EVIDENCE
Fall 2010
Professor Ben Trachtenberg

Comments on the Final Examination

Having read all the answers to the final examination, I have written a few comments about them. The text below is not intended to serve as a "model answer." I spent more than three hours preparing this document, and I consulted whatever sources I pleased. Accordingly, there is no way that any exam taker could have addressed all of the issues that I discuss below.[1] Instead, this document exists to list some of the main points that students could have raised in response to the questions calling for narrative answers, and it also identifies a few common mistakes. The purpose is to enhance the exam's utility as a teaching tool.

While not everything I discuss below applies to each student's answer, I have focused on issues of broad relevance. I begin with recommendations on the specific style of law school examination answers, and I then discuss the substantive legal matters raised by the examination.

A few Suggestions on the Style and Form of Examination Essays

Some students heeded my advice to provide headings and other evidence of the organization of their answers. Others did not. These little markers of attention to detail make answers easier to follow (and to grade). Help yourself by helping your teachers find your good points.

A common problem was students attempting to answer a question they wished had been asked, instead of the actual examination question. For example, some students responded to the second essay question by suggesting how they might implement an attendance-tracking system (*e.g.*, using "clickers") at the law school. But the question asked about how MU can prove past attendance, making any speculation about future systems unresponsive. Similarly, students occasionally read a question as asking, "What are some interesting things on your outline?" Unless some law you have learned is responsive to a question asked, chances are you gain no points by reciting it on the exam, even if you do so with perfect accuracy.

An important exam skill is the proper use of facts. Reciting the facts at length is not helpful; the instructor wrote the facts and does not need them retyped, especially in a big block at the top of an essay. But ignoring the facts is at least as dangerous. To succeed on a law school essay exam, a student must apply the law learned in the class (and perhaps other classes) to the facts provided. For example, if a memorandum is inadmissible because of Rule 407, a good answer will state what about the memorandum (*i.e.*, what items in the facts provided on the exam) trigger the rule. It is not enough to write, "This memorandum is barred by Rule 407, which prohibits the use of evidence of

[1] That said, these comments are by no means exhaustive; my failure to address an issue in this document does not necessarily mean that a student was erroneous in discussing it on the exam. These comments are too brief to acknowledge every good point I read while grading.

subsequent remedial measures to show liability." The answer need not drone on (one or two sentences is sufficient), but it ought to state why the memorandum constitutes evidence of a subsequent remedial measure and why the plaintiffs' use of it would be a use prohibited by Rule 407.[2]

In the rush to answer an exam question, there can be a temptation to write answers in outline form, an impulse that should be resisted. Notwithstanding the use of outlining later in this very document, I strongly recommend that students make the effort to write exam answers in normal paragraphs. The ability to make legal arguments in ordinary English sentences is part of what essay exams test. In addition, even when time is limited, students are wise to format their answers clearly. Creating nonobvious abbreviations (such as "UP" for "unfair prejudice" or "ev." for "evidence"—as in "inadmissible ev.") cannot possibly save enough time to justify the sacrifice in clarity. Reserve abbreviations for mouthfuls like "Enormous Rules of Evidence (ERE)" or things with well-known abbreviations (*e.g.*, FBI, FRE).

Multiple Choice:

The number of multiple choice questions makes it impractical for me to provide commentary. Students should feel free to contact me if they have questions or comments about specific multiple choice questions.

For those who are wondering, I note that this year one student received credit for one answer on the basis of comments. In other words, the scoring of a total of one multiple choice answer was changed from "incorrect" to "correct" because of the accompanying explanations. Also, no answers were rescored from "correct" to "incorrect."

Out of thirty multiple choice questions, the number answered correct ranged from 7 (23 percent) to 26 (87 percent). The mean raw score on this section was 18.6 correct answers (62.1 percent), and the median was 19 correct answers (63 percent).

Note that the alert sounds of a dolphin are not hearsay. *See* Rule 801(b) (defining a "declarant," for purposes of the hearsay rule, as "a *person* who makes a statement").

Narrative Answer Questions

Question 1

After describing three robbery defendants, the question asked: "Your boss would like to know what evidence related to the 2005 robberies, if any, is admissible at criminal trials concerning the 2010 robberies."

