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Beyond the Traditional First-Year Content: Using Prisoner Civil Rights Law for First-Semester Writing Assignments

By Sara F. Cates

Sara Cates is a Career Law Clerk to the Honorable William I. Garfinkel, United States District Court for the District of Connecticut and an Adjunct Professor of Legal Skills, Quinnipiac University School of Law.

Creating assignments that allow students to practice and hone their writing and analytical skills is critical for legal writing professors, but ensuring these assignments capture students' attention and expand into topics beyond the traditional first-year curriculum can also enhance their effectiveness as powerful learning tools. This Article details my experiences with a prisoner's rights problem I created and used with great success to teach objective analysis in a first-semester legal writing course. In addition to developing students' legal research and writing skills, the two objective writing assignments I prepared enabled students to consider and evaluate issues practitioners face in litigating civil rights cases, and I observed students were particularly engaged in the writing process due to the subject matter involved.

The Importance of Engaging Writing Assignments

Students often tell me they applied to law school due to a desire to protect constitutional rights and reform the justice system, but it can be easy for them to lose sight of this amidst the general stress of tackling a new and rigorous academic environment. Providing students with the opportunity to write about civil rights and justice in their first semester of law school can help nurture new students' ambitions to fight for something greater than themselves and to seek justice for those who have little or no voice. Prisoner rights law, in particular, allows students to recall these aspirations while they also develop the research and writing skills required of attorneys. In

addition, prisoner rights law is an apt introduction to the complexities—both legal and moral—of the profession. Prisoner rights law presents complicated questions regarding the rights of prisoners and the responsibilities of prison officials, and it highlights that we, as lawyers, often find ourselves in the middle of situations in which there are no simple right answers and no clear paths to just results.

On a more pragmatic level, the first assignments law students undertake should be carefully crafted to ensure students can learn and practice the skills legal analysis entails. Successful assignments require students to find, critically read, and understand how a group of legal authorities work together to create an area of the law, and then to be able to take that authority and apply it to a new set of facts. Ideally, assignments will allow students to consider the impact law has on people and institutions, and how that impact influences choices lawyers make while representing clients. While many areas of law are conducive to students achieving these aims, prisoner rights law is particularly well-suited for doing so.

The Problem

The problem I created is based on *Almighty Supreme Born Allah v. Milling et al.* and its subsequent appeal to the United States Court of Appeals for the Second Circuit.¹ In the problem, the client is currently incarcerated in a Connecticut state prison, and he has filed a complaint under 42 U.S.C. § 1983 alleging that three state prison officials violated his Fourteenth Amendment right to substantive due process by placing him in solitary

¹ *Almighty Supreme Born Allah v. Milling et al.*, No. 3:11-cv-668 (WIG), 2016 WL 1311997 (D. Conn. Apr. 4, 2016); *Almighty Supreme Born Allah v. Milling et al.*, 876 F.3d 48 (2d Cir. 2017).

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confinement when he was a pretrial detainee. They did so because the client was previously placed in a segregation program (solitary confinement) at the same prison during a prior term of incarceration months before his newest arrest. The client’s previous placement in solitary confinement was for questioning the decision of a correctional officer and requesting to speak to a commanding officer while surrounded by inmates in an open-dormitory style facility, which prison officials found to be an attempt to incite the other inmates and impede order. As a result of this finding, the client was housed alone in a cell for twenty-three hours a day, restrained any time he left the cell, and had limited visitation and telephone privileges.

The Assignments

The problem was the foundation of two major objective writing assignments: an interoffice memorandum by the plaintiff’s law firm and a memorandum written from a law clerk to the presiding judge. The first assignment, the initial interoffice memorandum, analyzed the likelihood the plaintiff could show a substantive due process violation. It was a closed memo, and students were given multiple Second Circuit cases addressing substantive due process rights of pretrial detainees in similar situations. The cases were not directly on point and supplied no definitive answer to the issue.

