Preach and Testing What We Teach*, in TECHNIQUES FOR TEACHING LAW 292, 292-93 (Gerald F. Hess & Steven Friedland eds., 1999). Using a variety of assessment methods to

to try to grade on what was taught in the course, which is actually uncommon in law school.¹⁵⁰

Some schools now require additional components to a course grade, and even if this is not required, some teachers may wish to add grade components in order to help students learn. For teachers who wish to assign other projects as part of the course grade, this book is a boon. One can assign any problem to be answered in writing for credit or part of the grade. The role-plays discussed above can be graded if they are complex enough. Also, drafting exercises based on many of the problems can be created. One year, I assigned a drafting exercise based on the *Fisherman's Pier* sale.¹⁵¹ The book does not provide copies of loan documents for this transaction, so the students were asked to draft a note and a short security agreement. They also did a bill of sale and a financing statement, all for part of their grade. Since many written assignment can be designed based on problems in this book, this book is useful in providing additional components to the course grade, if desirable.

V. CONCLUSION

This book is an excellent text on a number of levels. Any new teacher, or any teacher who is considering changing his or her secured transactions course materials, should consider this text. Its light style appeals to both teachers and students without sacrificing serious content or intellectual vigor. The authors have incorporated traditional teaching tools with practical, hands-on applications. This marriage of the theoretical and the real makes the book flexible. Teachers can experiment with different instruction methods, which will ultimately benefit the variety of learning styles present in a single classroom. *Secured Credit: A Systems Approach* is a textbook with the potential to make great contributions to law school curricula and the legal community at large as teachers send new generations of lawyers into ever-changing societies and communities. It is theoretical and doctrinally sound enough to hold its own in a field with important and strong traditions, but forward-looking enough to inspire contemporary learners and educators. In fact, I urge *all* teachers of secured transactions to try this book—it will become habit-forming.

minimize the deficiencies of each. See Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 944 (1997).

150. See Sergienko, *supra* note 147, at 292–93.

151. See BOOK, *supra* note 7, at 156–58.