[2] An example: "Because the memo was written in March (two months after the party) and concerns a recipe change that probably would have made the deaths at issue less likely to occur (less caffeine likely makes Five Loko less dangerous), Rule 407 bars use of the memo to prove negligence. Here, the plaintiffs' only use for the evidence would be to suggest that the change (a subsequent remedial measure) demonstrates that CDI was negligent in selling the original recipe, and the evidence will be barred."

In general, students were wise to consider two potential categories of uses of the 2005 evidence: (1) use by the prosecution permissible only if the defendant testifies and (2) all other uses. Many students neglected to consider the possibility that prior convictions might be admissible to attack a witness under FRE 609.

Case 1 (Defendant Xavier):

Here, Xavier was convicted of the 2005 offense and spent three years in prison. Accordingly, his conviction may be used to attack his character if he testifies, so long as "the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." *See* FRE 609(a)(1). Because Xavier is using a mistaken identity defense, he might want to testify about what he was doing at the time of the 2010 robbery. This will become less enticing if he knows the prosecutor can inform the jury of his 2005 conviction. Decent answers raised this issue. Good ones considered the test from *United States v. Brewer* (page 273).[3] Factors include:

i) Nature of crime (affects probative value) — If not dishonesty, then cuts for inadmissibility [here, not a crime of dishonesty]

ii) Time of conviction and subsequent history (affects probative value) — If long ago and no subsequent history, cuts for inadmissibility because not very probative [here, not long ago, but no subsequent history]

iii) Similarity with present crime (affects prejudice to accused) — If similar, cuts for inadmissibility (higher prejudice) [here, quite similar, prejudice is off the charts]

iv) Importance of defendant's testimony (affects prejudice to accused) — If important, cuts for inadmissibility (don't want to chill right to testify in own defense) [here, we don't know enough from the facts; what if anything does he want to say? Does he have an alternative witness?]

v) Centrality of credibility (probative value) — If credibility is unimportant, cuts for inadmissibility (no probative value) [again, we don't know enough to apply this factor here]

Regardless of whether Xavier testifies, perhaps the prosecution can go "around the box" to introduce evidence of the 2005 robbery despite the constraints of Rule 404(b) ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). Most good answers noted that while the 2005 and 2010 cases seem similar (masks, note, bag, gun), they are both garden-variety bank jobs (lots of robbers have guns, wear simple disguises, use notes), and there are also a few differences. Not much chance of a successful argument for "signature crime" or special *modus operandi*.

[3] There was no need to cite *Brewer* (although doing so served as handy shorthand), so long as an answer addressed the relevant factors.

In sum: The prosecution almost certainly can't use evidence of the 2005 crime if Xavier doesn't testify. If he does testify, maybe the prosecution can attack his credibility with the conviction, depending on the probative-value/prejudice-to-accused balance.

Case 2 (Defendant Yvette):

Evidence of the juvenile conviction is not admissible to attack Yvette's character if she testifies; recall that she was released from confinement at "age seventeen." *See* Rule 609(d) (allowing rare use of juvenile adjudications to attack "a witness other than the accused" and prohibiting such use against witness defendants).

Because Yvette's defense is entrapment, however, the defendant's predisposition to rob is relevant irrespective of whether she testifies. She is arguing that she would not have participated in a bank robbery absent meddling by police.[4] Therefore, the prosecution likely can admit evidence of the past bank job. *See* Rule 405(b) ("In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct."). Note that Rule 609(d) prohibits use of juvenile *adjudications* but does not state that nothing one has ever done as a juvenile may be mentioned in court.[5]

This case proved difficult for exam takers. Many students missed the entrapment issue, costing them points. Others argued that the 2005 conviction could be used to attack Yvette's character under Rule 609.[6]

Case 3 (Defendant Zoe):

Here, there is no prior conviction, so Zoe would not subject herself to attack under Rule 609 if she chooses to testify. She also could not be attacked under Rule 608 (at least not based on the 2005 robbery) because the 2005 robbery is not evidence of "character for … untruthfulness;" it's a generic bad act.

The prosecution probably can, however, use evidence of the 2005 bank robbery to show that Zoe likely committed the 2010 crime, if and only if the prosecution can show that Zoe committed the 2005 robbery.

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[4] *See, e.g.*, *Black's Law Dictionary*'s definition of "entrapment," which states that "[t]o establish entrapment (in most states), the defendant must show that he or she would not have committed the crime but for the fraud or undue persuasion [of law enforcement]." The difficulty of proving one's prior unsullied character is part of why the entrapment defense is nearly always a loser.

