

-On grading in law school-

Hi, all. Since Larry opened the door on the grading question, I'd like to share some thoughts I have about grading in general, but especially for first-year students. Your reactions would be appreciated.

I strongly believe that the entire first year should be graded on a pass-fail basis. The typical reaction I get to this statement is "but how will they get jobs?" -- and my response is that they will have passed the first year of law school, and it is not my job to make their potential employer's hiring process easier. I know that grades are a motivating force for some students, but the effect of the Cs, Bs and B-s that most of them get (after a life-time of As) is a great deal of anxiety, depression, etc.

The other problem I have with typical law school grading is that it pits the students against each other --- we cannot simply give "B" work a B, because we have to compare all those Bs to each other and decide which are a bit better or worse. There is enough natural competition anyway, and I think we "feed into" some of the nastiness that exists in the legal profession by comparing our students this way, rather than grading them solely on the merits of their own work.

I would use the typical letter grades in the second and third years -- really only because I don't have any illusion that the world would let me do otherwise, and I do have some hope that I might be able to change the way the first year is treated! However, I would argue against the use of harsh curves and comparison of students against each other (which will happen to some extent anyway), so that collegiality can be a reality in the law school and the profession, instead of just an ideal we tell our students they must espouse.

Yes, I know this sounds idealistic. Just call me "still crazy after all these years"!!

Maura

Maura A. Flood  
Associate Professor of Law  
Gonzaga University School of Law  
(509)323-3764  
[mflood@lawschool.gonzaga.edu](mailto:mflood@lawschool.gonzaga.edu)

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Colleagues,

I've pushed the other way on this plow before, although unfortunately that didn't result in my being brief here.

Grades are my way of telling students, including first-year students, how well they can expect to perform (assuming continued development) as compared to the standards applied in practice, and at the lower limit, whether they are identifying and resolving legal problems at a level that

predicts success on the bar examination. The ABA standard says that we should not keep students in school who are not moving towards success on the bar and in the profession (I forget the exact words), and I don't know how one would do that without grades. Leaving aside whether we have any obligations to law firms as constituencies of our schools, we do have an obligation to assist our students in determining whether they can expect success at Bluchip, Silk & Moneybags or at Roughscrabble & Hardtimes: grading systems require us to be more rigorous than, I would submit, most of us would be if it were left to ad-hoc, private assessments of students' capabilities. Moreover, I am not comfortable with the assumption that bad grades are bad things for bad performances: the D- I got in the first semester of Con Law was a wake-up call for quality performance that, once I got over the disappointment, I remain grateful for to this day.

The competition-among-themselves issue is addressed at our law school by two policies: a verbal description of the performance necessary for a particular grade, and a grade distribution policy that says that a certain percentage of grades in various ranges is expected, and required unless the professor can articulate why the grades should be otherwise. I use raw scores derived from criterion-based grading to assess quality, and the student's grade is the one reflected by that raw score. It probably looks more scientific than it is, but I could count the inaccurate grades it has produced on less than one hand. Maura is quite right that rigid curves don't work the same way, and I hold no brief for those.

On anxiety and depression, I hold out the hope that if we teach our students what goes into good performance in our substantive areas, provide adequate support for those who need extra help, support the efforts of our legal writing and clinical professors to teach necessary fundamental skills, and make sure that our grades accurately measure good performance, then the anxiety and depression may become more manageable. Maybe we substantive professors need to turn all of our classes into mini-legal-writing courses to provide frequent feedback on our students' mastery of substantive law--if we can gain the skill to teach legal writing. Further, I would rather teach them (or have a staff psychologist teach them) how to manage anxiety and stress than to eliminate it: life itself is anxiety and distress, and their management. I would be concerned that eliminating grades would be a false cure for anxiety and depression, and that it might well set our students up for even deeper anxiety and depression later on, when they finally got out into that meritocracy that is the legal profession and found that people actually expected them to perform according to a professional standard. If a substitute for grades that will accomplish that is invented, I'd say let's all use it, but I've not seen it and don't know how to design it myself.

Regards,

Ed Brewer

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I agree with Ed that grades are essential. My concern, as a new prof. and as a fairly recent (2000) law school graduate myself, is the means by which we are assessing our students. Specifically, I see a large part of students' stress being caused by the existence of only one mode of assessment (exam) at the end of each course. If you have one bad day (cold, breakup with a significant other, bad night's sleep, distracting person next to you), your whole GPA can be thrown off. Are we really getting the best measure of our students abilities to perform in the real world with one 2 or 3-hour bluebook exam at the end of each course? Why don't law profs offer more exams/assessments? Obviously time is a big problem. Unlike our colleagues at other professional or graduate schools, most of us don't have TAs. So, we're limited in the amount of "face time" we can give each student's written work.

I am going to try an experiment next semester with criminal law. In lieu of giving 1 final exam at the end of the semester (whose answers would encompass 4 bluebooks per student) I am going

to "divide" the exam into four parts and give it throughout the course of the semester via writing projects. They would be short (the equivalent of one or two bluebooks each) and would build on what they're doing in legal writing (objective/persuasive memos, argument section of a brief, client letter, etc.). Although the quality of their writing will obviously play a part in their grade, my primary focus will be on how well they analyzed the problem from a criminal law perspective. My challenge is going to be finding a way to grade and critique 80 papers quickly and efficiently. If the papers are short, hopefully it won't be too time consuming. For comments, I'm going to develop some sort of shorthand/coding system so I'm not writing out word-for-word comments on each paper (after all, many students demonstrate the same problems over-and-over). My attempt will be to spread out the crush of grading exams over the course of an entire semester. Has anyone experimented with this approach before? One of my colleagues here at Tech suggested having them do some of the projects in groups to cut down on the number of papers to grade.

