

# Why “Walk and Talk”?: The Role of a Practical Skills Exam in Advanced Legal Research Courses

By Nancy A. Armstrong

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## Introduction

Developing and using an oral practical skills exam can be an incredibly rewarding experience. It can also be quite a challenge. Early on, news of your “walk and talk” test may cause panic and fear. Unexpected things can go wrong during the exam. So why do it to the students—or to yourself?

The purpose of this article is to highlight some of the genuine benefits of using an oral skills test. In the right circumstances, this kind of assessment tool can be a terrific alternative to traditional written exams or pathfinders. The benefits can extend to the students, too, and can ultimately help you become an even better classroom teacher.

The practical aspects of developing an oral exam or practical skills test have been documented in various earlier articles.<sup>1</sup> In short, this type of assessment involves the real-time demonstration of skills learned, including oral responses from the student to questions provided by the instructor. For example, in response to a written question, a student might orally explain a research strategy and then use an annotated code to locate specific material. The instructor writes and pretests questions using selected library materials or resources, gives the oral test individually to each student, and can, if desired, grade the test as the

exam progresses. At the end of the time allotted—perhaps 45 minutes or so—the instructor may provide feedback and a rough score.

## Benefits for Teachers

Perhaps the single biggest benefit of an oral exam is the opportunity to discern real and clear differences in ability. Listening to a student’s thought process can be as interesting and enlightening as the results of his or her research. At the start of the test I explain to the students that I will be asking them to “think out loud” and to tell me what they would do at each stage of their work. This oral technique has helped me better evaluate students, especially those who get wrong answers but who had an excellent approach, or those who end up with the right answer but more by luck than skill. It has also helped to differentiate between students who may otherwise seem similar,<sup>2</sup> and to easily establish the far ends of the curve.

Students who are truly accomplished legal researchers typically do well on the oral exam and earn higher grades. The students who struggle, or who are on target but painfully slow or inefficient, tend to earn fewer points. They typically end up with lower grades, if you are also testing for efficiency. Most likely you will be confident in those high grades, and although disappointed, you can usually be sure of those lower grades, too.

<sup>1</sup> See, e.g., Pamela Rogers Melton, *A Lesson in Exam-Building: One Law Librarian’s Mission to Create a Practical Legal Research Exam*, 8 AALL Spectrum 10 (February 2004); Nancy A. Armstrong, “Tell Me More About That...”: *Using an Oral Exam as a Final Assessment Tool*, Legal Reference Services Q., No. 2/3, 2006, at 117. Oral exams are also used in certain areas of graduate and medical education.

<sup>2</sup> Some students are more similar than others, of course—such as identical twins. One year I had a set of identical twins who always sat next to each other. I knew each by name, but their grades had been similar throughout the course and it was hard to distinguish the performance of one from the other. However, during the oral exam, while listening to each one talk, I immediately noted differences in their knowledge and ability. One twin earned a slightly higher grade than the other due largely to his fine performance on the oral exam.

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The teacher can also observe patterns. Problem areas can be addressed or corrected in future classes. This is similar to reading the same wrong answer from multiple students on a written exam; the instructor quickly realizes that certain concepts may not have been thoroughly understood. By contrast, it is particularly satisfying to watch students perform first-rate legal research, especially those who have successfully mastered previously unknown material.<sup>3</sup>

One unpredicted pattern that surfaced in my early administrations of practical tests involved traditional book indexes. The reality today is that for many of our students, information routinely comes from a screen rather than from a book. Much of the information they need is acquired by a basic word search in Google or some other Internet resource. As a result, we cannot count on students bringing a traditional “print research” orientation to class. Real comfort using sets of books, i.e., working with a book index or table of contents to find material or looking for that material in another place or book, is no longer intuitive or for some, even familiar. For the teacher, this became very obvious when I used a practical skills exam. Many of us already know this from anecdotal experiences, but recent studies are also documenting this change.<sup>4</sup>

Carefully crafted, a practical skills test can accurately measure a student’s knowledge and ability. Breaking down each question into separate parts lets you award points for each step, if desired. For example, points can be earned for using the index, finding the correct citation, interpreting the statute, using the pocket part, and explaining the research strategy. A student who does all five steps

well can earn more points than another student who does not.

