



## Part III: Faculty Orientation and Training Materials



American Board  
of Trial Advocates









## Part III: Faculty Orientation and Training Materials



American Board  
of Trial Advocates





# Orientation for Volunteers and Program Faculty

## Overview

<b>1:00 p.m.–1:15 p.m.</b>	Welcome Remarks & Introduction to the program
<b>1:15 p.m.–1:30 p.m.</b>	Litigating with Professionalism (American Inns of Court representative)
<b>1:30 p.m.–2:00 p.m.</b>	Program Overview (goals, schedule, techniques)
<b>2:00 p.m.–2:30 p.m.</b>	Discussion of Case
<b>2:30 p.m.–3:15 p.m.</b>	Lecture/Demonstration of Opening Statement (ABOTA representative)
<b>3:15 p.m.–3:30 p.m.</b>	Break
<b>3:30 p.m.–4:00 p.m.</b>	Review of critique methodology
<b>4:00 p.m.–4:15 p.m.</b>	Schedule
<b>4:15 p.m.–4:45 p.m.</b>	Roles & Responsibilities
<b>4:45 p.m.–5:00 p.m.</b>	Q&A
<b>5:00 p.m.</b>	Adjournment

## Materials

- PowerPoint (with talking points)
- Article, “Civility Matters”
- Case Materials
- Faculty Responsibilities
- Critiquing Guidelines
- Trial Academy Trial Procedures

*[It is suggested that the orientation be held the week prior to the week that the first weekend program is held.]*



# Faculty Orientation Schedule & Content

## **1:00 p.m.–1:15 p.m. Welcome Remarks & Introduction to the program**

- The players
- Need for program
- Based on NITA/ABOTA format
- Abbreviated week to weekend

## **1:15 p.m.–1:30 p.m. Litigating with Professionalism** *(American Inns of Court representative)*

- What Is Professionalism?
- Action Speaks—Cultivating Professionalism by Mentoring
- Developing Goals and Programs To Enhance Mentoring
- A Call to Action—A Vigorous Movement Pushing Ahead
- How this program fits in

## **1:30 p.m.–2:00 p.m. Program Overview** *(goals, schedule, techniques)*

- Cover the basic trial skills:
  - Voir dire
  - Objections
  - Offering of exhibits
  - Opening, DX, CX, Closing
- How the program works:
  - Lecture/demonstration of skill
  - Time to prepare
  - Student Perform 10-15 minutes
  - Public critique
  - Private video critique

## **2:00 p.m.–2:30 p.m. Discussion of Case**

- They should review in advance of the orientation
- Overview of problem and fact pattern
- Discuss points that they will look for in each section
- Participants will have materials before the program; not provided onsite *(saves on printing costs)*
- Anticipating questions

## **2:30 p.m.–3:15 p.m. Lecture/Demonstration of Opening Statement** *(ABOTA representative)*

- Technique is a mixture of both lecture and demonstration
- Free to structure like you want as long as basics covered
- Refer to the case problem
- OK to offer exhibits—be mindful of time

## **3:15 p.m.–3:30 p.m. Break**

# Faculty Orientation Schedule & Content *cont'd*

## **3:30 p.m.–4:00 p.m.    Review of critique methodology**

- Faculty should be provided a copy of the critique document in advance of orientation

## **4:00 p.m.–4:15 p.m.    Schedule**

- Week 1:
  - Friday
  - Saturday
- Week 2:
  - Saturday

## **4:15 p.m.–4:45 p.m.    Roles & Responsibilities**

- They should be provided a copy of the Faculty Responsibilities document in advance of orientation
- Court room attire
- Time is critical—role of “room coordinator”
- No rigid format for critique but pay attention to reviewed guidelines
- Parking
- Attendance—critical! We need back-ups...can't do it if there's a shortfall in faculty.
- Last day trials (review)
- Determine who is doing what

## **4:45 p.m.–5:00 p.m.    Q&A**

## **5:00 p.m.    Adjournment**

*[More details and information provided in the Orientation PowerPoint provided separately.]*



