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TO THE HEAD OF THE CLASS? QUANTIFYING THE RELATIONSHIP BETWEEN PARTICIPATION IN UNDERGRADUATE MOCK TRIAL PROGRAMS AND STUDENT PERFORMANCE IN LAW SCHOOL

TERESA NESBITT COSBY[†]

INTRODUCTION

In 1985, twelve colleges and universities fielded ten to twelve undergraduate mock trial teams at the American Mock Trial Association's (AMTA) National Championship tournament.¹ The records of the early national champions illustrate that the initial collegiate participants were primarily students from small liberal arts colleges.² Over the past fifteen years there has been an explosion in participation of the number and types of colleges participating, with 5,300 undergraduate students from 402 colleges and universities fielding multiple teams.³ To illustrate the exponential growth of this activity, just four years ago there were 549 teams, while currently there are 682 teams registered for the 2019 tournament.⁴ The expansion of this intellectual

[†] Teresa Nesbitt Cosby is a Visiting Professor in the Department of Political Science at Furman University.

¹ Brad Bloch, *In the Beginning: Facts, Figures, and Anecdotes from AMTA's early years*, AMERICAN MOCK TRIAL ASSOCIATION, <http://www.collegemocktrial.org/InTheBeginning.pdf> (last visited Jan. 22, 2019).

² *National Championship Final Round Results*, AMERICAN MOCK TRIAL ASSOCIATION, <http://www.collegemocktrial.org/about-amta/history-/national-championship-trial-results/> (last visited Jan. 22, 2019) (Rhodes College (four times) and Bellarmine University with exceptions like Drake College (two times) and the University of Maryland (four times)).

³ *AMTA Member Schools*, AMERICAN MOCK TRIAL ASSOCIATION, <http://www.collegemocktrial.org/about-amta/member-schools/> (last visited Jan. 22, 2019). Some schools field as many as four teams. *2019 AMTA Team Numbers*, AMERICAN MOCK TRIAL ASSOCIATION, <http://www.collegemocktrial.org/tournaments-/general-information/team-numbers/> (last visited Jan. 22, 2019).

⁴ *Compare American Mock Trial Association 2014 Team Numbers*, AMERICAN MOCK TRIAL ASSOCIATION (2014), [http://www.collegemocktrial.org/AMTA%20Team%20Numbers%20\(2014\).pdf](http://www.collegemocktrial.org/AMTA%20Team%20Numbers%20(2014).pdf) (last visited Jan. 22, 2019), *with 2019 AMTA Team Numbers*, AMERICAN MOCK TRIAL ASSOCIATION, <http://www.collegemocktrial.org/tournaments-/general-information/team-numbers/> (last visited Jan. 22, 2019).

“sport” underscores the fact that this intercollegiate contest has grown exponentially since its early years. Further, more diverse schools and universities are now participating in these activities at the national level.⁵ The last ten national champions are Miami University (2018), University of Virginia (2017), Yale University (2016), Harvard University (2015), University of California, Los Angeles (2014), Florida State (2013), Duke University (2012), the University of California, Los Angeles (2011), New York University (2010), and Northwood University (2009).⁶ The makeup of the recent champions is also different—the reign of the small liberal arts colleges seems to be over.⁷ Clearly, these national results reflect the ascendancy of large public and private universities as the powerhouse schools.

This Article seeks to answer the question of whether students who engage in undergraduate mock trial competitions gain a competitive advantage in law school. The Article will examine the pedagogy of experiential learning methods by analyzing how student performance in undergraduate school compares to how these same students perform in law school, and, importantly, whether these students are gainfully employed in a law-related career after law school. This is accomplished by conducting four interviews with Furman alumni who participated in the undergraduate mock trial program during their tenures, and a survey targeting law school students and recent graduates who participated in mock trial and those who did not participate by comparing LSAT scores, law school class standing, job market success, and other related factors. As a result of this study, this Article qualitatively and quantitatively discusses the benefits and detriments of an undergraduate mock trial experience in relation to successful law school performance and subsequent legal careers.

⁵ *AMTA Member Schools*, *supra* note 3.

⁶ *National Championship Final Round Results*, *supra* note 2.

⁷ *Id.* The American Mock Trial Association began in 1985 and the early champions were schools like Eastern Illinois University (1985), Wright State (1986), University of St. Thomas (1986), University of South Dakota (1988), Drake University (1989), and Rhodes College (1990-91). *Id.*

I. WHAT IS MOCK TRIAL?

Mock trial is a law-themed activity that educates students about the role of law and other governmental institutions in society.⁸ It is a form of a simulation game that is based on a model of experiential learning.⁹ A definition for a standard educational simulation game evaded scholars for some time; however, after considerable scholarly discussion, Dean Dorn, in his article *Simulation Games: One More Tool On The Pedagogical Shelf*, proposed this definition:

A game is any contest or play among adversaries or players operating under constraints or rules for an objective or goal Consequently, simulation games are activities undertaken by players whose actions are constrained by a set of explicit rules particular to that game and by a predetermined endpoint. The elements of the game constitute a more or less accurate representation or model of some external reality with which players interact by playing roles in much the same way as they would interact with reality itself¹⁰

Simulations and active learning modalities yield the best outcomes in maintaining student interest and often result in better academic outcomes.¹¹ This pedagogy has proven results in helping students improve their interpersonal skills and increase their self-confidence in decision making.¹² Simulations, or “active learning,” help students to understand complex legal rules with a real-life feeling for the many potential outcomes a chosen course of conduct could produce.¹³ It is a teaching tool that encourages student experimentation.¹⁴ Role-playing legal activities work very well in the arena of active learning pedagogy.¹⁵ There is a major distinction, however, between role-playing and simulation

⁸ John R. Vile & Thomas R. Van Dervort, *Revitalizing Undergraduate Programs Through Intercollegiate Mock Trial Competition*, 27 PS: POL. SCI. AND POL. 712–13 (1994).

⁹ See Dean S. Dorn, *Simulation Games: One More Tool On The Pedagogical Shelf*, 17 TEACHING SOC. 2–3, 6 (1989).

¹⁰ *Id.* at 2–3.

¹¹ *Id.* at 6–7.

¹² *Id.* at 7.

¹³ Robert P. Burns, *Teaching the Basic Ethics Class through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS. 37, 38 (1995).

¹⁴ Dorn, *supra* note 9, at 1.

¹⁵ David L. Weiden, *Comparing Judicial Institutions: Using an Inquisitorial Trial Simulation to Facilitate Student Understanding of International Legal Traditions*, 42 PS: POL. SCI. AND POL. 759–60 (2009).

games—in the former, students assume the role of a particular character and are directed to act as that character would act.¹⁶ In a simulation, students are independent actors and thinkers and choose from many options the best course or strategy to pursue.¹⁷ Hence, learning is a direct experience and it eliminates the monotony of traditional instruction methodologies, making these games excellent tools for sharpening “effective cognitive and conceptual learning.”¹⁸ Traditional pedagogical formats sometimes fail to engage students studying information that does not energize them or encourage them to engage in class discussions.¹⁹ For instance, medical schools use case-based methods as a way to keep students’ attention.²⁰ Evaluations of mock trial simulations used to teach pharmacy law showed that simulations enhance student understanding and provide students with an opportunity to make legal judgments based on the law.²¹ This finding was especially enlightening to scholars studying the use of this method in pharmacy schools because the pedagogy was embraced by a group of students who do not gravitate toward legal course content.²² This form of active learning also adapts well to the legal environment.²³ Mock trial is a perfect platform for affording students a first-hand view of how courts operate, equipping students with a better understanding of the legal system.²⁴ In these types of exercises, the rules explicitly explain acceptable and unacceptable conduct.²⁵ Players are required to make informed decisions emerging from their competition; further, cooperation is necessary to enjoy success.²⁶ The pedagogical benefits of mock

¹⁶ Dorn, *supra* note 9, at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ D. Todd Bess et al., *An Innovative Approach to Pharmacy Law Education Utilizing a Mock Board of Pharmacy Meeting*, 7 INNOVATIONS IN PHARMACY, no. 1, Mar. 2, 2016, at 1, <https://pubs.lib.umn.edu/index.php/innovations/article/view/419/413>.

²⁰ *Id.* See also Anar Ahmadov, *When Great Minds Don't Think Alike: Using Mock Trials in Teaching Political Thought*, 44 PS: POL. SCI. AND POL. 625, 626 (2011).

²¹ Bess, *supra* note 19, at 2–3.

²² *Id.* at 2–4.

²³ See Weiden, *supra* note 15, at 759; see also Ahmadov, *supra* note 20, at 625.

²⁴ See Vile & Van Dervort, *supra* note 8, at 713–14.

²⁵ Dorn, *supra* note 9, at 3; AMTA *Rulebook*, AMERICAN MOCK TRIAL ASSOCIATION, 5, 46, 60 (2018) <http://www.collegemocktrial.org/AMTA%20Rulebook%20-%20final%209-3-18.pdf> (last visited Jan. 23, 2019).

