

ENHANCING CRITICAL THINKING SKILLS THROUGH  
MOCK TRIAL

By

Daniel J. Herron\*  
Ruth Wagoner\*\*  
Jo Ann Scott\*\*\*

I. INTRODUCTION

The variety of structures, content, and focus of University Requirements or General Education plans are as nearly as numerous and varied as the universities and colleges which require them. However, a common thread within this area of pedagogy has clearly and recently emerged: the need for these university requirement or general education courses to stress critical thinking. While most University Requirement plans retain a need for minimal coverage in traditional disciplines based in the three broad areas of social science, natural science, and humanities, regardless of the course's disciplinary topic, that common thread of critical thinking is nearly always required. As one researcher has noted, [c]ritical thinking may well be the higher education buzz word of

the 1980's and 1990's."<sup>1</sup> Clearly, this has remained true well into the twenty first century.

In our combined teaching experience of more than 60 years, we have found mock trial to be the single most effective vehicle for teaching critical thinking skills. It was not our intent to teach critical thinking skills when we started coaching mock trial. We were trying to teach students something about the law and how to be persuasive. We wanted to expose the student to application of the law using persuasive speaking skills. It turns out that the adversarial nature of the courtroom provides an excellent methodology for teaching thinking, speaking, and listening skills.

We are classroom teachers and coaches of mock trial teams that compete nationally. We, along with other mock trial coaches, are convinced by our students' performances that mock trial experience teaches analytical, evaluative, and communicative skills. Since intercollegiate mock trial is competitive in nature, success is driven by the students' mastery of these skills. Mock trial is an effective strategy for teaching critical thinking because it is interactive in a public setting. This sets it apart from pencil and paper tests, case studies, and papers. In a mock trial, students demonstrate their ability to think within an adversarial system in front of a judge and their peers. It is the combination of interaction between students and the public nature of mock trial that make it a most effective vehicle for teaching thinking, speaking, and listening skills. The public display of interactive elements raises the stakes engaging the student ego that encourages the students to do well.

---

\* Professor, Business Legal Studies, Dept of Finance, Miami University, Oxford OH

\*\* Professor, School of Communications, Bellarmine University, Louisville KY

\*\*\*Professor, Department of Political Science, Ohio Northern University, Ada OH

<sup>1</sup>Caryn L. Beck-Dudley, *Understanding Reflective Judgment and Its Use in Legal Courses*, 16 JOURNAL OF LEGAL STUDIES EDUCATION 229 (1998).

This paper argues that intercollegiate competitive mock trial competition, as currently defined and administered by the American Mock Trial Association,<sup>2</sup> may serve the need to interject and actually teach critical thinking skills in a course that will satisfy most general education criteria.

## II. IDENTIFYING A WORKING DEFINITION OF CRITICAL THINKING

### A. *Traditional Critical Thinking Approaches*

There seems to be relatively, and remarkably, a general agreement in the literature regarding the concept of critical thinking itself. As early as 1939 Watson and Glaser argued that

[c]ritical thinking involves a persistent effort to examine any belief or supposed form of knowledge in the light of evidence that supports it and the further conclusions to which it tends, as well as the ability to recognize problems, to weigh evidence, to comprehend and use language with accuracy and discrimination, to interpret data, to recognize the existence (or non-existence) of logical relationships between propositions, to draw warranted conclusions and generalizations and to test the conclusions by applying them to new situations to which they seem pertinent.<sup>3</sup>

In 1956, Benjamin Bloom articulated his now famous and generally accepted taxonomy regarding critical thinking that

---

<sup>2</sup>The American Mock Trial Association, 801 Grand Avenue, Suite # 3140, Des Moines IA 50309; founded 1985.

