DESCRIBING THE BALL: IMPROVE TEACHING BY USING RUBRICS—EXPLICIT GRADING CRITERIA

Sophie M. Sparrow[*]

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INTRODUCTION

"They just aren't getting it," law professors frequently complain when they talk about grading student work. One professor began each year hoping that students would show they understood the course material; each year his hopes were dashed. "As I read through the exams, I start out optimistic and

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* B.A., Harvard/Radcliffe College, J.D. Harvard University School of Law, Professor of Law at Franklin Pierce Law Center. I thank Jon Garon, Gerry Hess, Judith Gire, Barbara Glesner-Fines, Chris Johnson, Kimberly Kirkland, Greg Munro, Jeffrey Roy, Barry Shanks, and Mary Sheffer, for reading and providing helpful feedback on earlier versions of this article. In addition, I thank Jenny Workman for her comments and editing, and Ellen Purcell for her invaluable research assistance and insights.

quickly become realistic."[1] And this happened consistently, even though this colleague[2] annually revised his course materials and teaching methods.

Law students are equally frustrated with grading. "I just don't know what the professor wants," is a common complaint, as is "the professor only explains what she wants *after* we have completed the assignment." An upper level student[3] summed it up: "the thing that bugs me the most about law school is that at the end of the semester you get a grade but you don't get any other comments, and you have no idea of what you did right or wrong." Occasionally students will leave an exam stating that it was a fair assessment of what they had learned, but just as often students—including those in the top of their class—report that they have no idea how or why they received their grades. Strong feelings remain after law students graduate. One colleague recalled, "Sometimes I did well in law school, sometimes poorly—but I rarely knew why."

Law professors and students complain about grading[4] and have been doing so for decades.[5] At the same time, lawyers, judges and law professors

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1. This phenomenon has been aptly referred to as an element of the "Bluebook Blues," a scenario "played out twice every year in our law school." Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 881 (1985). For a more recent lament, see Cindy G. Buys, *The Five Stages of Grading*, 10 LAW TCHR. 15 (Fall 2002) (identifying the stages as pleasant anticipation, shock and disbelief, anger, depression and acceptance). Assuming Professor Anders Henriksson's compilation of humorous undergraduate mistakes is at all representative, this reaction is not limited to law professors. *See* ANDERS HENRIKSSON, NON CAMPUS MENTIS 122 (2001) (One student, writing about World War II for an essay examination, stated "Hitler, who had become depressed for some reason, crawled under Berlin. Here he had his wife Evita put to sleep, and then shot himself in the bonker.").

2. I use the term "colleague" to refer to law professors I have spoken with at Franklin Pierce Law Center and other law schools. Over the last five years, I have had many similar conversations with professors attending national teaching conferences. These conferences include those sponsored by the American Association of Law Schools (AALS), such as its annual meetings and its 2001 *Conference on New Ideas for Experienced Teachers: We Teach But Do They Learn?* (June 9-13, 2001) (notes on file with author) [hereinafter AALS 2001 New Ideas Conference]; Gonzaga University School of Law Institute for Law School Teaching; the Legal Writing Institute; the Association of Legal Writing Directors; the Society of American Law Teachers, and Vermont Law School. Individual comments are not attributed.

3. Conversations with students and graduates from Franklin Pierce Law Center and other law schools. Individual comments are not attributed.

4. *See* Janet I. Motley, *A Foolish Consistency: The Law School Exam*, 10 NOVA L.J. 723, 723 (1986) ("Probably everyone [students and professors] who has participated in the endeavor of legal education also has participated in complaining about it."). *But cf.* Ruthann Robson, *The Zen of Grading*, 36 AKRON L. REV. 303, 306 (2003) (offering another approach to grading).

5. *See* GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 57 (2000) (chronicling remarks made by Professor Williston to Professor Llewellyn that were reported by Llewellyn at the December 29, 1947 proceedings of the Annual Meeting of the Association of

complain about legal education in general, and law school grading systems in particular.[6] Grading systems have been specifically criticized for relying on one end of the semester exam,[7] contributing to student stress[8] and reducing

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American Law Schools. The essence of the conversation was that despite the fact that they had devoted the first year of law school to teaching Contracts to their students, one year later the same students in their Sales classes "didn't know the Contracts that [they had supposedly] taught them in the first year.").

6. *See* MUNRO, *supra* note 5, at 45-64 (reviewing decades of critiques of legal education); Roger C. Cramton, *Lawyer Competence and the Law Schools*, 4 U. ARK. LITTLE ROCK L.J. 1, 10-15 (1981) (suggesting changes in curriculum and the delivery system of legal education to improve lawyer competence); Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 247 (1992) (advocating that the primary method of teaching in law schools, the case method, be supplanted by the problem method); *see generally* Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411 (1977) (a comprehensive survey of the deans and student bar associations of 196 ABA-accredited schools); Robert MacCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. & PROF. DEV. [hereinafter MacCrate Report].

7. *See, e.g.*, Robert C. Downs & Nancy Levit, *If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 823-24 (1997) (asserting that the typical law school method of examining students on a single, end-of-semester is the "least recommended," according to educational testing theory; but it is unlikely to change, given the perception of the status quo, that "if it ain't broke," and the fact that any alternative is likely to require much time and effort on the part of professors); Steven Friedland, *A Critical Inquiry Into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 188 (2002) (Using a single final exam creates a "'disconnect' between the examination and the body of teh course.");Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 435, 462 (1989) (critiquing end-of-the-semester law school evaluations, or "Blue Book" exams and suggesting that this type of examination latently functions as a "reaffirmation of both conservative legal ideology and professorial prowess"); Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, With a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 693 (1997) (The disadvantages of a single essay exam as method of grading are "profound," and include *inter alia* "the difficulty of student improvement with so rare and sparsely evaluated feedback," and the calculation of grades based on stressful and artificial circumstances.); Paul T. Wangerin, *"Alternative" Grading in Large Section Law School Classes*, 6 U. FLA. J.L. & PUB. POL'Y 53, 54 (1993) ("[T]he grading system used in most law school classes, the system that primarily relies on the use of a single end-of-term essay exam, is not consistent with generally accepted theory regarding grading in higher education.").

8. *See, e.g.*, Friedland, *supra* note 7, at 171 (Exams' "impact extends from prestige and potential jobs, to the psychological, bearing on self-esteem and self-image."); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 78 (2002) (noting that law school grades are a primary source of student stress, and result in "a profound loss of self-esteem."); Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 LOY. L.A. INT'L & COMP. L.J. 601, 618, 630-31 (1991) (stating that legal education in the United States is primarily based on the Socratic and case methods, and suggesting that the Socratic method focuses inappropriately on the teacher, and

student motivation.[9] Grading and graders are faulted for being arbitrary, inconsistent[10] and promoting an unfair ranking system.[11] Fortunately, over the past ten years, many resources have been developed to help law professors improve their teaching, including books, articles, videos and conferences.[12]

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creates "anxiety, fear, and apprehension" in the learner).

9. *See* Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 879 (1997) (grading practices in the majority of law schools have "profound negative effects").

10. *See* Linda R. Crane, *Grading Law School Examinations: Making a Case for Objective Exams to Cure What Ails "Objectified" Exams*, 34 NEW ENG. L. REV. 785, 787 (2000) (Observing the process of grading essay exams is inherently tainted, Crane notes that subjective influences and non-substantive "distractions," e.g., penmanship or ink color, lead to inconsistency in grading and produce unreliable and invalid test results.); Daniel Keating, *Ten Myths About Law School Grading*, 76 WASH. U. L.Q. 171, 178-79 (1998) (The belief that law school grades have objective, non-relative meaning is a myth, for

> Even if the faculty could agree on which skills were necessary for minimum competence, we could probably not agree on how to objectively assess them. And even if we could agree on how to assess them, there would be no way to ensure that different graders would be consistent in applying those assessments. *Id.* at 179.);

Sheppard, *supra* note 7, at 687 ("There has long been concern for grades that are not uniform among instructors in a single faculty.").

11. *See generally, e.g.*, Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647 (1997) (for a detailed treatment of the topic of mandatory grade curves, the relative ranking of law students based upon grades, and resulting inequities); Glesner Fines, *supra* note 9; Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399 (1994); *see also* Deborah Waire Post, *Power and the Morality of Grading—A Case Study and a Few Critical Thoughts on Grade Normalization*, 65 UMKC L. REV. 777, 778-79 (1997) ("The underlying problem is the extent to which grading in law schools is unconnected or disconnected from the ideal of education. . . . [A] very narrow measure of achievement is reflected in law school examinations and this narrowness advantages particular groups of students and disadvantages others.").

12. *See generally* CORINNE COOPER, GETTING GRAPHIC 2 (1994); GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW (1999); MARLENE LE BRUN & RICHARD JOHNSTONE, THE QUIET REVOLUTION: IMPROVING STUDENT LEARNING IN LAW (1994); MUNRO, *supra* note 5; Gerald F. Hess, *The Legal Educator's Guide to Periodicals on Teaching and Learning*, 67 UMKC L. REV. 367 (1998); Arturo N. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, SPECIAL EDITION GONZ. L. REV. 1 (1994); Arturo López Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, SPECIAL EDITION GONZ. L. REV. 1 (2000); J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 1 CLINICAL L. REV. 1 (2d ed. 2001) (Special Issue); Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998). *See also generally* 10 THE LAW TCHR. 1 (2002); Videotape: A Day in the Life of Law School Teaching (Larry Dubin, Institute for Law School Teaching 1994); Videotape: Principles for Enhancing Legal Education (Gerald F. Hess et al., Institute for Law School Teaching 2001); Videotape: Teach to the Whole Class: Barriers and Pathways to Learning (Paula Lustbader et al., Institute for Law School Teaching 1997).

However, even with these tools, and with professors trying a variety of teaching methods, many law professors are regularly disappointed with student performance. Moreover, despite its problems, grading—assigning letter grades to summarize students' performance—is unlikely to disappear.[13] This is appropriate. Law schools should continue to evaluate students, but they should also conduct formative assessments. These assessments are defined as "ongoing assessments designed to make students' thinking visible to both teachers and students,"[14] not assessments that merely provide numbers and letters that give students very little guidance.

Acknowledging that law schools will probably continue to grade students, however, does not necessarily signal defeat. Instead, we can tackle some of the problems related to grading by improving our grading practices.[15] By being more explicit about how we grade, and refining our grading process, we can use grades as a tool to improve our students' learning. In addition, refining and analyzing grading systems can help us professionally and institutionally. With improved grading practices we can evaluate students more effectively and efficiently. We can better plan individual courses and the law school curriculum. The advantage of revising the grading process is that schools would not have to create something new; instead, we improve a procedure already prominent in legal education. Grading itself is a powerful learning tool. As one leading educator recently noted, "[grading] is the most effective tool a teacher has to promote learning."[16]

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13. *See* Glesner Fines, *supra* note 9, at 886-87, 908. Although Glesner Fines would like to see competitive grading structures done away with, she recognizes this is unlikely given the pressure and competition amongst law schools and from the marketplace. She also suggests that law students would be disadvantaged if not graded and ranked, losing interview and job opportunities to students from other schools that do rank. *See id.* at 886-87.

14. HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 24 (John D. Bransford et al. eds., 2000) [hereinafter HOW PEOPLE LEARN].

15. This article addresses grading; there are many others who have noted the value of providing students with "formative" assessments, assessments where students are not graded, but are given guidance and feedback to improve learning.

16. MARYELLEN WEIMER, LEARNER-CENTERED TEACHING: FIVE KEY CHANGES TO PRACTICE 17 (2002); WILBERT J. MCKEACHIE, TEACHING TIPS: STRATEGIES, RESEARCH, AND THEORY FOR COLLEGE AND UNIVERSITY TEACHERS 306-07 (10th ed. 1999); *but see* Glesner Fines, *supra* note 9, at 884, 884 n.24 (asserting that although grades induce learning, "[s]tudy after study confirms that grades are not necessary to motivate learning."). Friedland, *supra* note 7, at 192-211 (Professor Friedland provides "A Prescription for Improving Law Student Evaluation" suggesting many tangible ways in which law schools can improve their evaluation measures.)

We can improve law school grading by following approaches used by educators in other disciplines.[17] These teachers have noted that students learn more effectively when their teachers provide them with the criteria by which they are evaluated.[18] One way to do this is to provide students with rubrics, or detailed written grading criteria, which describe both what students should learn and how they will be evaluated. Certainly rubrics are not the only solution to solving the problems with grading in law schools, and they have flaws. But the benefit of using rubrics do, I believe, outweigh their deficiencies.

Rubrics are already used by those teaching students from kindergarten to graduate school;[19] law school professors can benefit, as other teachers have, from the abundant research in the science of learning, and thereby help law students learn more effectively. Grading law students may never be easy, but it may serve as a learning tool that benefits professors and students alike.

