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VIEWPOINT

THE GETTYSBURG ADDRESS AS WRITTEN BY LAW STUDENTS TAKING AN EXAM

*C. Steven Bradford**

I. INTRODUCTION¹

A Cameroonian proverb states that “[h]e who asks questions cannot avoid the answers,”² and, unfortunately, that proverb applies to law professors. At the end of each semester, law professors must endure the agony of creation that Mary Shelley’s Dr. Frankenstein³ had to experience only once in his life. We are horrified to see the monsters we have created, so different from what we intended. The joy of teaching is the constant challenge and interaction with students in the classroom; the agony of teaching is reading what some of those same students have written on their examinations.

Of course, not all law students’ exams are bad. Some exam answers contain brilliant insights in spite of enormous time pressures. I learn much from grading such answers,⁴ and I doubt that my experience is unique. A majority of exam answers are satisfactory, if not completely satisfying. These students provide no new insights, but at least demon-

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Of course, all blame for the contents of this article belongs to my parents, for raising me to be the sarcastic, cynical brat that I am.

¹ This section heading is offered for the benefit of those readers who would otherwise have trouble locating the introduction.

² Cameroonian Proverb, reprinted in RHODA T. TRIPP, *THE INTERNATIONAL THESAURUS OF QUOTATIONS* 316 (1970).

³ See MARY W. SHELLEY, *FRANKENSTEIN* (1818).

⁴ Or am I just saying that so the smart students don’t get mad at me?

strate competent legal writing and an acceptable understanding of the subject matter of the course. Unfortunately, there are also those OTHER exams—the ones for which law professors earn most of their pay,⁵ the ones that make grading exams such a miserable experience.⁶ Those OTHER exams send law professors on early vacations and, eventually, to early retirement.⁷ Those OTHER exams are often the ones indignant students bring into professors' offices the next semester, demanding to know why they did so poorly.

The grading process might be less frustrating if those OTHER exams were at least unique. Uniqueness is enjoyable, even the uniquely bad.⁸ Who among us has not at some point sat transfixed by a horrid, yet entertaining, movie such as *The Attack of the Killer Tomatoes*?⁹ Who among us has not turned to a friend while reading something and said, "You've got to read what this idiot said"? Who among us has not taken whipped cream and lotion and aggressively . . . (Sorry, I got carried away).¹⁰ Unfortunately, those OTHER exams are seldom original in any way. I don't know if a form book is available somewhere,¹¹ but students from different geographical, social, and racial backgrounds with varying interests and ideologies share common exam answer styles. Year after agonizing year, the same dreadful, torturous exam styles appear and reappear. At least ten¹² types of student answers are identifiable in those OTHER exams: (1) the Timeless; (2) the Empty; (3) the Waffler; (4) the Grammarian; (5) the Outliner; (6) the Repeater; (7) the Scholar; (8) the Avoider; (9) the Crit; and (10) the Footnoter. Each of these styles is different, although some particularly inept students are capable of writing answers fitting three or more categories.

To illustrate these recurring styles, let me pose a simple hypothetical exam question. Suppose that an exam question asked law students to write the opening line of Abraham Lincoln's Gettysburg Address. The actual opening line of the Gettysburg Address is: "Four score and seven years ago our fathers brought forth, upon this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are

⁵ My neighbors argue that one who is required to work only six hours a week, 28 weeks a year, could not possibly earn his pay.

⁶ Grading exams is still not as miserable an experience as taking them or, as my wife will attest, being in a household with someone taking them. See MEG BRADFORD (*not* on file with the *Law Review*).

⁷ Contrary to popular belief, early retirement and tenure are different, although closely related, concepts.

⁸ Cf. Dan Quayle (Vice President of the United States).

⁹ "Tomato" is a politically incorrect term, but not, I believe, in the context in which the filmmakers used it. Vegetarians might disagree.

¹⁰ To my wife: This is a joke. There is no one else.