<sup>3</sup>Garside, Colleen. *Look Who's Talking: A Comparison of Lecture and Group Discussion Teaching Strategies in Developing Critical Thinking Skills* COMMUNICATION EDUCATION pp. 212-227 July 1996.

espoused a linear or sequential approach of knowledge=>comprehension=>application=>analysis=>synthesis=>evaluation.<sup>4</sup> Bloom's taxonomy has formed the basis for most variations in the attempt to define critical thinking. Ennis, for example, argues that reasonable reflective thinking that is focused on deciding what to believe or do includes such critical thinking processes as formulating hypotheses, alternative ways of viewing the problem, questions, possible solutions, and plan for investigating something<sup>5</sup>.

The pinnacle, or ultimate, achievement and simultaneous skill in nearly all critical thinking taxonomies, it seems, is the evaluative aspect and the application of that evaluation to potential or prospective situations. Even taxonomies which vary in definitions or even specific methodologies do not vary in the identification of a final evaluative determination since, as Richard Paul, argues the plurality of definitions is not problematic, and in fact, is advantageous because it helps to maintain insights into alternative perspectives and helps us to escape the limits of separate definitions.<sup>6</sup>

Nearly every identified critical thinking taxonomy includes an evaluative function either as a fundamental activity interwoven throughout the taxonomy or as a culminating dynamic. Descriptions or action words or phrases such as: evaluating evidence, drawing conclusions, judging, examining assumptions, interpreting information, determining if a reason is relevant, drawing inferences, detecting bias, or weighing evidence are typical.<sup>7</sup> The point of this paper is not to argue the merits of the

---

<sup>4</sup>BENJAMIN S. BLOOM (ED.), *TAXONOMY OF EDUCATIONAL OBJECTIVES* 201-207 (1956).

<sup>5</sup>Garside, Colleen, *op cit.*

<sup>6</sup>*Id.*

<sup>7</sup>Barry Beyer, *Critical Thinking Revisited*, *SOCIAL EDUCATION* 273 (April 1985); while nearly fifteen years old, this article gives a fairly comprehensive overview of eight different critical thinking taxonomies from a variety of sources. These

different critical thinking taxonomies, but instead to identify one that may be used to evaluate the intercollegiate mock trial experience.

Keeley and Browne give the most succinct definition of critical thinking in distilling it down to [c]ritical thinking is the process of reacting with systematic evaluation to what one reads and hears.<sup>8</sup> Picking up on this concept Kubasek and Browne add that critical thinking has two components: a technical skill component and an attitudinal component.<sup>9</sup> The technical skill component requires the student to first identify the structure of the argument: issue, conclusion, and reasons; the attitudinal component is the application of an evaluative set of processes to that structure and argument.<sup>10</sup>

### *B. Reviewing Traditional Critical Thinking Approaches to Law Cases*

Critically thinking about law cases, whether in the classroom or in actual legal/judicial practice, is remarkably similar to generally accepted concepts of critical thinking regardless of disciplinary context.<sup>11</sup> However, there had been debate that legal critical thinking omits the highest cognitive skill in Bloom's taxonomy: the emphasis on evaluation.<sup>12</sup> The traditional methodology for law case critical thinking, is commonly identified as FIRAC: Facts,

---

taxonomies from the Beyer article are attached as an appendix to this paper for reference only.

<sup>8</sup>M. NEIL BROWN AND STUART M. KEELEY, *ASKING THE RIGHT QUESTIONS: A GUIDE TO CRITICAL THINKING 2* (4th ed. 1994).

<sup>9</sup>M. Neil Browne and Nancy Kubasek, *Integrating Critical Thinking into the Legal Environment of business Classroom*, 14 *JOURNAL OF LEGAL STUDIES EDUCATION* 37 (1996).

<sup>10</sup>*Id.*

<sup>11</sup>This similarity supports the hypothesis that the teaching of *law* by definition includes the teaching of *critical thinking*; but this conclusion is premature at this juncture of the paper.

<sup>12</sup>Browne and Kubasek, *op cit.* 38.

Issue(s), Rule of law, Application of the rule of law, Conclusion of the court.