Professors and administrators have the power to add value to a student's legal education so that the student who is not "getting it" in the first few weeks can become a proficient lawyer three years later.[20] This article advocates using rubrics to change grading practices on an individual, as opposed to an institutional level.[21]

In writing this article, I have made the following assumptions: First, one of the most important goals of law schools is to educate students so that

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17. *See generally, e.g.*, HOW PEOPLE LEARN, *supra* note 14; MCKEACHIE, *supra* note 16; BARBARA GROSS DAVIS, TOOLS FOR TEACHING (1993); JOHN C. ORY & KATHERINE E. RYAN, TIPS FOR IMPROVING TESTING AND GRADING (1993); BARBARA E. WALVOORD & VIRGINIA JOHNSON ANDERSON, EFFECTIVE GRADING: A TOOL FOR LEARNING AND ASSESSMENT (1998); WEIMER, *supra* note 16.

18. *See* WALVOORD & ANDERSON, *supra* note 17, at 50, 66, 137.

19. *See* RUBRICS: A HANDBOOK FOR CONSTRUCTION AND USE ix (Germaine L. Taggart et al. eds., 1998) [hereinafter RUBRICS].

20. *See* Allan Collins et al., *Cognitive Apprenticeship: Teaching the Craft of Reading, Writing, and Mathematics*, *in* CENTER FOR THE STUDY OF READING: TECHNICAL REPORT NO. 403 4 (1987) (noting that students improved their reading, writing and mathematical skills when teachers used the methods of cognitive apprenticeship, "modelling, coaching, and fading"); WALVOORD & ANDERSON, *supra* note 17, at 50, 66, 137.

21. I am referring to the "institutional" and "individual" levels as others have previously. *Compare* Glesner Fines, *supra* note 9, at 909 (distinguishing the administrative, institutional level of law schools from the individual, or professorial level as distinct areas in which responses that "mediat[e] the negatives" of current law school grading practices can be implemented), *with* Kissam, *supra* note 7, at 496-98 (similarly separating out possible changes in legal education that would have to be effected by the institution from steps individual faculty members can accomplish without institutional support). *See* MUNRO, *supra* note 5, at 3-64 (for an institutional approach related to this topic); *see also* Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ALWD 229, 229-38, 244-46 (2002).

students will become competent novice attorneys.[22] Secondly, law schools have a duty to teach students whom they admit, not just to teach students at the top of the class. Finally, the science and research on teaching and learning applies to law students as much as it does to other adult learners.[23]

This article first describes what rubrics are and how they were developed. Part II shows how rubrics enhance learning and teaching; Part III discusses how professors ease their grading burden when they adopt rubrics. In the final section, I briefly describe a method of developing rubrics that colleagues and I have used. The Appendix contains samples of rubrics for courses in Civil Procedure, Professional Responsibility, Entertainment Law, Employment Law, Legal Writing, and Patent Practice.

I. DESCRIPTION AND DEVELOPMENT OF RUBRICS

Rubrics are sets of detailed written criteria used to assess student performance.[24] These criteria are based on the learning goals of the course. These goals are what the professor has identified students should learn by the end of the course. Within these goals, benchmarks may describe varying levels of student performance.

More specific than letter grades or raw numbers, rubrics describe how a student performed in a number of areas. Varying in complexity and

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22. This assumption may at first appear superfluous, since a cursory review of law school catalogs and web sites indicates that schools seek to attract applicants by touting the depth and expertise of their faculty, and the superior education and training they can provide. However, this does not necessarily mirror the reality that administrators place a higher value on their faculties' ability to publish, rather than to teach. *See* John O. Mudd, *Academic Change in Law Schools, Part 1*, 29 GONZ. L. REV. 29, 60-61 (1993-94) (identifying as a barrier to academic change in law schools the "predominant" reward system in place which "strongly favors writing law review articles over creating innovative courses or developing new teaching materials"); Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 52-53 (2000) (to enjoy promotion and job security, law teachers must devote much of their time focusing on publication; the academy's emphasis on publication is to the detriment of teaching); *cf.* Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 1974-75 (1999) (noting that a research orientation like that of the traditional university, with publication standards for professors tied to tenure, salary, and chair positions, has left less time for and less interest in teaching in law schools).

23. Law professors frequently do not believe that they can learn from those who teach in other disciplines. *See* Feinman & Feldman, *supra* note 1, at 895 ("Law professors have long believed that educational theorists are either charlatans or primitivies. That belief is arrogant and anti-intellectual.").

24. RUBRICS, *supra* note 19, at ix. Educators use the term to describe various assessment tools; for this article, "rubric" is defined as stated above.

approach, rubrics identify the knowledge and skills a teacher assesses, and provide criteria for how a student demonstrates success in these skills. Rubrics have no set form. Some are more specific and analytical; others may be more holistic. A professor may describe varying levels of performance in a rubric or make a checklist that describes the criteria necessary to meet the highest criteria only. Many professors already use versions of these instruments in grading student work.[25] This seems especially true for professors who regularly provide feedback to students on their progress, such as those who teach legal analysis, research and writing.[26] Three examples of rubrics follow in Figures 1, 2 and 3. Figure 1 contains a rubric that could be used in a criminal procedure course; Figure 2 shows parts of a rubric for an appellate brief; and Figure 3 is a portion of a rubric for a civil procedure final exam.

Professors can use rubrics like the ones in Figures 1, 2 and 3 in several ways. Some use rubrics to evaluate each part of an exam or other assignment. Many colleagues note that they prepare these before grading their exams, modify them as they read through the exams, and use them to determine total scores. Following that evaluation, professors might use the rubric to determine the final grade for the assignment. In most cases, this is where the rubric stops—completed and filed. Students wanting more information may follow-up with a professor and see a copy of the rubric for their exams; students in academic difficulty may be required to do so.

A small number of colleagues provide the completed rubric to students, thus giving their students detailed feedback about their performance on an assignment. For example, if a student received her professor's completed criminal procedure rubric (Figure 1), she might learn that she did extremely well identifying basic and complex issues in criminal procedure, but that she insufficiently analyzed the competing goals of the criminal justice system. In contrast, the student's classmate might learn that he did well applying criminal procedure to the facts provided on the exam, discussed competing policy goals thoroughly, but only identified the most basic procedural issues. While professors' letter grades can convey similar information—an A+ meaning that a student excelled in all categories and an F meaning the opposite—a letter

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25. *See, e.g.*, Robson, *supra* note 4, at 311 (discussing using and modifying a "feedbacksheet/grading grid, the instrument I will use to assess points in particular areas").

26. From reviewing materials prepared by legal writing professors, and from conversations on the LWI Listserv, it is clear that many legal writing professors create very explicit checklists that are used to provide students with feedback. *See, e.g.*, Melissa J. Shafer, *Effective Assessment: Detailed Criteria, Check-Grading, and Student Samples*, 14 SECOND DRAFT: BULL. OF THE LEGAL WRITING INST. 6-7 (1999). Similarly, clinicians also provide such detailed feedback; *see* MUNRO, *supra* note 5, at 215-17 (providing criteria for client counseling).

grade in the middle does not. When using a rubric, professors specifically show students how they earned their grades.

In addition to being a tool to evaluate and provide specific feedback, when provided in advance, a rubric tells the student how she will be graded, and is a teaching tool. For example, when given the criminal procedure rubric (Figure 1) *before* the exam, the student would know that identifying issues and applying facts were equally important, as each were worth forty percent of the total. She would also know that analyzing the policy underlying criminal procedure was less significant, counting for twenty percent of the exam grade. Telling students that they must identify issues, apply facts and address policy does not provide as much detailed information as this kind of a rubric does, nor would it direct students to the most important tasks. While many professors have an overall sense of why one student's answer to a question gets full points, and another earns a third of that, analyzing and describing these distinctions teaches students which skills are important.

I started creating more explicit rubrics after I heard many students say that they were not sure how well they were doing in my course, even though I gave them individual comments and a detailed checklist showing how many points they earned for each aspect of their assignments. Because I had spent hours commenting and assessing student work, I was initially quite skeptical of this claim, thinking that the students had overstated their concerns. Then I reviewed the students' graded assignments. When I reread my comments, which included a balance of positive and constructive feedback for all students, I could not tell how well the student was mastering the material either. I had given students a list of the A criteria but failed to describe the B, C, D and F assignments. The result was that when I provided students with a checklist, they had a picture of the top result. They could read from their feedback that they had not reached the top, but such feedback failed to provide guidance about where they were *in relation* to mastering material. When I gave students feedback using a more detailed rubric, however, more students could see what they had mastered and where they still struggled. The more specific the rubric, the more students could see what they needed to work on. By utilizing a rubric, students could see that though comments were encouraging, they still needed to do additional work to meet course goals.[27]

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27. Not all law students had this reaction. For example, some found that the weighing among categories did not accurately reflect the goals of the course; others stated that the descriptors were unhelpful. I believe that all rubrics are "works-in-progress" and continue to modify them according to feedback from students, teaching assistants and professors.

FIGURE 1 - RUBRIC FOR CRIMINAL PROCEDURE

This rubric identifies the "skills" but not specific content–and hence could be given to students *before* and after an exam.

Descriptions of levels of competence These do not necessarily correlate with end of the semester grades. **Description of what is being assessed.**	**Highly proficient or Roughly "A" quality**	**Proficient or "B" quality**	**Developing or "C" quality**	**Beginning or "D"–"F" quality**
Identifies Basic Procedural Issues 30%	Accurately identifies all basic procedural issues 28-30	Accurately identifies almost all basic procedural issues 16-28	Accurately identifies most basic procedural issues 8-15	Accurately identifies many basic procedural issues *or* 1-7
Identifies Complex Issues 10%	Identifies all or almost all of the more complex issues 9-10	Identifies most of the more complex issues 6-8	Identifies many of the more complex issues 3-5	Identifies some of the more complex issues 1-2
Analyzes the facts 40%	Accurately and explicitly shows how the law applies to important facts 31-40	Accurately shows how the law applies to most of the facts 21-30	Accurately shows how the law applies to many of the facts 11-20	Accurately shows how the law applies to some of the facts 1-10
Identifies and applies the policy behind the rules of criminal procedure 20%	Identifies competing policy goals and shows how they apply to facts and lead to predicted results 18-20	Identifies policy goals and mostly shows how they apply to facts and lead to predicted results 11-17	Identifies policy goals and somewhat shows how they apply to facts and lead to predicted results 6-10	Identifies policy goals and minimally shows how they apply to facts and lead to predicted results 1-5

FIGURE 2 – PORTION OF A RUBRIC FOR APPELLATE BRIEF – SECOND SEMESTER LEGAL WRITING

As with the rubric in Figure 1, Figure 2 identifies skills, but not specific content; this could be given to students *before* and after an assignment. Because this rubric built upon rubrics used in the first semester, which were very detailed, this rubric's categories were not broken down. In using the rubric, professors circled the parts that applied to individual student's briefs.

Overall Content And Analysis 32%	Uses most effective authorities for each issue, sub-issue and umbrella, includes holding, reasoning, and key facts from holdings; includes policies, statutes, regulations and other authorities as appropriate; authorities used to explain the points that are made; adverse authority is noted and distinguished. Shows how the sub-issues and issues relate to the whole argument; analysis within argument and sub-issues thoroughly explains, advocates and shows how the authorities and the facts relate. Shows how facts relate to underlying purpose and policy goals of the authorities. 25-32	Meets almost all of the highly proficient criteria, but has a few sections where cases are not synthesized, policy is not related to the argument, or facts are not completely analogized or distinguished from the authorities. 17-24	Some sections of the argument may lack using authorities to fully develop or explain the arguments being made; adverse authority is included. Some of the sub-issues may explain or apply the law superficially; counter-arguments may be weakly refuted; may lack showing how the issues relate to each other. 9-16	Minimally effective authorities used; some sub-issues may use ineffective authorities; authorities may be included but not with sufficient detail and depth to explain the arguments; minimal use of authorities may include inaccuracies; adverse authority is not included. Minimally uses the authorities to make arguments; minimally refutes counter-arguments, in several issues or sub-issues, fails to show how the authorities and facts work together to make the argument; key parts of the authorities or the facts or underlying policy are missing. 0-8

FIGURE 3 – PORTION OF A CIVIL PROCEDURE RUBRIC – Because this rubric identifies specific content that students should show on an exam, students would see this only after they had completed the exam. Professors could also show students this rubric in future semesters, accompanying it with the exam and sample answers, as this would provide students with information about how the professor grades and what the student is expected to learn.[28]

QUESTION ON SUBJECT MATTER JURISDICTION

Question 1

Part B - Subject Matter Jurisdiction, Joinder, Amendment (40 pts)

_____ Subject Matter Jurisdiction of the federal courts (10 pts)
28 USC 1332 original jurisdiction over Brown v. TMBG. (5 pts) No original jurisdiction over Brown v. Answering Systems. (1332 (c) for citizenship of corporation, complete diversity, *Strawbridge*, amount in controversy.) *Answering Systems* meets amount in controversy but not complete diversity.) (5 pts)

_____ Supplemental Jurisdiction (15 pts)
Student recognizes that it must look to 1367 to determine whether the court can exercise supplemental jurisdiction over Brown v. Answering Systems. (5 pts) Applies 1367 and finds that it meets 1367 (a) common nucleus of operative fact test (5 pts), but fails pursuant to 1367(b) exception for claims by plaintiffs against parties under Rule 20 in diversity cases. (5 pts)

_____ Joinder of Parties under Rule 20 (10 pts)
Student recognizes that plaintiff must meet Rule 20 test. (1 pt) Identifies (4 pts) and applies (5 pts) same transaction or occurrence or series test and common question of law or fact test.

