

Australian law schools offer a course in trial advocacy, whereas almost all of the accredited law schools in the United States offer such a course.

This article deals with the place which a trial advocacy course should occupy in the undergraduate law school curriculum and the structure and content of the course. The program pioneered for the United States National Institute of Trial Advocacy (NITA) is discussed. It is also noted that the Australian Advocacy Institute focuses on training practitioners. Four reservations about the application of the NITA model with undergraduate students are considered and the conclusion drawn that a modified form of the NITA method should be adopted in Australian law schools.

A NITA based advocacy course should be a semester course rather than an intensive course. Students should work with the same case file throughout the semester. Whilst the course should centre on skills development, a substantial amount of time should be set aside for discussion. The delivery of constructive feedback is of great importance and should follow the detailed recommendations set out in the NITA program. Videotape review provides an excellent opportunity for the course instructor to give personal attention to the students' performance and allows students to reflect on their presentations. In trial advocacy courses instructors' assessment may be influenced by the personality of students and their own experience and bias. To minimise an inherent subjectivity, a written component should be included in the assessment regime with students identified by student number rather than student name. The course should also teach students to deal

with and relieve courtroom anxiety by emphasising the confidence gained through thorough preparation and systematic desensitisation. The content of the course should emphasise that a trial is a search for truth and instil principles of professionalism and ethical behaviour.

The conclusion is reached that a trial advocacy course which emphasises skills training does warrant a place in the law school curriculum, provided students are given the opportunity to explore and question issues beyond the mastery of forensic skills.

Testing trial advocacy: a law professor's brief life as a public defender

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After teaching trial advocacy for 14 years the author decided to serve his sabbatical as a public defender in Cumberland County, Pennsylvania so as to test the advocacy skills that he had urged upon his students.

One aspect of the litigation process that no textbook, lecture, videotape or simulation could ever reproduce was the client. Sentencing advocacy arguing commonsense reasons why incarceration would be inappropriate and counterproductive rather than trial advocacy arguing the law was required in the representation of the defenceless client. Appeal to legal protections such as presumption of innocence, the defendant's right not to testify, and the prosecution's burden of proving guilt beyond reasonable doubt had little effect on the jury's verdict when the client for one reason or another could not be put on the stand. This highlighted the divide between legal precepts and

reality - something trial advocacy courses can only allude to.

The vacillating client was also encountered, providing ethical dilemmas for the advocate. No magical formula was discovered to deal with this contingency other than "maintaining a poker face when adversity strikes." At the public defender's office counsel usually had only fifteen minutes to prepare the defendant's case. The justice system resembled an assembly line with the defendant's advocate perceived as simply another cog in the machinery processing him towards incarceration.

Finally, the most stressful moments were those spent defending those whom the author was convinced were not guilty, whilst the most rewarding moments were seeing those people walk, free, out of the courtroom.

The author's experience had a profound impact upon his own teaching of trial advocacy. He recommends that teachers must try harder to prepare their students for the surprises, frustrations and despair they will encounter when live clients replace the confines of the case file.

Developing legal problem-solving skills

S Nathanson

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Competent lawyers must be effective problem solvers and it is the job of legal educators to find methods to teach legal problem-solving effectively. Teachers should design instruction which synthesises general problem-solving skills and context-specific knowledge.