While FIRAC seemingly lacks a readily identifiable evaluative step, the process that FIRAC initiates will, if fully developed and applied, evolve an evaluative step beyond the mere identification of the conclusion of the court. This evaluative step is essentially the reflective judgment component of a critical thinking taxonomy. Beck-Dudley notes that [i]n reviewing the critical thinking literature it becomes apparent that most of the critical thinking inventories look at a students ability to interpret, analyze, evaluate, infer, communicate, and reflect.<sup>13</sup>

In integrating legal education with critical thinking models, Beck-Dudley relies on King and Kitchener's stages of learning.<sup>14</sup> King and Kitchener developed seven stages of reflective judgment in which each stage examines how an individual evaluates evidence before deriving an answer to a question or problem posed. Beck-Dudley argues that reflective judgment is distinguished from critical thinking by its focus on an individual's epistemic assumption and in assessing how people reason about skill-structured problems.<sup>15</sup> However, it seems that reflective judgment is necessarily part-and-parcel of the evaluative component of critical thinking in that it views how information is evaluated and interpreted.

Beck-Dudley also argues that this reflective judgment is a crucial step in the overall teaching and understanding law and law cases in the classroom. Since so much of law cases pertains to the idea of weighing and evaluating evidence and conclusions drawn from that evidence, Beck-Dudley found in her classroom experience that

---

<sup>13</sup>Beck-Dudey, *op cit.* 230

<sup>14</sup>PATRICIA M. KING AND KAREN STROHM KITCHENER, DEVELOPING REFLECTIVE JUDGMENT (1994).

<sup>15</sup>Beck-Dudley, *op cit.* 231

[a] standard, case analysis approach to the course does not produce increases in levels of reflective judgment...and that the course needed to be refocused to incorporate the instructional goals of stage three and stage four learners. The goals for a stage three learner are to learn to use evidence in reasoning to a point of view and learn to view their own experiences as one potential source of information but not as the only valid source. The learning goals for stage four learners are to learn that interpretation is inherent in all understanding and that the uncertainty of knowledge is a consequence of the inability to know directly and learn that some arguments can be evaluated as better within a domain on the basis of adequacy of the evidence.<sup>16</sup>

Beck-Dudley's work seems to dispel the long-held notion that traditional legal thinking and analysis must necessarily be devoid of the evaluative step. In fact, her work argues and supports the contrary notion: legal critical thinking must, by definition, include a distinct and pervasive reflective, i.e. evaluative, judgment dynamic. In searching then for a critical thinking model to use in analyzing intercollegiate mock trial experiences, we look for a generally accepted taxonomy which incorporates as many identifiable and discreet functions as possible and one that incorporates a detailed evaluative aspect as exemplified in the emerging literature on legal critical and reflective thinking.

Beyer's taxonomy fits such a description. The traditional FIRAC model can be integrated into Beyer's taxonomy; yet, Beyer's model retains the inter-disciplinary and trans-disciplinary nature of critical thinking taxonomies in that it may be applied to a variety of disciplines or even serve as an overarching model for a variety of

---

<sup>16</sup>*Id.* 236, citing to King and Kitchener.

disciplines. Beyer characterizes critical thinking as involving careful, precise, persistent and objective analysis of any knowledge, claim or belief in order to judge it's validity and/or worth.<sup>17</sup> Beyer continues by identifying ten discrete critical thinking skills in a similar sequential fashion as Bloom's taxonomy. Beyer offers these sequential steps:

- 1) distinguish between verifiable facts and value claims;
- 2) determine the reliability of the source;
- 3) determine the factual accuracy of the statement;
- 4) distinguish relevant from irrelevant information, claims or reasons;
- 5) detect bias;
- 6) identify unstated assumptions;
- 7) identify ambiguous or equivocal claims or arguments;
- 8) recognize logical inconsistencies and fallacies in a line of reasoning;
- 9) distinguish between warranted and unwarranted claims;
- 10) determine the strength of the argument.<sup>18</sup>

Beyer's taxonomy provides a sequential approach while incorporating the evaluative aspect. It is this model then that we will utilize. Against this model we will compare characteristics of the intercollegiate mock trial competition.