28. Developed by Professor Kimberly Kirkland of Franklin Pierce Law Center. More examples of rubrics are in the Appendix, including several rubrics for civil procedure.

_____ Amendment (5 pts)
Student recognizes this is an amendment as of right under 15(a). (5 pts)

_____ Personal Jurisdiction (5 Bonus points)
Student considers whether the court has personal jurisdiction over *Answering Systems*.
(Few PJ facts here so PJ analysis not required.)

Using this kind of detailed criteria to assess and evaluate student learning has been written about for nearly thirty years. In the 1970's, educators published the system of "Primary Trait Scoring" to evaluate students' writing.[29] Developed in response to national essay tests, educators used primary trait scoring to assess students' performance with great accuracy.[30] At that time, evaluators measured students' writing ability by scoring the number and range of words students used in an essay. Students who used the greatest range of words earned the highest scores. The high scores indicated that those students had a large vocabulary. The scores, however, showed little else. The test did not analyze the context in which students used the words, thus students' vocabulary scores provided little information about students' ability to use complex vocabulary in writing reports or essays.

Similarly, testing students solely on whether they got the "right answer" for a math test did not show whether students knew how to solve particular problems, use the most appropriate mathematical operations, or accurately compute solutions.[31] Knowing how to divide numbers is relatively meaningless unless students know how and when to use division appropriately

29. *See* Richard Lloyd-Jones, *Primary Trait Scoring*, *in* EVALUATING WRITING: DESCRIBING, MEASURING, JUDGING 33-66 (Charles R. Cooper & Lee Odell eds., 1977).

30. *See id.* at 37.

31. RUBRICS, *supra* note 19, at 3-4. Mathematics assessment no longer focuses just on having students get the "right answer" but on choosing appropriate strategies to solve problems, accurately applying strategies and reporting them. Similarly, educators assessing writing evaluate "ideas and content, organization, voice, word choice, sentence fluency, and conventions." *Id.* at 4.

in a real context.[32] By focusing on the "right" answer, students could appear to be competent by guessing the right answer; conversely, students who understood how to solve a problem but made computational errors could fail.

By identifying, weighting and assessing these different "traits" such as vocabulary, organization, problem solving or computation, teachers and administrators could identify where their students needed more instruction; then tailor their teaching accordingly.[33] For example, sixth grade students with college level vocabularies, but little sense of effective organization, must learn to design an essay around topics. In contrast, classmates who write in well-organized paragraphs, but who cannot use correct punctuation, must practice writing mechanics. Similarly, students who have trouble dividing by twelve must practice computation, while those who struggle with understanding whether to add or divide must learn how to choose the most appropriate operation. By unbundling and evaluating specific learning goals, educators developed measures that indicated what students were learning and where the teachers needed to focus their teaching. In the process, educators also explicitly defined what it meant to be proficient in their disciplines.

The concept of explaining specifically what we mean when we are trying to teach has been around for centuries. Over 1500 years ago Plato described it in *Meno*.[34] In responding to Meno's question about whether virtue can be taught, Socrates first asks Meno what is virtue.[35] In the ensuing dialog Socrates elicits from Meno that far from being one thing, virtue is complex, and might consist of temperance, justice, strength and courage.[36] After several exchanges, Socrates suggests that "we have discovered a number of virtues when we were looking for one only."[37]

Similarly a rubric takes "one thing" such as a paper, exam, or other assessment, and identifies its complex characteristics. This is what the authors of the MacCrate Report[38] did when analyzing the fundamental skills of lawyers. They took the "one thing" of being a lawyer, and unpacked it into

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32. *See* HOW PEOPLE LEARN, *supra* note 14, at 164. In his presentation at the AALS 2001 New Ideas Conference, John Bransford noted students' lack of understanding how math principles applied in a "real world" context. *See* AALS 2001 New Idea Conference, *supra* note 2. When high school students were asked how many buses a group needed to travel, the students showed that they could do the arithmetic, but then gave meaningless answers, such as "4 buses, remainder 1." *See id.* (June 10, 2001) (notes on file with the author).

33. *See* HOW PEOPLE LEARN, *supra* note 14, at 57.

34. *See* PLATO, PROTAGORAS AND MENO (W.K.C. Guthrie trans., Penguin Books 1956) (Plato c. 429-347).

35. *See id.* at 115-16.

36. *See id.* at 117-19.

37. *Id.* at 119.

38. *See* MacCrate Report, *supra* note 6, at 138-41.

ten fundamental skills and four fundamental values.[39] Within each fundamental skill, the authors further described the complexities, such as noting that the fundamental skills of legal analysis and reasoning included, among many others, identifying issues, analyzing facts and formulating rules and theories.[40]

Educators have applied rubrics to subjects ranging from music to computer science, and to assignments as varied as making a free throw in basketball to writing an essay.[41] With an abundance of models available by way of a quick Internet search,[42] rubrics are easy to modify and adapt to assess students, and help students evaluate themselves. College professors began developing rubrics partly in response to pressure from legislators and accrediting agencies. These groups wanted to know more about what students had learned—a college's report that a certain number of students received As was no longer sufficient to prove that students were learning.[43] Subsequently, these professors found that using rubrics not only provided them with a better picture of student achievement, but also resulted in improved student performance, and pushed them to become better teachers.[44] There is no reason that this experience at the undergraduate level cannot be transferred to law schools.

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39. *See id.*

40. *See id.* at 151-55.

41. *See generally* RUBRICS, *supra* note 19 (describing how to design and use rubrics in a range of courses and assignments including oral reports, physical education, music, and use of technology). Sample rubrics show how these instruments can be used to assess all ages from early writers to school principals. *See id.* at 63, 146.

42. Using "Google" as a search engine, at http://www.google.com, searching for the terms "rubric college" yielded links to grading college level courses. Similarly, searching for "rubric" provided links to hundreds of sites, many of which provided samples, and methods to construct rubrics, such as at http://www.relearning.org/resources/PDF/rubric_sampler.pdf. (last visited Mar. 8, 2004).

43. At its 2002 Annual Assessment Conference, the American Association of Higher Education (AAHE) provided many workshops that taught educators how to develop and use rubrics. *See* 2002 AAHE Assessment Conference, *at* http://www.aahe.org/assessment/2002 (June 19-23, 2002). College professors and administrators showed how they developed rubrics to identify specifically what a student needed to do to competently complete an assignment or a course, graduate in a major, and even receive a degree from that institution (notes and materials on file with the author); *see* MUNRO, *supra* note 5, at 22-25 (discussing the origins of the assessment movement as a response to the calls for reform and accountability in higher education); WALVOORD & ANDERSON, *supra* note 17, at 3-4.

44. *See* WALVOORD & ANDERSON, *supra* note 17, at 139-42 (explaining how college professors provided specific criteria to students, charted the students' performance over time, and observed that students' work improved when they were provided with more detailed criteria).

II. RUBRICS ENHANCE TEACHING AND LEARNING

After using rubrics for two years, a colleague stated,

> [H]aving a rubric is like having a theory of the case in a trial. If you just put on witnesses and introduce documents without a theory, there is nothing that holds the case together. With a theory, you can focus on introducing the most important evidence and build your case. With a rubric, you have a theory of your course. You define what students need to learn, and then work to accomplish that.

We should use rubrics in law school because they help us focus our teaching and students' learning. Using these detailed instruments requires us to analyze our courses, test what we teach, and modify our teaching according to student performances. Rubrics help us move from a "teacher-centered" approach to a "learner-centered"[45] approach, where we look at what helps the students learn rather than looking only at our performance. By looking at what we want students to learn, we can make more informed decisions about what material is essential to our courses, and how we will evaluate students on that material.

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45. Friedland, *supra* note 7, at 201 ("Teachers concentrate too often on what they are teaching and not what students are learning. It is broadly assumed that teaching and learning constitute an identity, and therefore, what students actually understand is a useless measure. Yet the literature shows the fallacy of this assumption, and that students learn and respond differently to teaching."). *See generally* Dennis R. Honabach, *Precision Teaching in Law School: An Essay in Support of Student-Centered Teaching and Assessment*, 34 U. TOL. L. REV. 95 (2002). For a summary of the current literature on learner-centered teaching and how it applied to teaching the author's college students see WEIMER, *supra* note 16, at 6-20. Weimer says that one of her main motivations for her book came from reviewing Stephen D. Brookfield's *Becoming a Critically Reflective Teacher*, and becoming aware of the contrast between using a "learned-centered" approach and a traditional approach. *See id.* at 3. ("Before . . . I had redesigned my course; afterward, I attempted to redesign the teacher. Getting the course reshaped turned out to be much easier than fixing my very teacher-centered instruction." (citation omitted)). *See also* THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS 3 (2d ed. 1993) ("[T]here is no such thing as effective teaching in the absence of learning. Teaching without learning is just talking.").

A. Rubrics Focus Student Learning and Our Teaching

We teach better when we have identified a course's goals,[46] and students learn better when they understand what these goals are.[47] As other educators have noted, identifying a course's goals is one of the hardest parts of teaching.[48] Specifying these goals requires us to think through what we want students to learn and describe that in concrete terms. In doing so, important questions arise. What is essential to understanding this area? What is reasonable to expect of students? Have I tested what I taught? What is more important in showing an understanding of this subject—understanding factual nuances and showing how they apply—or understanding and showing the relationship among different issues within the subject? Should students be able to articulate both sides of an argument on an issue? Weave in policy? These are hard questions, but they are important ones.[49] They are worth spending time and effort answering, even knowing that next semester we may realize that we have different answers.

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46. "Goals" refers to what students are expected to learn from a course; in other educational literature the term "outcomes" or "objectives" may have the same meaning. For a list of goals applicable to law school, consider "Fundamental Lawyering Skills" from the MacCrate Report, *supra* note 6, at 35-221; MUNRO, *supra* note 5, at 199-217. *See also* ANGELO & CROSS, *supra* note 45, at 393-97 (The authors provide a "Teaching Goals Inventory and Self-Scorable Worksheet" that allows professors to identify goals for a course, such as "Develop ability to apply principles and generalizations," "Develop ability to synthesize and integrate information and ideas," and "Develop ability to think holistically: to see the whole as well as the parts.").

47. *See* Hess, *supra* note 8, at 99 ("Students perform better when they know what goals they are trying to achieve."). *See* WALVOORD & ANDERSON, *supra* note 17, at 66-67 (noting that becoming more explicit in identifying goals and subsequently teaching to them allowed their students to become more proficient on their biology tests).

48. Ideally this happens before the first class, when the professor identifies the goals for the course. Unfortunately, with little guidance and experience in effective teaching, few professors know how to do this. Maryellen Weimer suggests that professors consider what they would like a student remember about their course five years later; alternatively, that professors write the ideal final exam for the course, and then work backwards to determine "the skills and knowledge a student would need to perform well on that final." MARYELLEN WEIMER, IMPROVING YOUR CLASSROOM TEACHING 30 (1993). *See also* Glesner Fines, *supra* note 9, at 882 (noting that developing criteria to evaluate law students "is by no means an easy task—some may say impossible.").

49. *See* ANGELO & CROSS, *supra* note 45, at 5 (The authors note that professors should be "continually asking themselves three questions: 'What are the essential skills and knowledge I am trying to teach?' 'How can I find out whether students are learning them?' 'How can I help students learn better?'").

Constructing a rubric requires us to think through these questions. It may be much easier to do this after we have written (and read) exams; at that point we often have a clearer idea of what we are looking for and what we expect students to learn. But creating a rubric that identifies the most important learning components of our course does not require that we write the exam question first. In fact, to do that would provide only half the benefits provided by rubrics—we would lose the opportunity to inform students of our goals.

