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By Jill Barton

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Basketball, dogs, and ice cream—these are a few of the topics I've used to teach oral advocacy to law students. Because oral arguments can be among the most intimidating experiences of the first year of law school, I fit in as much practice as is practical. This practice begins the first day of the second semester with 90-second arguments on topics that typically are not related to the law. Students choose a topic, pick a side, and make their case.

The lesson leads to a rush of volunteers, an increase in their confidence, and occasionally, a dose of hilarity. This article describes my 90-second approach, explains why it's fun and effective, and demonstrates how it serves as a warm-up to the trial- and appellate-level oral arguments students complete later in the semester. In addition, I'll summarize other creative approaches for teaching oral advocacy from colleagues around the country.

The 90-Second Approach

I start by asking students to suggest topics. Students have proposed cats vs. dogs, chocolate vs. vanilla ice cream, Macs vs. PCs, and movie theaters vs. Netflix. This teaching exercise is the brainchild of my colleague Annette Torres, whose students have engaged in similar debates, including LeBron James vs. Michael Jordan, along with more substantial topics, such as campaign finance reform and the death penalty.

To start on day one, students put potential topics anonymously on note cards, and I quickly skim them for approval. I reserve ten minutes at the end of each class for the arguments and try to fit in four students. For my class of about twenty students, which meets once a week, this schedule means that everyone will stand at the podium and finish an oral argument within the first five weeks of school.

The earliest, bravest volunteers can sift through a stack of note cards to find a topic they prefer. Students who volunteer later might get stuck with a topic they feel less passionate about. Students also may choose to rebut any argument made earlier in the semester. So if a student in the first class argued why cats make great pets, a student in the third class could argue in favor of dogs. This format allows students responding in a later class to research their topics in advance of class—and their enthusiasm for the exercise shows in their creativity. On cats vs. dogs, which has been a topic three years running, students have researched the psychology and costs of pet ownership, instances of allergies and bites, training challenges, and legislation banning specific breeds.

I ask students to start each argument with the standard “May it please the court” introduction and a road map. In the road map, students introduce themselves, state their positions, and outline one or more points in support of their argument. This structure allows students to practice an opening that's similar to what they will use in their formal oral arguments later in the semester.

The short arguments allow time for each student to practice early in the semester and before completing a formal argument on a trial motion during week six. My syllabus calls for an ungraded oral argument on a trial-level motion—typically a motion to dismiss or a motion for summary judgment—during the sixth week of the semester. Students stand at the same podium in the same classroom, and they have five minutes to make their case. I serve alone as the hot bench, and I make audio recordings of the arguments for students who want to analyze them with me one-on-one during office hours. The course ends
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With a graded, 10-minute oral argument before an appellate panel made up of judges, lawyers, and me. To keep every student engaged while one student practices a 90-second argument, I call on everyone else in the class to serve as judges on one “bench.” I encourage a hot bench—and students rise to this challenge zealously. It’s common for student-judges to begin firing off questions as soon as the speaker finishes stating her position. As an alternative, I’ve tried assigning three students to serve as a mock appellate panel, but questions were sparse. By making every student a judge, speakers are challenged with a steady barrage of questions, and the judges practice public speaking as well.

Questions from the bench are often thoughtful and even well researched. Some students show their Google savvy by quickly pulling up a statistic to challenge the speaker. Many speakers and judges use ethics, emotion, logic, or a combination of these methods—allowing me to reinforce the lesson of ethos, pathos, and logos. When both the questions from the bench and the arguments from advocates, students have fun but they remain professional. It helps, of course, that professionalism and participation count for ten percent of their grade.

While students take the exercise seriously, the arguments remain lighthearted because of the topics. For instance, in my colleague Professor Torres’ class one year, two students asked if they could argue Shake Shack vs. Five Guys after spring break so that they would have enough time to conduct research. The students gathered relevant facts about store locations, menu offerings, prices, and even nutritional information. The students’ efforts were rewarded with cheers and applause.

**Benefit: Magic in the Classroom**

In *What the Best Law Teachers Do*, Dean Michael Schwartz and his coauthors assert that the best law classes can “sometimes seem almost magical, suggesting that good teaching is more art than science.” When these practice arguments lead to a standing ovation or to a shy student sharing a passionate plea, the moments do seem to have a bit of magic. An added benefit is that once students experience how helpful the practice rounds can be, they realize that they can continue to teach themselves through additional practice. It helps that students can easily record a practice argument with their phones or laptops and then critique the replay. I encourage this out-of-class strategy, particularly when students are preparing for the final appellate oral argument. The result is that the magic in the classroom continues outside the classroom.

**Benefit: Overcoming Stage Fright**

The fact that these practice arguments are fun keeps students engaged. But the arguments are more than fun: they help students overcome their fear of public speaking, become comfortable with the format and organization of arguments, and practice thinking on their feet. Because time is so short, students learn to lead with their strongest argument. This organization is important because “judges’ questioning may prevent you from ever getting beyond your first point,” as Justice Antonin Scalia and Bryan A. Garner point out in *Making Your Case*. The exercise helps students test their mettle and avoid the fight-or-flight reaction that can result from stressful law school experiences.

Even with some practice before their formal oral arguments, I’ve watched students faint mid-sentence, sweat through their suits before they even reach the podium, and throw their hands up in defeat upon even gentle questioning. With the 90-second oral arguments, students get an early idea of what it’s like to stand before a hot bench. More than a few students have told me later that they were surprised that they suddenly became

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nervous when they looked out from the podium. Most are shocked by how quickly a minute can pass.

**Benefit: Little Class Time**

Of course, oral advocacy is only one component of the legal writing curriculum, so there’s a practical limit to how much practice professors can fit into a semester. The 90-second argument fits perfectly. The key is to give students a constructive introduction to oral advocacy and to empower them to practice more on their own—so the focus in the classroom is balanced on legal writing and analysis as well. Short, in-class arguments that do not require outside research help respect that balance. Nonetheless, despite the ample practice rounds I hold in class, I hear a similar refrain from students in course evaluations each year: “More practice!”

**Other Approaches**

Creative approaches to teaching oral argument abound in the legal writing classroom. My colleague Rachel Stabler uses a grab bag filled with seemingly random objects and asks students to argue, for example, how a boomerang or clock relates to legal professionalism and ethics. Another University of Miami colleague, Rachel H. Smith, assigns articles on legal writing and oral advocacy and then gives students one minute to summarize them. This exercise during the last class pushes students to practice public speaking just before making their final appellate argument.

Still other professors incorporate public speaking practice earlier in the first year of law school. Professor Bill Chin at Lewis & Clark Law School requires each student to speak for three to five minutes on a writing tip during the fall semester. Students can select a writing, research, or oral advocacy tip, and they can use handouts or other visual aids to make their points. Professor Chin asks students to think deeply about the tip they’re sharing and explain how it can be important and helpful.

**Conclusion**

As we’re called on by the ABA and the demands of the profession to better prepare students for law practice, we should recognize that students need experience making presentations long before their participation in a single appellate oral argument at the end of the 1L year. Practice with approachable topics and short time frames helps jumpstart students’ introduction to an intimidating exercise.

As Professors Corie Rosen and Hillary Burgess suggest, “Only through deliberate practice, that process of doing, erring, receiving feedback, and incorporating that feedback into subsequent efforts, will ... students become better learners, stronger performers, and, ultimately, experts in the field.”

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6 Professor Chin described his technique during the brainstorming session at the 2013 Innovative Teaching Workshop at the University of Kansas School of Law, sponsored by the Association of Legal Writing Directors.