²⁶ See Dorn, *supra* note 9, at 3.

trial can be replicated to other disciplines outside of traditional legal topics to comparative, inquisitorial, or adversarial approaches.²⁷ Anar Ahmadov argues that mock trial is an underutilized teaching tool.²⁸ The key strengths of the activity, he contends, are the immersive nature of an activity that students use to reconstruct and experience political understanding. His argument reflects the arguments of others that simulated learning deepens a student's knowledge base.²⁹ Ahmadov outlines the benefits of moot court and mock trials to students as follows:

First, students gain a deeper understanding of the law, the judicial process, and the substantive area on which a given dispute is focused. Second, because students are required to conduct a thorough investigation of the disputed matter and prepare a robust argument, their research skills and critical and analytical abilities are enhanced. Third, the need to present and defend an argument before a group of exacting outsiders forces students to sharpen their argumentation, thus contributing to the improvement of presentation, debating, and public speaking skills. Moot courts and mock trials can also help students improve teamwork skills and enhance their leadership abilities³⁰

Each summer the American Mock Trial Association (“AMTA”) issues a password-protected hypothetical case on its website to member schools.³¹ The Association alternates between a criminal and a civil case on a bi-annual schedule. The material provided includes the rules for the competition, exhibits, witness affidavits, case law, the statutory law applicable to the case, and the rules of evidence.³² During a tournament competition, each team presents a prosecution or plaintiff case twice and a defense case twice for a total of four rounds of trials over a two-to-three day period.³³ The competition begins with both sides presenting opening statements, followed by the presentation of witnesses, and ending with closing statements.³⁴ The sides are limited to

²⁷ See, e.g., Weiden, *supra* note 15, at 759.

²⁸ Ahmadov, *supra* note 20, at 625.

²⁹ *Id.* at 626.

³⁰ *Id.*

³¹ See *The American Mock Trial Association New Team Handbook*, AMERICAN MOCK TRIAL ASSOCIATION, 24 (2017) [http://www.collegemocktrial.org/AMTA.%20Handbook%20\(update%20July%2021,%202017\).pdf](http://www.collegemocktrial.org/AMTA.%20Handbook%20(update%20July%2021,%202017).pdf) (last visited Jan. 5, 2019).

³² Vile & Van Dervort, *supra* note 8, at 712–13.

³³ *Id.* at 713.

³⁴ *Id.*

three attorney-participants and three witness-participants per team for each round of the case. The witnesses are directed by their team members and then cross-examined by the opposing team.³⁵ There are also strict time limits for each activity:

- Opening statements - 5 minutes per side
- Direct examinations of all three witnesses (combined) - 25 minutes per side
- Cross-examination of all three witnesses (combined) - 25 minutes per side
- Closing arguments - 9 minutes per side
- Rebuttal. The plaintiff/prosecution may give a rebuttal after the defense closing argument. The length of time for plaintiff/prosecution's rebuttal (i) shall be the amount of time not used during the plaintiff/prosecution's closing argument, but (ii) may not, in any event, exceed five minutes.³⁶

Each team member is scored on their presentation of the case, which includes opening statements, witness performances on direct and cross-examinations, the effectiveness of cross-examination of witnesses on direct and cross-examinations, and closing arguments.³⁷ Usually, a three-attorney panel acts as judges and scorers in the case. Most often these attorneys are seasoned practitioners from the local community.³⁸ For the national championship rounds, judges are recruited nationally. Most often, for the National Championship Tournament, the AMTA secures a sitting federal or state appellate judge to preside over the final trial or championship round.³⁹ Preferably, one judge will preside and rule on objections and evidentiary matters and two judges will score the trial.⁴⁰ The scoring is not based on who should prevail on the merits of a case; rather, there are several factors to rank or "score" that are defined on a

³⁵ *Id.*

³⁶ *See AMTA Rulebook, supra* note 25, at 31.

³⁷ Vile & Van Dervort, *supra* note 8, at 713.

³⁸ Interview with Dr. Glen Halva-Neubauer, Past President, American Mock Trial Association, in Greenville, S.C. (Jul. 24, 2017). The value of using seasoned attorneys cannot be overstated. Attorneys are in the best position to critique the overall performance of a trial team in presenting their cases in a manner that resembles real trial practice, thus adding considerable value to the experiential exercise. *Id.*

³⁹ *Id.* Sometimes it is difficult to recruit enough volunteers, so tournaments sometimes require the presiding judge to also score the trial. *Id.*

⁴⁰ *See generally* Vile & Van Dervort, *supra* note 8, at 712–13.

standardized “ballot”⁴¹ form provided by the AMTA.⁴² This form directs judges to evaluate teams based on presentation skills and trial preparation skills like case theme, case theory, case substance, and the performances of witnesses and attorneys in advancing the interests of the team.⁴³

The mock trial student must develop the trial record by presenting witnesses and arguments to support their theory of the case. Therefore, they must critically examine the facts and the law in a case to determine from a group of witnesses and prior case law precedent, which witness and what case law best support their theory of the case.⁴⁴ Winners and losers should not solely be determined by who has the best oral advocacy skills. Rather, the activity is designed to determine who also presents the best theory of the case, whose witnesses are more credible, the quality and value of the exhibits in convincing the Trier of Fact, knowledge of the law, knowledge of the rules of evidence to either admit evidence favorable to your case or to effectively exclude evidence unfavorable to your case, and the application of the law to fact to support the theory of the case.⁴⁵ The cases chosen by AMTA rarely revolve around a “big issue” policy question; rather, the cases involve everyday matters of civil and criminal law that are often pulled from real cases or societal situations and adapted for use in an academic setting.⁴⁶

To prepare, many schools require students to attend lectures and to practice at least two times per week with coaches.⁴⁷ Students also practice an additional two to four days per week during tournament seasons independent of the coaches.⁴⁸ Most schools employ paid and/or volunteer coaches who practice as trial attorneys in local communities.⁴⁹ Some schools also utilize the services of speech and acting coaches to work with students on presentation skills.⁵⁰

⁴¹ See American Mock Trial Association, *Ballot Form*, 1 http://www.virginiamocktrial.org/gamti/AMTA_Ballot.pdf (last visited Jan. 23, 2019).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Vile & Van Dervort, *supra* note 8, at 712–13.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Interview with Halva-Neubauer, *supra* note 38.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

A. *A Practitioner's Perspective on Mock Trial*

I was introduced to the fictional world of mock trial as an attorney recruited to judge a tournament. This first glance caused me to question the value of this exercise due to the traditions of the practice of “mock trial” which closely mimicked an actual courtroom trial while departing oddly from actual trial practice.⁵¹

I became a coach of a mock trial program in the fall of 2003. When my coaching career began, I became intrigued by an activity that on the surface appears to be all about the law. However, there were certain peculiarities about the activity that confused me—an attorney who has practiced in state, federal and appellate courts. First was what I call “high court” practice where the courtroom presentation includes every rule of courtesy, like seeking permission of the presiding judge to retrieve a document from any source and to approach opposing counsel. These traditions have been relaxed in real trial practice. The second observation is the triangle method of presentation wherein students discipline their movements in the courtroom within an imaginary triangle—moving sideways or forward within the confines of the triangle. This approach can appear stiff. Third is the deliberate spatial decisions of where to place hands and keeping arms within a “box” on the body. Finally, the use of terms, although technically correct, that are not generally used by practicing attorneys, such as “demonstrative”⁵² and “the well” of the courtroom.⁵³

After three years of coaching “mockers,” I gained an appreciation for the value of this exercise as an enriching academic activity for student participants. Students participating in the mock trial program are exposed to numerous substantive legal practice areas— personal injury or tort law,

⁵¹ See also Elizabeth Ellen Gordon & William Gillespie, *Competition in Political Science Pedagogy*, 10 ACAD. EXCHANGE QUARTERLY 111, 113 (2006).

⁵² American Bar Association, *Persuasive Use of Exhibits in Trial*, THE AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2014_spring_conference/persuasive_use_of_exhibits.pdf (last visited Jan. 23, 2019) (a tool to aid the Trier of Fact, such as a floor plan or a picture, that may or may not be entered into evidence as an exhibit).

⁵³ HG.org Legal Resources, *Who's Who and What's What in the Courtroom*, <https://www.hg.org/article.asp?id=31722> (last visited Jan. 23, 2019) (the area in front of the portion of the courtroom that divides the audience from the area where the attorneys, judge, and court personnel sit. The presenter is asking the court to allow him or her to walk freely within that area).

state criminal law, criminal sentencing procedures, federal civil rights law, criminal procedure, civil procedure, and federal criminal law including the federal rules of evidence. They are further exposed to academic disciplines like psychology, economics, biology, the sciences,⁵⁴ and public speaking.⁵⁵

In 2006, I joined the faculty of Furman University. My area of specialization is Constitutional Law. While teaching these courses, I observed an additional value in mock trial participation that escaped me as a coach. Student mockers in my legal classes tended to perform better than non-student mockers with very few exceptions. I observed a gap in five areas of performance:

1. Student mockers could identify the legal issues presented in cases better than their colleagues.
2. Student mockers could formulate and argue their legal positions better than their colleagues.
3. Student mockers were more adept at applying the facts of the case to the law to reach sound legal conclusions.
4. Student mockers exhibited more confidence in presenting in class than their colleagues.
5. Student mockers performed better in the hypothetical portion of written exams than their colleagues.