[5] Note the title of Rule 609: "Impeachment by Evidence of Conviction of Crime." It concerns only the "impeachment" of witnesses, not evidence of character generally. Impeachment of witnesses is an exception to the normal bar of propensity evidence, see Rule 404(a)(3), and Rule 405(b) provides another exception.

[6] A more bizarre theory occasionally presented was that the conviction of Yusef (the boyfriend involved in the 2005 robbery) could be used to attack *his* character for truthfulness should he testify. While it is theoretically possible that the prosecution might use Yusef's testimony under Rule 405(b) to prove Yvette's past conduct, the scenario is highly implausible. A more straightforward witness would be a bank employee or law enforcement agent with personal knowledge of Yvette's 2005 actions.

Why? The similarities are almost a parody of a signature crime: We see the same rare motorcycle, same unusual weapon (unusual even without the same unusual decoration), similar accents (Germans and Austrians sound pretty similar, especially to Americans), same bank, and female robbers in both cases. *Compare Trenkler*, page 161. It is difficult to believe that the 2010 crime was not committed by the perpetrator of the 2005 bank job.[7]

But was it Zoe in 2005? We have an issue of conditional relevance. *See* Rule 104(b); *Huddleston*. If it was not Zoe who robbed the bank in 2005, then the 2005 story does not make it more likely that Zoe is the 2010 perpetrator (indeed, if it wasn't her in 2005, then she's almost certainly not guilty of the 2010 crime).[8] According to the question, the task force boss doesn't want to prosecute 2005 crime, but the prosecution must prevent evidence so that a reasonable juror could conclude that Zoe committed it; otherwise, the 2005 robbery can't be mentioned at the 2010 trial.

And then we turn to Rule 403. The evidence from 2005 could be relevant but too unfairly prejudicial. Perhaps the Nazi crest will inflame the jury. *See Zackowitz*, page 137. This probably isn't enough to keep out all of the 2005 evidence, but perhaps the defense could get a ruling preventing any mention of the crest. But, if the prosecution has the gun used in the 2010 robbery, the defendant won't be able to keep it away from the jury just because it makes her look bad; this isn't like a random gun found in her house. Also, perhaps the similarity of the robberies itself presents the Rule 403 problem. But this is true of pretty much any signature crime, and such evidence may nonetheless be used if a "signature" can be shown. *See Trenkler*.

Question 2

This question raised the possibility of an ABA audit of student attendance at my Fall 2010 Evidence class. It asked, "If you were one of the selected students [whose attendance will be at issue], how would you recommend the law school prove your attendance in a trial governed by the Federal Rules of Evidence?"

The best answers suggested live sworn testimony concerning events at issue. There are many potential witnesses, including:

i) the student herself ("I was there."), who might refresh her memory with a writing such as class notes, *see* Rule 612 ("Yes! Now I recall hearing the discussion of Rule 612.").

ii) other students who saw her in class ("I saw her there." "Me too.")

iii) me ("While teaching the class, I saw her there."), and I also might refresh my memory with a writing, such as a seating chart ("Now I recall seeing her sit in such-and-such a place.").

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[7] Note that this case is not one involving the "doctrine of chances." That issue is presented when the same person is involved with highly unusual (and allegedly innocent) events, again and again. One wife might drown in the tub, but three wives of the same man? A person might accidentally shoot one friend when cleaning her gun, but three friends?

[8] Note that there is no "reverse 404(b)" argument for Zoe, unless she can show that *someone else* committed the 2005 robbery. This theory is even worse for Xavier, who was actually convicted in 2005.

None of these witnesses present any hassles with hearsay, authentication, best evidence, etc. Live witnesses are the way to go. Offer ten such witnesses. The ABA might object to an alleged waste of time under Rule 403. MU Law's response could be, "If you stipulate that all the witnesses will say she was in class, we won't call them. And our case will be proven." Many students ignored entirely the possibility of offering witnesses with personal knowledge of the disputed facts, costing them points.

Another good source of evidence was my attendance sheets. MU could call me to testify as a custodian (to authenticate the documents and for purposes of records hearsay exceptions). A few issues arise concerning the sheets.

First, are the attendance sheets hearsay? This is best seen as two mini issues:

(i) Student's initials, which demonstrate that the student was indeed present in class on the day the sheet was distributed. Are these offered to prove truth of matter asserted? It seems so at first; initials could mean, "I'm here," an assertion from the student to me.

