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Sophie M. Sparrow

University of New Hampshire School of Law

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Using a Civil Procedure Exam Question to Teach Persuasion

Sophie Sparrow (Franklin Pierce Law Center)

Because studies show that learners master new material more effectively when it builds upon what they already know, we reuse material from the fall semester to teach persuasion in the spring. By revisiting an assignment, students can focus their efforts on persuading, rather than learning new doctrine or facts. Turning a predictive discussion into a persuasive argument also

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demonstrates that making an argument requires the same rigorous thinking as predicting a result. One way we do this is by assigning students to write an argument based on their fall Civil Procedure exam.

At the beginning of the spring semester we introduce some general principles of persuasive writing, and then

spend the next few weeks working on arguments about personal jurisdiction. Using the facts from students' Civil Procedure exam and the cases from their text, students argue that their client does not have the necessary minimum contacts for jurisdiction over an out-of-state defendant.

Working in small groups during class, students compare their matrices of the cases, outline and draft components of the arguments, and read and critique their classmates' drafts. At several times during this module, students also e-mail professors current versions of their arguments. From these we make composites that illustrate particular techniques, such as organizing for persuasiveness, using authorities, making policy arguments and refuting counter-arguments. We also use these composites to illustrate common problems students encounter. Students read the composites on overheads, diagnosing the troublesome areas and identifying strategies to make the writing more persuasive.

This exercise has several benefits in addition to allowing students to concentrate on the skill of persuasion. One is that revisiting material builds students' analytical skills and understanding of Civil Procedure. From talking to our Civil Procedure colleague, we know what she emphasized in class, how students analyzed the material on their exams, and where students need additional coaching. By working through the material collaboratively over several classes, students develop more sophisticated approaches to arguing the minimum contacts rules than they showed in their exams and communicate those arguments more effectively. In the process, students also learn that the art of persuasion is not about "telling" but "showing" why the requested result should be followed.

Another benefit to this approach is that it increases student confidence. As they rework the same material a month after the exam, students recognize where they need to sharpen their writing and organizational skills. Students also begin to realize that they are now identifying arguments, analogies and issues in a way that had been invisible before. By calling their attention to this, we help them see their progress and continued capacity to

grow and develop as future lawyers. This helps students at all levels; students who have done well see how they can improve, and those who were struggling recognize that they can master writing and analysis. Do students groan about having to revisit the minimum contacts cases? Yes, but at the end of the semester those students also note that these exercises helped them really start to “get” what it means to persuade. ◆