These observations caused me to examine the value of mock trial through a different lens. The vast majority of students participating in the University's mock trial experience communicated to me their plan to further their academic careers in law school. They utilize mock trial as a mechanism for enhancing skills and gaining an academic advantage. If my observations are correct, there is substantial merit to their strategy. Rather than viewing mock trial as primarily a competitive intellectual sport, it is better characterized as an experiential learning activity. An alternative theory, however, is that the activity of mock trial tends to attract very bright

⁵⁴ Interview with Halva-Neubauer, *supra* note 38. Students often have to learn complex scientific concepts in forensic pathology, biology, the pathology of diseases, anatomy, orthopedic medicine, psychological disorders, and appropriate medical and psychological treatment regimens. *Id.*

⁵⁵ See also Felicia Walker, *The Rhetoric of Mock Trial Debate: Using Logos, Pathos and Ethos in Undergraduate Competition*, 39 COLL. STUDENT J. 277, 277 (2005). Walker discusses how Aristotle's proofs of logos, pathos, and ethos apply to undergraduate mock trial and how competitors can use them to be successful. *Id.*

students, especially those on top teams; therefore, these students will perform well in any academic arena, including in my classrooms and in law school classrooms.⁵⁶

B. Mock Trial as a Valuable Experiential Pedagogy

Experiential learning involves active interaction by the student with the concepts or theories being studied.⁵⁷ Essentially, experiential learning is a philosophy of education based on what John Dewey called a “theory of experience.”⁵⁸ The foundational premise of experiential education is that students need more than a passive teacher-to-student lecture format to learn. There should be some form of dynamic engagement in the learning process.⁵⁹ Dewey insisted that a good education connects “theory and practice.”⁶⁰ Practical and classroom education standing alone do not provide the same level of education as the two pedagogies in combination.⁶¹ This combination of learning allows for student reflection and the ability to integrate and connect the two.⁶² Arguably, this model is effective in enhancing students’ ability to acquire new skills and to apply those skills individually to new situations.⁶³ The dual dynamic of theory and practice is the basis of the American educational experience.⁶⁴ Liberal arts colleges have embraced the belief that relevant work experience paired with a strong educational background is a good combination that will enhance the intellectual and career success of their graduates.⁶⁵ Experiential learning has grown to a point where it is now a

⁵⁶ See also Gordon & Gillespie, *supra* note 51, at 112.

⁵⁷ Kelly E. Millenbah & Joshua J. Millsbaugh, *Using Experiential Learning in Wildlife Courses to Improve Retention, Problem Solving, and Decision-Making*, 31 WILDLIFE SOCIETY BULLETIN 127, 127 (2003).

⁵⁸ Alice Y. Kolb & David A. Kolb, *Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education*, 4 ACADEMY OF MANAGEMENT LEARNING & EDUCATION 193, 194 (2005).

⁵⁹ H. FREDERICK SWEITZER AND MARY KING, *THE SUCCESSFUL INTERNSHIP: PERSONAL, PROFESSIONAL, AND CIVIC ENGAGEMENT* 11 (Brooks/Cole 4th ed. 2014).

⁶⁰ Thomas Ehrlich, *Pedagogy as a University Discipline*, 9 THE ELEMENTARY SCH. J. 489, 490 (1998).

⁶¹ *Id.* at 489.

⁶² *Id.* at 495.

⁶³ James G. Boggs, Amy E. Mickel, and Brooks C. Holtom, *Experiential Learning through Interactive Drama: An Alternative to Student Role Plays*, 31 J. OF MGMT. EDUC. 832, 833–34 (2007).

⁶⁴ MARIANNE EHRLICH GREEN, *INTERNSHIP SUCCESS: REAL-WORLD STEP-BY-STEP ADVICE ON GETTING THE MOST OUT OF INTERNSHIPS* 9 (2007).

⁶⁵ *Id.* at 10.

critical component of a core education.⁶⁶ “The primary goals of experiential learning are to broaden, extend, and deepen the intellectual content of instruction by integrating theory and practice, to increase student motivation through the experience of applying knowledge, and to encourage students to develop their skills as independent scholars. . . .”⁶⁷ Experiential learning also provides opportunities for faculty and students to interact in new ways.⁶⁸ The theory of experiential learning is built upon six propositions:

1. Learning is best conceived as a process, not in terms of outcomes. To improve learning in higher education, the primary focus should be on engaging students in a process that best enhances their learning—a process that includes feedback on the effectiveness of their learning efforts . . .
2. All learning is relearning. Learning is best facilitated by a process that draws out the students’ beliefs and ideas about a topic so that they can be examined, tested, and integrated with new, more refined ideas.
3. Learning requires the resolution of conflicts between dialectically opposed modes of adaptation to the world. Conflict, differences, and disagreement are what drive the learning process. In the process of learning one is called upon to move back and forth between opposing modes of reflection and action and feeling and thinking.
4. Learning is a holistic process of adaptation to the world. Not just the result of cognition, learning involves the integrated functioning of the total person—thinking, feeling, perceiving, and behaving.
5. Learning results from synergetic transactions between the person and the environment . . . learning occurs through equilibration of the dialectic processes of assimilating new experiences into existing concepts and accommodating existing concepts to new experience.
6. Learning is the process of creating knowledge. ELT proposes a constructivist theory of learning whereby social knowledge is created and recreated in the personal knowledge of the learner. This stands in contrast to the “transmission” model on which much current educational practice is based, where preexisting fixed ideas are transmitted to the learner.⁶⁹

⁶⁶ Millenbah & Millspaugh, *supra* note 57, at 127.

⁶⁷ *Id.* at 128.

⁶⁸ Leslie K. Hickcox, *Personalizing Teaching through Experiential Learning*, 50 *COLL. TEACHING* 123, 123 (2002).

⁶⁹ Kolb & Kolb, *supra* note 58, at 194.

A critically important feature of experiential learning is the control that it gives to students over their own educational outcomes.⁷⁰ This form of authentic learning engages students in real-world concepts closely related to the subject that they are studying. Research shows that this pedagogy works.⁷¹ Students implement knowledge in ways that professionals do⁷² and they express enthusiasm about individual projects.⁷³

Dewey focused on a democratic learning process and focused on a continuing state of learning that is organized around three important elements:

[T]hat process should engage students in reaching outside the walls of the school and into the surrounding community;
[T]hat it should focus on problems to be solved; and
[T]hat it should be collaborative, both among students and between students and faculty.⁷⁴

The way you teach a subject is as important as the subject matter.⁷⁵ Dewey's pedagogy was adopted by Portland State University, which is redesigning its entire undergraduate curriculum. There, the focus is centered on real-life situations and problems that help students to develop lifelong adaptive learning skills.⁷⁶ This type of exploratory education blends theory and practice by linking theory with practice.⁷⁷ Learning can also occur outside of a structured academic setting.⁷⁸ It can happen anywhere with or without teachers and institutions.⁷⁹ Furthermore, experiential education is an effective way to help students develop interpersonal and professional skills.⁸⁰ Students cannot become skilled simply by reading about skills or watching others perform tasks usually performed by lawyers.⁸¹ Mock trial, which is a student-controlled experiential learning

⁷⁰ Molly Nicaise, Teresa Gibney, and Michael Crane, *Toward an Understanding of Authentic Learning: Student Perceptions of an Authentic Classroom*, 9 J. OF SCI. EDUC. AND TECH. 79, 81 (2000).

⁷¹ *Id.* at 80. See also Bess et al., *supra* note 19, at 3.

⁷² Nicaise et al., *supra* note 70, at 80, 91.

⁷³ *Id.* at 91.

⁷⁴ Ehrlich, *supra* note 60, at 494.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION, 165 (1st ed.) (2007).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 170-71.

⁸¹ *Id.*

experience,⁸² does exactly what experiential theorists propose by combining classroom learning with the added bonus that it does not end in a semester; rather, it lasts a significant number of years.⁸³ A mock experience closely mirrors the real practice of law.⁸⁴ Research by Susan Williams supports a conclusion that Mock trial is a form of “authentic activity.”⁸⁵ She argues that “authentic activity” involves skills like interviewing witnesses, investigation of case facts, and negotiation; skills that are not developed in the case-study pedagogy of law schools.⁸⁶ In traditional learning environments, students have a limited role in controlling their educational outcomes; rather, form and substance are imposed.⁸⁷ Authentic learning engages students in real-world concepts closely related to the subject they are studying via simulations. Research shows that this pedagogy works in that students implement knowledge in ways that professionals do.⁸⁸ It is vitally important for the learning goal, however, that students feel a sense of ownership in the activity. If students sense that a project is teacher-controlled, enthusiasm for the activity can be diminished.⁸⁹ Mock trial encourages student critical thinking.⁹⁰ In a mock trial curriculum, students gain skills in formulating conclusions and in analyzing cause and effect.⁹¹ These skills are readily transferable to oral, written, research, and teambuilding functions.⁹² The added bonus of a mock trial program is that the learning experience does not end with the semester clock; rather, it can continue for four years!⁹³

⁸² *See id.* at 180.

