

A Cooperative Reading and Analysis Approach to Teaching Intro to Legal Studies

Prof. James Croft – 2025 AAFPE Spring Conference

Cooperative Reading and Analysis - What I Do

In a nutshell: Use class time to work through legal problems with the students

Problems:

- Require students to read primary texts (cases and statutes) closely
- Require students to apply those texts to problems
- Require students to apply multiple texts at a time
- Are all scaffolded—worked on over multiple days
- Are a mix of criminal and civil problems
- Are a mix of state and federal problems

Why Cooperative Reading and Analysis ? – To Rectify Student Deficiencies

Students Would Rather . . .

- Talk about opinion of issue than apply law to issue
- Read shallowly than read closely
- Engage with a source generally than with an eye toward a concrete legal issue, specifically
- Engage with the gist of a law than engage with the concrete text of the law
- Apply a law to facts as they see fit than in a way that is consistent with past precedent

Why Cooperative Reading and Analysis? – To Set Students Up for Future Success

- Set students up for success in elective courses—where they will need to read and apply cases and statutes
- Set students up for success in Legal Writing course and in Legal Research course—where they will need to read and apply cases and statutes
- Help students understand the WHY of paralegal tasks (e.g., the WHY of factual development tasks = the elements of the cause of action and/or the facts that were relevant in past similar cases)
- Increase student confidence—can't panic if asked to summarize a case or a pleading in practice
- Supports overall college outcomes of close reading and analysis
- Supports students who aspire to go to law school

Examples Will Share

- Two-Day Felony Murder Problem
- Five-Day Writing Assignment
- Including Legal Analysis in a Unit on Reading Pleadings
- Final Assessment/Whether this Works

Two-Day Felony Murder Problem

Two-Day Felony Murder Problem

Facts: Joe and Tim robbed a young woman of her purse. The crime was quickly reported. When police attempted to apprehend Joe and Tim, Joe shot and killed a police officer. The homicide occurred half an hour after and one mile away from the robbery. At the time of the homicide, Tim still had the purse.

Question: Could a reasonable jury convict Tim of felony murder?

Day 1

- Goal: Understand analysis of problem
- Pull the felony murder statute from Nexis Uni, N.Y. PENAL LAW § 125.25(3)
- Break statute into elements
- Match facts to elements
- Identify research issue
- Look at summaries of three past precedents for insight into the research issue
- Answer question

Day 2

- Goal: Understand how summaries of precedents came from primary texts
- Students read and brief 2 of the past precedents before class
 - Each read both and brief 1
 - Full credit if done on time and in good faith
- 15 minutes in class for students to work through questions re case one
- Class discusses questions re case one
- 15 minutes in class for students to work through questions re case two
- Class discusses questions re case two

Facts and Question

Facts: Joe and Tim robbed a young woman of her purse. The crime was quickly reported. When police attempted to apprehend Joe and Tim, **Joe** shot and killed a police officer. The homicide occurred half an hour after and one mile away from the robbery. At the time of the homicide, Tim still had the purse.

Question: Could a reasonable jury convict **Tim** of felony murder?

Elements and Matching (N.Y. PENAL LAW 125.25(3))

Tim guilty of felony murder if:

- He commits or attempts to commit one of nine listed crimes, including robbery
 - Yes, Tim committed robbery
- And, in the course of such crime or in the immediate flight therefrom
 - Homicide did not occur in the course of the robbery
 - Maybe homicide occurred in the immediate flight from the robbery
 - On one hand: homicide occurred one mile away from and one half hour after the robbery, suggesting “immediate” flight had ended
 - On the other hand: only one mile and only ½ hour had passed, cop shot to avoid apprehension, and Tim still had the fruits of the crime, suggesting that “immediate” flight ongoing.
- He or another participant in the crime . . . causes the death of someone other than one of the participants in the crime.
 - Yes, Joe, another participant in the robbery, caused the death of a police officer, someone other than one of the participants in the robbery

Legal Issue

Is a homicide that is committed one mile away from and one half an hour after a robbery and that is committed for the purpose of avoiding apprehension committed in the “**immediate flight**” from such robbery?

- If the answer is yes, Tim is guilty of felony murder—because all elements of felony murder are satisfied.
- If the answer is no, Tim is not guilty of felony murder—because not all of the elements of felony murder are satisfied.

