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### The Deconstructed Issue-Spotting Exam

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# The Deconstructed Issue-Spotting Exam

Jamie R. Abrams

## I. Introduction

This article proposes a teaching technique for use in large, Socratic-style law school classes to embed exam preparation, formative assessment, and lawyering simulations in the course without overburdening the professor or students. This technique is sustainable, yet highly efficacious for students.

Law schools nationwide are implementing new reforms pushing law schools toward stronger assessment techniques and client-based simulations better preparing students for the practice of law.<sup>1</sup> Many law schools have implemented these reforms around the margins or outside of the traditional doctrinal course. Law schools have generally *added* new classes with experiential learning components or with simulations integrated into the course.<sup>2</sup> This approach has moved the needle strengthening assessment practices in the upper-level curriculum, in seminars, and in small elective courses. It has not, however, moved the needle significantly in large, traditional, casebook classes dominating the first-year curriculum and upper-level bar courses.<sup>3</sup>

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1. See generally ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015, AMERICAN BAR ASSOCIATION (2014), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf) [hereinafter ABA STANDARDS] (setting forth new standards requiring law schools to establish learning outcomes, curricular standards, simulation experiences, and assessment standards).
2. *Id.*
3. See, e.g., Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562 (2015) (proposing tweaks to the Socratic Method in traditional doctrinal courses to align with larger curricular reforms).

On the one hand, this “around the margins” approach makes sense because of faculty-student ratios in seminar-style courses. It is generally easier to turn many small ships than one ocean liner. Professors teaching large-casebook, Socratic-style courses have a higher student load such that the mere suggestion of including formative assessment on top of summative assessment and student support responsibilities seems untenable.<sup>4</sup> On the other hand, the full vision of curricular reforms seems to require more synergies and consistencies across the curriculum than existing approaches have achieved.<sup>5</sup>

This article proposes a manageable and replicable technique called the “deconstructed exam” through which law faculty teaching large-casebook, Socratic-style courses can better supplement and support the larger curricular reforms without significant burdens on faculty or students. It strings a client simulation through the curriculum in which students deconstruct a handful of client-centered questions from a preceding exam. Students produce collaborative client advice on each subissue as it arises in the syllabus. The professor either provides solely global feedback to the class as a whole on these short student assignments or small-group responses to teams of three to four students working collaboratively. The professor allocates some percentage of the overall course to the completion of these assignments, but does not individually score responses or weigh them heavily.

This approach leads to several notable benefits. It embeds exam preparation organically in the course instead of backlogging an exam “cram and jam” at the end. It ensures that all students are aware fairly, inclusively, and directly of the professor’s expectations governing exam performance.<sup>6</sup> It provides soft, collaborative, formative assessment allowing students to see room for growth before the cumulative exam at the end of the semester. It positions lawyering in a traditional law school class. It energizes and engages the class dynamic.

## II. The “Deconstructed Exam” Technique Explained

This section explains the teaching technique. Supporting materials are liberally available upon request. The technique is adaptable to any large-casebook, Socratic-style course. There are three components to the technique: an introductory “client” interview, issue-spotting and analyzing client issues throughout the semester, and either “global feedback” to the class as a whole

4. See, e.g., Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 473 (1989) (explaining that the idea of practicing exam performance “will appear to most professors (and to many students) to be too time consuming and too costly, particularly in view of the large classes that dominate the law school landscape”).
5. See, e.g., Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. REV. 245, 279 (2016) (characterizing these reforms as requiring a “fundamental change” to the delivery of legal education, including “a more comprehensive view of its curriculum and a more deliberate process of assessing students”).
6. See, e.g., Kissam, *supra* note 4, at 473 (noting that students do not often receive guidance or feedback about what is expected on final exams).

or small-group feedback. This section discusses each of these components. It also explains the overall course structure in which the simulation sits and the ways in which it feeds into exam performance.

### *1. The Overall Course Structure of the Deconstructed Exam*

While the deconstructed exam technique would work in any style course, it is primarily intended to embed formative assessment and lawyering simulations in a casebook, Socratic-style course. It thus bears noting briefly what the overall course structure and format might look like in which this simulation sits.