### III. INTERCOLLEGIATE COMPETITIVE MOCK TRIAL

#### A. *The American Mock Trial Association*

Mock Trial is an intercollegiate competition among schools that are members of the American Mock Trial Association (AMTA). Today, 350+ schools nationwide, some of which have as many as five teams, are members of AMTA. Member schools include

---

<sup>17</sup>Garside, Colleen, *op cit.*

<sup>18</sup>Beyer, *op cit.* 272.

nationally prominent institutions such as Harvard, Yale, Michigan, Princeton, Stanford, UCLA, University of Chicago, and University of Maryland, and NYU, among many others.

### *Cases and Rules*

At the beginning of each year, teams are given a fictional legal case, complete with witness affidavits and applicable case law. Mock Trial uses a slightly simplified version of the Federal Rules of Evidence. The case can be either criminal or civil, alternating each year. This variation gives students insights into two different fields of law. As with any legal case, there is a prosecution (or, in a civil case, a plaintiff) and a defense. Students from one member school represent one side and compete against students from another school who present the opposing side. In competition, teams represent both the plaintiff and defendant in successive rounds.

### *B. Trial Structure and Procedure*

#### *Opening Statements.*

Every trial begins with an opening statement from each side. Opening statements serve as road maps for the judge and jury; they detail the information to be provided by each of the witnesses who will testify.

#### *Case-in-chief.*

Each side then presents a case-in-chief (plaintiff or prosecution first) in which three witnesses testify. The witness testimony is elicited through a question/answer sequence between the examining attorney and the witness. All testimony is governed by the Rules of Evidence; if an objection is raised, testimony that is speculative, irrelevant, prejudicial, based on hearsay, etc. may be ruled inadmissible by the presiding judge. During the case-in-

chief, opposing counsel has the opportunity to cross examine witnesses in order to damage their credibility or minimize the impact of their testimony thereby helping to prove their own case by disproving the opposing side's case. The prosecution (or plaintiff) always bears the burden of proof—it is their responsibility to prove their case to the court. The defense must defend against the allegations of the plaintiff in their case-in-chief.

### *Closing Arguments.*

To conclude a trial, attorneys from each side give closing arguments, in which they summarize the evidence presented and use it to argue their case. Only evidence that has been brought forth in the trial may be used to support closing arguments; evidence that has been stricken from the record will not be considered by the judge.

### *Scoring*

Mock Trial is not won or lost based on the merits of the case—whether or not the prosecution (plaintiff) meets its burden—but on how well the student participants perform and how clearly they articulate their case theory through witness testimony. Undergirding this policy is the realization that the facts in each case are slanted in some way, whether toward the defense or prosecution (plaintiff), thus making it easier for that side to win on the merits of the case. To avoid potential bias, the students' performances, not the overall outcome of the case, are the basis for determining the winner. Each participant is scored on a 1-10 basis, with a score of 10 describing a student who functions "like an experienced attorney" or for a witness who give a "convincing performance, effectively advancing the case." These scores assess the effectiveness of each student presentation—opening statements, each direct examination, each cross examination, each witness performance on direct and cross examination, and closing arguments-- before the court. The participants are scored by two

judges (often trial lawyers or judges). Each judge is given a ballot, on which a total of 14 functions for each team are evaluated. Then, scores on the ballots are tabulated, and the team scoring more points is awarded that ballot. At the end of a four-round tournament, eight ballots have been scored for each team. A team's record is determined by how many ballots they have been awarded.

### *Tournament Competition*

Most tournaments consist of four rounds of competition. After the first round, teams will have a record based on whether they have won, lost, or tied the two judges' ballots from that round. All mock trial competition is power-paired, which means that teams are paired for the following round based upon their record from previous round; teams with similar records meet.