⁸³ *See id.* at 172, 180.

⁸⁴ STUCKEY AND OTHERS, *supra* note 77, at 165. “Experiential education integrates theory and practice by combining academic inquiry with actual experience.” *Id.*

⁸⁵ Susan M. Williams, *Putting Case-Based Instruction into Context: Examples from Legal and Medical Education*, 3 THE J. OF LEARNING SCI. 367, 372 (1992).

⁸⁶ *Id.* at 391.

⁸⁷ Nicaise et al., *supra* note 70, at 79.

⁸⁸ *Id.* at 80.

⁸⁹ *Id.* at 91.

⁹⁰ Meg Wilkes Karraker, *Mock Trials and Critical Thinking*, 41 COLL. TEACHING 134, 134 (1993).

⁹¹ *Id.* at 135.

⁹² *Id.* at 137.

⁹³ *See How Do I Rush Yale Mock Trial?*, YALE MOCK TRIAL ASSOCIATION, <https://mocktrial.sites.yale.edu/how-do-i-rush-yale-mock-trial> (last visited Jan. 25, 2019).

C. *Is Competition Good Pedagogy?*

Mock trial also exists in a competitive environment and this fact raises concerns for some scholars.⁹⁴ In his essay, *The Case Against Competition*, Alfie Kohn argues that competition is bad and that children should not compete in any competitions.⁹⁵ The object of one child winning and the other losing is always bad. Kohn explains that “[c]hildren succeed in spite of competition, not because of it.”⁹⁶ Relying on results from researchers around the globe, Kohn concludes that performance declines when competition is used as a pedagogical tool.⁹⁷ Kohn promotes cooperation as a better learning strategy.⁹⁸ David Shields and Brenda Bredemeier posit that Kohn is right and wrong.⁹⁹ He is right, they say, when he talked about one form of competition, the winner and the loser type. He is wrong when he did not consider a different type of competition, one where you have a contest. It was in this context that they found value in competition.¹⁰⁰ The real value is that competition “can cultivate their character. It can build their self-esteem, promote humanistic values, support a sense of competence, and lead to enjoyment.”¹⁰¹ Mock trial competition enhances the learning process of students because the competition motivates students to invest time in the experience, and it provides a reliable measure of student progress in achieving goals. The exercise also provides rewards to students; students are equipped with a hypothetical situation that mirrors some of the dynamics of a real trial experience that helps students to be flexible enough to adapt to unanticipated situations, teaching them to “think on [their] feet” and to learn from the examples and strategies used by their adversaries.¹⁰² Real-world simulations expose students to stress situations that provide advantages to students entering real work environments.¹⁰³ Finally, competition teaches students

⁹⁴ Gordon & Gillespie, *supra* note 51, at 111–12.

⁹⁵ Alfie Kohn, *The Case Against Competition*, WORKING MOTHER, 1–2 (1987) <https://www.alfiekohn.org/article/case-competition/>.

⁹⁶ *Id.*

⁹⁷ *Id.* at 2.

⁹⁸ *Id.* at 3.

⁹⁹ David Light Shields & Brenda Light Bredemeier, *Competition: Was Kohn Right?*, 91 THE PHI DELTA KAPPAN 62, 63 (2010).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Gordon & Gillespie, *supra* note 51, at 113.

¹⁰³ Boggs et al., *supra* note 63, at 834; GREEN, *supra* note 64, at 9.

how to work as a team.¹⁰⁴ Gordon and Gillespie concluded that AMTA-sponsored mock trial is good pedagogy because of, not despite, its competitive character.¹⁰⁵

II. THE NEW LAW STUDENT LEARNING CURVE

The hurdle that most first-year law students face is a lack of prior exposure to legal studies.¹⁰⁶ The law school curriculum confuses students not because they lack inherent skill or intelligence, but because of the unique characteristics of law school.¹⁰⁷ Reading a case is a complex task for a new law student.¹⁰⁸ Further, the fact that many law students have been academically successful in the past provides for even greater frustration.¹⁰⁹ Students face this hurdle because they lack background knowledge when reading a judicial opinion.¹¹⁰ As a result, new law students simply do not comprehend what they are reading, or legal text, in an efficient manner.¹¹¹ The novice reader has difficulty with new terms and new meanings.¹¹² Also, while the law school case study methodology is considered by scholars to be the best tool for legal educators, it is, however, limited in its ability to equip lawyers with all of the tools they need to possess for a successful legal career.¹¹³ The core of a legal education curriculum is “reading, writing, reasoning and speaking with accuracy and self-critical insight.”¹¹⁴ Critics argue that legal education should teach lawyering capacities that cannot be learned via the case-study method.¹¹⁵ Legal studies should emphasize conceptual and practical skills training like those students experience in a mock trial curriculum.¹¹⁶ Conflict should not exist between developing intellectual and practical

¹⁰⁴ Gordon & Gillespie, *supra* note 51, at 114.

¹⁰⁵ *Id.* at 115.

¹⁰⁶ Leigh M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 21 (2006).

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 7.

¹¹⁰ *Id.* at 8.

¹¹¹ *Id.* at 7–8.

¹¹² *Id.* at 8.

¹¹³ Eric Mills Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 539 (1976).

¹¹⁴ *Id.* at 576.

¹¹⁵ *Id.* at 540.

¹¹⁶ *Id.* at 564–65.

lawyering skills in legal education pedagogy.¹¹⁷ Applied skills training has value because it merges problem solving and intellectual skills like interviewing, counseling, arbitration, negotiation, research, writing, advocacy, and professionalism.¹¹⁸ These are all skills used by undergraduate mock trial students.¹¹⁹ Arguably, participation in undergraduate mock trial helps students to bridge this learning divide and jump ahead of their colleagues who have not had four years of this substantive mock trial experiential learning curriculum.¹²⁰ Beginning students struggle with this new learning schema because they do not understand terms and meanings;¹²¹ something mock trial students have been exposed to for a maximum of four years. Mock trial participants are already familiar with the organizational structure of the legal text, so this is a barrier that is overcome at the undergraduate level. Mock trial students have an advantage because they already understand the language of the law while the new reader must work hard to understand the words of an opinion.¹²² Legal reading is a new discourse for the beginning law student, and the new reader has to work hard to grow past basic reading strategies.¹²³ These students lack content and context knowledge.¹²⁴ Most students do not come to law school with the necessary tools for success;¹²⁵ another barrier bypassed by mock trial participants. Mock trial students are distinguished because they come to law school already loaded with the requisite schema that facilitates logical thought in the law school context because they already have experience in the law.¹²⁶ This experience evidences itself in student capacity to efficiently read and analyze legal cases.¹²⁷ Speaking specifically about a similar experiential tool, moot courts, Lewis Ringel opined that “[m]oot court is an extremely fluid pedagogical tool which can be used for more than learning

¹¹⁷ See *id.* at 560.

¹¹⁸ *Id.* at 564–65.

¹¹⁹ See Vile & Van Dervort, *supra* note 8, at 713–14.

¹²⁰ See *infra* Figure (indicating that mock trial students in law school believe that they are enjoying an academic advantage over their peers).

¹²¹ Christensen, *supra* note 106, at 6–8.

¹²² *Id.* at 8.

¹²³ *Id.* at 9.

¹²⁴ *Id.* at 10–11.

¹²⁵ *Id.*

¹²⁶ *Id.* at 11.

¹²⁷ *Cf. id.* at 12 (indicating that the absence of a schemata impairs students' ability to read and analyze the law).

about the law or the judicial process.”¹²⁸ Mock trial competitions provide students with an opportunity to develop technical writing skills and the ability to speak effectively.¹²⁹ Students are mostly enthusiastic about these exercises¹³⁰ and report that mock trials are “educational and fun to do” and that they help to clarify the issues taught in class.¹³¹

Some scholars take issue with the value of experiential education in a law school setting. Appellate Judge Alex Kozinski in his article, *In Praise of Moot Court—Not!*, identified a number of reasons why moot court was not a good teaching tool for aspiring lawyers.¹³² He argues, in part, that there is too much of a “make-believe” quality to the cases, the winners and losers are determined by advocacy skills and not by winning on the merits of the case, and the lawyers are forced to argue both sides of the case which is antithetical to normal litigation where a lawyer argues only one side of the case.¹³³

These arguments may have some validity as they relate to preparing law students for the practice of law.¹³⁴ However, Kozinski’s criticisms of moot court also lend support to the argument that mock trial, unlike moot court, is a valuable tool in preparing students for law school.¹³⁵ This argument is supported

¹²⁸ Lewis S. Ringel, *Designing a Moot Court: What to Do, What Not to Do, and Suggestions for How to Do It*, 37 PS: POL. SCI. & POL. 459, 459 (2004).

