

The Use of Writing Projects in a Criminal Law Course

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1. Problems With the Traditional, End-of-Semester Final Exam

One of the common complaints from law students, particularly 1Ls, is that most course grades are computed on the basis of single, end-of-semester, comprehensive, final examinations. How a student does on this one and only assessment tool will govern, in most cases, 100% of their grade in a course. A lot, therefore, rests on how a student performs in a given 3- or 4-hour exam period.

Many factors other than knowledge or skill can impact how a student performs in such a situation. Getting the flu, breaking up with a significant other, or even getting a poor night's sleep before an exam might all detrimentally impact how a student does on the exam and, in turn, in the course. In addition, using a single final exam limits the material that can be tested—both in breadth and depth.

The solitary final exam model for assessing students does not sufficiently mimic the problem-solving skills that will be required in law practice. Traditional final exams do not test students on research, careful and thought-out analysis, and overall presentation. Grammar, structure, and style are all abandoned in favor of the archaic IRAC formula. In real life, most legal assignments look nothing like law school final exams.

Traditional, end-of-semester final exams test students on a very narrow skillset: the ability to *quickly* apply law to facts. Issue spotter exams provide the facts in a neat paragraph form. In the real world, rarely will projects, assignments, and cases be given to new lawyers in such a "neat" and compact fashion. In practice, new attorneys must be able to extract facts from various documents such as depositions and grand jury transcripts, and must be able to extract the law from a variety of primary sources.

A single final exam makes it impossible for students to adapt and learn from their mistakes. Particularly for students who struggle with the law, final exams afford them little opportunity to gain feedback and to improve their analysis.

2. Skills in Criminal Law

At Texas Tech, Criminal Law is a required course for all first-year students. 1Ls take Criminal Law in the Spring semester in a large-lecture format (typically between 60-70 students). Criminal Law is one of the first public law and code-based courses that students take. While some states retain a common law penal law, most states have codified their criminal law into statute. Criminal Law is thus a key opportunity to introduce students to the basic tools of statutory construction and interpretation.

Criminal Law is also a way to refine students' problem-solving skills. Most criminal law problems (in law school and the real world) involve a simple formula: Apply a set of facts to a given statute using, if necessary, cases that have interpreted and applied the statute. This yields a simple result (guilty or not guilty of the charged crime).

To teach problem-solving skills in Criminal Law, I selected a problem-based textbook by Myron Moskowitz (Professor, Golden Gate), *Cases and Problems in Criminal Law*. The textbook is organized around specific crimes such as robbery and burglary. Each chapter contains a problem and a set of factual materials, such as a police report or a transcript of a witness interview. The book then provides a set of statutes on the crime in question from a particular jurisdiction (e.g., California). Following the statutes are cases from the same jurisdiction that interpret the statutes. Students must practice *stare decisis* the same way actual lawyers do. They learn to see the interrelationship between statutes and the cases that interpret them. They also practice applying facts to the law.

3. Spring 2004 Experiment

In recognizing the problems inherent with single final exams as well as the opportunities associated with teaching problem-solving skills in Criminal Law, I gave students in my Spring 2004 Criminal Law course four, separate writing projects that involved criminal law issues, in lieu of a final exam. The projects were modeled after the Multistate Performance Test (MPT), now used on 57% of bar exams.

For each exam, students were given a "task memo" from a hypothetical supervisor explaining what they needed to accomplish. They were given a "fact file" consisting of transcripts and other documents, such as police reports, from which they had to extract the facts of a given case. They were also given a "law file" consisting of statutes, rules, and cases (some relevant, some not) from which they had to discern the applicable law in a jurisdiction. Exams were "closed-packet," meaning students were not allowed to do outside research. For one of the exams, students were allowed to work in groups.