But consider the "I'm alive!" v. "I'm dead!" hypo.[9] What if student had written, "I am not here"? As long as she wrote it, we know she was indeed present. Accordingly, we don't need any statement by the student to prove the matter asserted. The initials are not hearsay.

Consider also Rule 803(1) (present sense impression, "I am in class now.") and 803(5) (recorded recollection of student witness, "I don't remember the details now, but I attest that I signed that sheet while knowing that I was present."). Even if hearsay, no problem because of exceptions.[10]

(ii) Information at the top of the sheets concerning class numbers and dates, which show when the initials were written. These words probably fall within the business records or public records exceptions. *See* Rules 803(6), 803(8). Consider also Rule 807 if not convinced by the records exceptions. The documents are reliable (made in ordinary course of business, filled out by persons with knowledge, potential punishment for falsification). Accordingly, the statements are almost certainly not barred by Rule 802.

Are the documents authentic? In addition to having me testify about the documents generally, MU may need a witness to authenticate your handwriting. A good choice would be you ("Yes, that's my signature."). MU could also call someone else familiar with your handwriting.

There is no "best evidence" problem. No one is disputing the content of the writing (the sheets); instead, the dispute is about whether you wrote on the sheets at all.

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[9] The scenario mentioned in class concerned a wrongful death suit at which the time of death was at issue. If the plaintiff offered proof that the decedent shouted "I'm alive," the statement is not hearsay. After all, had he said, "I'm dead," the fact of his being alive would be just as soundly established.

[10] The initials are not, as some students wrote, party admissions because they are not being offered against the student who wrote them.

Another respectable idea, albeit impractical, was to introduce the videos taken of certain class meetings. There are only a few classes taped, but if a student was present at each one, it's pretty probative. The tapes could be authenticated with testimony from MU IT, or perhaps me or a student ("This looks like a fair and accurate representation of the class I attended."). The tape may show a student in the classroom, especially if speaking. A layperson can identify the voice of student speaking if unseen on tape.

An interesting idea was to introduce the student's own class notes. While potentially admissible, this evidence strikes me as less likely to impress the finder of fact than the options discussed above. Before we get to that, is it admissible? The first question is whether it is hearsay.

Is it admitted to prove truth of matter asserted? Not to prove truth of evidence law, but perhaps to prove the truth of dates, and possible an implied assertion ("I am the person writing these notes."). Then again, no there is intent to communicate (compare with a diary), so no assertion; therefore, not hearsay.

But these notes are just not as reliable as the evidence above. They could have been made after the class summarized therein (based on notes of other students), or even for purposes of litigation. (Then again, if forensic analysis of the computer on which notes were taken can show the time of document creation, that's strong evidence. A big hassle, but could work.)

Two weaker ideas appeared a few times. First, the exam itself**,** or other evidence of knowledge of material taught in class. This is not a good choice because you could know the information despite not attending class. Second, witnesses about habit, *see* Rule 406 ("She always goes to class." "I always go to class."). As a preliminary matter, attendance is more like character than habit, and evidence of one's propensity to attend class is likely barred by Rule 404(b). In addition, once you have witnesses ready to testify concerning your general propensity to attend, just cut to the chase and offer testimony about your specific attendance in this class.

The best answers discussed both live testimony and attendance sheets, or discussed one of them very well and also discussed some other plausible source of proof.

Question 3

This question described the ill-fated Five Loko party and listed a bunch of evidence that plaintiffs hope to use. You were asked by the general counsel of CDI, "Is this evidence all admissible?"

The most sensible way to organize this answer was to address the pieces of evidence in the order listed on the examination, if for no other reason than that such answers are easiest to grade. Other schemes (*e.g.*, first list all admissible evidence, then inadmissible) tended to leave things out.

Counsel for the plaintiffs intend to offer the following evidence at trial:

1) Testimony by twenty students, each of whom attended the "Loko Night" party and lived to tell about it. Two good issues here:

    a. First, is this even relevant? What is the testimony about? *See* Rule 401; Rule 402. Depending on what the students intend to say, much of it may be irrelevant.

b. Next, consider Rule 403. Surely we don't need 20 of these witnesses (waste of time).

c. Other issues: Some students took this opportunity to disgorge their outlines, listing all sorts of evidence that would be inadmissible (*e.g.*, "If the students were to repeat the statements of absent persons to prove the truth of the matter asserted, that would constitute inadmissible hearsay. Similarly, if they were to testify about CDI's prior bad acts, then Rule 404 … ") This was not an effective way to earn points.