Of course, I may go crazy by the second assignment and swear never to give anything but multiple choice exams again! :)

Larry Cunningham

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I tried this approach (using several assignments during the semester for evaluation instead of one massive exam) when I taught legal writing and also when I taught housing law. I was very pleased with it. I had three or four assignments throughout the semester that constituted at least 75% of the total grade for the course. I used a lengthy objective checklist which contained all of the specific points of analysis for which I was looking and which also provided a little space by some objectives and at the end for personalized comments. This allowed me to grade quickly.

I think my students as a whole performed better. Interestingly, it was not the student who wrote the most brilliant first or last paper who won the book award for the writing class but another student who had performed consistently well throughout the semester.

Hugh (Lee)

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Kathy, Maura, Larry, and all,

First, Larry, I think the 3.2 has a more consistent meaning than an 81 because schools have different number scales. For example, here at Iowa we have a 90 top score, so, 81 is a reasonably high average for our students.

Second, not in importance, but in order of issues brought forward -- I support Maura's idea of 1st year pass/fail grades. I have often wondered how we got into the business of sorting law students for law firms and other legal jobs. I suspect we agree that some important skills are tested by traditional exams and much that is important to successful practice is not tested by traditional exams. I believe that pass/fail on law students' transcripts would send a message that the first year is about learning, particularly if they also receive confidential personal scores reflecting their performance

on each exam. I believe that these data are too valuable to discard. Students need to receive specific feedback. They need to know when they are at risk for upperclass courses and bar exams in time to do something about their study strategies. When scores become useful feedback they provide valuable information in the learning cycle instead of being "a form of academic violence."

Pass/fail grading in the first year could help decrease the inherent advantages of social class and experiences within the legal culture that some students bring with them by giving students who lack previous exposure an opportunity to learn the language and culture and to adapt their skills before the testing "counts." There is lots of research showing the benefits of positive feedback to learning and the detrimental impact of perceived negative evaluations to motivation, an important element of learning difficult material. Re-examining law school grading systems for the purpose of stimulating learning and positive lawyering skills such as collaborative working could benefit students and the profession.

These types of discussions -- grades, stress, etc. are very useful. I very much value the thoughtful questions and responses on this list.

Best wishes, Marty

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A problem I see with the traditional grading system (aside from those already noted) is that exam grades pretty much comprise the only institutional feedback about knowledge, skills, and abilities that we give (esp. to 1Ls).

We don't make an effort to assess the huge, wide range of skills that make up an exceptional lawyer in any other formal way (although students scramble to participate in extracurricular activities to sort of self-document their other skills, and we often give awards for exceptional pro bono work, writing, etc. at graduation). On our exams, whether essay or short answer, we are testing only the ability to perform on narrow analytical tasks in a timed setting. We give feedback of varying degrees of reliability on a student's mastery of that skill. As Ed points out, reliable feedback on this skill (which is an important lawyering skill, but not the only lawyering skill) is valuable

-- but is it a valid predictor, standing alone, of a student's potential for future success in the active practice of law?

A concern I have is that feedback on this one, isolated skill is pretty much the ONLY feedback we give students (esp. 1Ls) about their potential as lawyers -- and pretty much the ONLY feedback we give future employers as well. Are we really being honest with our students to "rank them" for feedback purposes or employment purposes based on their mastery of this one skill -- making little or no comment (esp.

not in the first year) on any other skills (except in their legal writing courses, which is, of course, valuable, too).

I don't have any solutions, but worry about encouraging students to think that their whole future in the field of law turns only (or even primarily) on their ability to perform on these timed analytical tasks. What about the ability to assess or analyze a problem accurately in a non-timed setting? What about other lawyering skills (such as the creativity that Paula pointed out -- there are academic programs, such as architecture, that give very concrete feedback about creativity; the ability to draw information out of others; the ability to network and make community connections; leadership skills; charisma; active listening skills; integrity; oral communications skills; the ability to be persuasive; the ability to build individual or group trust, etc.?).

I think the disconnect between the wide array of characteristics even lay people attribute to exceptional lawyers and the one skill we test and measure (and class rank on) contributes to the sense of being diminished (rather than empowered) that many law students feel. A student might have an average (or even below average) ability to perform on a timed analytical task like exams but be a true star in the charisma, persuasion, or active listening department. How would he or she know that? Maybe a

solution isn't to stop grading exams competitively, but rather to begin giving other kind of tangible feedback to students and employers in addition to exam grades. Many of us do that in letters of recommendation (which I always share with students -- a way to do a small thing, as Larry points out, to help rebuild their self-confidence). Has anyone heard of a law school maintaining portfolios on students' talents and achievements the way some undergraduate and prep schools do? If we can't do that, can we at least be clear about what a narrow window of a very large picture we're giving feedback on?

Whew -- I feel better after getting that off my chest. :) -- Ruth

Ruth Ann McKinney  
Clinical Professor of Law  
Director of RRWA and LEAP  
UNC School of Law  
Chapel Hill, NC

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(responding to a comment about internalizing low grades to mean low self worth or ability to be a good lawyer):

I can't help but briefly respond to one of your comments. In the six years that I have been teaching in the clinical program here, I have had numerous students who have performed below their own expectations (whatever that may mean in raw numbers, and for some that does mean LOW grades) but who have performed well in the clinic. They come to the clinic doubtful of their ability and competence to lawyer (or to lawyer well). The realization that, in many instances, those grades do not reflect their true ability as

advocates completely changes their law school experience,  
restoring a lot of the self-esteem that they've lost during the first  
two years of law school.

I find that to be one of the greatest sources of job satisfaction for  
me.

Hugh