Another advantage for the instructor is that grading can be real-time. For my class it is the last graded assessment of the course, and I can easily generate a student’s tentative grade at the end of our hour together. If all other graded exercises have been tallied throughout the term, plugging in the oral exam score is a fairly straightforward last step in calculating final grades. Final grades for your course might even be finished early, leaving time during the traditional exam period for other tasks.<sup>5</sup>

Finally, a pleasant side benefit for the instructor is the opportunity to observe firsthand some special ability or experience that you can use in letters of recommendation. Sometimes something the student has said or done in an oral exam setting will generate a memorable event that fits nicely into your recommendation form or letter. An instructor can usually quickly recall the student who came up with a clever alternate route to solve a problem that paralyzed others, or the one who showed remarkable efficiency and agility compared to others.

Perhaps an example would help illustrate this point. One memorable student oral exam allowed me to observe up close the machine-like precision and thinking of a law student trained in engineering. Deep into a serious mistake on his practical skills test, this student methodically checked and rechecked his work, found his error, self-corrected, started again from scratch, systematically repeated his steps, and eventually got the right result.<sup>6</sup> Watching this kind of process unfold step by step can provide insights not easily observed in more typical student-teacher interactions.

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<sup>3</sup> My personal favorite is watching a student successfully use a looseleaf service.

<sup>4</sup> See Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 *Law Libr. J.* 661 (2005); Erika V. Wayne & J. Paul Lomio, *Book Lovers Beware: A Survey of Online Research Habits of Stanford Law Students*, Robert Crown Law Library Legal Research Paper Series, Research Paper No. 2, June 2005, at <[www.law.stanford.edu/publications/projects/lrps/](http://www.law.stanford.edu/publications/projects/lrps/)>.

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<sup>5</sup> I usually teach in the spring, but May is also the last month of our fiscal year, so the month must be reserved for budget work, not grading.

<sup>6</sup> Former students of mine may recognize themselves here and elsewhere. All student examples noted are real and are used primarily to help illustrate the point being made.

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### Benefits for Students

Can there be benefits to an oral exam *for those taking it*? At first blush, a student might be hard-pressed to compile such a list. This kind of exam can be extremely stressful for the person taking it. Some students break into a serious sweat before we even get started. Additionally, there is tremendous pressure to work efficiently, which is not always easy to do. Finally, and perhaps most importantly, students know they cannot fake their way through an oral exam. This is especially true when their instructor is standing next to them, carefully listening to their every word.

Despite these concerns, a list of benefits really does exist. First, for confident researchers, there might actually be *less* stress in an oral exam. A skilled researcher may find it easier to simply demonstrate learned skills and explain what's being done rather than to write about this process.<sup>7</sup> For some students a 45-minute walk and talk can be less pressure than having to produce a dozen written pages in a final exam that lasts for three or four hours. Maybe it's not a pleasure for them, but it's not nearly as bad as the alternatives.

Students also have a great opportunity to “think on their feet.” Obviously, this is a very useful skill for many areas of law practice. Other courses such as trial advocacy use live, real-time assessments instead of written exams, and these experiences are usually valued by students. With the overwhelming curricular emphasis on written work, students with stronger oral communication skills may also feel they have a more level playing field in an oral exam setting rather than in a written exam.

Another benefit comes to those students who experience a lot of stress and pressure from not being able to fake their way through the test. In my experience, most of these students take

preparation for their exam very, very seriously. This in turn means that they actually do learn the material, since they know they will be required to show me their skills and that I will be watching and listening very carefully.

