

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**

G S Gildin

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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.

Legal problem-solving skills include everything a lawyer needs to know and be able to do to solve practical legal problems - to meet client goals through a process of preventing or resolving legal conflicts. Hence it also consists of using problem-solving skills to refine and elevate the performance of other skills.

Legal problem solving can be used as the driving force in curriculum design. Modules in the curriculum should follow the skills teaching cycle: theory, demonstration, practice, feedback. If theory and problems do not fit together it is necessary to modify both theory and problems to bring them closer to each other. Problems with precedents should be created. However, students should be taught to use precedents in both a linear and flexible manner. Assessment of problem-solving skills was most effectively evaluated by determining if the problem-solving skills that the students had learned were transferable from one context to another.

Principles for teaching legal problem solving were identified: A. Students must be given opportunities to solve legal problems. B. Teachers must design meaningful problems so as to hold the students' interest. C. The curriculum must be designed around the problems - problem-generated design. D. Teachers should design problems to promote the transfer of legal problem-solving skills from one context to another. E. Students should learn by discovering solutions on their own through preparation and performance of written problems and simulations. F. A coherent knowledge base that is readily accessible should be provided through traditional teaching

methods, in addition to the problem based knowledge and learning.

## STATISTICS

[no material in this edition]

## STUDENTS

[no material in this edition]

## TEACHERS

### **Solutions to the dilemmas and concerns of teaching international students in universities**

D J Phillips

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The number of international students studying in Australian tertiary institutions has reached significant proportions as a result of the Australian Department of Trade's decision to allow Australian tertiary institutions to offer places to Full Fee Paying (FFP) international students.

Australia's objectives in its international education program range from provision of human resources to underdeveloped countries to the perception and development of education as an export commodity. The quality of export education to Asia should be high and represent value for money. However, the changing ethnic composition of the student body has created some difficult pedagogical issues for the academic/teaching staff of Australian universities.

To assist them the Australian Vice Chancellors' Committee has prepared a Code of Ethical Practice, which sets out a number of guiding principles for the conduct of higher education

institutions which offer FFP placements.

Examples of the dilemmas facing academic staff when teaching FFP students include the direct link between the student's academic performance and his/her financial support; whether teachers should exercise leniency when assessing FFPs; whether teachers should alter their teaching styles in order to accommodate the special needs of FFPs; and the attention that should be given to FFPs over and above that given to local students.

The term "ethnogy", coined by the author, is defined as the science of teaching across cultures. The article sets out the parameters of ethnogy and provides examples of how to apply them to problems encountered in teaching FFPs. Universities also need to focus their efforts on faculty development so that they might more adequately respond to and teach the new student today.

### **Talking heads: effective television techniques for academics**

D A Harris

*44 J Legal Educ* 2, June 1994 pp 207-213

This article provides advice to law teachers upon techniques to adopt if given the opportunity to offer comment on legal issues on television. The reasons for doing television interviews are discussed, including improving your image, the benefits to your institution, and the challenge of making a complex issue understandable to most people without emptying it of all content. Advice is given as to what issues to consider before accepting an invitation for an interview and practical tips about preparation and delivery. The hardest part of preparation for the law professor is to discard the practice of