¹¹ If so, it must be published by the same people who publish "canned" briefs of cases. The quality is similar.

¹² There could be more than ten, but I ran out of fingers and I wrote this with my shoes on.

created equal.”¹³

Excellent students would recite these lines flawlessly. Most other students would capture the essence of Lincoln’s message. However, a simple recitation of this sentence would be too difficult for some students.¹⁴ What follow are examples of how this question would be answered on the OTHER exams. **WARNING: THOSE WITH A WEAK STOMACH SHOULD READ NO FURTHER. READING THESE ANSWERS COULD BE HAZARDOUS TO YOUR HEALTH.**

II. THE BOTTOM TEN

A. *The Timeless*

“Four . . . (Nearly out of time) . . . score . . . (Time almost out) . . . and . . . (Out of time. Exam was too long!).”

The Timeless student never has enough time to finish the exam. When I began my teaching career and read answers like this, I assumed I was not providing enough time for students to answer the questions. I gradually shortened my questions and gave the students more time to answer, and the number of Timeless students decreased. However, no matter how simple the question, and no matter how much time I give students to answer it, there are always Timeless students who simply do not finish.¹⁵ These are probably the same people who always brought home unfinished and uncolored pictures from kindergarten.¹⁶ One wonders what these students do with their time. Are they using some of the time I give them to work on some other professor’s take-home question? Or perhaps they have a thriving mail-order business. After they graduate from law school (if they do), many of these students become judges.¹⁷

¹³ There are several different versions of Lincoln’s Address. See 2 WILLIAM E. BARTON, *THE LIFE OF ABRAHAM LINCOLN* 485-93 (1925) (giving nine different versions). Apparently, not a single reporter brought his tape recorder to the speech. The opening sentence quoted in the text is consistent with most of these versions.

¹⁴ The point is not that law exam answers should consist only of recitation. The point in using the Gettysburg Address example is to illustrate the structure of poor answers independent of particular questions. If the reader wants to deal with the general issue of what law exams should test and what a good answer should look like, the reader can become a writer and write his or her own article. This is my article and so, like most legal authors, I can assume and ignore whatever I want.

¹⁵ Therefore, I have once again lengthened my questions and shortened the time period. If there are always going to be Timeless students, I don’t want them to be lonely. Also, less time means fewer bluebooks. Giving more time to accommodate Timeless students also gives more time to those students who write encyclopedias instead of exam answers.

¹⁶ I have a child who did this. The teachers explained that she spent the time learning to socialize with other children. You’d think that law students would already know how to socialize.

¹⁷ Cf. your favorite overdue, long-expected opinion.

B. *The Empty*

“.....”

Many law professors have searched bluebooks in vain¹⁸ for missing answers to questions. Some students never answer all of the questions. There are several explanations for such behavior. Some Empty students are Timeless students who did not even have time to indicate that they were out of time. Other Empty students strategically decided that it would be more detrimental to their overall grade to show their ignorance on the particular question than simply not to answer and hope for mercy from the grader. “The surest way to conceal from others the limits of one’s own knowledge is by not overstepping them.”¹⁹ The ultimate Empty answer is the No-show—the student who, although registered for the class, does not appear for the exam. It is difficult to understand the decision process of the No-show. How could one’s position possibly be worse taking the exam than receiving the automatic failure which results from not appearing?²⁰

C. *The Waffler*

“Approximately two to six score years ago (more or less), our fathers (some lower courts say it was our grandfathers) brought forth, somewhere in the world, a new nation, country, or some other enterprise, which according to some people was conceived in liberty, and dedicated to the proposition that all, most, or some men (and men might mean ‘women’ in some contexts) are created equal, or maybe not. This may not be exactly right. It’s something like that, but I could be wrong.”