There are also some indirect benefits that are related to the nature of the exam administration. First, because the test must be given individually, students can elect the time to schedule their oral exam. For some folks this is truly a fantastic thing. Our students do not normally have discretion in scheduling exams, so the chance to get even one exam scheduled at the student's convenience is rare indeed. In addition, because I require that the oral exam appointments be completed before the final examination period begins,<sup>8</sup> students can actually complete all requirements of one course before their other final exams begin. This is another truly fantastic thing for them.

In other courses offered at law schools, an exam often represents 100 percent of a student's grade. For my course, the oral exam is only a fraction of the whole course grade. So, another indirect benefit to the student is that a weak performance on the practical skills test doesn't necessarily spell disaster.<sup>9</sup>

Perhaps the biggest advantage for all of the students is that preparation for and completion of this experience helps them develop a needed, practical, and marketable skill. Some of my students returned to campus this fall, after their summer jobs, with some interesting stories about their research skills. A few said they felt a distinct advantage over other summer associates because they were already familiar with library resources. One said she could work efficiently and find things quickly when others could not. It also seems that certain law firms still

<sup>7</sup> At least that's what some of my former students have reported to me, when asked directly.

<sup>8</sup> I substitute one contact hour of class for the one hour of contact in the oral exam setting and require that this be done during the last weeks of the class schedule, not during the exam period.

<sup>9</sup> Of course, the oral exam could be counted as 100 percent of the grade if the instructor so desired. For a number of pedagogical reasons I would not recommend this. It would also put a great deal of pressure on both the student and teacher, and may produce unexpected and undesirable results.

want to see research done using print resources! And they expect summer associates to be able to perform such research efficiently. One student reported that he became the “go-to” person because he could actually use a looseleaf service.

Would the students have had this kind of positive experience at their jobs without the practical skills testing found in their oral exam? I’m sure they would. But, the preparation that went into “proving” their skills to me on the oral exam gave them well-earned confidence, and ultimately helped them prove it to their new employers, too.<sup>10</sup> Since students from past classes had also reported the same kinds of things, I feel comfortable noting this as a significant benefit for a student.

One additional advantage for our students is that if an elective course with the oral exam is listed for “skills” credit, those who sign up generally want to master new skills. After successfully demonstrating their newfound skills on a practical skills test, students actually do get some satisfaction that they have, indeed, learned something.<sup>11</sup>

### Challenges and Opportunities

Let’s get right to the point: taking on this project will involve a lot of work. Instructors must be prepared to invest a fair amount of time into developing a practical skills exam. Of course, the more time invested up-front the more likely a satisfying end result. I would be remiss if I did not mention this, and present some of the other challenges involved. Of course, with a creative and open perspective, most of these challenges can also be viewed as opportunities.

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<sup>10</sup> In addition, many of these students received permanent job offers from their firms. No doubt their sharp legal minds and excellent grades were the primary reasons, but the fact that they could efficiently find the law and use legal materials did not hurt.

<sup>11</sup> Certain credit hours of skills classes are required at our school, so our students are also knocking off a requirement through something they really want to learn. Whether they would prefer to do that without taking an oral exam could be debated, though.

### Challenges for Teachers

Using an oral exam requires flexibility. Instructors *must* be prepared to make changes—sometimes as you are speaking—when something unexpected develops. You may need to “tweak” the test when you administer it for various sound pedagogical reasons. This process could be very disconcerting, though, for those who prefer teaching with 100 percent fully planned, preset arrangements.

What kind of real-time challenges might you face? The most likely involve questions that require computers for answers. The network might be down, Web sites can disappear, and Web pages can load at very different rates depending on the time of day. Still, I have used online resources for testing and when problems come up I simply make adjustments that are applied equally and fairly to all test takers.

For example, an established Web site disappeared for a few days in the middle of my most recent test administration. I substituted another page for that student and all subsequent students who needed it, and accepted answers from either site.

It worked out in the end, but it was somewhat unsettling for me and for the first student who encountered the problem. Adequate preparation made the difference, as alternative sites had been reviewed and selected in case of technical difficulties. No doubt additional technological solutions might also be available to address some of these issues.