¹²⁹ J. Lon Carlson & Neil T. Skaggs, *Learning by Trial and Error: A Case for Moot Courts*, 31 THE J. ECON. EDUC. 145, 148 (2000).

¹³⁰ Oxford Law Faculty, *Mooting: What is It and Why Take Part?*, <https://www.law.ox.ac.uk/current-students/mooting-oxford/mooting-what-it-and-why-take-part> (last visited Jan. 23, 2019) (describing moot court as a competition modeled after an appellate law practice which is primarily engaged in at the law school level).

¹³¹ Carlson & Skaggs, *supra* note 129, at 152.

¹³² Alex Kozinski, *In Praise of Moot Court—Not!*, 97 COLUM. L. REV. 178, 178 (1997).

¹³³ *Id.* at 178–79, 181–86. The first reason is the fact that a moot court advocate does not sound or act like a real lawyer. Another problem is the overemphasis on an oral argument over brief-writing. In real life, the brief is the major advocacy tool in appellate litigation but is de-emphasized in moot court. Analogous to this argument is the fact that there is not enough emphasis on the facts of the case as developed by the record below. Kozinski also points to the fact that moot court cases are always “[b]ig issue [sic]” cases heard before the United States Supreme Court; thus, focusing the attention of the participant on policy as opposed to precedent. Finally, he argues that the team concept that divides the issues is not realistic and does not allow for a uniform presentation of the case by one advocate as would be the case in an actual case. *Id.* at 178, 186–93. *See also* Vile & Van Derhort, *supra* note 8, at 712.

¹³⁴ *See* Telephone Interview with Jen, an anonymous practicing attorney (Aug. 8, 2018). Jen found that her moot court experience was helpful in her civil practice.

¹³⁵ *See* Vile & Van Derhort, *supra* note 8, at 712.

by Stuckey's observations that law schools include three forms of experiential learning in their curriculums: simulation-based courses, in-house clinics, and externships. He explains that these "pedagogies are based [on] an understanding that students must perform complex skills to gain expertise."¹³⁶ Practical courses in lawyering "make an essential contribution to responsible professional training."¹³⁷ "These courses are built around simulations of practice or law clinics involving actual clients" and can be the "law school's primary means of teaching students how to connect the abstract thinking formed by legal categories and procedures with fuller human contexts."¹³⁸ In a direct rebuttal to Kozinski, Michael Hernandez argues that moot exercises are beneficial to students.¹³⁹ Hernandez argues that brief writing skills are honed and improved upon in interscholastic competitions.¹⁴⁰ Students, he argues, gain valuable experience in appellate advocacy that mirrors real-world practices like the diversity of questions that come from experienced judges.¹⁴¹ Furthermore, students arguing both sides of a case may not be realistic but it is still a good teaching tool.¹⁴² This practice promotes professional objectivity, develops students' ability to anticipate contra arguments, and helps to develop a good habit of analyzing and anticipating all sides of an issue.¹⁴³ He also argues that through this activity students grow in the process and, importantly, build character, confidence in public speaking skills, and improve writing skills.¹⁴⁴ Hernandez concludes that more moot court is needed to train future lawyers.¹⁴⁵

Simulations of case trials also help students to understand the interaction between the law and politics.¹⁴⁶ In political science classrooms, mock trials help students understand that

¹³⁶ STUCKEY AND OTHERS, *supra* note 77, at 122.

¹³⁷ *Id.* at 123.

¹³⁸ *Id.*

¹³⁹ Michael V. Hernandez, *In Defense of Moot Court: A Response to "In Praise of Moot Court—Not!"*, 17 REV. LITIG. 69, 71 (1998).

¹⁴⁰ *Id.* at 72.

¹⁴¹ *Id.* at 73.

¹⁴² *Id.* at 73–74.

¹⁴³ *Id.* at 74.

¹⁴⁴ *Id.* at 77–78.

¹⁴⁵ *Id.* at 89.

¹⁴⁶ Nancy V. Baker, *Oyez, Oyez, Oyez: The Trials of Teaching the Supreme Court*, 27 PS: POL. SCI. & POL. 253, 253 (1994).

legal decisions are not “value neutral.”¹⁴⁷ In a simulated Supreme Court exercise, students learn how the justices decide cases, the procedural rules and mechanics that the Supreme Court operates by, how and why opinions are assigned and written, including political factors, the history of the Court, and how these outcomes impact society.¹⁴⁸ Students also learn that “social, personal, and political factors [] contribute to the outcome of a case.”¹⁴⁹ Nancy Baker highlights some of the other advantages of mock trial activities in a classroom setting:

- Students [] become personally engaged in the learning process;
- Active learning helps students comprehend and remember substantive material;
- Students become acquainted [with each other] during the exercise, leading to increased student participation through the rest of the semester;
- The format of [the] mock trial also provides an arena where particular legal issues may be debated;
- Court processes [are] dramatized;
- Oral skills [are] honed.¹⁵⁰

As mentioned above, mock trials are not solely employed in limited disciplines. They are also incorporated into the pedagogy of sociology classes.¹⁵¹ Trials in sociology courses provide good tools for students to incorporate and to promote critical student thinking.¹⁵² Students in these classes examine the “cause[s] and effect[s]” of decisions made by elites in institutions and the logic of such decisions.¹⁵³

III. INTERVIEWS

Students engaged in mock trial begin their experiential simulation before they get to law school. This early exposure may make a difference in the performance levels of mockers in

¹⁴⁷ *Id.*

¹⁴⁸ See Richard J. (Rick) Hardy et al., *In the Supreme Court Justices' Shoes: Critical Thinking Through the Use of Hypothetical Case Law Analyses and Interactive Simulations*, 38 PS: POL. SCI. & POL. 411, 411–12 (2005).

¹⁴⁹ Baker, *supra* note 146, at 253.

¹⁵⁰ *Id.*

¹⁵¹ Karraker, *supra* note 90, at 134; see also Ringel, *supra* note 128, at 459 (these exercises are utilized in “political science, media, history, sociology, journalism, art, economics, business, and the life sciences”); see also Bess et al., *supra* note 19, at 1.

¹⁵² Karraker, *supra* note 90, at 134.

¹⁵³ *Id.*

their law school and legal careers. To determine the viability of the theories examined in this paper, four former Furman University mock trial participants were interviewed for their impressions on the impact of their mock trial experiences on their law school careers. Two of the interviewees were law school graduates who are now gainfully employed as litigation attorneys. The other two students were a rising second-year law student and a rising third-year law student.

Audrey is an alumna of Furman University and a top-five ranked law school. She is currently employed as a prosecutor for the federal government.¹⁵⁴ Audrey participated in Furman's undergraduate mock trial program for four years. She competed in mock trial because she thought it would provide a training ground for learning about the law and preparing to be a lawyer by working with actual attorneys. She stayed the last two years because she had become a leader in the program and she was committed to fulfilling her leadership obligations.¹⁵⁵

Audrey found mock trial helpful in providing a framework for understanding how the law works.¹⁵⁶ For example, the term "complaint" is foreign to most law students, yet someone who participated in mock trial not only knows what document the term refers to, but also what it looks like. So, terms and concepts are not foreign or confusing to the mock trial law students, making law school concepts less challenging.¹⁵⁷

Audrey also feels that she enjoys an advantage in any activity involving oral presentations or anything having to do with the rules of evidence. "Those are the two areas where I had an advantage."¹⁵⁸ Audrey explained that she had confidence from being in circles where she constantly interacted at an undergraduate level with actual lawyers; hence, she did not question her capacity to eventually be an attorney. "Law school [is] intimidating but I had already projected myself into the court room."¹⁵⁹ For Audrey, she viewed mock trial as a better preparatory program for actual lawyering than for law school

¹⁵⁴ Telephone Interview with Audrey, an anonymous practicing attorney (Aug. 8, 2018).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*; see also Christensen, *supra* note 106, at 8.

¹⁵⁸ Telephone Interview with an Audrey, *supra* note 154; see Christensen, *supra* note 106, at 8–9. Christensen outlines the core components of a legal education (reading, writing, reasoning, and critical thinking skills). *Id.*

¹⁵⁹ Telephone Interview with an Audrey, *supra* note 154.

because law school is so removed from the actual practice of law. She felt that mock trial has a more direct correlation to being a lawyer.¹⁶⁰ She would advise high school students who are deciding whether to participate in an undergraduate program to get a preview of the practice, which is distinctive from the weighty theoretical law school process that may detract from being a lawyer.¹⁶¹ In essence, mock trial is a better tool for training lawyers.