The approach follows a traditional law school casebook and Socratic-style course. High enrollment likely compromises individual assessment feasibility. The course is primarily assessed with an issue-spotting cumulative essay at the end of the course.<sup>7</sup> While the exact distribution varies from semester to semester, the exam is always the bulk of the course grade, ranging from seventy-five percent to ninety percent of the overall course grade. The remainder of the course grade is attributed to participation, which expressly includes the completion of the in-class exercises described in sections 2, 3, and 4 below.

Finally, the exam is assessed on three metrics. The first two exam metrics are likely unsurprising: legal analysis and issue-spotting.<sup>8</sup> These metrics assess the abilities of students to see legal issues within a fact pattern and then reason through them with a rule and an application of that rule to reach an accurate legal conclusion. The third metric is more noteworthy and relevant to the deconstructed exam simulation. It looks at the student's ability to write the exam in a client-centered lens. This invites students to explain *why* rules are as they are, to provide context for how a rule developed to be what it is, to highlight whether claims are strong or weak, to put issues in procedural context, and to anticipate client reactions, among other details.

This unique client-centered lawyering lens aligns the summative assessment on the course exam with the deconstructed exam simulation. The steps of the deconstructed exam simulation are described below.

### *2. The Mock "Client" Interview*

The simulation begins powerfully with a surprise client interview early in the semester. This live (mock) client interview introduces the simulation that will thread throughout the rest of the course. It is built entirely and authentically on the exam from a prior course administration. It thus requires no new development from the professor. Editing or modifying the exam too heavily risks undermining the integrity of the simulation as an exam readiness

7. See generally *id.* (describing the form, structure, and assessment techniques governing traditional law school blue book exams).

8. See, e.g., *id.* at 440 (noting that typical law school exams test issue-spotting, the identification of legal rules, the application of legal rules to complex fact patterns, a process often referred to "rather loosely" as analysis).

tool. Using a real old exam builds trust with students about exam content and performance.

The simulation begins with the surprise entry of a “client” to the class seeking legal advice. A student (usually a prior student from the course) interrupts an early course session in a frenzy needing timely legal guidance from your “law firm.” Finding a student volunteer becomes easier the longer the simulation continues, as many students eagerly volunteer at the end of the course to play this client role in subsequent years. Because the simulation usually involves the prior course administration’s exam, it is also easier and more manageable for the student to memorize the fact pattern if he or she took the exam with the same content.

The “client” will verbally present the facts and issues from your prior course exam styled as an initial client intake.<sup>9</sup> The students do not initially even know that a prior exam is the source of the fact pattern. The client should follow your “script” exactly, with some minor ad-libbing for context and interpersonal dynamics. For example, one torts hypothetical that I used involved a stage collapse at a concert. It is important that the client identify the right parties, injuries, damages, sequence of events, etc. He or she is free to ad-lib which performer was on stage when the collapse occurred, reactions to the injuries, etc.

When the client enters the room by surprise, the energy shift is palpable. Students sit more erect and engage in a way that is suspenseful and energizing. As the professor, I shift into a role-play as a supervising attorney with a meeting convened of my associates. I agree that the class will represent the “client” and invite two student volunteers to conduct a client interview. I ask classmates sitting near the volunteer attorneys to share notes from the client interview with the volunteer interviewers so they can just focus on conducting the interview.

I have previously not assigned any readings on conducting a client intake, preferring the element of surprise instead, but this could be a useful pedagogical enhancement.<sup>10</sup> I often cold-call on students who are in our law clinics or have worked in law office settings, if possible, to ensure that they do have some exposure to client interviewing.

I allow the student attorneys to conduct a basic client interview for about ten to twelve minutes. The students not conducting the interview rarely understand immediately that this is their only opportunity to take notes on the client’s legal needs. I usually let the interview go for just a minute and

9. See, e.g., Marjorie Corman Aaron, *Client Science: Advice for Lawyers on Initial Client Interviews* (2013), [https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1345&context=fac\\_pubs](https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1345&context=fac_pubs).

