

AN ACTIVE LEARNING SMORGASBORD FOR TEACHING EVIDENCE

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Tell me, and I will forget. Show me, and I may remember. Involve me, and I will understand.

—Confucius

I. INTRODUCTION

Where I teach, Evidence is an upper-level compulsory course and classes are large.¹ As I enter the classroom, I find myself facing a large lecture hall full of students, most of whom are convinced they will never be barristers and will never need to know the rules of evidence. Even those who think they might want to become a barrister someday are, by the time they take Evidence, in their fourth or fifth year of university study, acculturated to expect the lecturer to stand at the front of the room and talk. They expect to see PowerPoint slides or overhead projections that summarise what they will need to know for the final exam. They expect to listen passively, copy the text from the slides, and cram for the final exam. They have very low motivation to participate or engage.

Passive listening is a particularly ineffective way to learn evidence.² Trying to learn evidence in a classroom can be like trying to learn to prepare a gourmet meal without ever tasting a dish or even going into the kitchen. Like high cuisine, the courtroom has its own language, ritual and history. The techniques used derive from 100s (maybe 1000s) of years of experience.³ Like treasured recipes, the rules of evidence and the traditions of court practice are embedded in a thick layer of historical practice. Both trial practice and cooking require skills that are unique to their context. You would not expect someone to learn to cook a soufflé by being told how to do it. Although recipe books are very helpful, you would never expect to become a chef without ever picking up a knife. Neither can students be expected to learn and understand arcane rules of evidence and procedure without learning how they operate in practice. Students need opportunities to ‘pick up a knife’ and put their understanding into action by engaging in the legal reasoning, making decisions and advocating positions.

Doling out information to passive students is also a particularly unenjoyable way to teach.⁴ It can be demoralising to face a room full of students who are there only because the subject

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1 ¹ Enrolments fluctuate between about 150 and 250 students.

2 Passive listening may, in fact, be a poor way to learn anything. The fact that active learning methods are more effective than passive ones is so well-known that it is no longer considered to be a topic for research: Roy Stuckey et al, *Best Practices in Legal Education* (Clinical Legal Education Association, 2007) 90.

3 Australia’s common law jury trials have their roots in medieval England: see Morris S Arnold, ‘Law and Fact in the Medieval Jury Trial: Out of Sight, Out of Mind’ (1974) 18 *American Journal of Legal History* 267, 278–80. Britain’s oldest extant cookbook is thought to be a volume written by chefs employed by King Richard II in 1390 AD: see Liz Hull, ‘Porpoise Porridge, Sire? World’s Oldest Recipe Book Reveals Dishes English Kings Enjoyed 600 Years Ago’, *The Daily Mail* (online), 4 December 2009 <<http://www.dailymail.co.uk/news/article-1232527/Unveiled-Worlds-recipe-book-shows-masterchefs-creating-600-YEARS-ago.html#ixzz1OZKaUft>>.

4 There may be some legal educators who lecture just to hear themselves talk. In my experience, however, law teachers — like any tertiary teachers — are motivated by interactions with students that provide cues about student learning and that catalyse their own thinking: see James L Bess, ‘The Motivation to Teach’ (1977) 48(3) *Journal of Higher Education* 243, 252.

is compulsory. It can be even more disheartening if students stop coming to class and use the lecture slides and someone else's notes to memorise what they 'need to know' for the final exam. Teaching to students who are prepared to learn only on a need-to-know basis can be soul-destroying. After all, we teach law because we are interested, curious and inspired; we enjoy ideas; and we want to inspire a new generation of lawyers.

The challenge of teaching evidence is to create an active learning environment that is inspiring to both the students and the teacher.⁵ The evidence teacher's quest is to devise a set of experiences that provide students with the contextual background for understanding the material and multiple opportunities for students to engage, practice, build their legal skills, and to make the course memorable and worthwhile. This paper describes a few techniques that I have found effective in transforming the traditional law lecture into a more interactive experience. It also provides a few ideas for moving active learning beyond the classroom and onto the web. The techniques suggested here may not suit everyone's teaching style or circumstances. I invite you to treat this paper as a smorgasbord of active learning ideas from which you may pick and choose.