### *Awards and Honors*

At the end of a tournament, awards are given based on team and individual performances throughout the tournament. Team awards are based strictly on a team's record at the end of a tournament. In the case of a tie, a tie-breaking procedure, which looks at such variables as strength of wins and losses, is employed. Individual awards are given to outstanding witnesses and attorneys. To earn an individual award one must usually earn at least 16 points. Points are awarded based on where an individual finishes; five points are given for first on the bottom of the ballot, three points for second, and one point for a third place finish. Scores for performance on prosecution (plaintiff) and defense are kept separate. These points are then added to arrive at a score for each individual. A score of 20, a perfect score, would reflect four first-place finishes at the bottom of the ballot as a witness or an attorney for one side. Participants who exceed the minimum point score needed for an award are recognized as all-tournament attorneys or witnesses. In national tournament competition, the awards are

given All-American status similar to those awarded in college athletics.

### C. *Mock Trial and Critical Thinking*

Mock trial is an effective strategy for teaching critical thinking because it is interactive in a public setting. In mock trial, students demonstrate their ability to think within an adversarial system in front of a judge and their peers. It is the combination of interaction between students and the public nature of mock trial that make it extremely well suited to teaching thinking, speaking, and listening skills.

The constraints of the courtroom force students to present their case in the form of questions and answers using both their own and the opposition's witnesses. Objections may be made and answered. The trial requires interaction to tell the story. Mock trial is dynamic in that a team may have a strategy they prefer but they must adapt to the witnesses called, the other team's evidence, and the rulings of the court. In this sense mock trial does not have the same limitations as a paper and pencil test, an essay, or a case study. Those are solitary acts that allow the student to remain aloof, an observer. Because mock trial is interactive, the student internalizes it and the competitive element raises the stakes producing a much higher level of ego involvement. Students have an incentive to do well in front of their team, their opponents and the judges who represent a professional and distant audience.

Students gain knowledge of rules and the facts of a case, learn how to frame issues, and develop case theory. There is a progression which produces direct and cross questions, develops narrative, considers counter arguments and appropriate responses or reactions which results in extemporaneous modification of strategy depending on the court's rulings and opposing counsel's case. This activity manifests itself through group dynamics, audience analysis, and performance. This is not to suggest that these

elements proceed in an orderly or linear fashion, rather than that there is a symbiotic relationship between and among them that makes it all the more complex and interesting. This is a developmental process but it is not necessarily discrete.

#### IV. INTERFACING OF A CRITICAL THINKING MODEL AND COMPETITIVE MOCK TRIAL

##### A. *Beyer's Model*

Beyer's Model of critical thinking can be used to illustrate how effectively mock trial teaches critical thinking skills.

##### *Distinguish Between Verifiable Facts and Value Claims.*

Attorneys use questions to elicit both facts and claims and to differentiate between them. For example, an attorney may ask an expert witness if the product in question was exposed to the elements for several days. The answer would be a verifiable fact. If the expert is then asked if he was surprised the product was corroded and he answers no, going on to explain why he was not surprised, the expert has made a value claim as to the reason why the product was corroded.

##### *Determine the Reliability of the Source.*

Attorneys spend part of every direct establishing why the court should believe the witness, while opposing attorneys look for bias or limitations that might affect the believability of the witness.

##### *Determine the Factual Accuracy of the Statement.*

Through a series of questions, an attorney can compare testimony by this witness to their own affidavit and to the testimony of other witnesses and or documents.

*Distinguish Relevant From Irrelevant Information, Claims or Reasons.*

In mock trial the standard for relevance is “any evidence which makes the existence or nonexistence of a fact necessary for the resolution of the case more or less probable.” This standard is used to determine what facts should be elicited from a witness as well as what material is objectionable on the grounds of relevance. In mock trial, relevance lies in the subjective opinion of the ruling judge so information that is entered into evidence in one trial may not be accepted in another.