# Faculty Responsibilities

1. Time is short—there's a lot to accomplish in a limited time. The timekeeper role is crucial for this program. If only one portion goes over, it has a cascading effect throughout the rest of the program. Please be cognizant of time and staying on track. It is a good idea to let everyone (students and faculty) know that you will be keeping track of time and will give the appropriate signal/code for when they need to wrap it up.
2. When objections are allowed, assign a faculty member to play the judge who will rule on objections.
3. To figure how much time is to be allotted to each student for both performance and critique, determine the number of performances and divide into 60 minutes. The standard number is two critiques per student (unless you have students missing from your group). If you have more than two faculty members in the room, designate which will give the critiques for which student. Don't forget to include yourself!
4. Assign someone to keep track of time. You have about 10 minutes per student for their performances. Total critique time is 5 minutes for both critiques.
5. If there are not explicit instructions in the schedule, you may decide how to proceed through the group of students. You may choose to take whomever volunteers to go regardless of side, you may prefer plaintiff/defendant, plaintiff/defendant, or both plaintiffs, both defendants.
6. Breaks are built into the schedule, but you should make it clear that students and faculty can come and go as is necessary for them.
7. Ensure that faculty follow the critique guidelines. We want to make sure that the feedback is helpful and well-received. Every personality is different and some people may be more sensitive than others and we don't want people to feel inhibited or shut down. It is important to ensure that the critiques are not delivered in a harsh or embarrassing way.
8. War stories can be good teaching tools, but keep them brief. The students love them, but sharing stories will take up precious performance time. Better to save them for the coffee breaks!
9. Be careful about getting sidetracked with questions from the students. You might suggest tabling questions until the end and take them up then.
10. Keep things moving and on time. Do not let over-long critiques of the early performers short-change the time available for the last participants to perform.



# Critiquing Guidelines For Faculty

*Contributed by Professor Fred Moss (ret.), SMU-Dedman School of Law, Dallas, Texas*

The NITA Method of critiquing trial skills exercises was developed after decades of experience and experimentation. This format delivers the most efficient and effective critique practicable given the time constraints in a “learning by doing” skills training program.

## OVERVIEW

The critiquing method assumes:

- One to two faculty are critiquing the performances of several persons in a limited period of time.
- Every student assigned to perform in a breakout group **MUST** perform in that session.
- Four students must perform in an hour, each student performs for **5-10 minutes**.
- The total critique is no more than five minutes—with two faculty, each critique lasts **2 to 2-1/2 minutes**.

The method also recognizes that there can be too much critique. Once “the glass is full,” additional critique is not retained, dilutes the most important critiques, and wastes time. An effective critique of one or two things is best remembered; more than that should be considered overload.

You will not be able to address all the problems you observe. Instead, try to identify the biggest problem that can be fixed here and now. You should focus on one or two problems that can be addressed in the 2-5 minutes you have.

If you are the second critiquer, don’t waste time repeating things from the first critique. Go to the next most serious, unaddressed problem you can fix in the time allotted to you. And then **STOP**; move on to the next performance. **WATCH THE CLOCK. Don’t let the last couple of performers get short-changed in time left for their performances because you didn’t keep the train running on time.**

## THE METHOD

While the student is performing, write down notes to address during the critique. Observe the Q & A, the statement, the conduct, the objections (or missed objections), etc. Be certain to **WRITE IT DOWN**. On a sheet of paper draw a line down the middle of the page: on the right, write down the action; on the left, jot down your thoughts, one to two word reminders of the point you want to make when it is your turn to critique. Identify several, especially if you are critiquing in pairs, as your partner may pick the same point you wanted to make.

When the student has finished the exercise (not before), follow this format:

1. **THE HEADLINE:** Draw the student’s attention to the specific topic to which you intend to direct your comments. E.g., “Charlie, I want to talk to you about the danger of using non-leading questions on cross.” Be specific and **STAY ON POINT**.
2. **THE PLAYBACK:** Play back (from your verbatim notes) exactly what happened that you are going to address. The critique won’t be taken seriously when the specific action can’t be recalled or specifically identified.
3. **THE RATIONALE:** Articulate why the action is not the proper or most effective way to perform. E.g., “Before you can refresh your witness’s recollection, you have to ask questions that indicate a failure of memory at the moment, which you didn’t do, prompting the objection.”
4. **THE PRESCRIPTION:** Tell the student how to correct the problem you identified. E.g., “Here are a couple of ways to either force the evasive witness to give you a “yes” or “no” answer or appear to all that s/he is not playing fair and is clearly a partisan in this fight. . . . .” Feel free to get up and demonstrate (quickly) how to do it right. If you have time, have the student try the skill again.

