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How I Compete with “the Donald” and Teach Them to Write: the Forensic IRAC

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How I Compete with “the Donald” and Teach Them to Write: *the Forensic IRAC*

by Suzanne Darrow-Kleinhaus

As a law teacher armed solely with books and blackboard, how can I compete with Donald Trump, who televises weekly the personal riches and power to be gained by boosting the company's bottom line, all without so much as writing a post card? Still, I have no choice but to compete with “the Donald” for my students' time and attention, even though what I offer seems so ordinary in comparison.

It's no secret that good writing is little valued. A recent study by the National Commission on Writing concluded that a third of the employees in American companies write poorly and acknowledged that an employee could move up the ladder to C.E.O. despite an inability to compose a comprehensible letter. While a lack of writing skills may be acceptable in the business community, it is not acceptable in the legal profession.

Without minimizing the need to find long-term solutions to our students' general writing problems, my job is to develop students' writing and analytical skills in the shortest possible time to improve law school performance and bar passage. Working with students to achieve these goals, I have found the shortest distance to improved writing skills is improved reading skills.

Students need to see results to be motivated and they do when I initially shift the focus to reading rather than writing. Since students are far more willing to read than to write, this approach alleviates some of the pressure. Reading allows them to model their writing by following the examples of what they read. Each case is a paradigm for IRAC and another example of the process to be emulated. However, since most students are not trained to be careful, thoughtful readers who question the content and meaning of what they read, I show them how to do so by modeling my own reading strategies. In class, I think aloud about a case and share my questions and thought processes. Similarly, I point out the structure of the court's analysis and how it follows the IRAC structure. After we've worked on reading skills, we are ready to move on to the writing process.

Here, too, the focus is performance-based: I provide practical applications in the context of substantive law. For several of the topics covered in class, I prepare a short hypothetical and require students to write a response. This has been particularly effective with students in my Contracts sections, where, in addition to covering the substance of Contracts II, I incorporate skills training. Over the course of

the semester, I require four writing assignments; the first assignment is for diagnostic purposes only, but the subsequent three assignments are graded and count toward the final course grade. For each of the questions, I provide sample answers. Typically, I'll write two answers myself and distribute them in addition to one of the top student responses. This way students can see a variety of approaches to the same question and see that there is room for variation even while following the basic IRAC structure.

In addition to providing sample answers, I evaluate each paper according to a grading sheet which shows the precise point allocation. I make the grading sheet as detailed as possible in terms of the breakdown of the rule and the facts the students should have used in their analysis. This way, when they review their work they can see exactly where they gained or lost points.

When providing individual feedback on papers, I evaluate the student's essay for substance and structure, and focus on the precise use of language, especially the use of

specific signal language in writing issues, statements of the rule, and analysis of the facts. Still, it is difficult to improve a student's written analysis. Writing is an excursion inward and teaching writing requires nothing less than a trip inside the head of another. Teaching writing requires finding a way into students' thought processes because the

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problems they have in writing about the law are mirror images of the problems they have in thinking about the law. Further, a way is needed to “objectify” the process so that both student and teacher can identify what the student is thinking and correct flaws in the process without stigma.

Initially, I developed “forensic IRAC” to assist re-takers prepare for the bar exam. It uses the familiar “Issue, Rule, Application, Conclusion” structure of legal analysis to work with the student's written product to see the internal thought process. Forensic IRAC works by examining each sentence the student has written in terms of its place in the IRAC structure of legal analysis. Now please don't laugh or think I've been watching too many television crime dramas (even though I have), but I call the process forensic IRAC because the techniques I use are similar to those employed by crime scene investigators, accountants, medical examiners, and any of the forensic experts who go back over the trail of evidence to determine how that evidence led to a particular result.

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The Forensic IRAC

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While forensic experts rely on fingerprints, ledger books, and DNA, I use IRAC. I work with the student's written essay to figure out what the student was thinking that led to that particular response. By applying the mechanics of legal analysis to what the student has written, I can see where the student's thinking has gone astray. And if I can see it, the student can learn to see it as well.

While it is outside the scope of this essay to show exactly how a self-diagnostic using forensic IRAC would work with a student's paper, the process unfolds very much like the troubleshooting section of a technical manual that identifies system faults and provides possible solutions. The other part of forensic IRAC, and one which can be discussed here, involves sentence diagramming. Years ago, when students were taught grammar, they were shown how to diagram the parts of a sentence. While this technique has fallen into disuse, the principle of mapping the parts of the sentence to show how they work together is just as useful for showing how the parts of a legal argument are structured. It is insufficient to tell a student to organize an answer around IRAC without showing how it is done. In this way the process is objectified and the sting of writing a poor answer is somewhat ameliorated. It is very hard for anyone (this author included) to go back over what they have written and be critical of it. But it is essential in any endeavor, especially law school exams, and this process allows it to be a lot less painful and a lot more practical.

The process works sentence by sentence, where each is labeled appropriately. A sentence is either issue, rule (rule can break down to general statement, element, factor, definition of element or factor), fact analysis (fact analysis can break down into argument pro or con), or conclusion. This approach works particularly well when multiple issues are tested in an exam and the student has an almost impossible time learning to organize a response. Diagramming allows me to show the student how and where the issues have been mixed together.

For example, let's say I am working with my student Ben and we are reviewing his exam answers to a Contracts mid-term. We review each sentence he has written and identify whether that sentence was a statement of the issue, one discussing the applicable rule of law, or a sentence applying the rules to the facts of the particular case. In fact, we label each sentence with an "I", an "R" or an "A". The sentence must "fit" somewhere. This is useful for several

reasons. First, it "physically" identifies organization problems. If Ben has discussed the "facts" of the particular problem before he has recited the relevant "rule," then we find "A" sentences before there are any "R" sentences. Second, when we work sentence by sentence, we see what function each sentence serves in the IRAC equation. Ben

can see whether a sentence is repetitive, for which he will lose time and not gain any points, whether a statement is an analysis of facts because it connects law to relevant facts by means of such language as "because," or whether it is merely a recitation of the facts contained in the hypothetical, serving no purpose at all. By breaking down and labeling the sentences, Ben can "see" what he has written. But even more important, we can begin to see by examining exactly what Ben has

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written whether he understands the rules and how to use them. By examining each sentence in the essay, problems can be identified at the appropriate step in the student's thought process. And once identified, problems can be corrected.

I have been using this approach for several years with much success both in preparing students for the bar exam and in improving law school grades. While this requires a considerable amount of work on my part, the benefits to the students make it well worth the effort. When they relate their excitement in finally connecting with the process of learning the law and share news of improved grades, I know that I have competed with "the Donald" and won.

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