Designing a rubric requires us to emphasize the most meaningful aspects of our courses. This is true whether we teach trademarks, literature and the law, international human rights, or secured transactions. To develop explicit criteria that will be distributed to students in writing, we must necessarily be clear about what we expect students to learn; we must identify the core skills and knowledge that are necessary to be competent or proficient in the particular area of law.[50] These are fundamental questions focusing not on what we will "cover" in class and how we will fill up the time, but on what we want students to take away with them, hold on to, and return to in the future.[51] We may have already identified our learning goals to students in our syllabus and other materials, and have talked about these in class. However, breaking these goals into more specific components that describe *what the students have learned* and *how we know if they have demonstrated that learning* forces us to think at a deeper level.

For example, I worked with a colleague in constructing the rubric in Figure 1 after talking with him about what he sought to have students learn by the end of his course in criminal procedure. This colleague emphasized that it was the analytical process of understanding how to work through the issues involved in criminal procedure that was essential to students' mastering the course; it was less important for students to "spot" every possible issue. In developing these criteria, the professor was clear that understanding the black letter law was not enough.[52] If the students could not apply facts, analyze

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50. *See* Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 394 (2001) (describing learning goals and identifying six learning goals in teaching illusory promise law).

51. *See* WEIMER, *supra* note 48, at 30 (explaining that in planning a course, teachers must first "identify the outcomes. What do you want students to know and be able to do at the conclusion of the course? . . . Most faculty underestimate [this] . . . . their first thought relates to material and how much they could or should include in the course."); *see also* Glesner Fines, *supra* note 9, at 912 (noting that grading should not control teaching, but come from course goals).

52. This was appropriate, since during the course the professor had stressed this to students, and students had practiced analyzing criminal procedure hypotheticals all semester.

nuances or make informed judgments and arguments, they had insufficiently learned the essential analysis of criminal procedure.[53] In constructing the rubric for Figure 1, it also became clear that the professor had certain minimum standards, and that one of the goals of the course was a solid grasp of the fundamental issues in criminal procedure. Incorrectly identifying many basic procedural issues, for example, would result in a failing grade. Conversely, the professor identified what it meant to receive the highest marks in the course: a student would need to analyze the facts, apply the law to the facts and show how the arguments reflected the underlying goals of the criminal justice system.

A rubric helps us with identifying course goals by providing a structure in which to specify these goals and allocate priorities among them. Teaching to these goals, and then evaluating students based on a rubric also helps us be more consistent in evaluating students on what we have taught. Often we teach one thing and then evaluate students on another. For example, in a traditional law school course, students spend thirteen or fourteen weeks reading cases, and hours in class *orally* answering questions and considering hypotheticals.[54] Often the hypotheticals are directed at the particular class topic, not an accumulation of the material that has been studied over the course of the semester. Then, in a three or four hour final, students are asked to put the course together and analyze a set of facts and its relation to many different areas of the course *in writing*. Many students have not had the experience of doing this before, and have not received feedback on a practice attempt. This seems unreasonable, but most law professors regularly evaluate students this way.[55]

In a similar vein is the problem that arises when professors articulate their goals for students, but test students on something else. For example, at the 2001 AALS Experienced Teachers' Conference, *We Teach But Do They Learn*, three very experienced and thoughtful teachers of civil procedure each discussed their top three goals for the course. Each one framed his or her respective goals differently, such as to teach students about the role of the courts as part of a government structure, how a civil suit unfolds, and the role of the court, counsel, witness and juror in the adversary system. However, when they discussed how they tested and graded students, all three professors

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53. This was also consistent with "real world" practice; he used many of the same criteria that he had used to evaluate attorneys in his criminal practice.

54. *See* Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 202-03 (1999).

55. *See* MUNRO, *supra* note 5, at 34-39 (noting that law school exams are regularly administered so that they are not learning tools).

stated that they tested issue spotting and personal jurisdiction.[56] Because they all tested these two areas, and had been doing so for years, it would seem that they agreed that two of the goals of a civil procedure course are that students learn to identify the issues that arise during the course of litigation, and that the students show how to analyze whether a court has personal jurisdiction. Having a rubric, which identified learning goals for the course, would help students and professors focus on these goals. A rubric could also make us question our testing. If we do *not* want all students to focus upon mastering personal jurisdiction analysis, perhaps that suggests we should broaden the focus of our exams.

Having specific grading criteria is appropriate in all courses. Given the volume of law, professors cannot teach students everything about a doctrinal area. Instead, professors can show students the fundamental issues of the substance in such a way that students can then transfer that learning when they are exposed to an unfamiliar issue in that discipline. For example, a colleague who teaches an upper-level employment discrimination course explicitly works through readings, discussion and problems involving Title VII, the Age Discrimination and Employment Act, and the Americans with Disabilities Act, having first introduced students to employment-at-will and employment contracts. During the semester, in addition to reinforcing fundamental skills of analyzing statutes and cases, she requires students to practice applying hypothetical facts to employment discrimination issues. She also stresses the methodology of burden shifting, which carries through this area. In her final exam, she tests students on their ability to transfer their learning of the substance, analysis and methodology to an area not discussed in the course, such as the Family Medical Leave Act. What she is essentially teaching then, is both the discipline *and* the skill of understanding, applying and analyzing employment law.

My experience supports this need to be clear about aligning what we teach with what we evaluate. Early in my teaching career, some students became angry after receiving graded legal writing memos. After talking with students about their reactions, I realized that students did not know what I wanted.[57] I had assigned them to read a chapter about analyzing statutes, assuming that they would thus know that I expected them to identify a statute's ambiguities when applied to a set of facts. But these students, who had been in law school for less than a month, had no idea what I expected. They were struggling to understand both the unfamiliar material *and* how a correct response to the assignment should be presented. Rather than focusing

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56. *See* AALS 2001 New Ideas Conference, *supra* note 2 (June 10, 2001).

57. *See* WALVOORD & ANDERSON, *supra* note 17, at 38. ("Students will complete the assignment they think you made, not the assignment you actually made.").

on the goal that I wanted them to master—communicating effectively about statutory analysis—students were trying to decipher what it was that I *wanted.* This led many of them to do poorly and become incredibly frustrated with the course. I have since found that communicating goals to students by providing rubrics in advance greatly reduces these problems.[58]

B. Rubrics Reveal a Course's Complexities

Many law professors state that their goal is to teach students to "think like a lawyer."[59] This amorphous common goal does not reveal much.[60] Just as Socrates drew from Meno that "virtue" is composed of many parts,[61] and as the authors of the MacCrate Report did in describing lawyering, [62] we should also break down our courses for students. This is not always easy, but when we talk about what we want students to learn, we develop language that helps us name the learning goals.

For example, I developed the criteria in Figure 2 for the "content and analysis" portion of an appellate brief rubric to incorporate additional learning goals. Although previous versions of the rubric contained the term's "overall analysis," some early versions excluded information about "using the most effective authorities." Choosing the most effective authorities to make arguments was an important part of the course. Thus, I emphasized selecting authorities throughout the semester. Students completed many assignments designed to help them realize the importance of selecting authorities. But it was not enough that the student just chose and cited these key authorities; students needed to show the reader how these authorities applied to the facts, and related to each other.

In addition, the rubric in Figure 2 shows that to meet the highest criteria, students needed to organize the argument around sub-issues *and* show how those sub-issues related to the whole analysis. I added these descriptions because earlier rubrics described organizing issues and sub-issues, but did not inform students of this need to show the relationship of the parts to the whole. Providing students with this additional detail, as well as showing them that

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58. *See* Hess, *supra* note 8, at 107 (noting that feedback is most effective when professors "give the students detailed performance criteria in advance.").

59. AALS 2001 New Ideas Conference, *supra* note 2; *see also* MUNRO, *supra* note 5, at 42; Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?* 1 J. ALWD 91 (2002).

60. *See* MUNRO, *supra* note 5, at 42 (noting that "thinking like a lawyer" has "never been critically analyzed"); Rapoport, *supra* note 59, at 93-94.

61. *See supra* text accompanying notes 34-37.

62. *See supra* text accompanying notes 38-40.

this portion of the rubric counted for thirty-two percent of the grade, the single highest category, gave students much more information than a verbal statement that analysis and content were important and worth about one-third of their grade.

It is important though, to teach students about the rubrics. We need to explain to students what the rubric is *and* what it *is not.* For example, one student commented that she did not realize that the rubric emphasized the goals of the course *at that particular time.* She pointed out that

> [R]ubrics may mislead students to believe that there is 'one way' to do an assignment, or that the weight of the rubrics reflects the importance of certain skills in the real world. While partly true, I think students often don't realize that the rubrics also weigh things according to the time spent on it in class.

C. Rubrics Provide Valuable Feedback to Students

Providing students with feedback about meeting course goals enhances student learning.[63] In its recent studies, the National Research Council noted that across multiple disciplines, one of the four ingredients essential for learning was an "assessment-centered" environment.[64] Included in such an environment was the opportunity for students to receive feedback.[65] Unfortunately, the trend throughout the twentieth century has been for law students to receive little feedback.[66] Ideally, law students would get regular

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63. *See* Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education,* AAHE BULL.COM, Mar. 1987, at 3, 5 (Principle 4: "Good Practice Gives Prompt Feedback"), *available at* www.aahebulletin.com/public/archive/sevenprinciples1987.asp (last visited Mar. 8, 2004); *see generally* Terri LeClercq, *Seven Principles of Good Practice in Legal Education: Principle 4: Good Practice Gives Prompt Feedback,* 49 J. LEGAL EDUC. 418 (1999); Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview,* 49 J. LEGAL EDUC. 367 (1999) (for a comprehensive overview applying all seven principles).

64. *See* HOW PEOPLE LEARN, *supra* note 14, at 134. The three other elements essential to learning environments are knowledge centered, community centered, and learner centered. To be effective, these assessments need to be

> [L]earner-friendly: they are not the Friday quiz for which information is memorized the night before, and for which the student is given a grade that ranks him or her with respect to classmates. Rather, these assessments should provide students with opportunities to revise and improve their thinking, help students see their own progress over the course of weeks or months, and help teachers identify problems that need to be remedied.

Id. at 24-25 (internal citations omitted).

65. *See id.* at 139-40.

66. *See* Sheppard, *supra* note 7, at 681.

feedback during a course, both graded and ungraded,[67] as they need this feedback to get the most benefit from courses.[68] Even when law students do not receive this regular and prompt feedback on practice tests and multiple graded events, giving students a rubric that explains the criteria for one grade alone enhances learning.[69]

A colleague teaching civil procedure provided her first semester students with valuable feedback when she returned students' final exams with a rubric that contained a detailed scoring sheet like the one in Figure 2. One student's analysis of the grade reveals the value of this kind of detailed feedback. "I thought I really knew civil procedure and was shocked to see my grade. Then I looked at the rubric and my exam, and I was surprised I didn't lose more points. I can see now that I really missed some basic issues." It would have been even more valuable for the student to have been given a description of the deeper analytical skills ahead of time. Considering this, a colleague noted that the pressures to cover more doctrine, weave in fascinating scholarly theories and assess increasingly more complex skills "have caused many of us to abandon basic analytical training."

D. Detailed Grading Criteria Help Students Become More Aware of Their Learning

In addition to providing feedback and showing students where they are in terms of mastering subjects and skills, rubrics encourage students to be metacognitive, or reflective, independent learners.[70] Being metacognitive, or becoming aware of their own learning, is essential to students across all

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67. *See* HESS & FRIEDLAND, *supra* note 12, at 8 (law students benefit from having "[f]requent and timely feedback").

68. *See id.* at 16 ("When getting started, students need help in assessing existing knowledge and competence... students need chances to reflect on what they have learned, what they still need to know, and how to assess themselves."). "[F]eedback allows students to recognize performance strengths and weaknesses. Without such recognition, improvement would be haphazard and inefficient. After recognition occurs, and the areas or skills to be improved are identified, specifically directed efforts can be made to improve." *Id.* at 286.

69. In fact, rubrics allow professors to increase the amount of feedback they provide without expending a proportionate increase in effort. By having a form that a professor can copy and distribute, the professor is relieved of the burden of writing individual notes on each graded event or exam, or of delivering this information orally to students.

70. *See generally* Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771 (1989) (explaining how incorporation of independent learning theory in academic support programs will result in sustained student achievement even after the tutoring has ceased).

disciplines.[71] Within legal education, Professor Gerald Hess notes that "Teachers can facilitate students' metacognition by drawing attention to the process of learning ... and providing feedback to students on the effectiveness of their learning strategies."[72] Using detailed performance criteria, such as a rubric, provides students with feedback that enables them to begin understanding how they can evaluate their own performance. Developing these criteria helps students in other courses and on the job. For example, a student may be given little guidance on the job for what makes an effective client letter. But knowing the general principles involved in legal analysis and writing, the student knows that the letter must be organized, apply law to the facts, and be concise. If later told by a supervising attorney that he did not write an assignment well, the student could effectively seek more information, asking the supervisor focused questions about which areas needed improvement.