## GENERAL COMMENTS

1. **Don't forget to clap.** Sometimes a student does something well—it's okay to acknowledge that. Students need to know not only what they did wrong and what they did right. Tell everyone why that was something they should try to emulate.
2. **No war stories.** War stories can illustrate a teaching point nicely. We love to tell them! But unless they can be told in 15 seconds, they are not worth the time spent in the telling. Save war stories for the breaks.
3. **Additional diagnosis.** It may sometimes be necessary to ask clarifying questions about what the student was attempting to accomplish and why. The answer may alter your critique. E.g., "Do you realize that you asked 23 leading questions on direct?" The answer may be, "Sure. I did it intentionally because my opponent didn't object." You have learned that your original diagnosis—the student does not know how to ask a non-leading question—was wrong. Now, you may want to talk about the effect upon the credibility of an important witness of answering no more than "yes" and "no" to the lawyer's recitation of the facts (and to talk to the opponent about his or her failure to object). But, do not let students engage in a lengthy justification of their performances. The clock is ticking.
4. **Be honest.** While it is helpful to find a positive in each performance, participants will know when you're not being honest; don't extoll an undeserving performance. Don't be so afraid of hurt feelings that you deliver a disingenuous evaluation. Starting every critique with, "That was very good, as good as most lawyers I've seen..." followed by, "but..." wastes time.
5. **Critique the performance, not the student.** Be constructive and non-judgmental. As the writer William Arthur Ward put it: Flatter me, and I may not believe you. Criticize me, and I may not like you. Ignore me, and I may not forgive you. Encourage me, and I will not forget you.
6. **Offer an alternative viewpoint.** Flat-out disagreeing with a colleague's assessment may be counter-productive and saying another faculty member is wrong can lead to confusion. But offering a different perspective can make for a more robust critique. Trial work is not an exact science, so try to explain why your alternative viewpoint might work as well or even better under certain circumstances.
7. **Keep things short.** Do not engage in lengthy discussions of the rules of procedure and evidence. This is a "learning by doing" course. There should be more "doing" than "discussing." Postpone lengthy discussions and answering tangential questions until after everyone has performed or until a break.
8. **Teach to the group.** All the participants can learn from your critique of a particular performance.
9. **Keep to the core performance.** Be careful of critiquing a participant's appearance, dress, or grammar. This can be highly embarrassing and can lead to a loss of confidence. Those things are important, but perhaps left best to the realm of a mentor.

## VIDEO REVIEW

1. Be encouraging; the student was just critiqued.
  - a. They may feel fragile and shell-shocked; it is common to be hard on themselves.
  - b. Be sure to compliment the student on at least one thing they did well.
2. Ask how the “live critique” went.
  - a. This tells you what it is that you don’t need to talk about, which can waste time. It also ensures that you will not contradict the live critique.
  - b. In order to maximize the review time, ask the student what they’d like to focus on during your time together.
3. If they have already been through a critique, it could be beneficial to ask in what areas the participant feels they’ve been working on or improved in.
4. Let them watch the video and then critique themselves first.
5. Focus on physical aspects rather than substance.
  - a. Voice volume
  - b. Tone
  - c. Verbal pace
  - d. Movement
  - e. Posture
  - f. Mannerisms (physical and verbal “tics”)
  - g. Clothing (be careful)
  - h. Hair (be careful)
  - i. Interrupting
6. Turn off the sound to focus on mannerisms/movement.
7. Keep an eye on the time—remember there are other students just around the corner (the live critiquers will be sending students to the video review only when they see that the previous one has finished).
  - a. Don’t need to watch the whole performance.
  - b. Talk during the video playback.
8. End with a specific prescription of what the student should do the next time and the improvement to look for at the next video review.





