

Promoting the science and art of teaching

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More Talking, More Writing

By Andrea J. Boyack

Building legal fluency is much like becoming fluent in a foreign language. As language teachers and learners know well, fluency comes not from merely memorizing vocabulary or studying rules of grammar, but from practice, practice, practice. Once upon a time, in my fervent attempts to achieve some level of fluency in Russian, I dedicated myself to writing and speaking in Russian as much as possible (to-do lists, mutterings to myself, etc.). Yes, learning vocabulary and rules of grammar was prerequisite to talking and writing, but it was only through trying to form my own sentences in the real-time challenge of actual conversations and in trying to compose written essays in Russian that I learned to think in Russian.

Each year, as I grade final exams (particularly in my first year law courses), I am saddened by the gap between my students' understanding of the law and their ability to explain and describe legal applications. Coming from a lifetime of more passive learning, where tests demanded mere recall of specific facts, new law students often find it hard to transition into a more active learning model, where exams require students to explain and apply, not just remember. The only way to smooth the transition, I believe, is to give students ample opportunities to practice articulating legal rules and applications prior to the exam. After all, our goal for our law students is not mere familiarity with legal rules, but fluency in applying and articulating legal concepts.

When students do an "IRAC" brief of a case, or when they listen to a class discussion of the case, they are absorbing information, not creating an articulation of it. The more passive activities of reading and listening, of course, are prerequisite to understanding the law, but without more, students do not learn that "thinking like a lawyer" needs to actually translate into speaking and writing like an attorney. To give students opportunities to write up legal analyses, I like to assign "problems" or hypothetical fact patterns for them to analyze, specifically requiring them to create

a written answer to such problems. And to give them opportunities to verbally articulate legal analyses, I bring students to the front of the class and allow them to “teach” concepts we cover in class.

For the past few years, I have experimented with giving students multiple graded writing assignments in first-year courses, and I have discovered several things. First, students despise being graded on their written work product in first-year courses (other than in a dedicated course on legal writing). Second, it is tremendously burdensome for a professor to give students meaningful feedback on multiple written analyses over the course of a year in a class of more than 50 or 60 students. Nevertheless, my belief in the value of multiple opportunities for written legal articulation persists. This year, therefore, I tweaked my approach, assigning students a written “capstone” practice problem due at the end of each unit (of seven units throughout the course). Only one of these written analyses will be graded for content (although the students do not know which one). Students will earn a point toward their overall course grade for a good-faith, on-time completion of each other written submission. For each unit’s capstone submission, I have created a very detailed grading matrix that I distribute after problems are completed. This allows students to grade their own work. I also welcome one-on-one feedback consultations with students on each problem, but only after the student (a) has graded his or her own original submission (per the matrix), and (b) has re-written it thereafter to be the “most perfect” answer possible.

In addition to these opportunities for students to practice written articulation, this year I have focused on bringing students to the front of the classroom with greater frequency and giving them the opportunity to explain and describe—indeed, to “teach”—cases and problems from the reading. This gives the students another opportunity to explain legal rules and helps them conquer fear of public speaking and to literally think “on their feet.” I find it interesting that some students who struggle with written articulation of legal rules and analytical reasoning are actually more comfortable doing this same thing verbally. Other students are competent in written analysis but have trouble orally explaining legal rules and how they apply. I find that bringing students to the front—individually or in small groups—creates a true “Socratic” experience of building fluency through verbal articulation. I learn much about what does and doesn’t work as I sit in the classroom while students try their hand at explaining how certain rules apply to a given case or problem.

Having students “teach” cases and problems can slow the pace of the class, which necessarily means less breadth of coverage in a semester. In addition, having students in



a teaching role renders classes somewhat less predictable and more difficult to control. Focusing class time discussing how to frame written analyses of hypotheticals takes more time than merely discussing legal applications more conceptually. And grading individual written submissions is, of course, quite burdensome on the professor. In fact, even mere spot-checking, grading rubric creation and discussion, and individual feedback sessions create significant time burdens. Nevertheless, the trade-offs are, I believe, net positives. Students go into essay exams with greater confidence and understanding regarding what it is they are supposed to be doing. They have already practiced explaining a rule and using analogical reasoning to apply it to new facts. And, hopefully, by the end of year one of law school, they have not just memorized a bunch of rules and standards and factors, but have actually developed some basic level of fluency in the law.

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