

What Does Trial Practice Education Look Like Today?

Here at the University of Louisville Brandeis School of Law, we're fortunate to have adjunct professors who can translate their experience in the courtroom into education in the classroom.

We asked three of our adjunct professors, Judge A.C. McKay Chauvin, Patrick Bouldin and K. Gregory Haynes, to share their thoughts on litigation and trial practice education. Read their responses below.

Embrace New Technology When Presenting Evidence



Judge A.C. McKay Chauvin presides in Division 8 of Jefferson Circuit Court.

What are some trends in trial practice education?

My trial practice professor at Georgetown was a phenomenal trial lawyer. His approach to teaching was to perform in-class demos of some of the more entertaining tricks

of the trial trade. It's fun. It's entertaining. And, most importantly, it can inspire students to go into the field. Once they get there, however, they have to be able to do more than a credible imitation of their science teacher or trial practice professor.

Some professors take a more doctrinal approach and go to a how-to list of trial lawyer rules. Because these rules impose necessary order on neophyte chaos, they provide a great point of reference. However, this approach can also discourage growth.

With that in mind, the hip new trend in modern trial practice classes is to focus on the purpose, properties, foundations and utility of each phase of a trial—what trial practice hipsters might call meta-trial practice. The meta-trial practice theory is that if students are taught to understand and appreciate the purpose and value of each component part of a trial (both as it operates independently and in concurrence with every other component part) then they can figure out on their own what to do and how to do it. The idea is that you don't have to tell someone exactly *how* to do something if they have a thorough understanding of *why* they're doing it.

How has technology changed the way evidence is presented in court?

More and more of our jurors have come of age in an age of visual narrative. That means more and more of our jurors learned to listen with their eyes.

In order to communicate effectively in 2016, lawyers have to talk the way those jurors listen. That requires lawyers to make more and better use of audio-visual technology.

I spend one entire class hammering home this point. I use the Jefferson Courtroom Upgrade Project (JCUP) system during every class and I illustrate the power of visuals at the beginning of each class using a brain teaser.

For example, you are in a room with no windows or doors—how do you get out? You might figure out the answer, but your answer will depend on how you picture that room, and everyone pictures that room differently. But if I show you a picture of that room (and it shows that while there are no doors or windows, there are doorways and window frames) then the picture is clear and the answer is obvious. Lawyers have to embrace the use of new and improved audio-visual technology as a means of telling their story. Illustration is persuasion.

What advice would you would give students hoping for a career in litigation?

There's an ancient proverb that says:

"If you give a man a fish, you've fed him for a day. But if you

teach a man to fish he will become obsessed with fishing. It will become all he ever thinks about and the only thing he can relate to. He'll spend all his time fishing, and all of his money on fishing gear and fishing trips. He'll get rid of all his non-fishing friends and family. And then one day he'll die (probably from water-related misadventure, shark attack or the skin cancer he got from years of over-exposure to the sun while trying to outlast and out think an animal with a brain the size of a walnut), all alone, clutching his rod and smelling like old bait and wet socks."

Like the fabled fisherman, what most of the most successful litigators have in common is how obsessively hard they worked to become successful. My key piece of advice to law students hoping to have a career in litigation is that if they want to be like those successful litigators, they have to work like them. They don't necessarily have to be obsessed (although it sure helps), but they do need to be passionate.

Professionalism, Good Reputation Essential for Litigators



Patrick Bouldin is an assistant federal defender and a partner with the litigation consulting group Trial In Focus.

What are some trends in trial practice education?

The biggest trend I have seen in trial practice education over the past few years is the use of technology in litigation.

The skills necessary to be a good litigator have not changed much, but the tools used in litigation have. With electronic courtrooms, the Internet, laptops and iPads, how information and evidence is handled and presented has improved.

But I also caution students not to overuse technology. Technology is a tool to help in litigation, but it is the litigator that ultimately has to present a persuasive case. And sometimes, low-tech can actually be more effective.

Few things trump strong evidence in a case, but I encourage students to never forget that litigation is ultimately very much still a human endeavor.

How has technology changed the way evidence is presented in court?

Electronic courtrooms are very helpful to practicing litigators. Being able to quickly and easily use something like a built-in document camera (ELMO) is invaluable as it allows all interested parties to quickly see the document at issue at the same time.

Several years ago, I tried a case that I believe was the first trial in the then-new electronic courtroom in federal court in Louisville.

The case was an organized crime prosecution involving charges of a murder, as well as several arson and burglary allegations. The trial involved dozens of exhibits, including documents, photographs, videos and physical evidence.

The electronic courtroom made it much easier to present the evidence in a quick, streamlined and effective fashion.

What advice would you would give students hoping for a career in litigation?

Be responsible, be professional and work your cases. These are the first things I tell students who want to be litigators.

I encourage them to do all the things they were taught growing up: Treat everyone with respect, do what you promise and are expected to do, protect your reputation, do not forget your sense of humor (when appropriate) and prepare your cases.

I think having a sense of competitiveness is absolutely critical to be an effective litigator, but not at the expense of these core values.

"Experience is the Greatest Teacher"



K. Gregory Haynes is a member of the Litigation & Dispute Resolution Service Team at Wyatt Tarrant & Combs.

What are some trends in trial practice education?

There continues to be a proliferation of trial practice-type courses in undergraduate schools throughout the country and an increased emphasis on trial practice, moot court and arbitration courses and competitions in law schools.

The result is that many 3L students have developed impressive litigation skills. They can handle increasingly complex exercises in direct and cross examination, introduction of evidence, evidentiary objections and persuasive argument.

By the time these students graduate, many are able to handle themselves in court.

The days of poster board blow-ups and jury handouts are over!

How has technology changed the way evidence is presented in court?

Technology software now enable litigants to organize tens of thousands of documents that can be instantly searched for key words or phrases and displayed on video screens for the jury.

Other software programs allow a presenter to highlight key portions of a document or "explode" or enlarge document excerpts for dramatic effect. Other software programs permit deposition testimony to be instantly retrieved and shown to the jury for impeachment purposes.

And, of course, many courtrooms are being refurbished and updated to accommodate the use of technology.

And, of course, many courtrooms are being refurbished and updated to accommodate the use of technology.

What advice would you would give students hoping for a career in litigation?

Experience is the greatest teacher for a trial lawyer.

Therefore, take advantage of litigation skills classes in college and law school and look for a job that allows you to get to court and develop examination skills and use techniques of persuasion. ■