For the second assignment, students took on the role of a law clerk to a district judge in the District of Massachusetts, and they analyzed whether the plaintiff could show a violation of his substantive due process rights under federal law and whether the defendants (the three state prison officials) would be entitled to qualified immunity. I provided students with background on Section 1983 litigation prior to introducing the problem and the assignments, including an analysis of the statute itself, an introduction to immunity defenses, and an explanation of the remedies available under Section 1983.² In addition, the second assignment was an open memo that

required students to conduct research in a different jurisdiction (the First Circuit) to complete it. I changed the jurisdiction for the second assignment to expose students to a different group of cases and introduce the idea that precedent from multiple jurisdictions can affect the outcome of a case.

Outcome

The assignments were successful on many levels. To begin, this area of law is limited enough that the research required for the second assignment was appropriate for first-year students. Instead of a frustrating process, the relevant terms of art were specific enough that a straightforward search of “pretrial detainee” and “solitary” in the jurisdiction resulted in a manageable number of cases. Because the quantity of search results was reasonable, students could focus on meaningfully reading and evaluating cases to select the most applicable ones. Thus, students gained confidence in their legal research skills.

The relevant legal authorities were also particularly helpful in allowing students to conduct sophisticated objective analyses. In the prisoner rights context, cases generally involve a prison policy, practice, or program that an inmate challenges. What makes the cases distinguishable from each other, and therefore reflects how substantive due process law develops, are the particular circumstances of each inmate and the action being challenged. This intensive factual inquiry is perfect for allowing 1L students to robustly analogize and distinguish cases, which aids in helping them recognize the critical role of facts in legal analysis.

The assignments also exposed students to the balancing approach courts use in resolving disputes concerning competing interests. The substantive due process rights of a pretrial detainee are violated when conditions of confinement amount to punishment, because a pretrial detainee may not be punished until found guilty through the legal process.³ In determining whether a condition of confinement amounts to constitutionally

² I also recommended that students read Martin Schwartz, *Fundamentals of Section 1983 Litigation*, 17 *Touro L. Rev.* 525 (2001).

³ *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

impermissible punishment, courts must determine whether it is imposed in order to punish the pretrial detainee, or whether the condition is incident to a legitimate governmental objective.⁴ Absent an express intent to punish, this determination will turn on whether the condition is rationally related to the proposed governmental purpose and whether it is excessive in relation to that purpose.⁵

This balancing approach is advantageous in helping students identify and contend with opposing interests of parties involved in civil rights litigation. Students had to weigh an individual's constitutional right to be free from punishment prior to an adjudication of guilt against prison officials' duty to implement policies and procedures that ensure the safe and efficient operation of a correctional facility. In so doing, students discovered that the world is filled with legal problems for which there are no clear answers. Teaching students to be adept in navigating ambiguity is, perhaps, one of the greatest challenges law professors face. These assignments readily introduced this concept and resulted in productive discussions about tolerating, and perhaps even embracing, the idea that legal problems often do not have a single, correct answer.

Further, tackling qualified immunity in the second assignment really emphasized to students the importance of precedent. In general, a qualified immunity analysis involves two considerations: first, did the official's conduct violate a constitutional right, and second, was that right clearly established at the time of the violation?⁶ Here, the second assignment had two issues: students had to determine whether the plaintiff could show a substantive due process violation, and then determine whether, if he could, the prison officials would be entitled to qualified immunity. Thus, to answer the qualified immunity question, students needed to determine whether the right at issue was

clearly established at the time it was violated. A right is clearly established when the parameters of the right are defined enough such that an officer would understand that his or her conduct violated the right.⁷ While a perfectly analogous case is not required, the right in question must be developed in and supported by existing precedent.⁸

Undertaking the "clearly established" analysis was a significant challenge for students, but one with great gains. The analysis presents the question of how similar the facts of the instant problem must be to the facts of the precedent for the law to be clearly established.⁹ The analysis also presents the question of how narrowly or broadly the right at issue should be defined.¹⁰ When researching the problem in the First Circuit for the second assignment, students found a factually similar case that likely established the right at issue.¹¹

The following semester, the transition from objective to persuasive advocacy came easier to students because we returned to these concepts. Arguing whether or not a particular case should control the outcome of a new set of facts came more readily to students because they were able to recall how they confronted a similar concept in conducting the "clearly established" analysis. Likewise, arguing that a particular case stands for a certain proposition came more readily to students because they were already familiar with the concept of framing a case's holding narrowly versus broadly.