The Waffler is dreadfully afraid of taking a position, perhaps realizing that a definite position one way or the other could be completely wrong. The Waffler therefore takes all positions, and is always partially right. Of course, the Waffler is also always partially wrong. Many Wafflers later in life write legal treatises.²¹ Others become politicians.

D. *The Grammarian*

“For score seven ago, our fathers bring new nashun; conceited in library. dedicate the to preposition that all man are equ.”

The Grammarian is the student who managed to escape elementary school, junior high, high school, and college without learning the slightest thing about grammar, spelling, punctuation, or writing. The Gram-

¹⁸ This should not be confused with “vein,” which is a small blood vessel in the arm which many law professors would like to cut open after reading bluebooks.

¹⁹ GIACOMO LEOPARDI, *PENSIERI* 135 (W.S. Di Piero trans., 1981) (§ LXXXVI).

²⁰ Lest I receive dozens of letters from the law and economics types out there, I should explain that this is a rhetorical question. I’m one of you. I *know* the answer; it’s just too boring to discuss.

²¹ “The majority view is The minority view is The view of two really stupid people living in Idaho is”

marian's work product is often used as an example of the decline of the American educational system. Given the pressures of an exam, almost everyone makes mistakes like this; what sets apart the Grammarians is the constant, repetitive nature of their errors.²² Grammarians pay the highest salaries to legal secretaries, because, for the Grammarian, brief-writing and memo-writing are necessarily team enterprises. Many Grammarians who are unable to find legal jobs become public school teachers.²³

E. The Outliner

"Gettysburg Address-
-87 years ago
-our fathers
-on this continent
-a new nation
-liberty
-all men equal."

The Outliner never learned to write a complete sentence (or perhaps Outliners skipped school the day their teachers discussed verbs or conjunctions). Some of the other categories of students can become Outliners with hard work. For example, many Timeless students through careful time management can become Outliners. Grammarians can also become Outliners, because outlining eliminates the need to construct sentences properly.²⁴ I have always wondered if George Bush was an Outliner when he was an undergraduate at Yale.²⁵

F. The Repeater

"The question is to restate the Gettysburg Address as spoken by Lincoln. As I understand the issue, my task is to write the Address in a close approx-

²² Notice how the focus on constant, repetitive errors cleverly allows me to avoid attacks from people who would point out the errors in my own writing. Isn't law review writing fun?

²³ My grandfather was a public school teacher; my grandmother was a public school teacher; my wife was a public school teacher; some of my best friends are public school teachers. I almost removed this line, but then I realized that they've all made insulting jokes about lawyers. So there!

²⁴ This sentence is an illustration of the advantage of being an Outliner. Does the adverb "properly" belong at the end of the sentence, immediately before the preposition, immediately after the preposition, or in a suburb outside of Cleveland? An Outliner would not have to deal with this issue. He would write the sentence as follows:

Grammarians = Outliners
-No need
-Proper sentences.

²⁵ Speaking of George Bush, are there really 1000 points of light, or only 999 or even 998? Has anyone really counted? The media have been incredibly trusting on an item that spearheads Bush's carefully crafted domestic policy.

imation to what Lincoln actually said. I shall proceed on the assumption that this is what you mean”

The Repeater is better at restating the question than answering it. Repeaters spend four or five bluebook pages restating the facts without adding any legal analysis whatsoever. They then spend another three or four pages restating the issues the question asked them to discuss. The actual answer seldom takes more than a page. Repeaters often lapse into Timelessness. After the long, ritual restating of the question, they run out of time and argue that the exam was too long. It is obvious from the Repeater's answer that he or she can read; it is less obvious whether the Repeater has the slightest understanding of the subject matter the question was testing. Repeaters make very good mediators and psychiatrists.