10. See, e.g., STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, AND ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009); G. NICHOLS HERMAN & JEAN M. CARY, *A PRACTICAL APPROACH TO CLIENT INTERVIEWING, COUNSELING, AND DECISION-MAKING: FOR CLINICAL PROGRAMS AND PRACTICAL SKILLS COURSES* (2009).

then I interrupt and ensure that all students understand that this is going to be the basis of coursework for the entire semester. This is their *only* chance to master the facts accurately and thoroughly. A tidy and polished version of the facts will not be distributed at any point. It is *their job* to make that tidy and polished summary of the facts to shape the case. This replicates the demands of legal practice."

After the critical mass of the facts has been presented to the class, I open the interview up to other members of the class for follow-up questions and clarifications. The students who did not volunteer as the primary interviewers are usually extremely eager and enthusiastic to participate in these clarification questions. I usually have so many questions that I have to keep a thoughtful queue to manage participation. I allow this for approximately another ten minutes of class. At this time, I intervene with any questions of my own to ensure that the full set of critical facts has been presented to the class.

The initial interviewers then end the interview promising to be in touch with legal advice on each of the questions presented. I try to time this to happen at the end of a class session to keep the entire interview limited to approximately twenty minutes and to manage the time efficiently. In prior iterations in which the interview has come at the beginning of class, the transition back into the course material can be a bit clunky.

For the next class session, students submit a client intake memo that polishes and organizes the interview facts. This is a critical assignment to kick off the deconstructed exam simulation. It replicates a frequent and foundational assignment that they will get in law practice.

Students usually struggle with a handful of components of this intake memo. First, the material usually comes out in order from the most general to the most specific. It is often not until the end of the interview when precise harms or dollar figures or even name spellings come out. The students quickly realize that constructing a chronological or thematic organization of the client intake requires more effort than they realized. Second, they realize how important precision and accuracy is. They often get the gist of the client's issues, but perhaps not all of the details that they needed. The interview moves quickly and covers a lot of ground fast. Some students miss critical details that require supplementing. This is one reason they will proceed later to work in groups. Third, the students often have reactions, impressions, and opinions about the case that they are not sure how to incorporate in a client intake memo. For example, perhaps they do not believe the client's one-sided account, suspecting that there is more to the story, or perhaps they question how a series of events could have unfolded as the client suggested.

I record the completion of the initial client intake memo (and all subsequent assignments) on a scale of √+ (exceeding expectations), √ (meeting

11. See, e.g., *Learning Outcomes for Lawyering*, N.Y.U. LAW SCHOOL, <http://www.law.nyu.edu/academics/lawyeringprogram/curriculum/learningoutcomes> (last visited Jan. 6, 2019) (positioning factual investigations as a learning outcome in a lawyering skills course).

expectations), and √- (falling short of expectations). This is a quick and cursory review that usually takes no more than an hour total. If teaching assistants are available, this might be a good spot to deploy their assistance. To minimize even this time allocation, faculty might instead simply record a “Complete” or “Incomplete” and select a strong sample to share with the class as an exemplar. This will become one of many scores that will be captured in the “participation and other assignments” component of the course. This ensures that the course is valuing and providing incentive for the class time spent on the deconstructed exam simulation.

A few “lessons learned” have emerged through various iterations of the client interview component of the simulation. This presents a sticky situation managing the element of surprise with the reality of class absences. Because I record a score and the client interview is so central to the entire simulation to come, attendance is critical on this day of class. I do not, however, want to alert students to the simulation because the element of surprise is engaging and provocative to this simulation and to the course overall. I accordingly include a catchall statement in my overall syllabus that says that this course will be highly interactive and engaging. The syllabus advises that I will never proactively reach out to a student who missed in-class work, but that I will always provide a makeup opportunity upon request within the week that the work was missed. For this reason, I always record this client interview class proactively so that students can listen to the recording and complete the intake memo carefully. This requires careful management of acoustics and volume during the interview to be sure the recording will be audible for absent students.

I do not tell students during the live client interview that we are acting out a prior exam or that the fact pattern derives from an exam. I save that for later, as will be discussed below. This live client interview then becomes the basis for the deconstructed exam simulation that develops throughout the rest of the course.