Audrey explains that the benefit she gained from mock trial was the confidence that she could be a successful lawyer. In law school classrooms, being asked to stand up and speak was less challenging for her because mock trial hones that skill. In mock trial, you have to conduct cross-examinations and closing arguments in your first two classes. The on-the-spot training, she explains, transfers to the classroom and the courthouse where you have to address surprise issues. It gives you a certainty that you can manage this type of exposure and that you can even ask the court for time to confer with counsel or look for a document, something new litigators are hesitant to do.

In mock trial, she explains, you get your first introduction to courtrooms, cases, and rules of evidence. “It is an incubator in a loving school type [sic] setting that is not replicated anywhere else.”¹⁶² She viewed law school as the obstacle she had to get through because she had seen the other side and she knew that she could be a good lawyer.¹⁶³ She explained that for someone like her, who is a litigator, mock trial helped her because it teaches you in a pedantic, instructive, and repetitive way how to perform certain skills that law school [fails to] teach[,] like introducing evidence.¹⁶⁴ Mock trial hones these skills, and Audrey noticed that lawyers who did not do mock trial struggle with these skills in the initial stages of their careers. “There is no other space where you repetitively practice these mechanics.”¹⁶⁵

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

Jen is a graduate of a top-100 law school where she was the Editor of the Law Review in her third year and participated in Moot Court.¹⁶⁶ She scored in the 170 to 173 range on the LSAT. Currently, Jen is in an associate with a large civil defense firm; she was employed within one year of graduating from law school.¹⁶⁷ Her practice area is commercial litigation and employment law.¹⁶⁸ She learned about mock trial by participating in a mock trial camp at Furman targeting high school students. Jen “loved that activity and decided to participate . . .” for numerous reasons: she liked the competition, she felt it would help her hone her public speaking skills, she knew wanted to go to law school, and mock trial would help her determine if law was a career she would actually like.¹⁶⁹ Jen participated in mock trial all four years of undergraduate school because she enjoyed the activity and the people. She felt, however, that she maximized the benefits of undergraduate mock trial in two years but stayed in the activity because she enjoyed her leadership role, and she enjoyed helping freshmen and sophomores to learn.¹⁷⁰ Jen felt that the advantage she gained from mock trial was the ability to speak on her feet and familiarity with legal terminology.¹⁷¹ Mock trial also helped because “legal terminology did not throw me in law school.”¹⁷²

Jen did feel that some components of the mock trial experience are specific to that activity and not law school—especially the theatrical components of the competitions. She felt that the skills developed through mock trial that transferred to law school were the development of familiarity with legal concepts and substantive courses like Torts, Evidence, and Criminal Law, and developing confidence in speaking on your feet.¹⁷³ Other components of the activity, she felt, transferred better to a litigation practice, such as “the development of strategic thinking skills,” quick thinking “to cover a hearing and deposition at the last minute,” knowing where to sit in the

¹⁶⁶ Telephone Interview with Jen, *supra* note 134.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* See also Telephone Interview with Audrey, *supra* note 154. This sentiment mirrors Audrey’s reflections.

¹⁷¹ Telephone Interview with Jen, *supra* note 134.

¹⁷² *Id.*

¹⁷³ *Id.*

courtroom, “when to stand, how to address [the] judge, and the mechanics of introducing evidence.”¹⁷⁴

Jen believes in experiential learning models and feels that both experiences helped her.¹⁷⁵ Moot court helps her practice because attorneys rarely go to jury trial in a civil defense practice but you do argue motions to the court, so, moot court experience has a tighter correlation to a civil practice than mock trial.¹⁷⁶ Mock trial helped with time management in undergraduate school in a similar way to a student involved in an athletic program who is required to be disciplined in meeting the demands of academic and athletic calendars. She is very glad to have done mock trial, but she feels that college mock trial is more combative than the practice of law.¹⁷⁷ She adds, however, that the combination of undergraduate mock trial and law school moot court helps her in her practice.¹⁷⁸

Jason is a rising second-year law student at a law school ranked between fifty and sixty-five.¹⁷⁹ Jason was a Division I athlete at Furman. He joined mock trial during a break in his athletic schedule because of an injury. The break gave him an opportunity to do some other things academically.¹⁸⁰ He also interned during the summer months of his undergraduate years with a local attorney. After working in a law firm, he thought he might be interested in law, something that he had never thought of before. “It was an Aha! moment.”¹⁸¹ Jason thought mock trial would help determine if law was the right choice for him.¹⁸²

Jason never considered that mock trial would help him in law school when he volunteered to be on the team. He “participated in it for one year and learned a lot.”¹⁸³ He had to withdraw from the activity “because it conflicted with [team] practice and engaging in both activities made his days too long.” He does regret not participating in his senior year.¹⁸⁴

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* See Telephone Interview with Audrey, *supra* note 154.

¹⁷⁶ Telephone Interview with Jen, *supra* note 134.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Telephone Interview with Jason, an anonymous rising second-year law student (Aug. 9, 2018).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

“The biggest benefit from mock trial, in [Jason’s] opinion, [is] the skills developed engaging in the program, like public speaking and presentation skills that improved after he enrolled in the program.”¹⁸⁵ “Being judged for what you were saying had an impact.”¹⁸⁶ Jason also felt that participation helped him organize his writing and to be more creative. He shared that mock trial forced him to organize arguments and determine how to communicate a particular point or develop the theme of his case, aspects of mock trial that he only appreciated when he got to law school.

“One of Jason’s first-year courses in law school was *Lawyering Foundations*—in that class[,] [he] wrote memos and persuasive papers like trial briefs and appellate briefs. It was in that class that he” utilized his mock trial training the most.¹⁸⁷

“The other benefit of mock trial for [Jason] was the confidence [he] felt in law school. Mock trial helped [] because you knew [the terminology] and when you get called via the Socratic method you are already familiar with what certain terms like ‘pleadings’ mean.” Jason said that “this knowledge helps[,] especially in the beginning stages of your legal career.”¹⁸⁸

Jason compares his mock trial activity to his experiences as a Division I athlete, where he had to manage his time and where mentally you have to stay focused. In sports, he said, it is one play at a time; in mock trial, you have to make sure you are making the points you need to establish as a team. “There are a lot of elements, key things you have to get to, and if you don’t do that hurt your team and competitiveness.” These are all skills that transfer to law school. Mock trial and sports helped Jason develop the foundation to approach different legal problems by triggering that focus he learned from sports.

Cindy attends a law school ranked below seventy-five in the country. She is a rising third-year law student and lead editor of the law review at her school; she is also on the trial team.¹⁸⁹ She started participating in mock trial when she was an eighth grade student. Her Social Studies teacher was the coach for the high school mock trial program. He gave his class a choice—give an

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Telephone Interview with Cindy, an anonymous third-year law student (Aug. 9, 2018).

eight-minute speech or volunteer for one mock trial competition with the high school. Cindy really liked mock trial and decided at that point that she wanted to be a lawyer.¹⁹⁰ She enjoyed the mental aspect of the game. “How you prepare, developing presentation skills, [and] your personal appearance. For [her,] mock trial was like a game of chess. There is a lot of thought behind every aspect of the competition. You had to consider how you would appeal to the jury, anticipating your opponent’s move, trying to out-think your opponent.”¹⁹¹ After her initial foray into the game, the coach asked her to join the high school mock trial team. Cindy had the benefit of a good school team program that won the state title in her sophomore year. She had a great coaching staff consisting of her social studies teacher and two local attorneys. It was this early experience that inspired her to become an attorney.¹⁹²

She was recruited to attend Furman University at a national tournament in New York where she won an award. She liked programs “where the students were very involved with the program and where there was a sense of camaraderie [and] [g]uidance from attorney and teacher coaches.”¹⁹³

Cindy enjoyed her collegiate career for many of the same reasons that she liked high school mock trial. She also “appreciated the continued development of her oral communication skills [and] her improvement in the critical thinking aspect of mock trial.”¹⁹⁴ Cindy said she “liked the people because she had great teammates and great coaches.” Cindy participated in undergraduate mock trial for four years. She stayed in the program because she “continued to learn and to grow.”¹⁹⁵ She elaborated that in her “junior year, [she] played [a] witness role . . .” and “was coached on character development and dialect by a theatre coach”; hence, she “learned a lot about acting.”¹⁹⁶ This was different from her freshman year where she learned trial techniques and the law—“every year you learned something different.”¹⁹⁷

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* (internal quotations omitted).