Summaries of Three Precedent Cases

- Donovan. Conviction for felony murder affirmed—and immediate flight found—where 45 minutes and 40 miles separated the robbery and the homicide.
- Slaughter. Court said that there was sufficient evidence for a reasonable jury to convict of felony murder—and find immediate flight—even when there was a pause in flight to drop off accomplices and buy cigarettes and soda.
- Gladman. When considering immediate flight, juries should consider: the distance in space between the two crimes; the distance in time between the two crimes; whether the culprits still possessed the fruit of the crime; and whether police were in close pursuit.

Day 2

- After day 1, before class on day 2:
 - Students read Donvan and Slaughter
 - Students brief Donvan or Slaughter
 - Full credit if done on time and in good faith
- In class day 2, slowly work through questions re Donovan and Slaughter
 - 15 minutes students work through questions re Donovan
 - Discuss as a class
 - 15 minutes students work through questions re Slaughter
 - Discuss as a class

Kinds of Questions re Donovan and Slaughter

- Case Reading Logistics: Deciding court, year of decision, where opinion starts (v. headnotes, summary, synopsis, etc.)
- Relevant Facts: facts re predicate robbery, homicide, connections/gap between robbery and homicide
- Matching of facts to elements of felony murder
- All crimes defendant convicted of and all arguments defendant made on appeal—for purpose of IDing and discarding irrelevant crimes and arguments
- Where court discusses felony murder/immediate flight issue
- Procedural disposition of case—conviction affirmed or reversed

Donovan, 385 N.Y.S.2d 385 (App. Div. 1976)

“The defendant relies heavily on the fact that when he was stopped on the Thruway by Trooper Dillon 45 minutes had passed and he was 37.75 miles distant from the site of the robbery. Distance and time alone, however, are not determinative of the issue of “immediate flight”. There is no exact minute on the clock or milepost along the escape route, the passage of which terminates a crime. Where, as in the case of a daylight robbery, felons know prompt, vigorous pursuit will follow, and where they urgently and directly seek to escape the area in which they know the search will concentrate, a *34 jury could properly conclude that the killing of a trooper to avoid arrest was perpetrated in the course and furtherance of immediate flight.”

Slaughter, 78 N.Y.2d 485 (1991)

“Defendant contends that the evidence adduced at trial was legally insufficient to support his guilt of felony murder because the homicide did not occur during the immediate flight from the alleged attempted robbery. He notes that when the van was first observed by the police, it was turning towards, not fleeing from, the warehouse and was traveling at a legal speed; two of the accomplices had been dropped off; and defendant had stopped to buy a soda and some cigarettes—all indicating that the flight from the crime had been completed prior to the start of the high-speed chase. We disagree. . . . Here, the van was first observed only 1 1/2 to 2 miles away from and 15 to 20 minutes after the occurrence of the crime. Upon observing the police, defendant and codefendant drove away at a high speed to avoid apprehension. . . . Given the circumstances and particularly the proximity in time and distance between the robbery and the homicide, we cannot say that the brief interruption in the flight from the crime scene . . . [was] sufficient, as a matter of law, to preclude a conclusion that when the homicide occurred defendant and his accomplice were still in the course of “immediate flight”. This question was properly submitted to the jury as a factual matter.”

Questions: Two-Day Felony
Murder Problem?

Five-Day Writing Assignment

Five-Day Writing Assignment

Conceptually

- Give students the inputs: facts, question and law
- Give students the outputs: the answer
- Work on process together—how to get the outputs from the inputs

Students Turn In

- Case brief—full credit if done on time and in good faith
- DIRT (Did I Read This) Quiz—on all cases—five questions, multiple choice, open-book
- Writing assignment—concise/relevant one-paragraph summary of a case—graded

Five-Day Writing Assignment - Inputs

Facts: Jim approached a young woman and demanded her purse. When the young woman initially refused to hand over her purse, Jim threatened her with a taser. After being threatened with the taser, the young woman handed her purse to Jim, and Jim fled. Jim was quickly apprehended and was caught with a Taser Model X26 (which I understand is commonly used by police). The young woman was only threatened with the taser. Jim did not use the taser on her.

Question: How is a court likely to analyze whether the taser that Jim was caught with is a “dangerous instrument” under the New York Penal Law?

Law: N.Y. Penal Law §§ 10.00(10), 10.00(13), 160.15. Hall, Morillo, MacCary, Richard.