### *3. The Client-Based Simulation*

Following this initial client meeting, the class will represent the client(s) going forward. For a class like family law, I actually do two shorter client interviews to allow one firm to represent each spouse to replicate the adversarial context consistent with exam coverage. For a class like torts, I later tell the students that we will be researching liability more broadly beyond just the initial client intake to better understand the liability of *all* parties introduced in the interview.

The client simulation presents several issues for resolution. As the topics organically arise for discussion in the coming classes, we stop and analyze the client’s issues and produce a short written answer in e-mail to the client. For a class like family law this is evenly distributed across getting married, grounds for divorce, property distribution, parentage, child custody, child

support, visitation, jurisdiction, etc. Each single issue receives about ten to twenty minutes of in-class analysis time, depending on its complexity.

When completing an assignment, the students open an e-mail message to me and copy each member of their team. They analyze the issue and provide client-centered legal advice to the client in this e-mail message. Depending on the volume of issues and the level of intensity to which a faculty might want to engage, faculty could vary this approach considerably. For example, some issues could just be discussed in Socratic exchanges to see them through to an application and a conclusion within the momentum of the material. In a course like torts, for example, we will often issue-spot minor issues orally, but take the time to write out more complex analysis, such as negligence *per se*, causation, informed consent, etc.

Where in-class work results in written analysis, it is always done in groups and sent via e-mail to me by the end of the class. The work *never* leaves class. The students write the rule that we just studied; apply that rule explicitly to the facts that our client previously presented; and reach a predictive conclusion. These e-mails are usually just a couple of paragraphs long. Assigning group work in teams of three to four greatly reduces the volume of messages. It also allows them to learn collaboratively. For long class sessions, the group work can nicely coincide with a break to manage time effectively. The next session discusses the feedback portion of the deconstructed exam simulation.

#### *4. Formative Assessment*

For each of the assignments described in section 3, I provide formative assessment either globally to the class as a group or in response to team e-mails. While the students are doing the work in class, I motivate them with the prospect of formative assessment. I emphasize that we are pulling exam studying and the application of course concepts into the course directly, ultimately saving them from the “cram and jam” at the end. I emphasize how it is much better to their overall law mastery to *apply* the concepts after learning them.

I commit to providing formative assessment on the work product that they produced in class. I grade all of these submissions within a day or two on the “exceeds expectations,” “meets expectations,” and “below expectations” scale described above. This feedback first focuses on whether they have identified the correct rule and stated it accurately. I find that in family law and torts particularly, many students jump to the application and do not adequately state or explain the rule. It is important, however, when the course is framed in a client-counseling lens particularly, to state what the rule is *and why*. For example, in a course like family law, the difference in the rigidity and judicial discretion between the rules governing child custody versus child support is critical for the students to explain to their clients. Child custody requires that family court judges make fact-intensive determinations based on what they determine to be in the best interests of the child. This decision can achieve widely disparate results; it can be infused with bias, and it can be indeterminate



in client counseling. In contrast, the role of the family court in child support determinations is heavily dictated by federal law requiring the family court judge to begin with a presumptive award and make written findings supporting any deviations from the presumptive award. This framework is consistent from jurisdiction to jurisdiction and can promote settlement between parties, but might also present attorney malpractice or other risks if attorneys do not accurately advise their clients of the obligations and enforcement mechanisms underlying the child support system.

In time, these formative assessment materials become easier and require less time investment as faculty are able to anticipate the common areas for growth. The investment of time, however, achieves critical results in student exam readiness, as discussed in the next section.

### 5. The Final Exam

Many scholars have long posited that the traditional law school exam is not the most effective assessment technique.<sup>12</sup> It rewards some skills that might actually provide incentives for *poor* lawyering such as “speed, surprise, and comprehensiveness of course material.”<sup>13</sup> It reflects “marked discontinuities between classroom work and examination work.”<sup>14</sup> It leaves students with minimal guidance and compels them to engage in considerable self-study of the fundamental skills and concepts of exam performance.<sup>15</sup> Our classroom texts are effective at teaching rules and holdings, but students “are left largely on their own to acquire the skills of issue spotting and rule application.”<sup>16</sup> In reality, lawyers would often focus on a smaller subset of issues thoughtfully and thoroughly using legal research. Yet, despite the weaknesses of traditional issue-spotting exams, they will likely persist and endure for some time as part of law school pedagogy.<sup>17</sup>

This deconstructed exam simulation adds three critical connections to the traditional final course exam. First, it equalizes exam readiness. Currently students do not receive much feedback, if any, on exam performance other than the grades themselves and their overall distribution.<sup>18</sup> This practice avoids

12. See, e.g., Adam G. Todd, *Exam Writing as Legal Writing: Teaching and Critiquing Law School Examination Discourse*, 76 TEMP. L. REV. 69, 72 (2003) (describing the “traditional blue book exam” as “an atrocity in many respects”).