In law school, Cindy has “noticed that mock trial helped to make her more comfortable speaking before groups.” One of the goals of mock trial, she elaborated, is to get you comfortable speaking in front of people.¹⁹⁸ She specifically credits mock trial for her success in her Legal Methods class where she won an award for the best oral argument; “that would not have happened without mock trial.” Cindy said that mock trial also helped some with her substantive classes like Evidence, but the biggest advantage was in writing. For instance, she learned the issue, rule, analysis, conclusion (IRAC) style of writing in high school, so she was “familiar with the style of writing and analyzing legal questions.”¹⁹⁹

“Everyone is afraid of being called on in class[,] but [she] was more confident than others because of mock trial.”²⁰⁰ Cindy explained that she “felt comfortable standing and delivering case briefs for class.” “I have been trained to do that [since] 8th grade,” she said. Cindy would advise any aspiring lawyer to participate in mock trial “because in law you have to be an advocate even if it is on paper and mock trial helps narrow down what you like and don’t like about the law.”²⁰¹

IV. SURVEY METHODOLOGY

A Qualtrics proprietary survey platform that is designed to collect and analyze data was used to conduct confidential surveys between April 5 and May 15, 2018. Survey answers are submitted anonymously and all identifying information is removed.²⁰² The survey was disseminated in two ways. First, to admissions representatives of law schools registered with the Law School Admissions Council.²⁰³ These offices were asked to encourage all students to participate in the study. The second methodology was to request that law firms allow junior associates to participate in the survey. One hundred and eighty-

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Survey methodology and results are in the possession of the author in compliance with IRB standards.

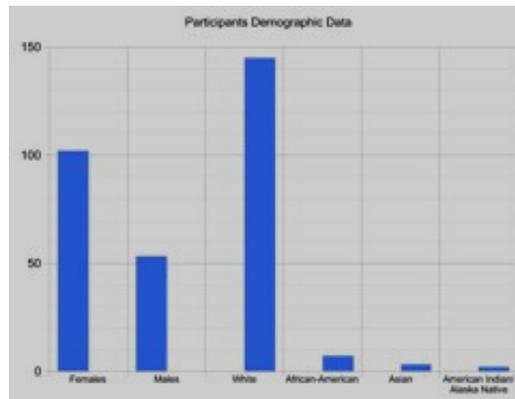
²⁰³ See Law School Admissions Council, *About the Law School Admission Council*, <https://www.lsac.org/aboutlsac/about-lsac> (last visited Jan. 27, 2019). The council administers the Law School Admissions Test (and an assembly service to disseminate applications) that most law schools rely on to determine the admissibility of applicants to their schools. *Id.*

four persons participated in the survey. The majority of the respondents who reported their gender were white females (94), followed by white males (51), Hispanic females (8), Hispanic males (4), black females (6), black males (1), Asian females (2), Asian males (1), American Indian or Alaska native females (1), and American Indian or Alaska native females males (1).²⁰⁴ The average age of all respondents was 20-29 years of age, with the preponderance of the responses from persons in the 20-29 age group.²⁰⁵ Of that number, 149 of the respondents were currently in law school.²⁰⁶ Thirty-six of those reporting were first-year students, sixty-six were second-year students, and forty-four were third-year students.²⁰⁷ Twenty-two percent or thirty-nine of the law students surveyed participated in an undergraduate mock trial program.²⁰⁸ Most undergraduate mock trial participants competed in the activity for four years.²⁰⁹

A. Survey Results

The mean cumulative undergraduate GPA of all respondents to the survey was 3.59, with most students, mock trial and non-mock trial participants, earning a GPA of 3.51, and the fewest students earning a GPA of between 2.4 and 2.7. The average SAT score for all participants was between 1200-1400.

Figure 1



²⁰⁴ See Figure 1, *infra*.

²⁰⁵ See Appendix I, *infra*, Figure 12.

²⁰⁶ See Appendix I, *infra*, Figure 13.

²⁰⁷ See *id.*

²⁰⁸ See Appendix I, *infra*, Figure 14.

²⁰⁹ See Appendix I, *infra*, Figure 15.

The same data holds true for students who participated in undergraduate mock trial programs.

Figure 2

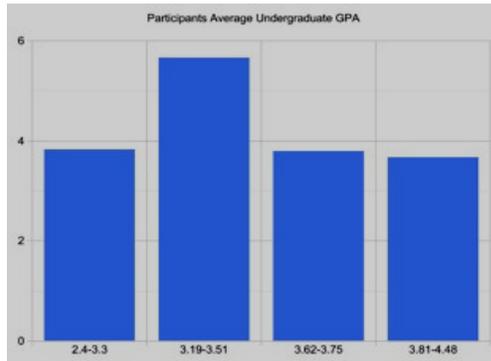
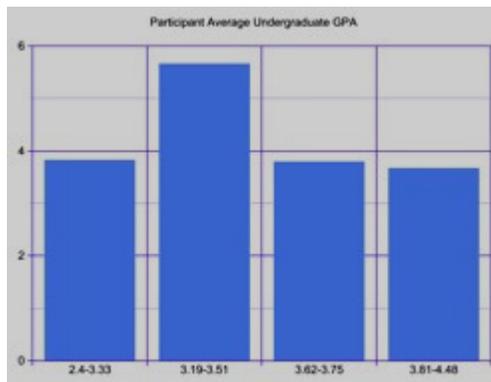
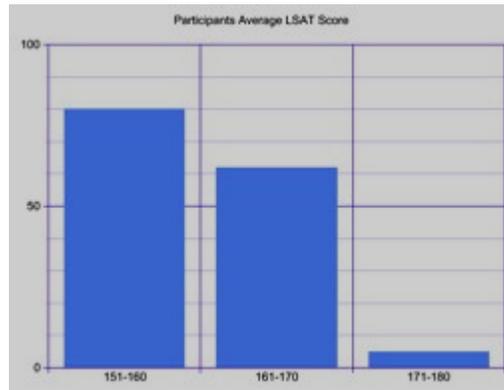
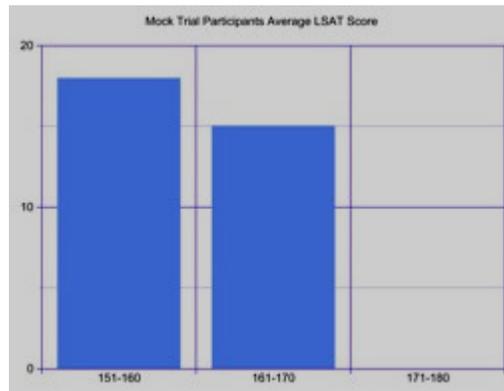


Figure 3



Of those who responded, the average LSAT score for all participants was between 151-160, followed by 161-170. Eighty students scored between 151-160 and sixty-two students scored between 161-170. Five students scored between 171-180. For mock trial participants, eighteen scored within the 151-160 range and fifteen scored within the 161-170 range.

Figure 4**Figure 5**

Another critical indicator of whether mock trial helps to accelerate the status of undergrads in law school is where each student ranks in law school. Survey results again show no significant statistical distinction between those persons who participated and did not participate in mock trial. One hundred and three students reported their law school ranking. Thirty-three students did not report their ranking and twenty of those were no longer in law school.

For those who did not participate in mock trial, twenty-six are in the top 15% of their law school class, eighteen are in the top 30%, twenty are in the top 50%, and eight are in the bottom 50%. Of the thirty-nine mock trial participants, seventeen did

not respond to this question; therefore, the data represents such a small data set as to be not significant in addressing this question. For information purposes only, seven percent of mock trial students ranked in the top 15% of their class, twenty-one percent in the top 30%, fifteen percent in the top 50%, and thirteen percent in the bottom 50%. If these numbers were statistically significant that would support an argument that mock trial students do not perform as well as students who do not participate in mock trial.

Figure 6

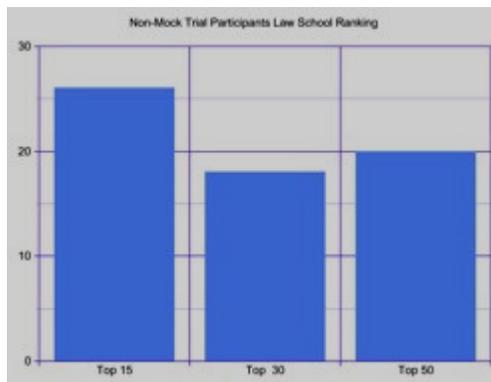
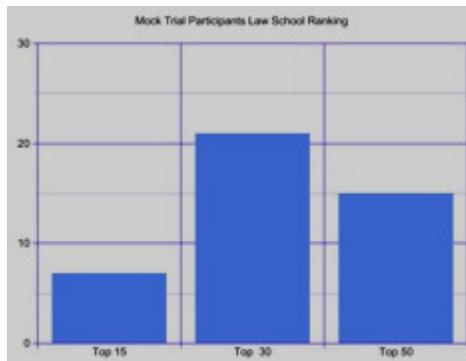


Figure 7



Students who rank high in their law school classes are often invited to participate in a law review or they can participate in a writing competition.²¹⁰ The survey asked students if they participated on law review as a way to measure academic success. One hundred and twenty-three students who did not participate in mock trial answered this question. Of that number, fifty-three, or 38%, are or were on a law review. The numbers are almost identical for mock trial students. Thirty-six of those students responded to this question and fourteen, or 39%, participated in law review. Again, the data shows no significant statistical difference between the performance of non-mock-trial versus mock trial students.