G. *The Scholar*

“Abraham Lincoln was born on February 12, 1809 in a log cabin near Hodgenville, Kentucky. His parents were Thomas Lincoln and Nancy Hanks. When Lincoln was seven years old, his family moved to Indiana. . . . In 1834, Lincoln was elected to the Illinois House of Representatives and, in 1836, Lincoln obtained a license to practice law. . . . Lincoln was elected President in 1860, defeating Stephen A. Douglas, John C. Breckinridge, and John Bell. . . . Lincoln's Gettysburg Address was a 268-word speech given at the dedication of the national cemetery at Gettysburg. It followed a two-hour oration by Edward Everett. . . .”

Pardon the ellipses, but a faithful reproduction of the Scholar's answer would fill several pages and destroy many more trees.²⁶ The Scholar suffers from a surplus of knowledge and an inability to organize that knowledge with any sense of priority. The Scholar knows too much, is not sure what is most important, and is therefore determined to transfer all of that knowledge to the bluebook. The Scholar is worried that leaving out a single detail might be interpreted by the professor as ignorance. The correct response is usually hidden somewhere in the Scholar's answer; finding that answer is like sifting through sugar to locate salt. Courts created page limits to deal with Scholars; Scholars created footnotes and appendices to deal with page limits. Never get into a conversation with a Scholar at a party; it (the conversation, not the party) never ends. Many Scholars become law professors.²⁷

H. *The Avider*

“The opening line of Lincoln's address at Gettysburg is reminiscent in both rhythm and effect of Marc Antony's famous oration in the play *Julius Cae-*

²⁶ Why is the environmental movement putting so much of the blame for the destruction of the world's forests on logging companies and Brazilian farmers, instead of where it rightfully belongs—the law reviews?

²⁷ Law professors, of course, are extremely fun at parties. Or, at least we would be if someone would invite us.

sar: Friends, Romans, countrymen, lend me your ears; I come to bury Caesar, not to praise him. The evil that men do lives after them; The good is oft interred with their bones; So let it be with Caesar."²⁸

The Avoider is a font of knowledge; unfortunately, none of that knowledge is relevant. In other words, the Avoider is an uninformed Scholar.²⁹ Lacking an answer to the question, the Avoider answers some other, unrelated question. The Avoider hopes that the grader will credit the general knowledge in the answer enough to assign a passing grade, even though the Avoider has no specific knowledge of the issue raised by the question. Avoiders often enter politics after graduation.

I. *The Crit*

"This question conceals several illegitimate assumptions. The question as framed assumes the legitimacy of Zionistic, capitalistic oppression; it glorifies the meta-hierarchy represented by the imperialistic, capitalistic war-monger Lincoln. In any event, the meaning of the question is indeterminate. It fails to identify the particular Lincoln who was the speaker; a reader from another culture might believe this to be a reference to some other Lincoln. Further, what do you mean by the 'opening' of the Address? At what point does the 'opening' end and the ending open? One's sense of opening is culturally derived and therefore indeterminate."³⁰

The Crit follows the old adage: "If you don't know the answer, question the question." The Crit is thus a very special class of Avoider. The Crit is freed from the need to acquire any substantive knowledge,³¹ since so much is culturally derived and indeterminate. In this sense, Critical analysis really is liberating. It liberates the Crit from having to study. Most Crits become corporate lawyers when they graduate; capitalism pays much better wages than Marxism.

J. *The Footnoter*

"As you said in class on April 1 at 2:10 p.m., the Gettysburg Address was a speech by Abraham Lincoln to dedicate the national cemetery at Gettysburg. As stated on p. 1401, fn. 17b, of the casebook, the Address begins with the words 'Four score and seven years ago.' The full Gettysburg Ad-

²⁸ WILLIAM SHAKESPEARE, JULIUS CAESAR act 3, sc. 2.

²⁹ "Uninformed Scholar" is probably an oxymoron, like "military intelligence," "legal writing," or "distinguished professor."

³⁰ I must admit that, as a non-Crit, I can't do justice to the Crit style. Most Crit writing is much more opaque than the example in the text. I was careful to include some of the Crit buzzwords: imperialistic, oppression, hierarchy, and the modifier "meta." At best, however, this is still only a meta-Crit answer.