Number (Month)	Format	Problem	Page Limit	Group?
1 (February)	Office Memo & Draft Indictment	Advise senior prosecutor on whether to bring charges against a Δ who stole a car and, if so, which theft offense to charge. Draft charging instrument.	3	No
2 (March)	Trial Brief / Motion	Argue that a capital murder and arson indictment should be dismissed.	4	No
3 (April)	Judicial Opinion	Decide whether Battered Woman's Syndrome should apply when the "victim" was sleeping.	Majority – 4 Dissent – 2	Yes
4 (May)	Argument Section of Appellate Brief	Argue for affirmance of conviction in felony-murder and accomplice liability case.	5	No

Each of the exams was graded anonymously. It typically took approximately 3 weeks to grade each set of exams. I tried to provide as much individual feedback and markups as I could, although this was made difficult by the number of exams. After returning the papers, I met with students on an individual basis if they had questions or concerns about their papers.

Typically the grade distribution for each paper followed a bell curve centered in the B/C+ range. Each exam was weighted approximately 25% of the final grade. While there was a fairly even distribution on each individual exam, I found that the students' final grades clumped together, with most students receiving a C+ or B, and few students receiving grades of A or D. This result makes sense—take 70 equally capable people and give them multiple opportunities to demonstrate their ability to analyze problems, and one would expect them to do equally as well in the end.

4. Evaluation

Professor's Perspective

From my perspective, students' ability to analyze criminal law problems increased throughout the semester. The writing assignments forced them to focus on the method of their analysis, not just the end result, on a given problem. The writing assignments helped to reinforce what students learned in their Legal Practice (research and writing) course.

The greatest challenge with this method of assessment was time. Instead of having one, very large final exam to grade at the end of the semester, I had a series of smaller assignments to grade and give feedback on throughout the semester. After I handed back an assignment, I often spent additional time meeting with students who were concerned about their grades and wanted to improve their analysis and writing skills.

Student's Perspective

Students' reviews of this experiment were mixed. The students who seemed to struggle the most with basic statutory analysis and interpretation seemed to appreciate the opportunities for multiple feedback. On the other hand, many of the A/B+ students complained excessively about the assignments. These students were accustomed to doing well on traditional, end-of-semester final exams. For many of them, writing several exams represented an increase in workload from what they were used to. Some students also felt it was unfair that their section had to complete these writing assignments while other sections just had one final exam. With these students, I attempted to explain the long-term benefits of having multiple opportunities for assessment.

The largest set of complaints I received was on the grading. For each exam, I used a grading sheet that broke down the final score into a series of smaller subparts. Each exam's grade was based mostly (about 70%) on analysis, issue spotting, and rule application. The balance of the grade was based on the quality of writing. Here, I did not grade on grammar or technical application of *Bluebook* rules. Instead, I asked whether the totality of the writing adversely or positively impacted on the ability to convey the writer's point. As in real life, great analysis that is clouded by poor writing can negatively impact the persuasiveness of the document. Some students felt that this system was arbitrary.

5. Conclusion

Overall, I concluded that this experiment was a mixed success. The best result came from the students near the bottom of the class who initially struggled with the material, but who ultimately demonstrated improvement in their basic problem-solving skills. Students who might have received a D or F on a single final exam were instead able to improve their skills throughout the semester and achieve a passing grade.

Some things I learned in hindsight include:

- More coordination is needed with the Legal Practice (legal research and writing) faculty to ensure that my grading standards on the writing component match what they were teaching. I tried to do this on an *ad hoc* basis, particularly when students would say that my criteria conflicted with their Legal Practice professor's.
- The need to define, in a clearer fashion, the expectations for the course, particularly in terms of workload and grading criteria, as well as the educational purposes of problem-solving and multiple assessments.
- The first assignment should not be graded so that students can "practice" getting accustomed to the nature of the assignments and my grading criteria. In the alternative, I might consider dropping the lowest grade that a student achieves.
- Many students fail to see the connection between legal writing, their doctrinal courses, and the real world. This may be due, in part, to the unequal faculty status that many legal writing faculty have or a perpetuated student notion that legal writing is not as important as doctrinal subjects.

If we are to "teach to the whole class," our traditional notion of how to assess students should be reconsidered. Much stress and anxiety in law school revolves around the traditional, all-or-nothing final exam. Such an exam does not enable students to learn from their mistakes or to demonstrate improved competency with the material. By incorporating writing assignments into their courses, professors can help to integrate problem-solving skills with doctrine.