Five-Day Writing Assignment - Outputs

- This taser is a “dangerous instrument” if it is “readily capable” of causing “serious physical injury.”
- The People need to prove that this taser is “readily capable” of causing “serious physical injury.”
- Evidence that Jim displayed the taser—that he threatened the victim with it—without more, will likely be insufficient.
- Evidence that this taser caused or could cause relatively minor injuries will likely be insufficient—e.g., temporary pain, minor burning, temporary incapacitation.
- Evidence that this taser caused or could cause any of the following will likely be sufficient:
 - Serious or protracted disfigurement;
 - Substantial pain;
 - Significant burns;
 - Loss or impairment of the functioning of the eye; and/or
 - Severe skin lesions/welts.

Day 1 – Statutory Analysis

“A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime . . . he . . . 3. Uses or threatens the immediate use of a dangerous instrument.” N.Y. PENAL LAW 160.15(3).

“‘Dangerous instrument’ means any instrument . . . which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.” N.Y. PENAL LAW 10.00(13).

“‘Serious physical injury’ means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.” N.Y. PENAL LAW 10.00(10).

Research Issue: How is a court going to analyze whether a taser/stun gun is a dangerous instrument—whether a taser is readily capable of causing serious physical injury—protracted substantial injury? How is a court going to determine whether the prosecution proved that a particular taser/stun gun is readily capable of causing such injuries? What facts/circumstances/evidence are relevant to such determinations?

Day 2 - Hall

- Students asked to read Hall before class
- Review problem and basic statutory analysis of problem
- Give students ten minute to refresh recollection of Hall in class
- Discuss Hall as class:
 - Hall used a stun gun on Mr. Sow during a robbery.
 - Sow testified “felt like fire coming out of toy gun. . . When he put on me, I couldn't do nothing.” Sow quickly recovered and was beaten.
 - Court said: “The only evidence of the weapon's potential for harm came from Sow's testimony, which described pain, a burning sensation and temporary incapacitation. These are very unpleasant things to experience, but they are not ‘serious *129 physical injury’ as the statute defines it.”
- Brief Hall together
- Assign case briefs for other cases—due before next class—full credit if done on time and in good faith
- Assign DIRT Quiz—due before next class—and do Hall question from quiz together—graded

Day 3 – Morillo, McCary, Richard

- Students asked to read Morillo, McCary and Richard before class
- Students briefed one of those cases before class and took a quiz on all four cases before class
- Review basic statutory analysis of problem
- Review Hall
- Give students five minute to refresh recollection of Morillo
- Discuss Morillo as a class
- Give students five minute to refresh recollection of McCary
- Discuss McCary as a class
- Give students five minute to refresh recollection of Richard
- Discuss Richard as a class

Day 4

- Go over writing assignment
- Writing assignment = summarize either McCary or Richard for purpose of demonstrating that observations that came from that case came from that case—**one relevant, concise, perfect paragraph**
- Show students model summary I did for Hall
- Connect rubric criteria for writing assignment to my summary of Hall
- Connect all cases to our observations as review for writing assignment

Day 4 – Writing Assignment Rubric

- Give me the relevant facts of the case, accurately—only those facts that deal with what the defendant did with the stun gun. Do not discuss irrelevant facts.
- Identify the relevant crime that the defendant was convicted of—only the crime with a dangerous instrument element. Do not discuss the other crimes.
- Identify what evidence was offered in that case about whether the stun gun was a dangerous instrument—accurately and precisely.
- Tell me whether the court thought that such evidence was sufficient to establish that the stun gun was a dangerous instrument.
- Tell me the procedural disposition of the case—accurately—whether the court affirmed or reversed the relevant conviction.
- Remain focused on the stun gun/dangerous instrument issue. Do not discuss other issues.
- Use the best grammar/syntax/paragraph structure/attention to written detail that you are capable of using.

Day 4 – Connecting Hall to Rubric

In the People v. Hall case, Hall, the defendant, used a stun gun on a store manager during a robbery. The store manager, Mr. Sow, testified that, when the stun gun was applied to him, he couldn't move and he felt burning. He said that "it felt like fire coming out of the toy gun." Mr. Sow said that, when the defendants used the stun gun on him, "I couldn't do nothing. I dropped my hand. . . . I couldn't move anymore." Hall was convicted of robbery in the first degree and criminal possession of a weapon in the fourth degree because the jury believed that the stun gun was a dangerous instrument.