A student recently illustrated the value of using specific feedback to self-assess when she described what she had thought about during her fall torts exam.

> As I went through the torts exam, I had a rubric in my head. Because I had rubrics in civil procedure and legal skills, I felt I had an idea of how my torts professor would evaluate the exam and what he was looking for. It helped me think through my analysis.

For this student the internalized rubric worked; for another student the internalized rubric had the opposite effect. "The professor didn't specify what he wanted on his exam, so most of us did what we did on other exams, and spotted issues. It turns out that he was basing his grades on different criteria—which he told us about after his exam."

One student described what she thought would be helpful in all her law school courses. "It would be great if all professors provided a rubric, but since they don't, maybe students should draft them and ask the professors to review them to see if the student's ideas about what is important are accurate." Indeed, as students become more knowledgeable about their legal education, having them develop rubrics for their courses helps them become the independent learners they will need to be to practice law.

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71. *See* HOW PEOPLE LEARN, *supra* note 14, at 140 (explaining that to maximize learning, students must "learn to assess their own work, as well as the work of their peers . . . [s]uch self-assessment is an important part of the metacognitive approach to instruction." (citations omitted)).

72. HESS & FRIEDLAND, *supra* note 12, at 5.

E. Rubrics Communicate High Expectations

By using rubrics to communicate specific learning goals, professors can communicate high expectations and help students learn better.[73] Professors who use rubrics with their classes move beyond the notion that "the highest grade goes to the best student." They describe the differing criteria for high, moderate and low levels of performance. In addition, professors can maintain high expectations by modifying rubrics according to the level of the course. For example, for the first assignment in a first semester, first year legal analysis and writing course, students are provided with criteria that separately describe writing about cases and facts, such as in Figure 4. But when students are in their second semester, the standards have increased and the rubric accordingly reflects this.[74]

FIGURE 4 – PORTION OF A RUBRIC FOR AN OBJECTIVE LEGAL MEMO

	Highly Proficient	**Proficient**	**Acceptable**	**Un-acceptable**
Rule Explanation Or Rule Proof	**Explains** rules and reasoning for precedent cases that are relied upon heavily. **Provides information** about what the court says and does, its reasoning, and the determinative facts. **For cases less critical to the analysis,** includes information about the holding and the court's reasoning, providing more than a cursory explanation.	**Provides** more than a cursory explanation of relied-upon case law, but does not provide a thorough explanation of the court's reasoning and analysis.	**Provides** cursory information about cases that are relied upon. Does not provide sufficient information about the facts or the court's reasoning and analysis.	**Provides** little information about cases that are relied upon. **Does not provide** information regarding the facts of the case, the court's reasoning or the analysis. Unable to determine how the rule of law was applied in precedent cases. **May misstate** the information in the case.
Application of precedent to client's facts	Includes a discussion of how and why precedent cases' rules, reasoning and implicit policy applies to the client's situation.	Applies precedent cases to the client's facts but neglects to provide a thorough explanation of how and why the cases should apply.	Mentions cases when discussing the client's facts, but neglects to explain how and why the precedent cases are applicable.	Discusses the client's facts with little to no reference to precedent cases.

73. *See* Chickering & Gamson, *supra* note 63, at 3, 5-6 (explaining that one of the principles of the American Association of Higher Education's "Seven Principles in Good Practice in Undergraduate Education," is to communicate high expectations). For an overview of how one of these principles applies to legal education see Okianer Christian Dark, *Seven Principles for Good Practice in Legal Education: Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441 (1999).

74. *See* Figure 2, *supra* pp. 11-12.

Providing students with this kind of explicit grading criteria does not "spoon feed" students. Spelling out the criteria does not mean that meeting them is easy, just as showing someone a video of a fantastic golfer does not make it too easy for someone seeking to master the sport. Moreover, the idea that students can be "spoon fed" legal education is curious. While it might be possible to "spoon feed" *knowledge* of the law, such as telling students they need to memorize parts of the tax code, teach only those parts of the tax code, and then test students on their rote memory of the code, this is rarely what students are asked to do on exams. Instead students are asked to take their knowledge of the subject, such as the tax code, and apply it to new facts. It is difficult to see how this ability to analyze and make informed judgments can be poured into students' brains.[75]

We need to be cautious, however, not to "spoon feed" a method that students adhere to rigidly. For example, within most first year required writing programs, professors require students to follow a certain format when writing predictive memos. This is often a version of "IRAC," or "Issue, Rule, Analysis/Application and Conclusion." We do this for sound pedagogical reasons, but if our rubrics heavily weight IRAC organization, students may believe that this is the *only* way to organize a memo. In other courses and on the job, they may fear trying other organizational approaches that are more suitable to a given memo topic. We can overcome this by teaching students about what rubrics are, why we use them and how to use them.

F. Using Rubrics is Intellectually Engaging

When initially presented with the task of having to develop and use rubrics, many college professors resisted the additional burden of having to prepare a detailed grading instrument on top of teaching, writing and service obligations.[76] It is true that designing a rubric can take considerable time and energy.[77] But, after having started talking with their colleagues about their teaching goals, and how they assess them, these same professors speak of the

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75. Scholars have repeatedly criticized this model of dispensing knowledge, in which the student passively receives knowledge and wisdom from the professor, and does not actively participate in the learning process. *See* WEIMER, *supra* note 16, at 11 (noting that students who memorized facts retained only superficial understanding of the material).

76. *See* 2002 AAHE Conference, *supra* note 43.

77. Designing a better grading system challenges us to work as hard in our teaching and grading as we do to master the subject area we teach. It also requires us to live with the uncertainty and discomfort of growth that we expect from our law students. The difficulty also points to the intellectually complex and rigorous aspect of teaching. *See* ERNEST L. BOYER, SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORIATE 23-24 (1990) (teaching is an "intellectually rigorous activity").

excitement and energy generated when they talk to one another about what they are trying to have students learn.[78] In describing this, professors have noted that for the first time, they have a context in which to talk about teaching. Comments like "no one used to talk about teaching before, but now we are engaged in fascinating conversations about what we mean when we determine that someone has satisfactorily completed our course," sum up some professors' excitement about using rubrics. Other professors note the variation among rubrics, even among those teaching the same course. It is these kinds of conversations about having different goals for the same course, and about what is expected in a required curriculum that engage professors in looking at the deeper issues. Similarly, law professors can engage in the fundamental questions about what law students should learn, how we measure it, and how we "prove" that our teaching is working.

III. RUBRICS EVENTUALLY EASE THE BURDEN ON PROFESSORS

In addition to enriching teaching and learning, rubrics can eventually make life easier for professors. Though developing rubrics takes effort, adopting them does not just mean adding more responsibility to a professor's workload.[79] In fact, over time, using rubrics does the opposite.[80]

A. Rubrics Provide Helpful Data About Teaching Effectiveness

As reflected in the cries of dismay about student performance on exams, many colleagues are frustrated that students seem to not learn what professors teach. To improve student learning, it is helpful to understand more completely where students are mastering material and where they are struggling. Using rubrics allows us to do this. When we analyze how students meet explicit criteria, we can assess our own teaching and identify where we need to change.[81] Having implemented changes and then evaluated students,

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78. *See* WALVOORD & ANDERSON, *supra* note 17, at 180; ANGELO & CROSS, *supra* note 45, at xvi; 2002 AAHE Conference, *supra* note 43.

79. I have heard from colleagues who question using rubrics, and I invite those with questions to contact me. As educator and scholar Deborah Meier has noted, challenging a teaching practice does not always mean resistance to it. Rather, it may mean that a technique has not been sufficiently explained. Deborah Meier, Address at the Upper Valley Teacher Institute Celebration of Teachers (April 28, 2002) (notes on file with the author).

80. *See* Glesner Fines, *supra* note 9, at 887 ("Without a need to articulate, justify or coordinate our grading criteria, we have considerably more time and resources for activities that are more likely to increase our institutional prestige.").

81. *See* HOW PEOPLE LEARN, *supra* note 14, at 141 (noting "[a]ppropriately designed assessments can help teachers realize the need to rethink their teaching practices.").

we can assess the effectiveness of those changes.[82] For example, if we have stressed certain material in class, and yet most students consistently fail to competently analyze that material, our instruction is flawed[83] and something needs to change. When the professor tracks overall student performance in a course, the professor can chart how students performed in different areas.[84] If all students do well at analyzing issues, but poorly at identifying complex ones, and the professor has determined that identifying complexities is critical to being proficient in her discipline, the professor can alter her teaching methods to give this more attention in subsequent semesters.

When we find new approaches that work, we are ensuring that our students are becoming more proficient and will be effective novice attorneys. Rubrics are therefore not just useful to current students; rubrics have the potential to benefit future students, professors, institutions and the profession.

B. Creating and Using a Rubric is Efficient

All of us who grade have some form of a rubric in our mind. Writing the rubric's details so that others can see them improves them. Having used rubrics for many years, one colleague noted that doing so enabled him to more efficiently give students information about the goals of an assignment and then grade students. He noted that "while the initial investment of time is high, that time is worth it. Because I make the rubric well before grading, I gain time management flexibility. And the time spent grading each paper is greatly reduced." He added that the overall time investment is less than when he grades without a rubric.[85] My experience has been similar. Now that I have worked with rubrics for five years, I find that I am much more efficient at modifying them for a particular assignment, and that the grading time is reduced.

Others have also noted that using a rubric enabled them to grade with greater consistency. As one colleague stated,

> I used to spend a lot of time and energy reviewing exams and papers, making sure I was consistent. Once I developed a rubric, I had my 'compass' for what I was

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82. *See* MUNRO, *supra* note 5, at 4 (Law schools that fail to assess students have "no real evidence that [they are] achieving any goals or objectives."); WALVOORD & ANDERSON, *supra* note 17, at 1-6, 171-88 (explaining that grading and analyzing students' performance on specific criteria can be a valuable assessment tool).

83. *See* ANGELO & CROSS, *supra* note 45, at 3.

84. *See* WALVOORD & ANDERSON, *supra* note 17, at 146-48.

85. *See* WALVOORD & ANDERSON, *supra* note 17, at 126-27 (noting that by changing teaching and grading, a professor considerably reduced the time spent grading and was able to spend more time "guiding" students).

> looking for. When I reviewed answers, I found I was consistent in my grading and more confident that I was using the same criteria for all students.[86]

Another colleague noted "it would have been impossible to have been consistent [grading 130 final exams] without one." Colleagues have also stated that they are concerned that many factors may prevent them from being consistent in their grading. The order in which they grade their exams, their level of energy, emotional state, and health may all contribute to how they interpret students' work. But with a rubric, they find that they are much more consistent because they apply the same criteria to all exams.

Other educators have found that when evaluators are given explicit criteria and taught how to use them, their subjective scoring of student work is much more consistent than when evaluators are asked to assess student work without the criteria and explanations. Professor Virginia Anderson, who teaches biology to college and graduate students noted that when outside reviewers used specific criteria to evaluate student work they achieved an eighty-five to ninety percent reliability rate.[87]

Though developing specific criteria takes effort, and evaluating law students' work is complex, professors can build rubrics using models from other disciplines that similarly seek to evaluate students on difficult material. One of the themes of the 2002 Annual Assessment Conference of the American Association of Higher Education was "Assessing the Ineffable."[88] The questions that educators from undergraduate and graduate education explored included how to assess critical thinking, academic integrity, ethical development and civic responsibility.[89] Though using detailed scoring criteria like rubrics are relatively new to higher education, many examples have been

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86. Virginia Anderson, *Using the Grading Process for Departmental & General Education Assessment*, 2002 AAHE Conference, *supra* note 43. *See also* W. Lawrence Church, *Forum: Law School Grading*, 1991 WIS. L. REV. 825, 829-30. Church describes an "unplanned" experiment at his law school. When the property professor fell ill at the end of the semester, Church and a colleague stepped in to test and evaluate the students. Each of them developed two essay questions and then graded them. Church "discovered with dismay" that his students' highest grades were his colleague's students' lowest, and vice versa. He was "inescapably [led] to the conclusion that part of the difference must have been due to the graders rather than the students." *Id.* at 830.

87. *See* Virginia Anderson, *Using the Grading Process for Departmental & General Education Assessment*, 2002 AAHE Conference, *supra* note 43.