13. *Id.* at 73.

14. Kissam, *supra* note 4, at 436.

15. *Id.*

16. *Id.* at 470.

17. See, e.g., Todd, *supra* note 12, at 73 (describing it as “naïve” to believe that the blue book exam will disappear overnight”).

18. See, e.g., Kissam, *supra* note 4, at 471-72 (noting that while opportunities to ask professors exist, they are limited because so few students ask for these consults and these consults so often focus on the points and scores).

bestowing advantages on select students who hustle their way to acquiring effective outlines or soliciting the advice of senior peers, or jockeying for limited time in office hours. It gives all students equal access to exam-readiness advice, materials, and feedback within the allotted class time.

Second, it takes much of the stress and anxiety out of the pre-exam period that students encounter. There is minimal frenzy surrounding the exam with this simulation in place, because students have effectively been preparing to perform all semester. The students and professor build trust regarding exam expectations, which helps fight the perception of exams as an ambush tool of the professor.<sup>19</sup> It also helps diffuse the power dynamics between professor and student to align the dynamic more closely with a lawyer-client.<sup>20</sup> This can also help diffuse the exam feedback as well. Instead of meeting with students and saying, “I wanted X” or “I was looking for Y,” the conversation can instead be framed around “your client would also need to know X” or “your client needs to understand why Y is not a valid claim.”

Finally, this simulation will also produce better exam results. Students move from “outline dumping or simply restating facts or giving sterile statements of legal rules unconnected to the case at hand” toward client-centered lawyering.<sup>21</sup> Students are able to practice integrating law and fact effectively to reach a clear conclusion multiple times in class.<sup>22</sup> It also helps students wear the many hats required of successful lawyers, “including those of drafter, counselor, advisor, strategist, litigator, planner, anticipator, dispute avoider, etc.—all while remaining sensitive to the lawyer’s role as an ethical professional, citizen, and leader.”<sup>23</sup> It helps students to see how the larger fact pattern interconnects and to retain their peripheral vision in test taking.<sup>24</sup> It teaches students to support and defend their conclusions on the exam, as each issue is analyzed separately.<sup>25</sup> It allows them to “internalize” the “paradigm for analyzing legal issues” as something that spreads across areas of practice and course content.<sup>26</sup>

19. See, e.g., *id.* at 453-54 (emphasizing the element of surprise that many blue book exams have).

20. See, e.g., *id.* at 455 (“The Blue Book system artificially enhances power/dependency relations between law faculty and their students.”). Kissam further notes how this power imbalance is also heavily masculinized around a “male code that employs rules, boundaries, game playing” at the expense of “thinking and caring about complex relations and interdependencies among persons, ideas, and situations” more in line with Carol Gilligan’s work on the ethics of caring. *Id.* at 456-57.

21. See Donald J. Kochan, “Thinking” in a Deweyan Perspective: The Law School Exam as a Case Study for Thinking in Lawyering, 12 NEV. L.J. 395, 407 (2012).

22. *Id.*

23. *Id.* at 408.

24. *Id.*

25. See generally *id.* at 412 (describing the absence of “because” clauses on exams).

26. See Amy E. Sloan, *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ASS’N LEGAL WRITING

The students avoid conclusory analysis and embed thoughtful client-centered lawyering on the exam. This makes the exams more enjoyable to read, because they reflect the transition from class into lawyering. Traditional exams are often disconnected from the practice of law.<sup>27</sup> The students learn to write with an audience in mind and a sense of importance about what matters to that audience. The next section critiques the strengths and weaknesses of this technique.