Naturally, if you adjust something for one person, you must be prepared to adjust it for all. This is not unique to an oral exam; the same is true for a written exam administration. Consider a typographical error in the written test materials. In a testing room, an announcement might be made about the typo in the exam materials. That adjustment would also need to be communicated to students in another room, and to those who take the test at a later time.

During the oral exam similar corrections may be needed, but they occur with only one student at a time. The problem and resolution need to be similarly applied two days later with the next

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student, four days later for two more students, the next week for additional students, and so on. This can be a little tricky or disconcerting the first time you encounter it, but it usually works out just fine by the time it's all over.

Another area to consider is how and when you will ask and answer questions. Typically I write questions and let students talk. For this method to work well, though, your initial questions need to be very clearly stated. If you continue questioning with oral questions, it may be hard to be consistent from student to student, if that is one of your goals. It's also important not to answer a question for one student that provides an advantage over the others.

Another challenge of using an oral exam for both the student and the teacher is the potential for a significant negative impact of one “bad day.” We are all familiar with such days, particularly the serious ones when a student is facing a family crisis or receives news of a serious medical illness. These days are not particularly conducive to concentrating on any kind of exam. But they are particularly hard for an oral exam, which inherently has a social aspect that involves two-way communication with another person.

Since using the oral exam I have become more aware of these issues than I ever could have imagined. They have made me rethink my views on weighting exams, rescheduling exams, and other related matters. There is a wide range of potential problems, including those less serious issues you would expect, such as the student who is anxious before any test. Indeed, the oral exam format will provide quite an opportunity to experience the intensity of such feelings in a very direct and personal way.

But unfortunately, there is a very real possibility that a major family, medical, or other personal crisis might affect a student right before the oral exam, and you may need to or wish to reschedule. This has already happened more than I would have expected. Each instance was a true emergency or crisis, not an elaborate

fabrication created for the purpose of avoiding or postponing a test. Of course, there is always the risk that such events may be “created.” However, at a smaller school like ours there is almost instantaneous community awareness of a serious emergency or crisis, and rescheduling may be the only way to proceed.<sup>12</sup>

At some schools, rescheduling exams is done by others, typically an associate dean or registrar's office. When you schedule your own exams individually with each student, though, you will need to consider your views on rescheduling. Specifically, you will need to consider what balance you plan to strike between maintaining a firm schedule, the need to fit in a certain number of students in a fixed time period, how much other work you need to get done during the days you devote to exam administration, and flexibility for unexpected but serious student problems.

A teacher must also carefully consider what percentage of the final grade the oral exam will be. Of course, in many law school courses, 100 percent of the grade is earned at one sitting during the final written exam. A bad day then can cause serious trouble. In my course the oral exam is less than 50 percent of the final grade. I have a total of five to seven assignments, which produces a range of scores before the final. No single component is weighed too heavily.

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<sup>12</sup> Three real examples are included here for those who may be new to the issue of rescheduling exams. They illustrate the unexpected nature and the potential seriousness of such problems, and how they might present themselves. One student was called upon to rush a classmate to the emergency room (he called me via cell phone, en route to the hospital). Another student's pregnant wife received a devastating medical diagnosis the day before his exam (he e-mailed before taking his wife for further medical diagnosis/treatment at a major medical center). Another student had a sudden veterinary emergency (he came in person right at exam time, pale as a ghost, and then raced out of the library to get his dog to the animal hospital). Others might have different views about whether pet emergencies should interfere with exam appointments, but on a purely personal level, I do not plan to be the cause of an animal's death if it just happens to need emergency veterinary care at the same time as its owner's oral exam. In the end, two of the emergencies had happy endings, but one did not. All three students had their exams rescheduled to a later date.

Arriving at the wrong balance for your practical skills assessment can be awkward. For example, one year I weighted the oral exam as a significant percentage of the course. After observing the effects of some minor bad days, though, the next year I lessened the percentage. Unfortunately, this was too much of an adjustment. Now too small a percentage of the grade to make a real difference, the practical skills assessment did not adequately reward the very best researchers. In addition, having an exam as a very low percentage of the overall grade might mean that students would not take the exam seriously. However, that has not been my experience.