2) Videos taken at the party on mobile phones. The videos depict a basement crowded with students, many of them holding Five Loko cans. In one video (taken by one of the student witnesses mentioned above), one of the decedents (who later passed out in the Chancellor's flower garden) is seen drinking Five Loko as onlookers chant, "Chug! Chug! Chug!" In the other video (taken on the phone belonging to a student later trampled to death), a different decedent (who later drove the fatal car mentioned above) is heard saying, "Gimme my keys. I'm not even drunk."

a. Is this relevant? Certainly. It shows the party at issue, which will help the finder of fact decide if the Deltas were negligent, whether Five Loko was being consumed, how some of the decedents were acting, etc.

b. Rule 403. Probably no trouble. Hard to say the video is unfairly prejudicial to the defendants, especially to the Deltas (and if admitted against the Deltas, a limiting instruction saying it cannot be considered against CDI isn't likely forthcoming, much less effective).

c. Authentic? Probably.

i. Video by student witness. Witness (video taker or student such as one of the 20 mentioned above) can vouch for accuracy.

ii. Video by dead student: Other witnesses can vouch.

d. Hearsay? Probably not.

i. The chant of "Chug!" is not offered for its truth (and is not really an assertion).

ii. "I'm not even drunk" is *definitely* not offered for its truth (instead it shows the state of mind of speaker, who was dangerously unaware of his drunkenness).

iii. Note that the video itself is not a statement (*i.e.*, not a hearsay statement to the effect of "I am recounting what happened"), so unless a video records a hearsay statement, no hearsay problem.

e. Bottom line: Both videos likely admissible

3) Photographs taken by police at the scene of the car accident and by the medical examiner at the morgue (the latter set of photographs depicts all ten decedents).

    a. Authentic? Probably. Need a custodian or affidavit.

    b. Rule 403? May not need a bunch of grisly photos. But pictures help the plaintiffs' "narrative integrity." This evidence allowed students to offer creative solutions that minimized the damage to CDI.

        i. Maybe show some of the photos but not all of them.

        ii. Maybe redact horrible ones, limit their size, and limit the amount of time they may be shown to the jury.

    c. Hearsay? No. Photos are not hearsay (same analysis as a video).

4) An e-mail message concerning the plans for Loko Night that was sent by Delta's Social Chairperson to Delta's executive board before the party. The message reads, "The supplies have been secured. We've got 10,000 cans of Five Loko in the basement."

    a. Relevant? Yes.

    b. Rule 403. No problem. Prejudice is fair (but fair to CDI?).

    c. Hearsay? Yes.

    d. Within exception? Yes. Party Admission, 801(d)(2)(D), because the social chair is acting as an agent or servant of Delta while planning Delta parties.

        i. Accordingly, the message is admissible against the Deltas.

        ii. But not against CDI; the Delta officer is not an agent or servant of CDI.[11] As CDI's attorney, this is important to you.

        iii. That said, a jury instruction ("Use against Delta, not CDI") would not be too helpful to CDI.

        iv. No Confrontation Clause/*Bruton* problem in civil case.[12]

5) A memorandum written by CDI's Head Mixologist in March 2010 and sent to various CDI employees. The memo, entitled "Recipe Update," includes this key sentence: "Effective immediately, the caffeine content of Five Loko will be reduced by 50 percent."

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[11] If the message were a business record, it would be admissible against all parties, but that hearsay exception is likely not applicable here. The message is too casual to qualify.

