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Adult Learning for Lawyers: Part 3 Expanding Training Techniques *Randall B. Christison*

In the first article in this series, I introduced adult learning theory and how it should apply to lawyers' professional development. In the second, we started down the road of developing specific training programs by systematically developing instructional goals. This article takes the next step, designing the programs to achieve those goals.

Let's assume your New York and Washington firm has announced it is merging with Blackstone, Holmes and Cicero of Los Angeles and San Diego. The litigation practice group head wants training on how to handle expert witnesses in California, especially since California does not follow *Daubert*, the Supreme Court's four-prong test for expert testimony. Meanwhile, the corporate practice group head wants to get her members up to speed on how to handle an acquisition.

You know lawyers—some in the firm, some outside vendors—who are tops in both these fields. Having read the last PDQ article, you know how to draft instructional goals, and you do so for both courses, aimed at understanding and at exercising judgment. You have made all the arrangements, ordered the pizza, made the handouts, and set the classes in motion. The day comes, the speakers deliver good lectures and panel discussions, the attendees give both classes high marks, and you smugly accept compliments for a job well done.

But two weeks later the litigation group chair calls, railing about how he had to write off seven hours because your civil procedure class graduate didn't know how to conduct an expert witness deposition in California. The associate didn't seem to understand that California doesn't follow *Daubert*. The chair grumbles something about seeing the compensation committee about your salary. You hardly hang up when the corporate practice chair calls, even more upset about how the draft agreement indemnity clause from your transaction class graduate ended up in the

trash can. She, too, says something about the compensation committee.

What went wrong? Remember the proverb set out in the last article, “Tell me, I forget. Show me, I remember. Involve me, I understand, but get me to think, I learn”? You solved part of the problem by establishing a teaching goal. You know that both classes’ content was adequate. The litigation class included a detailed lecture on *Daubert v. California’s Kelley-Frye* rule. The transactional class covered indemnity clauses at some length. But you didn’t solve the other part, how to ensure that the content was absorbed and understood. The car is pointed in the right direction. But with no map, you never get there.

The problem is in the teaching method. We assumed that lecture was the means of choice, and that if the speakers aimed for the teaching goals, we would be successful.

But goal setting is only the first step. Developing the content is likely the second. And neither works unless we take the third step, using teaching techniques calculated to reach the goals. If, for example, our goals include the ability to solve a particular problem, then why not have training that concentrates on recognizing and resolving that type of problem? That means more than hearing about the problem. And it means more than hearing how someone else solved the problem. Instead, we design a program where the participants must in fact participate, where they must solve similar problems. We design something requiring them to think.

The chart on page 3 identifies a number of commonly used techniques, each with its own appropriate use – even lectures. The challenge for the professional development professional is to design a program using the appropriate techniques. Notice I didn’t say “right technique,” for all are right in the right situation, and there are several right solutions for any given problem.

Teaching the Litigation Course

Let’s take another look at the expert witness program. Instead of a few hours of lecturing, using the typical panel discussion, we try something along these lines:

First, because everyone learns better when they have a similar level of understanding, set as a prerequisite the PLI Web-based program “Taking

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& Defending Expert Depositions” within the last six months. The instructors may then assume everyone has at least the PLI-course familiarity level. We hope they may also assume everyone has read the hypothetical we sent by email two days ago.

While people are gathering, have them take a five-minute self-graded true and false test. (See PDQ May 2004, pp. 2-5.)

The instructors start the class proper with an overview and the rules governing the role-playing to come. They then give a short lecture, preferably 15 minutes, but certainly under 30 minutes, on the instructional points. A short demonstration may reinforce the points.

The participants will then assume a role and carry out the problem set out in the hypothetical, for example, how to qualify an expert witness. For a litigation class one typically assigns roles: examiner, witness, opposing counsel, judge, observer-critiquer, the first two being essential and the remaining a matter of discretion. (I typically combine the judge and the observer-critiquer.) The instructors observe and provide guidance if needed, but otherwise allow the participants to practice and experiment.

At the conclusion, the instructor will critique the performances and lead a group discussion about what worked, what didn’t, what was learned and what is still uncertain.