Now my oral exam counts for approximately 40 percent of the total grade. This is enough weight for me to reward the folks who do a super job, and it creates a real difference in points earned from the top to the bottom of the class. But it's not so much of their grade that if they have a really bad day they won't drop two letter grades in an hour.<sup>13</sup> Instructors will need to consider all of these issues and assign a weight for the exam that works best for them.

Another issue that comes up in using an oral exam is evaluating the students in the middle range of scores. They can get there from different paths, which in turn may make their performances harder to compare. For example, one student may have an excellent research process, but miss the final results and overall earn a middle range score. An average performance can also come from someone who knows a lot about one question, but little about the next one. These patterns do also emerge in traditional written exams, and an instructor should consider his or her views on this topic when designing the exam.

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<sup>13</sup> I've also learned that a random good day is far less likely than a random bad day. In other words, people will likely perform at a certain level whether feeling average or great, but that performance can go down drastically due to distractions, emotional upsets, etc.

Those who teach elective classes may be concerned that an oral exam would deter enrollment. That has not been my experience. People do voluntarily sign up for this experience, and my advanced legal research course—well known for its walk and talk final exam—has now been wait-listed for many semesters in a row.

There are a few challenges during the exam itself. Other students from your class may be close at hand while you are in the middle of giving the test. They might not be deliberate eavesdroppers, just diligently preparing for the exam or reviewing materials in the same area where you need to be. This can be tricky in a smaller library facility, where core materials might be in close proximity to each other. Some simple communication usually does the trick. We are also interrupted during the exam by others who do not realize the exam is in progress. This year I developed some signage and strategies for coping with this problem.

### Challenges for Students

The obvious big challenge for a student is that it's very, very hard to fake your way through an oral practical skills exam. This type of exam presents a very realistic "moment of truth": either you know how to find the court rule, or you don't.

Students can also feel overwhelmed by having to know how to use so many resources, especially those used infrequently. Many also feel tremendous pressure having their instructor looking over their shoulders while they are working. They are very aware of the time pressure, too, if you are testing them for efficiency. While it might be adequate to find a statute in 10 or 15 minutes, students are generally very aware that a higher grade would likely go to the person who finds it more efficiently in five minutes.

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### Conclusion

Developing a practical skills test and observing and evaluating students in this way has helped me adjust my teaching methods to address problem areas. It has completely changed the way I teach and test, and made me think harder about what I am doing. In short, for me it has been a better evaluation method for what I'm looking for in student learning.

A side benefit is that the oral exam has also made me aware of problems using print materials in some of our younger students. In addition, the entire process has made me much more sensitive to personal issues in students' lives that can impact on their studies and classes.

Finally, the oral exam provides an opportunity to set expectations and tangible standards of competency for students enrolled in your course, which in turn helps bring into focus what you teach and why. On balance, the exam creates an opportunity to develop and grow, and to witness extraordinary student mastery of the subject matter that you teach.

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### Another Perspective

“Lawyers in active practice, even of long standing, either admit that they do not know easily how to extract information from their books, or bewail the fact that they did not learn it earlier in their careers. Law teachers also have said repeatedly in print and from the platform that a knowledge of legal bibliography is an essential part of the education of a lawyer. It is an obvious corollary of King George the Third's reputed remark that lawyers know not so much more law than other people, but they know better where to find it.”

— A. Hays Butler, *Frederick Hicks's Strategic Vision for Law Librarianship*, 98 *Law Libr. J.* 367, 373 (2006) (citing Harlan Fisk Stone, Report of the Dean, Columbia Law School, for the Academic Year Ending June 30, 1919, at 2 (1919) (unpublished manuscript, available at Columbia Law Library, bound in Annual Reports of Dean Stone, 1914–1923, Columbia University Law School)).