### III. The Deconstructed Exam Simulation Critiqued

#### 1. Strengths

This teaching technique has several strengths. Hands-down the greatest strength is heightened class engagement. Students are incredibly active and inquisitive. The exercises are always at the end of class, with a reduction in Socratic case discussions on those days. Consequently, the students know that they need to “get it” within the time allotted, because they will need to apply it within the hour. This pushes them to achieve mastery sooner. It also compels strong and thoughtful client-centered questions anticipating the work to come. Because more engagement happens in class, I have found *lighter* traffic during office hours and exam reading periods for upper-level courses.

Within the first-year curriculum particularly, this technique can nicely supplement the legal writing course pedagogy and curriculum. Despite considerable gains in curricular consciousness, the longstanding “artificial line” still persists between “doctrinal” or “podium” and “skills” courses.<sup>28</sup> Many schools have parsed their curriculum so finely that students and faculty alike struggle to denote the difference among simulation courses, experiential courses, externships, etc. This dominant approach of integrating the ABA Standards at the margins in new classes and additional class categories risks reinforcing the longstanding critique of legal education creating artificial lines separating “doctrinal” and “skills” courses.<sup>29</sup>

There are, of course, noteworthy similarities in teaching goals and performance assessment that bridge doctrinal and skills courses, which faculty can leverage for their students’ success with this technique. The pedagogical

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DIRECTORS 3, 4 (2002) (explaining how “doctrinal” and “skills” courses share pedagogical goals).

27. See, e.g., Kochan, *supra* note 21, at 476-77 (“Most students understand, at least intuitively and perhaps explicitly after clerking in law firms, that Blue Book skills are not loosely related to the day-to-day work of most law practices, despite the importance of these skills in the practice of law overall.”).
28. Todd, *supra* note 12, at 80.
29. Sloan, *supra* note 26, at 3 (“By choosing to focus on their differences, we create and reinforce a hierarchy that is reflected in faculty statutes, course credit hours, and other indicia of privilege.”).

goals of all classes focus on the “conventions and methods of legal analysis or legal problem solving and the process of communicating legal argument and analysis.”<sup>30</sup> It allows students to see throughout the semester that the analytical techniques they are learning in legal writing transfer to exam successes and to lawyering. For example, the students’ early efforts with a legal writing assignment and an exam both require them to review the facts provided and to identify the legal issues.<sup>31</sup> The tasks of outlining and reviewing for the exam function as a “a form of ‘research’ using primary and secondary materials in preparation for an exam.”<sup>32</sup> Success on both legal writing assignments and traditional law school exams requires students to consider the audience of their document, the purpose of their document, the formatting and style of their document, and the time constraints.<sup>33</sup>

This deconstructed exam also reinforces the new ABA Standards. In its recent reforms, the American Bar Association required schools to establish learning outcomes that help students achieve competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and legal systems; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.<sup>34</sup>

Other signature reforms in the ABA Standards required law schools to use methods of both formative and summative assessment “to measure and improve student learning and provide meaningful feedback to students.”<sup>35</sup> This deconstructed exam technique allows for repetitive formative feedback that can positively affect student performance.<sup>36</sup> This technique notably stays within the comfort zone of existing doctrinal teaching techniques, but moves

30. Todd, *supra* note 12, at 80 (describing the work of Amy Sloan).

31. *Id.* at 77.

32. *Id.*

33. *Id.*

34. AMERICAN BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, AMERICAN BAR ASSOCIATION, at 15 (2016), [https://www.americanbar.org/content/%20dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure.authcheckdam.pdf](https://www.americanbar.org/content/%20dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf).

35. *Id.* at 23. Formative assessment occurs during the course or throughout the student’s education, whereas summative assessment occurs at the culmination of the course. *Id.*

36. See, e.g., Deborah Jones Merritt et al., *Formative Assessments: A Law School Case Study*, 95 U DET. MERCY L. REV. 387 (2017) (summarizing literature on “repetitive formative feedback”).

the line closer toward skills development, formative feedback, and client-centered lawyering.

