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Collaboration with Doctrinal Faculty to Introduce CREAC

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When legal writing professors introduce CREAC (or IRAC, TREAT, etc.), our examples necessarily use some area of substantive law to demonstrate how the pieces of legal analysis fit together. And when we ask students to try drafting a CREAC analysis, they also have to learn the relevant substantive law first. Students might be asked to analyze whether a worker is an employee or independent contractor or whether the elements of a tort claim are satisfied. But that means that students need to learn the relevant substantive doctrine while they are also grappling with the basics of CREAC. In the language of learning pedagogy, that imposes an extraneous cognitive load¹ that hampers their ability to focus just on understanding the pieces of CREAC.² Inspired by examples from other disciplines,³ I realized that students could better learn how and why the pieces of CREAC fit together if I gave them an assignment for which they already knew the substantive law and court decisions. To do that, for the past several years I have been collaborating with doctrinal colleagues to use material from their classes to help students learn the fundamentals of CREAC.

HOW THE COLLABORATION WORKS

First, some background: I use three steps to introduce my students to CREAC analysis before they write their Closed Memo. Each step uses a separate set of materials (a fact pattern and several cases) to analyze a client's legal claim. I give my students multiple opportunities to work with the parts of CREAC using different sets of material, to enhance their

understanding of how CREAC works and enable them to transfer that understanding to new situations.⁴

1. First, I assign my students a series of videos I created that walks through CREAC using a case file they read ahead of time.⁵ The case file contains a fact pattern that suggests our hypothetical client might have a self-defense claim, and four short court opinions about self-defense. In the videos, I demonstrate how I use those materials to draft a CREAC analysis of the elements of the claim, breaking down each step of the analysis and writing. The first video provides an overview of CREAC. The remaining videos provide in-depth discussion and illustration of the Rules, Explanation, and Application parts of CREAC, with each part serving as the subject of one video.
2. As I discuss in detail below, in class my students then practice using the CREAC approach I demonstrated in the videos. They use a different fact pattern and set of cases, and work in groups to draft Rules, Explanation, and Application for a memo analyzing a legal claim.
3. Finally, my students each draft a CREAC analysis using yet another set of materials, drawn from the Closed Memo assignment. The Closed Memo requires them to analyze a multi-factor test. At this stage, each student drafts a CREAC analysis for one factor, and meets with me to discuss their work so I can ensure they are on the right path before they draft their complete memo.

It's step #2 of this process that involves significant collaboration with one of my doctrinal colleagues. During the in-class activity, students have their first opportunity to practice analyzing a legal claim using CREAC and drafting the analysis. To enable them to focus on just the CREAC analysis—and not have to simultaneously learn new doctrine—I use cases they are already familiar with. To do so, I began working with my colleague who was teaching my students Torts to develop the materials for the in-class activity. He was covering Intentional Infliction of Emotional Distress (IIED) the week I introduced CREAC. I read the three cases he had assigned our students, went to his class, and worked with him to develop a fact pattern that asked students to analyze whether a client had a valid IIED claim.

As a result [of collaborating with doctrinal colleagues], I am able to introduce more sophisticated analytical and organizational strategies earlier in the year, while drawing closer connections between the doctrinal and skills aspects of my students' education.

When our students came to my class, I had them work in groups to put together parts of the CREAC analysis using only the cases they had already read for Torts and the fact pattern I wrote. In other words, the cases weren't new; the only new thing was how students worked with them. In one class, they drafted Rules and organized them into a skeletal outline of an IIED memo. In the next class, they drafted parts of the Explanation and Application sections. During those classes, after students had worked in their groups for 15 minutes, I asked each group to post what they'd written to a Google Doc we could all see on the screen. I then solicited comments on each group's work and provided my own feedback and suggestions.

I have now run this collaboration five times with three different colleagues—two who teach Torts and one who teaches Contracts. Because I work with whatever material my colleague happens to be covering the week I introduce CREAC, I have used this approach with several fact patterns I've written, all with similarly successful results.