Figure 8

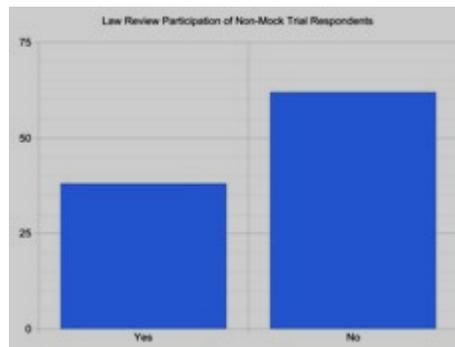
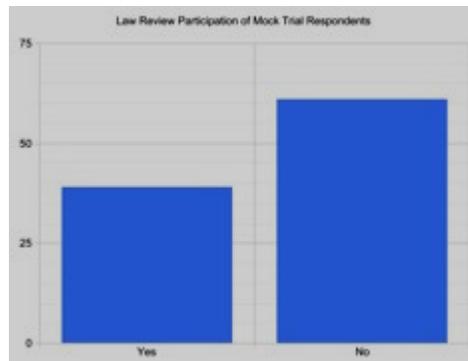


Figure 9



²¹⁰ G.M. Filisko, *Law Review: Will It Open Doors for Your Career?*, Before the Bar Blog (March 01, 2014), <https://abaforslawstudents.com/2014/03/01/law-review-will-open-doors-career/> (last visited Jan. 27, 2019).

What is statistically significant is that mock trial students do report that their reasons for participating in mock trial are law-related. Seventeen of the thirty-nine students responded that they participated because they wanted to prepare for law school and five others had law-career related responses. In sum, twenty-three of the thirty-nine students (59%) were motivated to participate in mock trial to either prepare them for law school or for a legal career. After enrolling in law school, an overwhelming twenty (57%) of the thirty-nine respondents to this question did feel that they enjoyed an academic advantage that correlated with their mock trial experience, while five (13%) were neutral and twelve (32%) felt that they did not enjoy an advantage.

Figure 10

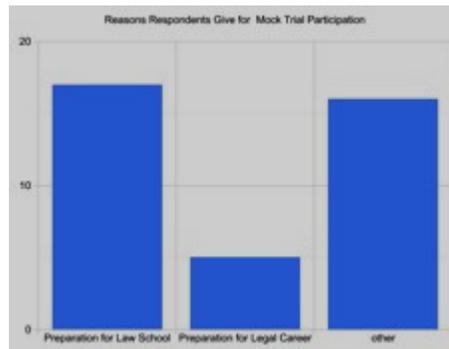
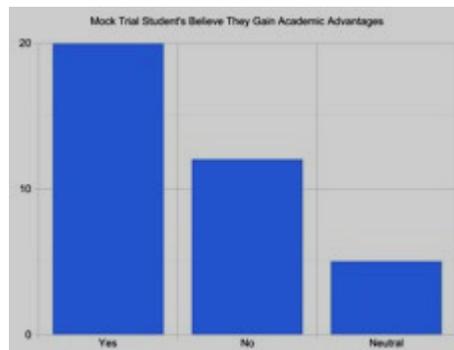


Figure 11



CONCLUSION

Mock trial is a competitive intellectual activity engaged in by very smart people. The average undergraduate grade point average of participants is 3.51 and the average SAT scores are between 1200-1400 for critical reading and math, which places these students in the 75th percentile of all test takers nationally.²¹¹ Just as mock trial students perform at a higher academic level than the majority of students who sat for the SAT and ACT, so do all law students who participated in the survey. The data shows that very smart students participate in mock trial and very smart students go to law school. The LSAT scores of students also showed similar results where the scores of all law students and students who participated in mock trial were within the same ranges. Finally, law school class ranking and law review participation, which are indicators of how well a student performs when compared to other students in their law school class, show that there is no significant difference between the academic performance of non-mock trial law school students and students who did participate in mock trial. The data shows that the majority of students who participate in mock trial do so because they think it will help them with their academic performance in law school. However, this belief is not supported by the data. Rather, the data show that there is no significant academic advantage for mock trial participants over their non-mock trial colleagues. Therefore, students may want to evaluate whether this activity will help them to achieve their goals. This conclusion is supported by the observations of Audrey, who felt that mock trial was not a good tool to prepare a student for the pedagogical process of law school.²¹²

The hindsight reflections of Audrey and Cindy support an interesting and surprising finding in the data that, while mock trial may not help a student to gain an academic advantage in law school, it does provide some advantages to students:

²¹¹ See *Total Group Profile Report*, COLLEGEBOARD (2013), <http://media.collegeboard.com/digitalServices/pdf/research/2013/TotalGroup-2013.pdf>. To be included in the 75th percentile a student must receive a score of 1170. Mock trial participants actually score higher than this total.

²¹² Telephone Interview with Audrey, *supra* note 154.

1. Students in interviews and from survey data report that they felt more confident in law school than their counterparts;
2. Students in interviews and from survey data report that they had a better understanding of legal terminology than their law school candidates;
3. Students in interviews report that they had an advantage in several substantive courses like Torts, Evidence, and Criminal Law;
4. The two interviews of practicing attorneys suggest that students benefitted most from mock trial in their litigation practices.

While participation in an undergraduate mock trial program may not catapult a student to the head of the class, the advantages to participation are meritorious. Law schools are often criticized as institutions that do not prepare students for the actual practice of law. Rather, the pedagogy is designed to hone the reading, writing, advocacy, and critical thinking skills of future counselors.²¹³ Law schools are encouraged to expand upon this survey to explore further the benefits of an experiential learning model like mock trial by expanding the reach of the survey to its students, faculty, and alumni.²¹⁴ If mock trial can serve as a high-quality engaged-learning tool where students are immersed for four years in an activity that hones the mechanical skills of advocacy, then this combination may work to benefit law students, especially first-year students, the practice of law, and the clients that are represented.²¹⁵ Students who want to be litigators in the courtroom or on paper should be encouraged to engage in an activity that replicates the Dewey “guild and apprentice” model to develop exceptional skills in applying theory to practice toward the goal of becoming excellent lawyers.

²¹³ See Nicaisse et al., *supra* note 70, at 80.

²¹⁴ See STUCKEY AND OTHERS, *supra* note 77, at 165–66. Stuckey argues that law schools should explore more experiential learning tools to train students in the practice of law. *Id.*

²¹⁵ See Christensen, *supra* note 106, at 21. This exercise addressed criticisms of law school curriculums that fail to equip students with the necessary practical skills for the practice of law. *Id.*

APPENDIX I

Figure 12

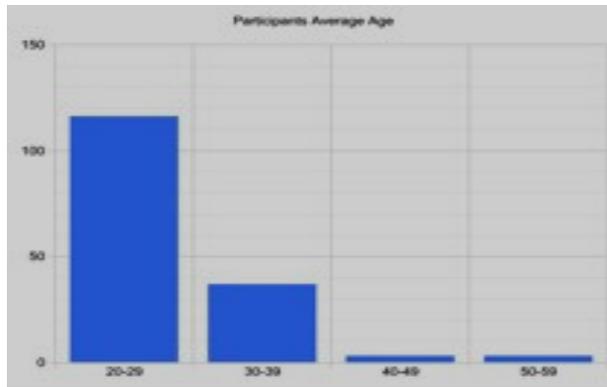


Figure 13

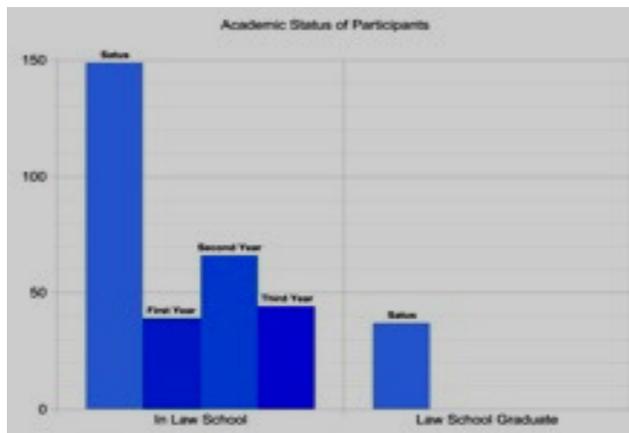


Figure 14

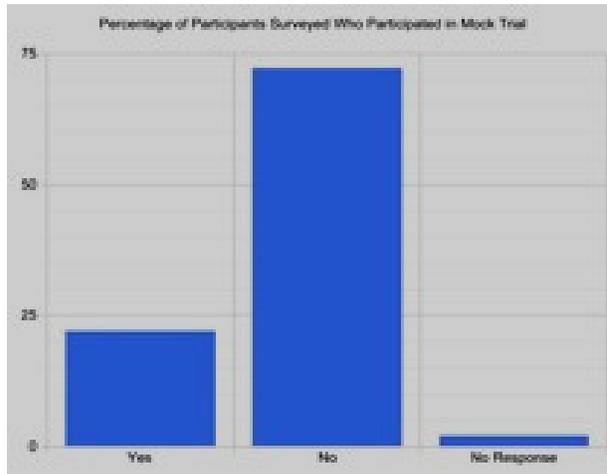


Figure 15