This approach can also promote student wellness. Existing law school exam techniques, as experienced by students, “can be dehumanizing and crippling to a student’s self-worth and identity.”<sup>37</sup> Students for decades have struggled with “considerable burn-out, despair, and malaise” as they progress through law school.<sup>38</sup> Through explicit exposure to a deconstructed exam, the students develop an advance understanding of the audience, the conventions, and the purpose of the document.<sup>39</sup> This helps the student place herself within the discourse community of law school exams explicitly before the grades are released.<sup>40</sup>

This technique integrates exam preparation, bar preparation, and lawyering together into the classroom with minimal upheaval to the text, syllabus, or style of the course. This helps students see a progression from law school to practice that humanizes the process with context and growth.

## 2. Risks and Critiques

A simulation like this also entails some risks and critiques to manage. Managing class attendance is a real risk. If students do not attend a class in which an assignment occurs, they might suffer a “triple whammy” in that they lose credit for attendance, they lose the substantive benefits of the in-class exercise applying the assigned reading, and they lose the exam-preparation opportunity. It is easier to come to peace with this risk in a first-year course, during which it is much less likely that students have other competing *professional* demands on their lives due to synchronized courses, limited work opportunities, and the general law school cultural norms. It is harder to enforce in upper-level courses, during which students do have more professional demands that interfere, such as interviewing, moot court travel, work demands, etc. These risks are easily addressed by allowing opportunities for makeup assignments, which I allow wholeheartedly with some limitations.

I do retain some limits on makeup opportunities, which I disclose candidly in class and on the syllabus. I record classes only upon request. I list the dates of in-class work on the syllabus for student planning. I allow makeups of the in-class work within a week of the missed class. This timing is to facilitate the growth in class that the exercise sought to achieve in sequence. It also ensures that students are not cramming assignments at the end. They know, however, that this is their obligation proactively. I will never track them down to request missed work. I believe that this strikes a balance to protect proactive students consistent with lawyering expectations.

37. Todd, *supra* note 12, at 82.

38. Kissam, *supra* note 4, at 477.

39. Todd, *supra* note 12, at 81.

40. *Id.* at 83.

Another critique would be the possibility of “freeloaders,” to the extent that group work yields more dominant participants and more passive participants. I do require that the groups rotate the e-mail drafting responsibility to avoid one student driving or dominating the work product consistently. The impact of this as a concern would vary a bit depending on whether the professor graded for a score or merely a “complete” versus “incomplete” notation. I strike a middle ground and record on the “exceeds expectations,” “meets expectations,” and “below expectations” hierarchy. The vast majority of groups fall in the “meets expectations” categories, but a few groups fall on the other extremes. During the group work, the professor can helicopter around the room to watch group dynamics and monitor for freeloader issues. In the first couple of exercises, I am quite intrusive and assertive to set the tone. I call out more distracted or disengaged students, etc. I am very vigilant in setting the standard of group engagement and professionalism. That does not entirely avoid the risks of freeloaders, but it is an attempt to minimize and monitor it.

Another critique is the time investment. How much work the simulation assessment entails depends on your baseline. It is definitely *more* work than a typical casebook, Socratic-style class culminating in a final exam. It is considerably *less* work than individualized assessment. For me, the work has been well worth it, but it is managed and controlled more fairly now. It avoids the office hour jockeying. I am much more comfortable and empowered deploying my time and energies across the class as a whole.

One final—but critical—critique is time management. I devote approximately fifteen to twenty minutes to each in-class exercise, although some longer ones go to thirty. Completing the assignments by the end of class and prohibiting work outside of class can rush the exercises. Notably, I have nonetheless retained tight restraints on class time. I have concluded that the constraints force students to get to work and listen more carefully earlier, but that may not be the right approach, admittedly. Because they are so lightly assessed and the timing affects them equally, I have found it efficient and effective to keep the time allocation short.

This technique can energize classrooms at any level. Additional teaching materials and samples are available liberally upon request.

#### **IV. Conclusion**

This article proposes a curricular modification that is sustainable and replicable in large law school classes by professors of various styles and pedagogical approaches. Using existing materials and content, the deconstructed exam provides students much-needed formative assessment in a timely and effective manner. This reform aligns with ABA nudges toward formative assessment and experiential learning. It can yield a more engaging and satisfying classroom for faculty and students alike.