[12] Many students mentioned *Bruton* and *Crawford* here, and some mentioned it in response to Question Two. Such discussion was not responsive to either question, unless skipping Evidence is now a crime, one that the ABA can prosecute.

a. Relevant? Yes. Tends to show that the recipe in use at the time of the party was dangerous.

b. Remedial measure? Yes. The evidence is inadmissible. *See* Rule 407.

   i. Subsequent measure. The decision to alter the recipe occurred after the Loko Night party, and subsequent remedial measures are not limited to classic "repairs" of dangerous items. Consider the hospital policies at issue in *Tuer* (page 95).

   ii. The measure was probably undertaken to reduce danger (or, to quote the rule, probably "would have made the injury or harm less likely to occur").

   iii. Evidence of the recipe change would be offered to show liability (*i.e.*, the use prohibited by Rule 407), not for some other purpose (*e.g.*, ownership or control, if controverted).

c. Rule 403. Could go either way. (A good answer need not discuss Rule 403 if Rule 407 is raised first.)

d. Hearsay? (A good answer need not discuss the hearsay rule if Rule 407 is raised first.) This document is a mirror of the Delta e-mail.

   i. Yes, hearsay. Offered to prove the truth of the matter asserted (*i.e.*, to show that CDI changed the recipe).

   ii. But it falls within an exception, as a party admission of CDI, and is accordingly admissible against CDI only. There is, however, also a decent argument that this memorandum is a business record as defined in Rule 803(6).

   iii. Regardless, even if not barred by the hearsay rule, the document is barred by Rule 407, and falling within a hearsay exception has no effect on the remedial measures rule.

e. No Confrontation Clause/*Bruton* problem in civil case.

6) Testimony by Ebenezer Expert, Ph.D. concerning the effects of Five Loko on underage drinkers. During April 2010, Dr. Expert conducted three parties as an experiment, each held on the campus of a university similar to ESU. Each was open to students and widely advertised. At one party, attendees were served original Five Loko (left over from before the recipe change). At another, attendees were served the new Five Loko. At the third, attendees were served a caffeine-free beverage otherwise identical to Five Loko. The cans at all three parties appeared identical. Dr. Expert will testify that partygoers consuming the

original Five Loko behaved in a substantially more dangerous manner, and consumed substantially more beverages per person, than students at the other parties.

a. Relevant? Yes. Tends to show Five Loko is dangerous in ways relevant to the Loko Night debacle.

b. Rule 403? No problem.

c. Rule 702/*Daubert*?

   i. Is Mr. Expert[13] really an expert? Doctorate in what subject? What does he do for a living? Previous similar work?

   ii. Is this study peer reviewed? Has the expert done similar work and had it peer reviewed?

   iii. Was this study done for purposes of litigation? (Probably. But maybe not possible to do research before litigation arose, or no reason to do so.)

   iv. Did this study use methods common for the discipline (what discipline)?

   v. Study postdated the tragic events giving rise to the suit. Does that taint results (by somehow influencing party behavior, *e.g.*, students now better understand the danger)?

   vi. Many other potential quibbles about methodology, or simply how reliable the study seems based on description in facts. That said, it does seem vaguely scientific (*e.g.*, has a control group).

d. *Daubert* ruling could go either way; we don't have enough facts. Points went to answers that identified key factors, raised the appropriate questions, and took a plausible stab at the analysis.

Some Additional General Comments:

When the answer to a question is debatable (*e.g.*, whether Dr. Expert will be allowed to testify) as opposed to a more straightforward application of the law (*e.g.*, is the changed Five Loko recipe a subsequent remedial measure), students miss opportunities when they neglect to consider counterarguments. Even if one believes the Five Loko study is junk science, students should confront the best arguments likely to be made by those seeking to admit the evidence. In addition to serving as useful practice for a career in the law, in which one may occasionally encounter silly arguments that nonetheless require a response, addressing the "other side" allows a student to demonstrate mastery of the topic and to earn more points on the exam.

[13] Excuse me, I meant "Doctor Expert." He didn't spend all those years in expert school for nothing.

Another way in which many students "left points on the table" was by failing to engage with the facts. For example, in Question One, there were plausible arguments to be made about whether Xavier and Zoe had committed signature crimes or had noteworthy *modi operandi*. Good answers marshaled the evidence leading to the appropriate conclusions, instead of simply stating that Xavier's crimes are not signature crimes but Zoe's are. Similarly, many students (for at least some questions) stated a variety of relevant law without applying it to the facts. For example, in Xavier's case, it was not sufficient to state that Rule 609(a)(1) allows one to attack a witness with certain prior criminal convictions. Points were earned by stating what facts justified the admission (or exclusion) of Xavier's 2005 conviction (*e.g.*, he was released less than 10 years ago, he was incarcerated for more than one year, etc., but he is the defendant today, the charged offense and the prior offense are similar or even identical, etc.).

I thank you all for a fun semester. I have enjoyed studying evidence with you and wish you the best of luck in your legal careers.