Additionally, the assignments gave the students the opportunity to have conversations about how constitutional law is (or is not) developed in trial courts. In practice, the two-part qualified immunity analysis is not sequential; courts can determine whether a right was clearly established without determining whether a plaintiff's rights

“Teaching students to be adept in navigating ambiguity is, perhaps, one of the greatest challenges law professors face.”

⁴ *Id.* at 538.

⁵ *Id.*

⁶ *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

⁷ *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

⁸ *Id.*

⁹ Karen M. Blum, *Section 1983 Litigation: The Maze, the Mud, and the Madness*, 23 Wm. & Mary Bill Rts. J. 913, 955 (2015).

¹⁰ *See al-Kidd*, 563 U.S. at 744.

¹¹ *Ford v. Bender*, 768 F.3d 15, 27 (1st Cir. 2014).

were violated.¹² Because courts may bypass the first qualified immunity inquiry—whether there was a violation of a federally protected right—the progression of constitutional law can be stymied.¹³ Reading qualified immunity cases, and examining the reasoning courts employ in deciding them, led to enriching discussions about how substantive civil rights law is developed specifically, and of how judges decide cases generally.

More pragmatically, students encountered the real and sometimes difficult conversations lawyers must have with clients. In civil rights cases, the plaintiff's lawyer is tasked with explaining to the client that, although the court or a jury may find a constitutional violation, recovery may be proscribed if the specific right was not clearly established at the time of the violation. And the test for determining clearly established is, paradoxically, far from clear. Perhaps for the first time in their law school careers, students discovered that the legal system may identify an injury for which there is no remedy. This forced them to evaluate their assumptions about the profession they are entering, and the fairness of the justice system. Students were also introduced to the role lawyers play in protecting civil rights by considering the importance of lawyers taking these cases on behalf of plaintiffs even when there is little prospect of any monetary recovery.

Moreover, students found benefit in being exposed to civil rights law early in their legal education. In year-end reflections, students stated they valued exploring concepts beyond those in their first-year courses. They appreciated the complexity of the problem and the discussions it invited. In fact, the material inspired one student to volunteer at an organization aimed at reducing violence in prisons. Another student said that having to write about substantive due process and qualified immunity was helpful in understanding how to best organize a memorandum. Two years after she

completed these assignments, a student informed me that Section 1983 claims appear often in cases she reads for a variety of courses, and she benefited from early exposure to the subject matter.

Lastly, though the problem I used focused on the substantive due process rights of a pretrial detainee, there are additional, related problems centered on the conditions of confinement of convicted prisoners that would work well in a first semester legal writing course.¹⁴ For instance, topics including the right to health care, the right to meaningful physical exercise, or the right to due process in disciplinary proceedings would all make for engaging first-year writing assignments that would achieve the benefits described above.¹⁵

Conclusion

Using prisoner rights law in my first semester writing class helped me achieve a variety of learning outcomes, both traditional and less so. My students used the topic effectively to develop objective legal analysis skills, which prepared them to take on the challenge of persuasive advocacy in the second semester. In addition, they were inspired by the use of a topic on civil rights and justice beyond the traditional first-year curriculum, and it introduced them to the multifaceted analysis and outcome prediction that is central to representing clients in the actual practice of law. Finally, and perhaps most practically, an assignment involving prisoner rights law prepares students for actual work they may do in the future, as attorneys on the civil pro bono panels in many district courts throughout the country are often called upon to represent prisoners in civil rights cases. When those attorneys have some prior experience in this area of the law, they will have a head start on skillfully representing their clients and working to improve the justice system as a whole.

¹² *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

¹³ See Blum, *supra* note 9, at 933-34.

¹⁴ See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

¹⁵ As starting points, see *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (deliberate indifference to an inmate's medical needs actionable under Section 1983); *Wilson v. Seiter*, 501 U.S. 294, 304 (1991) (under the Eighth Amendment, exercise is an identifiable human need); *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974) (prisoners may not be deprived of life, liberty, or property without due process of law).

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