88. 2002 AAHE Conference, *supra* note 43. "'Ineffable—incapable of being expressed in words.' Some of the most important outcomes from higher education do not lend themselves to easy definition or assessment." *Id.*

89. *See id.*

developed and can be further refined.[90] Just as with teaching a new course, or adopting a new text, creating rubrics becomes easier over time, and the investment is worth it.

C. Rubrics Enhance Conversations Between Students and Professors About Grades

Providing students with rubrics that describe how they have earned their grades does not make students obsess about grades[91] any more than they do already. In addition, my experience is that giving students explicit grading criteria reduces grading challenges[92] and makes conversations with students about grades more meaningful.[93] I give students a rubric *before* the graded event, and teach the skills on the rubric. I require students to ask questions about the rubric before evaluating their work. Students have rarely then challenged a grade on the basis that they did not know how they would be graded. Instead, most conversations have focused on the students' learning and how they could improve.

In meetings with students at the end of a course—even those who received D's and F's—many students reviewed the rubric for their final assignment and voiced their surprise that they had missed so much. "When I look at the rubric and what I did, I see how I just totally missed the point"

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90. *See generally* WALVOORD & ANDERSON, *supra* note 17, at 197-231 (showing samples of detailed scoring criteria).

91. Smith College used the same argument to refuse to allow its students to learn their letter grades until 1912. *See* Nanci Young, *The Great Grading Debate*, SMITH ALUMNAE Q., 96 (Spring 2002). In fact, evidence that providing grades had the *reverse* effect eventually surfaced; in 1914 a Smith student wrote her mother that she was disappointed with her grades but "next semester is going to be better, if I have anything to do with it." *Id.*

92. Law school students may challenge grades for several reasons. One may be that doing so in other educational settings has been rewarded. Several law students have told me that they had challenged their grades in college, and each time they did so, they received a higher grade. A colleague who taught undergraduates reported to me that he usually increased students' grades when they challenged them; he stated that he believed it was appropriate to reward students who took the initiative to talk to him about their grades and showed that they cared. This criteria—being assertive and invested in their grade—was not articulated to the students. When I pointed this out, my colleague conceded that this system might unfairly benefit students with a particular background or cultural perspective in which they were encouraged to challenge authority. He agreed that shy students, women, and students coming from cultural background that frowned upon challenging authorities were less likely to challenge his grading system.

93. *See generally* WALVOORD & ANDERSON, *supra* note 17, at 105-17 (offering suggestions for communicating with students about grades).

and, "I don't know what happened. I know what I had to do, but I just didn't do it."

Having explicit criteria also makes it easier to talk to students when they do challenge grades. Students are stunned to learn that their work is less than "highly proficient" and upset when they learn their work met the criteria for roughly a D or F. "I've *never* had such a low grade before" is a frequent response, followed by the students' arguing, "This grade is unfair; I worked really hard on this." When that occurs, students are first asked to identify the categories in the rubric which reflect this unfairness, and then to show where in the assignment their work demonstrated that it met a higher standard. By looking at their work with them, I show them why they had not met that standard.[94] I also point out that as lawyers they would get no credit if they misstated the law, even if they worked really hard.

Whether students seek to understand how they earned a grade, or insist that they were graded unfairly, the conversation rarely ends there. In fact, most of the time is spent exploring with the students how they approached the material, and what they can learn from the experience. I have learned that many students who do not "get it" in their first or second semester need more explicit instruction.[95] They may not have had a "critically-thinking-rich"[96] education nor come from an environment that valued and supported the kinds

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94. If, however, I think I may have made a mistake, I ask the student to leave the work and the rubric with me for twenty-four hours. I then review the work, and determine whether I need to change the student's score. These changes are only for certain kinds of errors.

95. To appreciate the perspective of the student who is not automatically "getting" law school, it is helpful to think about something that we want to do well, but for which we do not have a natural aptitude or gift, such as playing golf, painting landscapes, making fine furniture, or performing in a jazz ensemble. To improve in this area, it may be helpful to watch Tiger Woods or listen to Miles Davis, but most of us want individual coaching, concrete and direct instruction, a manual like *The Idiot's Guide to* ... and lots of opportunity to practice.

96. I am analogizing the term "critically-thinking-rich" to a "literature-rich" background referred to by reading specialists. One specialist noted that five-year-old children might enter school either as a member of a "ten book family" or a "10,000 book family." Children with the former have little exposure to books or seeing adults read; the latter are regularly read to, have many books in their homes and see others read. Children coming from a literature-rich background come ready to read—they know books are important, that English is read left to right and recognize when letters are right-side up. In talking to colleagues and law students, I have found that some law school students have not engaged in rigorous thinking, have regularly earned A's on papers they wrote about books never read and averaged two hours a week in out-of-class study time. Coming to law school without prior practice in critical thinking, close reading and rigorous study habits can make the transition to law school very difficult for such students. Writing well—as required on law school exams and assignments—requires rigorous, disciplined, logical thinking that is presented in orderly fashion.

of thinking and learning that is required in law school.[97] Students reveal that law school was not what they expected. They are afraid they will fail, and are frustrated with their grades. They have little confidence that they will succeed as lawyers. They do not know how to manage their time effectively. These are revealing and moving discussions. And talking with students about how they can learn from this experience is something I will gladly spend time doing.

IV. THE PROCESS OF DEVELOPING RUBRICS

In an ideal world, we would give our students rubrics along with the syllabus for each course;[98] the reality is that rubrics are considerably easier to develop over time.[99] Rubrics demand that we take the time to identify the goals of the course and design a fair way to measure that students have met them. Even if we are not ready to develop these immediately, we can start with small steps. Moreover, we should not be locked into one method of design; there is no one way to develop a rubric, and no one process suits all professors.[100] If the task seems daunting, know that these become considerably easier to construct with time, and that working with others generally makes the process more efficient. What follows is one method that colleagues and I have used.

Several of us have developed rubrics by starting with a completed assignment or test. While reading through students' work, we developed checklists—the beginning of the instrument in Figure 3—for what we saw was

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97. *See* WILLIAM ZINSSER, WRITING TO LEARN 43-46 (1989) (noting that looking at "why Johnny can't write" requires educators to realize that the underlying problem is that Johnny can not think).

98. In some places, though, it might be preferable to work with the students in specifying the criteria for a grade. *See* WALVOORD & ANDERSON, *supra* note 17, at 99-100; MCKEACHIE, *supra* note 16, at 121 (discussing "Contract Grading"); *see also* Glesner Fines, *supra* note 9, at 911 (noting the advantages of involving students in course design).

99. *See* WALVOORD & ANDERSON, *supra* note 17, at 72 (noting that developing grading criteria took anywhere from less than an hour to nearly ten hours). In other institutions of higher education, administrators have provided support for faculty to develop rubrics. These have included providing professors with a reduced teaching load when a faculty member is coordinating a team to develop a rubric for a department and providing grants to develop rubrics for a course, major or degree. *See* 2002 AAHE Conference, *supra* note 43.

100. *See generally* WALVOORD & ANDERSON, *supra* note 17, at 65-91 (explaining the steps involved in creating detailed scoring criteria); RUBRICS, *supra* note 19 (containing sample rubrics and guidance about how to create them); *see also* ANGELO & CROSS, *supra* note 45, at 121-361 (showing samples of classroom assessment techniques that can be adapted for a range of courses).

effective and ineffective.[101] By making notes to ourselves about what made a "highly proficient" answer and what was clearly not one, we started to develop material that could later be refined. Particularly with new courses, it is difficult to know what to expect on exams, whether the exam was fair and whether we taught what we evaluated. Many colleagues have commented that they cannot specify what they want on an exam, but that they "know it when they see it." As an experienced colleague stated, "When you grade a lot of papers or exams, you just know what feels like a B." But by analyzing and articulating what makes up the B answer, we started developing the raw material that became a rubric.

A colleague's description of how he graded his exams illustrates one way to do this. Before he opened a single student blue book, this colleague went through each of his essay questions and specified what a student would need to show to receive full points. In essence, he answered his own exam questions and compiled a list of what the answers should contain. Within each question, he identified the obvious issues, the more complex issues, the analytical steps students would need to apply to the hypothetical and how students could use the facts and law to make effective arguments. He determined how much emphasis to give each part of the answer. In his midterm, for example, he had emphasized the number of issues students identified. In his final, as he told the students, the vast majority of points would be for the analysis. Identifying issues and giving conclusory answers earned few points.

With this preliminary rubric, the professor read ten exams. He referred to the preliminary rubric as he read, but he did not grade the first ten exams. After doing so, he modified his rubric. He included points for brilliant analysis that he had not include on the rubric. He also redistributed the weighting of some categories that corresponded to students' answers. At the end of doing this, he started grading. Occasionally, as he graded, he realized that he needed to change the rubric again, and would do so. Here he followed an approach suggested by another colleague: for brilliant points that the professor had not considered, he added a "Bonus Points" category. That way he did not need to revise all previous rubrics, but added points to students' exams when they contained brilliance.[102] After grading all exams, he went back and reread the exams that he had graded first, making sure that he was consistent with the latest version of the rubric. He also checked that his scoring towards the end of the grading period was consistent with his scoring at the beginning.

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101. *See* Figure 3, *supra* pp. 12-13.

102. *See* Figure 3, *supra* pp. 12-13 (for an example of bonus points).

In grading students' writing assignments, professors follow a similar process. After taking notes and making checklists, we tweak the checklist to add complexities consistent with our goals for students' learning.[103] We continually refine rubrics because we find that initial rubrics incompletely reflect our goals that semester. We have added categories we overlooked. For example, in some writing assignments we valued more than straightforward objective analysis—we also valued creativity. Since that was not previously part of our rubrics, we included creativity in the next one. In the same way, we have added "presenting the connections among and between issues" to rubrics that earlier evaluated students' work only on identifying, applying, analyzing and evaluating separate issues. At times there are delightful additions—students identified a subtle nuance that we had not considered.

We have often also modified rubrics to weight categories differently. This is because even sophisticated point systems may not reflect course goals. For example, a colleague noted that in his issue spotting exam question, he allocated a certain number of points for each issue. To receive full points, a student needed to identify the issue, applicable law, and then apply the facts from the essay's hypothetical. Using this kind of a point system, though, led to unfortunate results—students who identified more issues, but insufficiently analyzed them earned higher marks than those who showed more sophisticated analysis with fewer issues. In grading his exams, the professor realized that he wanted to emphasize analysis. He had stressed analysis during the course, and wanted to give more points to students who analyzed in a deeper way than those who identified basic issues. Moreover, he realized that not all issues were equal, and having a system that treated all issues the same prevented him from appropriately discriminating student performance. In strictly allocating a fixed number of points per issue, two students could do equally well if they identified the same *quantity* of issues. What the professor wanted, however, was to reward students not just for the number of issues spotted, but for the kinds of issues they spotted. A solution to this would be to design a rubric that gave more weight to identifying and analyzing complex issues.

As we tweak our rubrics, we also borrow from others. We work with existing models because doing so is much easier than trying to design from scratch. Then we revise the rubrics to fit our goals. What is appropriate in a rubric for a first year, first semester, required course may often be quite different from a rubric in a higher level or specialized course. For the former, it may be appropriate to iterate the building blocks of legal analysis that students need to show, such as causes of actions, straightforward issues and

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103. As a teaching tool, one colleague provides her students with the previous semester's grading checklist to show them what she looked for in her exams the last time she taught the course.

factual applications. For the latter, a professor may want to focus a rubric on in-depth sophisticated presentation and analysis of a highly complex question.

Similarly, we refine rubrics during the semester when providing multiple assignments such as a midterm and a final. The midterm or early paper rubric might be quite detailed about what a student must do to achieve different levels of mastery; the rubric for the final exam or paper might be less explicit, but refer to and include the earlier criteria. In addition, so long as students are notified in advance, the rubric could reflect increased expectations for the final work product. This is appropriate because grading criteria for a student who has had five weeks of copyright law may not reflect the increased depth of understanding appropriate for a student who has spent fourteen weeks studying the subject.

In the process of developing rubrics, we have found that we usually did not provide students with rubrics in advance until we had used them at least once. Sometimes this was because we did not know what to expect. Sometimes, especially when we were teaching a class for the first time, we were also unsure about the course's learning goals. We often found it much more useful to "reverse engineer" the process and develop the rubrics after we had read assignments or exams.

When we initially began to provide students with rubrics in advance, we frequently called these "draft rubrics." The rubric also had a disclaimer that it might be modified during the grading process. This allowed us to satisfy two goals. We gave the students the criteria upon which they would be evaluated in advance, but we could modify the rubric as we graded when we found that the rubric needed changes. When using specific checklists, with "answers," such as in Figure 3,[104] we distributed rubrics from previous semesters to current students.