# Trial Academy Trial Procedures

1. On the final Saturday of the program half of the participants will try a complete jury trial in the morning, while the other half will try their trial in the afternoon. Participants will try the case for the party they have represented the previous workshops. They will be divided into two-person trial teams and paired against one another. Trial partners will be assigned at random. A schedule assigning trial teams, witnesses, trial times, judges, and locations will be distributed separately.
  2. The Complaint and Answer are provided in the case file. The action arises in a mythical jurisdiction. No issues are intended to be raised concerning the statute of limitations or the jurisdiction of the court over the parties. Amendments to the pleadings may not be offered.
  3. The witnesses' statements are to be treated as authentic, signed depositions unless otherwise indicated. In all cases, a witness's prior statement may be used for impeachment purposes.
  4. The host state's Rules of Civil Procedure and Evidence will apply in every trial.
  5. The case file contains the jury instructions. No amendments, additions and deletions are allowed.
  6. Trial Witnesses:
    - a. The trial file specifies which witnesses each side **must** call. No additional witnesses may be called.
    - b. Each trial team will be assigned one or two participants in the program to be their witnesses. Participants who are trying their case in the afternoon will be assigned to be a witness in the morning trials, and vice versa. If you are assigned only one program participant as your witness, the second witness's role will be filled by a volunteer.
    - c. Witnesses are listed in the case file as a witness for one of the parties. The witnesses must make themselves reasonably available to trial counsel for that party in advance of the trial for preparation of their testimony.
    - d. Witnesses will, of necessity, be required to "invent" facts to fill out their stories. However, witnesses are not permitted to invent facts that will have a material effect on the outcome of the case, or on a witness's credibility. When a witness is required to "invent" facts to be able to answer questions about matters not contained in their statement, trial counsel cannot supply them with the facts, even if asked to do so by the witness. Witnesses should make up circumstances, conditions, and facts that they believe would be consistent and reasonable in light of the other facts in the case (about which counsel may tell them), with the nature of the person they are playing, and the circumstances in which that person found him or herself.
  7. There will be no voir dire of the jury preceding the final trials.
  8. Trial Time Limits. (*Time will be kept by a faculty member.*)
    - a. **Opening statements:** 10 minutes per side. Only one attorney per side will give the opening statement. The defense may reserve its opening until the close of the plaintiff's case, or it may give its opening immediately following the plaintiff.
    - b. **Closing argument:** 15 minutes per side. The plaintiff may reserve part of its 15 minutes for rebuttal. This must be brought to the court's attention prior to summations begin. Summations may not be split between the two lawyers on one side of the case. Closing arguments will follow instructions to the jury.
    - c. **Witness Examination:** In addition to the times stated above for Opening and Closing, each side will have 60 minutes to conduct all direct, cross, re-direct and re-cross examinations of all witnesses regardless of who called them. The clock will be stopped during extended argument on objections or motions. The clock will not run during pre-trial discussions between counsel and the court. The trial judge has the discretion to extend the time allotted to a side, but only if their time has been unnecessarily interrupted by excessive objections by the other side or unfair conduct by an opposing witness.
- BUDGET YOUR TIME CAREFULLY.**

9. The division of labor among the two attorneys on each side is as follows: Attorney A will do the opening and Attorney B will do the closing, and each must do a direct examination and a cross-examination. Only one attorney for each side is permitted to interrogate each witness. Only counsel who is examining the witness may object during that witness's testimony.
10. Attorneys should have all exhibits marked prior to trial.
11. At the conclusion of the trial, the jury will retire to consider its verdict.
12. During their deliberations, the program faculty will critique the lawyers' trial performances. The jury may be allowed to deliberate only for a limited amount of time depending upon other time constraints, such as lunch and the approach of the next set of trials. If the jury has not reached a verdict by the time their deliberations must end, they should be polled to determine how they stand. After that, if time permits, each juror should be asked to briefly state one thing each trial counsel did that they liked and one thing that they think needs improvement. After their comments, the jurors should be dismissed and the faculty critique continued if not finished and if time permits.
13. **NOTE:** We are using the space with gracious permission. It is incumbent upon everyone in the program, participants, faculty, and jurors, to ensure that the rooms look exactly like they did when first entered. If you bring something in, you must take it with you. If something is moved for the program, please return it to its original position.