The second part of the class, say, how to establish the witness’s investigation, analysis and preparation, will follow the same pattern: short lecture, role-play, group discussion and critique. The only difference is that the roles change. For instance, the judge moves to examiner, examiner

TRAINING METHODS

Type	Advantage	Disadvantage	Application	Bloom's Learning Level
Lecture	Easy preparation	Passive, aural method; very low retention	Information transfer	Knowledge
Demonstration	Visual and concrete	Passive method; low retention	Convert concept to practical application	Application, comprehension
Class Discussion	Active participation by some	Risks of off topic and single person domination; may be threatening	Airing and testing learner's ideas and understanding	Application, analysis
Small Group Discussion	Active participation by all; non-threatening	Off topic risk	Airing and testing learner's ideas and understanding	Application, analysis
Role Playing	Active. High learning and retention	Difficult preparation; off topic risk	Any skill or knowledge, especially where practice useful	Synthesis, evaluation
Case History	Active. Familiar to lawyers; realistic	Difficult preparation; time consuming	Complex situations	Synthesis, evaluation
In-Box Simulation	Active. Flexible, realistic, not time consuming	Addresses only specific problems	Where flexibility and timeliness are goals	Synthesis, evaluation, application
Games	Active. Enjoyable, low stress	Preparation requires skill; fun may displace learning	Reinforce concepts and applications	Synthesis, analysis
Computer Based	Partially active. Flexible scheduling, interactivity	Difficult, possibly expensive preparation	Repetition, trial and error	Application, comprehension, knowledge
Team Teaching	Variety; lower demand on individual instructors	Presentation unevenness	Adjunct to any other method; good for developing new instructors	That of underlying method used
Panel Discussion	Different approaches & viewpoints	Passive, aural method; low retention	Information transfer, highlighting differing methods & solutions	Knowledge, some comprehension
Projects	Realistic	Time consuming	Involves broad range of knowledge, skills and talents. Increases retention	Analysis, synthesis, evaluation

Adapted from Mitchell, *The Trainer's Handbook*, 3d. Ed. New York: American Management Association, 1998, pp. 178-191. "Bloom's Levels" refers to Benjamin Bloom, *Taxonomy of Educational Objectives*, New York, David McKay, Inc., 1956 (see PDQ, August 2004, pp. 2-4, for application to lawyer training).

to witness, and so forth. This pattern will be repeated until we've completed all the content.

The participants will then retrieve their pre-tests, and in groups of two or three, answer the questions again, and be prepared to explain their answers. The instructor can then lead the entire room through a discussion of the class content, and may use the tests as a framework. The well designed test will necessarily reflect the day's learning points.

Teaching the Transactional Class

For a transactional class, assume we are addressing drafting an acquisition agreement.

Start with a video vignette of a transaction gone wrong, with, say, a visit from a client furious that she has no claim for damages because the indemnity was drafted wrong. Now that we have the class's attention, the instructors introduce the problem's first part: an indemnity provision requiring the seller to indemnify the buyer for misrepresentation or breach of warranty.

In their materials, the participants will have the hypothetical and indemnity provisions from three different contracts. The participants break up into groups of three to decide which provision to use, and prepare to defend the choice. Then the instructor leads a class discussion on the different provisions' pros and cons, why the groups chose one over the others, and how each provision advances the disparate interests of the buyer or the seller. Because the indemnity is often negotiated, they discuss on which terms to be firm and on which to be flexible.¹

Address the remaining course content areas by repeating this pattern.

The wrap-up exercise is an in-basket simulation. Make up twenty cards, each reflecting a problem,

a place where the deal can go wrong, drafted in the form of an inquiry from the partner, the client, the other side's lawyer, the SEC, or *60 Minutes*. All are designed to be realistic and difficult, and even ethically challenging or embarrassing. Each reflects a learning point and tests the limits of the participants' knowledge.

¹My thanks to Tina Stark, principal of In-house Legal Education, New York, for her assistance in developing this segment.

Each participant draws four cards, which he or she answers -- whether to the entire class or some group depends upon the class's dynamics.

The in-basket cards not used can be used later as a booster shot. Ask the participants a week or a month later by email or in another session, how they would handle the problems. That way the class content is brought back to conscious thinking rather than lost in the foggy recesses of memory.

Summing Up

Which of the various methods do you use? You are limited only by your imagination.

Whatever you do, the less time spent lecturing, the more time is spent in learning. In whatever way you design the class, the more time the participants are wrestling with problems, the more likely they will retain the knowledge and skills sought. The more relevant the course is to the lawyers' daily practice, the more likely they will use, and thus reinforce, what they've learned. And the more they will appreciate the PD staff's value.

Maybe even the compensation committee will notice.²



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²A number of books address adult training methods. The ones I use most often are Silberman, *Active Training*, San Diego, Pfeiffer & Company, 1990, ISBN 0787939897; Renner, *The Art of Teaching Adults*, Vancouver, Training Associates, 1994, ISBN 0969731906; and Mitchell, *The Trainer's Handbook*, 3d. Ed. New York: American Management Association, 1998, ISBN 0814403417.