The Appellate Division reversed those convictions. And, the Court of Appeals affirmed the reversal of those convictions because it did not believe that the prosecution proved that the stun gun that Hall used was a dangerous instrument. In this case, the only evidence of what the stun gun could do came from the testimony of the store manager, Mr. Sow. While the Court of Appeals acknowledged that Mr. Sow suffered "pain, a burning sensation and temporary incapacitation" and that those experiences were unpleasant, the Court did not think that those experiences rose to the level of "serious physical injury." Accordingly, the Court held that the People had failed to prove that the stun gun was a dangerous instrument.



James Croft

These first few sentences have the relevant facts of the case. Notice how I copied Sow's testimony verbatim—doing so ensures accuracy. Notice how I didn't include any facts unrelated to the robbery with the stun gun—facts about missing witnesses, for example.



James Croft

This sentence tells me the crimes that Hall was convicted of, mentioning only the crimes with a dangerous instrument element, and not mentioning the others.



James Croft

Here is the procedural disposition of this case. We read the decision on appeal to the Court of Appeals following the decision of the Appellate Division, which reversed the convictions. The Court of Appeals agreed with the Appellate Division, agreed that the convictions should be reversed. The Court of Appeals affirmed the decision of the Appellate Division.



James Croft

These sentences discuss the evidence re whether the stun gun was a dangerous instrument, how the court characterized that evidence, and whether the court thought that such evidence was sufficient. Notice that I used the words used by the court, verbatim. Doing so ensures accuracy.

Day 4 – Connecting Cases to Observations

- For Jim to be convicted of robbery in the first degree, the People will need to produce evidence that the taser that he used in the robbery in fact caused, or was readily capable of causing, serious physical injury. In past cases, the People have been able to meet this burden when they have offered evidence that the stun gun at issue in fact caused or could potentially cause:

- Serious or protracted disfigurement;
- Substantial pain;
- Significant burns;
- Loss or impairment of the functioning of the eye; and/or
- Severe skin lesions/welts.



James Croft

Everything in these five bullets—except for the reference to welts—comes from MacCary. According to the court: “Evidence was adduced at the trial to the effect that a stun gun, if applied to the body for a sufficient period of time, could cause serious or protracted disfigurement, substantial pain and burns to the body and, if applied to the eye, loss or impairment of the functioning of the eye.”

Additionally, evidence was adduced at the trial that, while the defendant restrained the complainant, the defendant's accomplice applied the stun gun several times to the complainant's body for several seconds during each application and that extreme pain, severe skin lesions and ‘significant’ burns were thereby caused. There was an ample basis upon which the jury could reasonably conclude that a stun **324 gun, as used herein, was a dangerous instrument.”



James Croft

This comes from the Ricard case. The court said that the stun gun caused welts (“Codefendant Taurean Holland produced an electric stun gun which defendant used twice to shock the victim on her abdomen, causing welts.”) and that the evidence was sufficient to establish that the stun gun was a dangerous instrument (“Weighing the evidence regarding the stun gun, including the manner in which it was used, it was not unreasonable for the jury to find that the stun gun was a dangerous instrument.”)

Day 5

Day 5

- No class meeting
- Students given class period to finish writing assignment

After Day 5

- Comment on and grade student work
- Students given a chance to resubmit for a better grade

Questions: Five-Day Writing
Assignment?

Including Legal Analysis in Unit re
Reading Pleadings

Legal Analysis in Unit re Reading Pleadings

Goals for Unit as a Whole:

- Students pick up a pleading, read it and have some idea what is going on
- Students don't have a panic attack if asked to work with a pleading in practice

Legal Analysis in a Problem with a Complaint and an Answer:

- Look at procedural rules re what needs to be in a complaint (e.g., basis for jurisdiction, allegations, and prayer for relief)
- Look at cause of action to ID elements of the action
- Look at complaint to ID jurisdiction, prayer for relief, facts that establish elements of action
- Look at procedural rule re what needs to be in answer
- Look at answer to ID what defendant says about jurisdiction, and about facts that plaintiff offered to establish elements of COA in complaint

Example – WNT – Equal Pay Action

Case:

- US WNT sued USSF arguing that paying WNT less than MNT violated Equal Pay Act, 29 U.S.C. 206(d)
- Case No. 2:19-cv-01717 (C.D. Cal.)