Students prefer having explicit grading criteria given to them in advance of a graded event. Even if these rubrics are taken from previous exams or are drafts that will be modified later, these give students valued guidance. One student commented that rubrics should always be given out in advance, even if they were just drafts. As she pointed out, "often we just don't know what the professor is looking for. *Any indication* is helpful and greatly appreciated. It calms student nerves."

In addition to finding that designing rubrics is easier over time, we have also found that it is often more effective, and more fun, to work with others.[105]

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104. *See* Figure 3, *supra* pp. 12-13.

105. *See* WALVOORD & ANDERSON, *supra* note 17, at 70 (noting how helpful it was to have Walvoord, an English teacher, review Anderson's biology grading criteria); *see also* ANGELO & CROSS, *supra* note 45, at xvi (stressing the value, and fun, of sharing assessment experiences with colleagues).

Former students, colleagues in the same or other areas and teaching assistants have all been enlisted to review and comment. In fact, having a colleague who teaches in another area review our rubrics provides valuable insights; in explaining the instrument, we have to fully articulate why we made the choices reflected in the rubrics.

Rubrics can also conform to required ranking systems.[106] One colleague exclaimed, "well, if students were given this, everyone would do perfectly!" But even with rubrics, students have performed at the very highest to lowest levels, including failing. Some of these students misunderstand the criteria, and some falsely believe they have met the highest level because it was "in their head" though not on paper. There are others who understand the criteria and work hard to meet them, but are unsuccessful.[107] This means that it is likely professors will continue to see students perform across a spectrum, even when they provide students with rubrics.[108] In fact, should students show improved work, rubrics could provide administrators with concrete evidence to show why mandatory means and curves are inappropriate. Specific data about student performance, collected over several years, may indicate that clusters of students do well or do poorly in a way that does not correspond to a perfect curve or pattern.

To conform to a school's mandatory mean or curve policy, though, a professor can select criteria to assure student distribution.[109] Although it is possible to attach grades to the rubrics in Figures 1 and 2,[110] such as "highly proficient" = A, "proficient" = B, "satisfactory" = C, "unsatisfactory" = D/F, this is not necessary. In making final grades using rubrics, a professor might find that most students perform at an "unsatisfactory" level, comparable to a D, and the best students in the class reach a level of "proficient," comparable to a B. If the professor were to grade based on the rubrics, many students would receive a D and the highest grade would be a B. But a professor need not rigidly attach grades in that fashion, and could award As to students who

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106. Many educators have noted the negative consequences of such rankings. *See, e.g.*, DAVIS *supra* note 17, at 283; WALVOORD & ANDERSON, *supra* note 17, at 100-101; *see generally supra* note 11.

107. *See generally* Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, 77 J. PERSONALITY & SOC. PSYCH. 1121 (1999) (noting that students unskilled in an area do not recognize that their work is incompetent, even when they have explicit criteria and samples of competent work).

108. Consider the problem if this were not true, and everyone in the class performed perfectly. What a delightful dilemma!

109. Discriminating between exceedingly competent students seems like a pleasant challenge, especially when compared to reading disappointing blue books and papers.

110. *See* Figure 1, *supra* pp. 10-11; Figure 2, *supra* pp. 11-12.

meet the "proficient" category. The professor can thus use the rubrics to provide feedback and information, but not to allocate specific letter grades.

CONCLUSION

Law students and professors would benefit from having explicit grading practices that related to their course goals. Having specific grading criteria would help students prioritize their learning and spend more time mastering the material we judge important, rather than trying to second-guess what we want on a graded event. Using detailed grading criteria would help us test what we teach, and change our teaching to improve student learning. In the long run this will allow us to examine what we seek to have students learn and whether they are, in fact, doing so.

Clarity concerning what we use to determine grades, which carry such high stakes for law students, is also just. In our classes we demand students analyze, use evidence, apply rules, and show us how they "think like lawyers." We require them to be intellectually rigorous rather than relying on their intuition or "gut sense" of the right answer. The "correct answer" in law school is rarely a conclusory response; the correct answer must identify how its author got there and upon what it is based. We should apply this intellectual rigor to our grading. Rather than telling students that their graded event "feels like a B" we should analyze our grading and honestly show how we evaluate students.

Though developing explicit criteria in the form of rubrics is not easy, failing to do so begs the question of what we, the legal educators, are doing. As expressed centuries ago by Plato, if we cannot describe it, how can we teach it? If we cannot explain to our students what we look for when we grade them, how can we expect students to master the subject we believe we are teaching?

APPENDIX: SAMPLE RUBRICS

Civil Procedure–Refining rubrics on a Personal Jurisdiction question[111]

Version One
Question 1 Personal jurisdiction 50 points

10 minimum contacts analysis
10 relatedness
10 purposeful availment
10 reasonableness
10 other

Version Two
Question 1 Personal Jurisdiction 50 possible points

10 Quality & Nature of Contact with Virginia – analyze contract and agency relationships as possible contacts (*Burger King, Calder*)

10 Relatedness – analyze relatedness of father's contacts for paternity and child support. Recognize difficulty in assessing children as an independent "contact" (*Burger King, Calder*)

10 Purposeful Availment – students argue *Kulko* policy and intentional conduct standards of *Calder*

10 Reasonableness – student analyzed plaintiff, defendant, state and other interests in litigation

10 Additional points for exceptionally well-written, creative or additional issues or analysis.

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111. I am very grateful to Professor Barbara Glesner Fines, University of Missouri-Kansas City School of Law, for providing these and the following rubrics.

Version Three

Question 1 Personal Jurisdiction 50 Points

10 Student recognized the need for additional discovery regarding contract provisions & employer's basis for paying for wife's housing allowance and analogized to *Burger King* and *Calder* cases for agency relationship; Argued both sides of agency contacts from factual and policy perspective

7 Student argued law and facts of agency relationship, but assumed facts not present and drew only one set of inferences from facts

4 Student provided conclusory reasoning on agency contacts

Relatedness of contacts

10 Student recognized that child support by its nature is a non-action and contacts are difficult to term "related" but, like *Burger King*, an ongoing relationship can be the basis for contacts. Student clearly articulated the standard of relatedness being applied and argued alternative standards. Student separately analyzed relatedness of contacts for paternity.

7 Student argued relatedness for one action only but saw variability of standards OR student argued relatedness for both actions but only one side.

4 Student argued relatedness in conclusory fashion for both actions

2 Student argued relatedness in conclusory fashion for only one action

Purposeful availment

10 Student recognized the state of mind choice as between a foreseeability (a.k.a. stream of commerce analogy) test and the Effects test extension and argued each, noting the effect of the *Kulko* precedent in limiting the use of the Effects test in this context and arguing for its narrowing or reversal

8 Student argued state of mind choice but did not use precedent

6 Student argued one state of mind (foreseeability or effects) well but did not apply second standard or mentioned both standards but did not fully argue

4 Student provided conclusory analysis of one standard

Fair Play and Substantial Justice

10 Student argued relative convenience, state interest, international implications, and policy balances on both sides

7 Student raised some but not fully

4 Student addressed one only or simply listed several

Overall Analysis

10 Concise, organized, coherent with creative or insightful analysis

7 Thorough but sloppy

4 Incoherent slap shot

Civil Procedure II **Grading Guide**[112]

Exam # _____

Question - did the student	Pts	Comments	Pts
Q1... Differentiate the substantive cause of action statute from the the long arm statute? Did the student recognize the legislative intent of extending jurisdiction to limit of due process?	5		
... Analyze nature, volume, value and relatedness of contacts (including publications).	5		
... Analyze state of mind under variety of standards but recognize that critical issue is whether actions aimed at the nation can count as aimed at the state.	5		
...Balance the interests, recognizing the important role of state interest here in bringing an injunctive action in the state	5		
...Analyze the general jurisdiction alternative, noting that contacts were not sufficient even if *Helicopteros* standard applied to individuals but that service of defendant while present would work.	5		
... Analyze whether a dismissal or a judgment either would act as issue preclusion in a Wisconsin discipline case.	5		
Q2 ... Analyze FNC, recognizing the strong preference for plaintiff's choice of forum.	5		
...Analyze removal, noting that because defendant is out-of-state, removal would be permitted.	5		
... Analyze dismissal for failure to meet long-arm statute.	5		
... Analyze possible actions after removal (change of venue 1406/1404).	5		

112. Provided by Professor Barbara Glesner Fines, University of Missouri-Kansas City School of Law.

Q3 .. Explain why dismissal for lack of personal jurisdiction does not result in claim preclusion.	5		
... Explain why fed. Q jurisdiction exists under Lanham Act.	5		
... Analyze whether amount in controversy exists by discussing possible values of injunctive relief and aggregation of damages.	5		
... Analyze applicability of supplemental jurisdiction over defamation claim if no diversity, especially relationship between trademark infringement and defamation.	5		
Q4 ... Analyze whether defendant and law firm are diverse, applying various tests for corporate citizenship.	5		
... Analyze supplemental jurisdiction over Rule 14 impleader, noting the inapplicability of 1367(b) and role of discretion under 1367(c).	5		
Total			

5 – precisely identified issue, argued from facts, precedent and policy as appropriate, examined both sides of arguments, evaluated relative strength of argument, noted relationship of issue to other issues and overall outcome
4 – clearly identified issue, noted arguments for both sides but presented well developed argument for one side only, drew conclusion with some relationship to overall outcome
3 – clearly identified issue, argued one side only, drew summary conclusion
2 – identified issue, articulated but did not apply legal standards for resolution of the issue, drew summary conclusion
1 – identified issue and drew summary conclusion
0 – missed issue, stated rules without identifying issue

Grading Guide: Professional Responsibility[113]

Question	Score
Essay Question: Did the student address: *	
I. the competence/malpractice liability issues raised by the past overpayments?	
II. the obligation of confidentiality to the client vs. duty of candor to the insurance company?	
III. the withdrawal option: when it would be appropriate and what steps would be required to complete withdrawal?	
IV. the attorney's own personal obligation to repay the insurance company in such a way as to protect the client's confidentiality	
V. the communication to the client in such a way that accurately informs the clients of his rights/duties, provides clear alternative solutions for the problem, and makes attorneys own rights/duties clear to the client?	
TOTAL	

FINAL GRADE _____

*Each issue is graded based on the following rubric: If the student identified the issue but did not accurately state law or analyze solutions, providing conclusory reasoning at best, the issue earned 2-3 points. If the student identified the issue and accurately stated the relevant law but provided conclusions only or very confused, inaccurate analysis, the issue earned 5-6 points. If the student identified the issue, accurately stated the law, and provided some analysis but that analysis was incomplete, the issue earned 8-9 points. If the student identified the issue, accurately and completely stated the law, provided clear, detailed and complete analysis of the potential outcomes and solutions, the issue earned 11-12 points.

113. Developed by Professor Barbara Glesner Fines, University of Missouri-Kansas City School of Law.

Entertainment Law – Grading Guidelines[114]

Each student will receive a numeric grade for the course. Course grades will be based on a final research paper involving a topic selected by the student as well as two projects assigned during the semester, a deal memorandum and a review of a theatrical production. The final research paper will be due Monday, December 18 at 4:00 p.m. in the Registrar's office. As already discussed, I will approve each topic. Generally, the paper topic must address an issue involving an area of entertainment, electronic media, sports or art law.

Final Paper Grading. I will grade the final paper using a scale from 0 to 4 for the skills or techniques demonstrated in the following areas. The number assigned to Legal Research will be multiplied by 2 and Legal & Factual Analysis will be multiplied by 3, so that the total number of points possible for those two categories is equal to 20 of the 32 possible points for the assignment. This weighting reflects the emphasis on Legal Research and Legal & Factual Analysis in the total process.

Legal Research	0 to 4 possible points Base score x2 for total		
Legal & Factual Analysis	0 to 4 possible points Base score x3 for total		
Organization	0 to 4 possible points		
Drafting	0 to 4 possible points		
Citation Format & Mechanics	0 to 4 possible points		
Total	0 to 32 possible points		

For each of the categories below, the following point guideline is used:

> *0-1–Not Acceptable Performance*: Demonstrated little or no use of the technique or skill.
> *2–Marginally Unacceptable Performance*: Occasionally demonstrated the technique or skill necessary, but often failed to demonstrate those techniques; used the techniques inaccurately; or did not use the information gathered from the technique or skill in the proper manner.

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114. Provided by Dean Jon M. Garon, Hamline University School of Law, former Professor of Law, Franklin Pierce Law Center and Western State University College of Law.

3–Satisfactory Performance: Consistently demonstrated the techniques and skills necessary; used the techniques and skills accurately in most cases; and used the information gathered from the technique and skill in the proper manner.
4–Excellent Performance: Demonstrated mastery of the techniques and skills necessary; used the techniques and skills accurately in all or almost all cases; and used the information gathered from the technique and skill in an effective and creative manner.