ADVANTAGES AND CHALLENGES OF THIS APPROACH

This collaboration with doctrinal colleagues has several major advantages. First, students are able to focus on the fundamental legal writing and analysis skills I want them to learn because they are already familiar with the case law. Second, students see the connections between what they learn in their other classes—both legal doctrine and underlying analytical skills—and what I teach in my Legal Practice course. And finally, my doctrinal colleagues develop a better understanding of what I teach and how my class marries substantive doctrine with practical skills.

I invite my doctrinal colleagues to join my CREAC classes to observe what our students do with the material they covered in the doctrinal class, and we often debrief afterwards.

There are a few hurdles to overcome to make these classes work. Most significantly, my syllabus doesn't offer much flexibility in when I introduce CREAC, so I have to work with whatever doctrine and case law my doctrinal colleague is covering that week. And because I teach these classes during the second week of the year, some of my doctrinal colleagues aren't covering material that would work for the CREAC classes. For example, last year my colleague who taught my students Civil Procedure was enthusiastic about collaborating on a CREAC problem, but during the relevant week she was still covering broad themes around which that course would be centered. The cases she planned to assign didn't lend themselves to the kind of rule synthesis and application I needed to make the CREAC classes work. Fortunately, my colleague who was teaching my students Contracts was equally enthusiastic and was covering material that worked well for the collaboration.

The specific cases my doctrinal colleagues assign also sometimes pose challenges. The CREAC classes work best when students have at least three cases to work with, so they can practice synthesizing information across court opinions. Given the way common-law casebooks are set up, that often means I am working with at least one case that is quite dated. And the cases frequently show the development of the doctrine over time instead of simply illustrating how different courts used the same principles to reach different results. I can usually manage those difficulties by thinking carefully about the fact pattern I draft, ensuring that it enables students to pull relevant threads out of the cases they have to work with and synthesize rules instead of merely parroting language from court opinions.

When I initially started this collaborative approach, I worried that I might unintentionally confuse students about the substantive doctrine or cause them to focus on details that were unimportant for their doctrinal exam. And I didn't want to hamper my colleagues' ability to cover the material in the way that made sense for their classes. Fortunately, those concerns have proved unwarranted. I work closely with my colleagues to write the fact pattern, and we discuss

the Rules and Application students might draft and the Conclusion we expect them to reach. The only concern my colleagues have raised is that students who were not in my Legal Practice sections (but who were in the larger doctrinal class) might feel *disadvantaged* by not having additional exposure to the doctrine I covered in my CREAC classes.

THE RESULTS

One of my major teaching objectives in the first weeks of the year is to cement the fundamentals of CREAC in students' minds. Collaborating with colleagues in the way I describe here has resulted in significant improvements in how quickly my students develop facility with CREAC. Most students now turn in Closed Memo *drafts* that are comparable to the *rewrites* I used to see. As a result, I am able to introduce more sophisticated analytical and organizational strategies earlier in the year, while drawing closer connections between the doctrinal and skills aspects of my students' education.

NOTES

1. See Terri L. Enns & Monte Smith, *Take a (Cognitive) Load Off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Processes*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 109, 111 (2015) (noting that extraneous cognitive load is "unnecessary to the immediate learning objectives and interferes with learning").
2. *Id.* at 111-12 ("[T]he educator's goal is to permit the amount of [cognitive] load that optimizes learning by paying careful attention to a learning task's intrinsic cognitive load and deliberately reducing the extraneous load.").
3. See generally SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 91-120 (2010) (providing examples—from fields as diverse as acting and math—of how breaking down a complex skill into component parts, and allowing students to focus on just one part at a time, helps them develop mastery).
4. See PETER C. BROWN ET AL., MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 51 (2014) ("[V]aried practice [i.e., practicing the same skill using different models or materials] . . . improves your ability to transfer learning from one situation and apply it successfully to another.").
5. The videos I created are available here (videos 2.01-2.04): https://www.youtube.com/playlist?list=PL7g_CQSIG4S8LNHbB7SErpvL6h-Kxx17o0. If you would like copies of the written materials that accompany the videos, please email the author of this article at wilensky@umich.edu.