³¹ "Hee is a foole that has nothing of philosophy in Him But not so much as hee who has nothing else but philosophy in Him." SAMUEL BUTLER, PROSE OBSERVATIONS 259 (Hugh De Quehen ed., 1979). Samuel Butler's main failing was that hee didn't know howe to spelle.

dress appears in Vol. 2, pp. 485-493 of Barton, *The Life of Abraham Lincoln . . .*”

The Footnoter has an inbred fear of being wrong and therefore refuses to say anything without providing direct authority for the proposition. The Footnoter fails to realize that “an ounce of a man’s own wit . . . [is] worth a ton of other people’s.”³² On law exams, which are often purposely indeterminate, the Footnoter leaves most of the important issues undiscussed, because there is nothing to cite. The Footnoter, like the Scholar, is frustrating to the grader, because the Footnoter clearly has some knowledge of the subject being examined. Unfortunately, that knowledge is hard to find amidst the tangential citations and cross references. The Footnoter has taken law review style³³ to heart. If that is how famous law professors and lawyers communicate, the Footnoter thinks, that must be the way to earn an “A.” After graduating from law school, many Footnoters become tax lawyers or accountants.

III. CONCLUSION³⁴

I am sure that more than these ten examples of bad exam styles could be given, and that I could insult even more people in both text and footnotes if I thought about it longer. Unfortunately,³⁵ I can’t stand to think about such exam answers for very long—I wake up in the middle of the night screaming.³⁶ Readers who have other examples should burn them; I do not want to see them. Once a semester is often enough to deal with such things.

Having picked on law students for most of this article, let me turn now to those who write and grade the exams—the law professors.³⁷ Law professors are entitled to no great credit for being able to write exams that produce answers of the sort discussed above. As Charles Caleb Colton wrote, “[T]he greatest fool may ask more than the wisest man can answer.”³⁸ We law professors might be more humble (and less willing to write smart-ass,³⁹ sarcastic articles like this) if we had to reread the exam answers that we wrote as students in law school, particularly those from courses we now teach. We may remember our brilliance as students, but

³² LAURENCE STERNE, TRISTRAM SHANDY 133 (Modern Library ed., 1928) (citing his father). How did Laurence Sterne weigh wit? Is this what my wife means when she says I have a big head?

³³ I hesitate to use the word “style” in connection with law review writing.

³⁴ Yes, the end is finally approaching.

³⁵ Or fortunately, depending on one’s opinion of this article.

³⁶ Only two other things have ever had this effect on me: (1) the Rule Against Perpetuities, and (2) the thought of my children growing up to be just like me.

³⁷ I will spend much less time criticizing law professors than I did criticizing law students. That is because I am a law professor and I am no longer a law student. It is therefore obvious to me that there is less fault to find in law professors.

³⁸ CHARLES C. COLTON, 1 LACON 152 (1829) (§ CCCXXII).

³⁹ Some people might find the word “smart-ass” inappropriate in law review discourse, but why should I care what the anal-retentives think?

those who graded our exams probably had a substantially different view.⁴⁰ Finally, a retort⁴¹ for those students who wish to defend themselves against the onslaughts in this article: " 'Tis not every question that deserves an answer."⁴²

⁴⁰ Professor Loss, please do not dig out my old Securities Regulation exam. I will wash your car, cook your meals, do anything that you ask if you spare me the humiliation of having to reread what I wrote on that exam. And please do not let my students see it. They think I know what I'm doing. (O.K., I admit it. Not all of them think that.)

⁴¹ Do students who fail Torts have to take Retorts?

⁴² THOMAS FULLER, GNOMOLOGIA ¶ 5094 (1732). Note the last of a series of obscure quotations. It's amazing how four or five quotation books and a good research assistant can cover for my lack of education.