The following descriptions provide an illustration or guidance as to the *satisfactory performance* of each skill or technique. These descriptions are based on the MacCrate Report.

Legal Research: The student should find and analyze pertinent authorities accurately and efficiently. Each research project should start with a well-organized and comprehensive research strategy. The research utilized should accurately reflect the legal information available, effectively employ precedent and persuasive authority, and be sufficiently authoritative to support the propositions described in the writing project.

Legal & Factual Analysis: The student should apply the legal research to the facts presented in an accurate, objective fashion that properly identifies the issue presented, the scope of those issues, and a reasonable interpretation of the facts within that context. The student should present the analysis with specific, logical, and well-crafted interpretations of each statement or proposition presented. The student should avoid emotional arguments and unsupported conclusions. Instead, the student should use only statements that have specific legal and factual support.

Organization: The student should organize the written project in a manner appropriate for the purpose of the document. The student should employ a clear, logical structure to the document, each section of the document and each paragraph within the document. The student should use a structure that reflects the weight of the authority cited, the logical relationship between the topics presented, and the analysis presented to the reader.

Drafting: The student should write in a clear, unambiguous style appropriate for the intended audience of the document. The student should minimize technical language and utilize an active voice wherever possible. The student should follow proper rules of grammar and select a tense for the document appropriate to its purpose.

Citation Format & Mechanics: The student should use correctly all punctuation, quotations, citations, and footnotes. The document should reflect that the student has properly edited and proofed manually as well as electronically. The student should select a format for the document that is most effective for communicating the objectives of that document.

Employment Law-Class Participation Grading Criteria[115]

Criteria	Levels of Quality			
	Highly Proficient	Proficient	Developing	Beginning
Class Participation and Preparation				
Do student's comments indicate the student has come to class prepared, i.e., has read the reading assignments and thought through the issues in advance of class?	Student's participation indicates he/she is conversant in preparatory material and that he/she has thought through issues raised by the material in advance of class.	Student's participation indicates he/she is conversant in preparatory material.	Student's participation indicates he/she is familiar with preparatory material but not conversant in it.	Student's participation indicates he/she is not familiar with the material. Inadequate prep.
Does student make a real and thoughtful effort to understand and analyze the issues raised?	Student's participation indicates he/she is making a substantial effort to understand and resolve the issues raised and is frequently understanding and resolving them at a level consistent with what one would expect from a good practicing attorney.	Student's participation indicates he/she is making a substantial effort to understand and resolve the issues raised.	Student's participation indicates he/she is making an effort to understand and resolve the issues raised.	Student's participation indicates he/she is making a minimal effort or is not making a real and thoughtful effort to understand and resolve the issues raised.

115. Developed by Professor Kimberly Kirkland, Franklin Pierce Law Center.

Brief Answer **And** **Final Conclusion**	BA-Starts with short answer, "Yes" or "Probably Not"; Conclusion starts with conclusions of law and facts; Sets out the rule of law governing the issues and summarizes reasoning leading to the answer by providing analysis of facts and law; Addresses each sub-issue–Conclusion engages in more depth than BA. 40-52	Starts with short answer or conclusion; sets out the rule of law governing the issue; summarizes reasoning; doesn't address each sub-issue or doesn't provide clear analysis of facts and law or doesn't provide more depth in the conclusion. 27-39	Starts with short answer, sets out the rule of law on the issue; summarizes reasoning; doesn't address each sub-issue and doesn't provide clear analysis of facts and law. 14-26	Starts with a short answer; doesn't clearly set out the rule and doesn't apply the rule to the facts. 0-13
Statement of Facts - Use of Facts	Includes all material facts and necessary background facts; Includes facts applied in rule application sections; Excludes extraneous facts. 28-36	Includes most material facts and most necessary background facts; Includes all facts applied in the rule application sections; Excludes most extraneous facts. 19-27	Includes some material facts and some necessary background facts; Includes most of the facts applied in the rule application section, but not all; Excludes only some of the extraneous facts. 10-18	Does not include many of the material facts and does not include necessary back-ground facts; Does not include many of the facts applied in the application section; Does not exclude any of the extraneous facts. 0-9

Statement of Facts - Objectivity/Expression/Style/ Technicalities	Maintains objective role–includes unfavorable and favorable facts; Organized in logical fashion; Well written and easy to follow; No Wydick errors or typos; Reveals source of facts; does not include legal material. 13-16	Mostly objective role; Organized in a logical fashion; well written but with some errors; reveals source of facts; does not include legal material. 9-12	Slightly one-sided facts; or organization difficult to follow; errors distract from the substance; source of facts not clear. 5-8	Facts heavily weighted toward one side or Organization is difficult to follow and there are many writing errors; does not reveal source of facts; Includes some legal material; may misstate facts. 0-4
Umbrella *or* Overall, Global Introductory Section	Begins with section providing a correct overview of law; discusses elements and general information about legal issue–reader understands broader context in which predictive analysis is made; uses most effective authorities. 37-48	Provides a correct overview of the law but lacks depth about how the general rule fits into the broader context; uses most effective authorities. Reader is given most of the broader context for the analysis. 25-36	Provides a correct general rule but lacks in explaining parts of its analysis; uses effective authorities. Reader is given some context for the analysis. 13-24	Provides general rule, does not explain general rule's analysis; uses somewhat effective authorities. Reader has minimum context for the analysis. 0-12
Allocating weight of analysis within memo and within paradigms	Devotes amount and depth of analysis treatment of authorities and facts–consistent with jurisdiction's approach and level of ambiguity 37-48	Most of the analysis is appropriately allocated among elements. 25-36	Some of the analysis is appropriately weighted according to the jurisdiction's approach to the elements. 13-24	Amount and depth of analysis is overall inconsistent with the jurisdiction's approach. 0-12

Conclusions	Conclusion for each element shows clear prediction, includes law and fact and gives explicit reasons for the prediction 37-48	Conclusions meet highly proficient criteria but lack specificity for reasons in all elements. 25-36	Some conclusions lack specific facts but all conclusions are clear. 13-24	Conclusions are unclear or confusing; conclusions lack specific facts. 0-12
Rules of law–on issue	Clearly and accurately states a rule for each element that includes complexities of that element 46-60	Rules are accurate but not all include complexities. 31-45	Rules all lack complexities or some are not completely consistent with authorities. 16-30	Provides rules that are inaccurate or restate the general rule for the element. 0-15
Rule Explanations: Organizing and synthesizing authorities to prove the rule	Authorities used accurately throughly, and efficiently explain or "prove" the rules; cases are synthesized where appropriate; most effective authorities are used; reader is thoroughly educated about the rules and their ambiguities. 91-120	Meets almost all the highly proficient criteria - but may minimally synthesize authorities or use mostly effective authorities or not fully educated reader about the rules' complexities and ambiguities. 61-90	Uses authorities to explain the rules, but cases may be minimally synthesized or not most effective authorities – overall result is that the reader is not fully educated about the rule. 31-60	Minimally shows how the rules are explained; may not use most effective authorities or misstate authorities – overall result is that the reader has some information about the rules, but would need to do additional reading and research. 0-30

Rule Applications: showing how the client's facts apply to the rule in an organized way	The reader is shown how the facts relate to the rules and authorities; facts are fully analyzed; complexities and ambiguities of the facts are noted; analogies and distinctions are explicit. The reader has a thorough and accurate picture of how a court would likely apply the rules. 91-120	Meets almost all the highly proficient criteria - but may not fully analyze the facts or not make all analogies and distinctions explicit. Reader is well educated about how a court would apply the rules. 61-90	Reader is educated about how a court would apply the rules – but several analogies and distinctions are not explicit or facts may not be fully analyzed and ambiguities in the facts may not be shown. 31-60	Reader is minimally shown how the rules would apply to the facts; few analogies/ distinctions are made, facts are not fully analyzed, some minor facts are inaccurate. 0-30
Counter-analysis – content	In 1-2 paragraphs, shows how the opposite conclusion could be reached on the most ambiguous element; C-A is supported by explicit analogies, distinctions and analyzing client facts 46-60	Counter-analysis shows how opposite conclusion could be reached, but may not be on most ambiguous element or C-A is not fully supported by authorities and applying the facts 31-45	Counter-analysis shows how opposite conclusion could be reached, but is only partly supported by authorities and applying the facts; does not address one of the more ambiguous elements 16-30	Counter-analysis shows how opposite conclusion could be reached, but is minimally supported by authorities and applying the facts; C-A is written about element that has least ambiguity 0-15

Citations and Writing

Use of citations **score from citation sheet**	Accurate citations 112-148	Mostly accurate citations 75-111	Some accurate citations 38-74	Minimal accurate citations 0-37

Paragraphing techniques	Uses effective para-graphing techniques including thesis sentences through-out memo 31-40	Mostly uses effective paragraphing techniques including thesis sentences 21-30	Sometimes uses effective paragraphing techniques including thesis sentences 11-20	Rarely uses effective paragraphing techniques including thesis sentences 0-10
Writing Mechanics	Uses correct grammar, punctuation, and spelling through-out. 25-32	There are minimal errors to fix, but almost everywhere uses correct mechanics. 17-24	Correct mechanics are missing in several areas. 9-16	Numerous errors distract the reader from the analysis. 0-8
Writing Style	No excess language and "legalese" uses active verbs, transitions. Writing is a pleasure to read. 31-40	Uses mostly plain English, but lacks in having smooth transitions or has portions that contain excess words. Writing is coherent. 21-30	Extra words, ambiguous meaning, use of legalese and other unnecessary words distract the reader from the content. 11-20	Writing is confusing and hard to follow. 0-10

Total Possible: 900. Final Score is divided by 10.

Patent Practice I **Claim Drafting Final Grading Rubric**[116]

Grading Criterion	Points Available	Points Received
I Claim (or the equivalent)	0 or +5	
Claim 1		
Preamble technically correct	5	
Preamble appropriate and not over limiting or too broad	5	
Transition: "comprising"	5	
Body: Complete Operable Invention workable with cooperative relationships:	0 ¾ 5 judgment	
One Complete Sentence that makes sense and is grammatically correct with proper punctuation. Colon, semicolons, "and" and only one "and."	to +5 judgment	
Poor Usage inappropriate modifier indefinite undefined relative term symbols, initials, abbreviations exemplary language unacceptable alternatives or negative lacks antecedent inferential item unsupported by disclosure unnecessary limitation mismatched case awkward language and so on	-2 each UP TO -20	
Claims the invention	5	
Indefiniteness (that which is already counted under "Poor Usage"	0 – +10 judgment	
No Means-Plus-Function language	-10 per	

116. Developed by Professor Craig Jepson, Franklin Pierce Law Center.

Inferentially claims the negative space	10	
True Elegance	0 – +10	
Includes Antecedent for: elongate dielectric core helical grove radiating element back plate impedance matching section second electrical impedance third electrical impedance	20 possible +4 +2 +2 +2 +2 +2 +4 +4 Up To 20	
Claim 8		
Numbered "8"	5	
Correct alternative multiple dependency from claims 1 or 2 or 3 or 4 or 5 or 6 or 7. Such as: "according to claims 1 or 2 * * *; "as in claim 1 or 2 or * * *; "as in any of the preceding claims * * *	10	
Add a further limitation	5	
Choice of further limitation is appropriate	5	
Form is flawless	5	
Claim 9		
Numbered "9"	5	
Depends from claim 2	5	
Correct Markush terminology: "wherein the material is selected from the group consisting of polypropylene, polyethylene, polyvinylene, PVC, a thermoplastic elastomer, ["and" is OK "or" is not OK] rubber." OR is OK in "wherein R is A, B, C or D", and "wherein the material is selected from the group consisting of __, __, __ or mixtures thereof".	10	
Correct Markush choice: None or made up (-10); Materials (+5).	-10 - +5	

Whereby clause appropriate choice.	10	
Whereby clause technically correct – adds no structural limitation, clarifies those present	5	
Correct use of Trademarks	5	
Otherwise flawless	5	
Claim 10		
includes: "said method comprising the steps of" "said method comprising"	15	
Preamble otherwise appropriate	5	
Form – technical correctness Punctuation No Antecedent Basis No unnecessary limitations (bolt, dielectric constant, specified ohms or impedance) Inadequate connections	-5 each up to -15	
Includes all the structural elements of claim 7 Claim 7 in preamble, or elements of claim 7 in preamble, or body, or elements of claim 7 in body	0 or +5	
Appropriateness of steps, i.e. calls out impedance matching sections and attaching them. not over using same gerund not conventional steps	up to +15 -5 per -5 per	
SUBTOTAL 160		