*Detect Bias.*

Attorneys look for any advantage a witness may gain by telling a particular version of events. The court will allow a crossing attorney wide latitude in exploring bias. Fact witnesses as well as expert witnesses are questioned about any benefit they might receive for their testimony. For example, a defendant pleading self-defense has an incentive to describe the alleged attack as vicious and unexpected.

*Identify Unstated Assumptions.*

From a pool of 8-9 affidavits, teams select witnesses immediately before a trial with the plaintiff choosing first then alternating until each side selected three witnesses. Teams have some sense of the case theory of their opponents based on the witnesses they selected. For example, if the plaintiff does not call a witness who is the author of a report, the defense may assume the plaintiff will try to garner that testimony from another witness.

*Identify Ambiguous or Equivocal Claims or Arguments.*

Much of a trial is spent clarifying these types of statements from witnesses. Attorneys ask questions of their own witnesses usually

trying to create an impression of certitude. When crossing witnesses attorneys try to show there are other possibilities, the witness is not absolutely sure; various factors may have limited the witness' ability to know. For example, a witness may note that the date on a memo preceded the event in question. This may call the legitimacy of the memo into question.

*Recognize Logical Inconsistencies and Fallacies in a Line of Reasoning.*

If the defense is arguing self-defense, the prosecution might well point to the lack of cuts or wounds that one would expect if the defendant had been attacked. In a civil case, if a defense attorney argues that a plaintiff expert is not credible because of a prior relationship with one of the parties it is then inconsistent to present a defense expert who draws the same conclusions.

*Distinguish Between Warranted and Unwarranted Claims.*

If a business is claiming their product exceeds industry standards, the plaintiff may respond by arguing that if one failure resulted in the death of his client's spouse it is not an acceptable rate of failure. Plaintiff is rejecting industry standard as acceptable to the reasonable person. An attorney may try to argue in closing that the company had a duty, that there was a breach, and a defective product, therefore the company should pay. This overlooks the third element of the law that the breach is the cause of the injury and as such the conclusion that the company should pay is unwarranted

*Determine the Strength of the Argument.*

In closing arguments attorneys address the strength of their own case and the weakness of the other side in light of the relevant law. When evaluating the opposing argument, an attorney may mention the paucity of evidence offered, the possibility of multiple

interpretations of this same evidence, and the inconsistencies between the claims made in opening statement and the evidence presented. In persuading the court of the strength of her own argument counsel may direct the judge's attention to points made in testimony that support her opening statement. Counsel may also enumerate the many pieces of evidence that lead to the ruling for which she is asking the court. The standard in evaluating argument is always the applicable law.

Beyer's model can also be grouped into three categories. Mock trial is an effective vehicle for teaching communication skills, courtroom constraints, and argumentation.

### *B. General Communication Skills*

#### *Group Dynamics.*

Mock trial requires collaboration between and among attorneys and their witnesses. Even if one person makes all the decisions, they cannot implement them without the active involvement of their teammates. Assume that the prosecution is arguing that the defendant had time to call the police before she shot her son. An effective team will look for opportunities to show the defendant wasn't near a phone, her son surprised her with his attack, and the yelling was loud but did not go on for very long before the shot, etc. Both attorneys and witnesses work to add testimony that supports that position, either by asking particular questions or answering in such a way as to support the theory. Additionally, each student has to perform and that performance is subject to interference and change. If the students don't all know the case theory they cannot adapt.

#### *Audience Adaptation.*

Team members have to adapt to the other team's theory of the case if possible as early as the opening statement. The defense opening

should refer to points of agreement or contrast with the defense opening. Effective closing arguments must reflect the testimony of opposing witnesses. Participants must also adjust to the court's rulings. Testimony that is admissible in one trial may not be heard in another. Strong attorneys have several strategies for trying to get evidence crucial to their case into evidence.