Day 1 Look at:

- FRCP 8(a), complaint
- Equal Pay Act, 29 U.S.C. 206(d)
- Complaint, DI 1

Day 2 Look at:

- FRCP 8(b), answer
- Answer, DI 42

Day 1 – FRCP 8(a) – The Complaint

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Day 1 – Equal Pay Act – 29 USC 206(d)(1)

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee. 29 U.S.C. 206(d)(1).

Elements of the Federal Equal Pay Cause of Action:

- An employer, who has an employee/employer relationship with both men and women;
- One sex is paid less than the other sex;
- For equal work on jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions; and
- No other legitimate reason for the pay discrepancy—e.g., based on seniority or merit or productivity.

Day 1 – Six Questions

- FRCP 8(a) + 29 USC 206(d)(1) Elements = Need Six Things in Complaint
 - Statement of the court's jurisdiction
 - Prayer for relief—what the plaintiff wants
 - Facts, that if proven true, establish the four elements of an Equal Pay Action
 - Employer/employee relationships
 - Women paid less than men
 - For equal work
 - And, no legitimate reason for the pay discrepancy
- ½ of class period, students look for these six things in the complaint—be specific—I want paragraph numbers
- ½ of class period, we go through where these things are in the complaint together

Day 2 – FRCP 8(b) – The Answer

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

Day 2 – Six Questions in Answer

In the Answer, how does USSF respond to:

- Allegation that court has jurisdiction
- Allegations that, if proven true, establish each element of Equal Pay Action:
 - Employer/Employee Relationship
 - Women paid less than men
 - For equal work
 - No legitimate reason for pay discrepancy
- Prayer for relief does not need an answer
- ½ of class period, students look for these six things in the answer—be specific—I want paragraph numbers
- ½ of class period, we go through where these things are in the answer together

Questions re: Including Legal
Analysis in Unit re Reading
Pleadings?

Final Assessment/Does this
Work?

Final Assessment - Conceptually

- Spent entire semester working through legal problems with students as a class
- Spent entire semester closely reading primary legal texts with students as class
- Conceptually, for the final, looking at whether students can now do these things themselves, independently
- Give students a problem that we didn't work on, and give students texts relevant to that problem that we did not look at, and ask students questions about that problem and about those texts
- The Exam:
 - Students have texts (not the questions) a week out
 - 15 questions – multiple choice
 - Open book – for the sources
 - On Canvas

Final Assessment – The Problem

Same Criminal Transaction First Degree Murder in New York:

“A person is guilty of murder in the first degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; and

(a) . . . (viii) as part of the **same criminal transaction**, the defendant, with intent to cause serious physical injury to or the death of an additional person or persons, causes the death of an additional person or persons . . . and

(b) The defendant was more than eighteen years old at the time of the commission of the crime.

N.Y. PENAL LAW § 125.27(1)(a)(viii).

Final Assessment – The Sources

- The New York Murder in the First Degree Statute.
 - Be able to find same criminal transaction aggravating factor.
 - Be able to apply the first degree murder statute generally, including the “same criminal transaction” aggravating factor.
- New York Criminal Procedure Law 40.10 (which defines “criminal transaction”).
- The New York Pattern Jury Instruction re: Same Criminal Transaction First Degree Murder.
- People v. Duggins.
 - The test will ask you what the court held about whether to use the Criminal Procedure Law definition of “criminal transaction” when applying the “same criminal transaction” provision of the murder statute (which is in the Penal Law).
 - The test will ask you about the **detailed facts** of the two murders—including how close in space, time and purpose the two murders were.
 - And, the test will ask you about the holding related to whether the defendant committed same criminal transaction first degree murder.
- People v. Dashnaw.
 - The test will ask you about the **detailed facts** of the two murders—including how close in space, time, manner and purpose the two murders were.
 - And, the test will ask you about the holding related to whether the defendant committed same criminal transaction first degree murder.

Final Assessment – Does the Course Work?

Formal Assessment Process

- Fall 2020—First semester gave this exam
- 47 students, across two sections of Intro to Legal Studies
- 21 of 47 students (45%) got 100%
- For each question, at least 75% got correct

This suggests to me that a majority of my students leave my course better able to read, understand and apply primary legal texts than they could at the beginning of the semester.

Thank You AND Questions?