*Speaking.*

Opening statements and closing arguments provide opportunities for students to give speeches. During the trial, attorneys and witnesses pay attention to the language both they and the other team use; by paying attention, attorneys may preclude a given series of questions and answers.

*Listening.*

If you don't listen in mock trial you will lose. Judges remember what is said in opening statements and hold attorneys to those assertions in closing arguments. The court penalizes those who make claims in closing argument that they did not prove. Attorneys should attend carefully to their own witness' answers to make sure the necessary facts are made known to the court. Opposing witnesses may claim to know information not in their affidavit. If they do, it should be brought to the court's attention that this information, if relevant and important, was omitted from the affidavit and the witness is only now bringing it to the court's attention. One of the most effective uses of careful listening is to turn the opposition's words against them.

*C. Courtroom Specific Skills*

*Constraints of the Courtroom.*

To function effectively in the courtroom, students must learn how to ask questions on direct and cross-examination. They also

develop some understanding of objections. Most teams use relevance, hearsay, narration, leading, asked and answered. These customs of the courtroom are new to most undergraduates so students have to learn to introduce facts and evidence through witnesses rather than their own testimony.

*The Adversarial System.*

Students are ill prepared for coping effectively with confrontation in a public setting. In a trial, they may have to fight to admit every piece of evidence. For students used to arguing their case on paper, the adversarial nature of the courtroom is a rude awakening. By arguing objections, students learn the value of thinking quickly of relevant responses and alternative strategies; while, at the same time, controlling their tempers.

Arguing objections allows students to show how the Rules of Evidence interact. For example, a witness may have information from a document that plaintiff's attorney is trying to enter as evidence. The defense may object on the grounds that the document is hearsay until it is entered into evidence. Plaintiff responds that the document is not available, to which the defense responds that opposing counsel has then violated the rule requiring a fair and accurate copy be offered to the court. Another example involves witness credibility. Plaintiff's counsel may ask questions of a witness concerning prior bad acts. Usually this is not permitted but if those prior bad acts are relevant to the witness' honesty, or lack thereof, the court may allow it under the rule that "credibility is always an issue." (AMTA Rule 602).

In a courtroom, attorneys and witness are interrupted by opposing counsel and/or the judge and told they may not continue a given line of questioning. It is up to the attorney, with the help of the witness, to find a different way of eliciting the information without raising the same or another objection. A trial requires students to perform; it is different than giving a speech because attorneys and

witnesses have to interact with others to do their own piece so their success is dependent in part on their ability to interact.

### *Argumentation*

We know that from the real practice of law that objections rarely present drawn out arguments before a judge. However, in mock trial the cases are created with a fairly neutral fact pattern. This often produces evidence objections that can either be sustained or overruled depending on the student's ability to argue. As the purpose of mock trial is education we often have judges using these objection arguments to probe the depth of knowledge of the participants.

On a traditional test students may be asked to argue in the form of an essay answer. Even though such answers require higher order cognitive skill, the student argues in a vacuum. The answer is not subject to other's scrutiny in the process of building the case. In mock trial arguments are properly directed solely to the bench. The bench is encouraged to challenge the validity of the argument being made. Opposing counsel and the bench itself are often responsible for the development of the argument. For example, the bench may rule that an objection is overruled "on those grounds." This acts as a clear suggestion that the bench will entertain other objections to the testimony. So the judge often acts as a changing force for the attorney's response. When making an objection, opposing counsel determines the content of counsel's response. As additional objections are often made during the argument over the original objection attorneys are forced to continue to adapt the criteria of relevance of their argument. Mock trial argument construction is more organic than essay exams in that the questions change during a trial. The interactive element of mock trial provides immediate feedback and requires interaction.

V. CONCLUSION

For all these reasons, mock trial is an excellent vehicle for teaching critical thinking skills and affords students a unique opportunity to cultivate these skills.