II. A LARGE TABLE: OPTIONS FOR ACTIVE LEARNING

Information can be communicated in large amounts, and efficiently, in books and articles, computer downloads, and even in lectures. But information is not knowledge. Transforming information into operational knowledge (an internalised understanding) is an *active* and *interactive* process.⁶ It is an active process in that it requires students, at a minimum, to listen or read and understand.⁷ Students are more likely to understand and recall information if they have engaged in applying, extending, interrogating, analysing or using it to make decisions and solve problems. Learning is also *interactive* in that new information must be integrated into the student's existing frameworks for understanding.⁸ Learning involves not only absorbing new information but also integrating and revising existing information and assumptions.

A. Starters: Mood Music

In spite of the advantages of active learning, students who have been acculturated to sit and listen often put up resistance to classroom activities which require them to do more. They may feel embarrassment or social pressure not to speak, and so will be reluctant to volunteer to answer a question. They may feel annoyed at class questions and discussion groups because they want to hear the 'right' answer, not the answer their peers provide. Student resistance is something to plan for — or plan around — when creating an active learning classroom.

'Music has long been considered an efficient and effective means for triggering moods and communicating nonverbally.'⁹ In a law school classroom, music can change students'

5 'A teacher's passion for both teaching and the subject is a critical factor in student motivation': Stuckey et al, above n 2, 92.

6 Jenny Beate, Johnsen Skorpen and Kirsti Malterud, "'What Did the Doctor Say — What Did the Patient Hear?' Operational Knowledge in Clinical Communication' (1997) 14(5) *Family Practice* 382, 382–3.

7 The term, 'active learning', is usually taken to require more than merely listening and taking notes. Activities such as talking, writing, reading, reflecting and evaluating help students to organise, integrate and remember what they have learned: Paul L Caron and Rafael Gely, 'Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning' (2004) 54 *Journal of Legal Education* 551, 552–3.

8 David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall, 1984) 27.

9 Gordon C Bruner, 'Music, Mood and Marketing' (1990) 54(4) *The Journal of Marketing* 94, 94.

expectations and set the stage for a more active learning environment.¹⁰ As students walk into the lecture theatre, set down their books and plug in their laptops, I use a class theme song to announce a different classroom ethos. Students who are accustomed to a stiff, non-interactive academic lecture know immediately that this class will be different.

The choice of song will have an impact on the mood created. Bruner's review of the research on music and mood suggests that the key, tempo, pitch and kind of harmony will have an impact on the mood that the music creates. Music in a major key with a slow tempo, flowing rhythm and consonant harmony at a soft volume might create a serene mood, for example. I usually choose an upbeat, danceable song to create an informal and lively lecture-hall dynamic.¹¹ When the song ends, the energy of the song carries on. The atmosphere in the room is relaxed and upbeat. I feel energised and ready to teach. The students pick up some of my enthusiasm. We are ready to go.

The theme song for each lecture usually has a title or repeating lyric that I will return to at some point in the lecture. It is important to find songs that connect to the material — however tangentially — and to explain the connection to the class. For example, in a lecture on evidentiary privileges, I use Sonny Boy Williamson's *Keep It to Yourself*¹² — with its repeating lyric, 'Please, baby, keep our business to yourself' — which I connect with the rules relating to waiver of privilege. (That is, if you don't 'keep our business to yourself', you will waive a claim to privilege!) In another class, the opening lyrics of the theme song, *I Heard It through the Grapevine*, 'I guess you wonder how I knew 'bout your plans to make me blue,'¹³ establish a perfect platform for discussing the central problems of hearsay evidence. How reliable is the singer's information if he 'heard it through the grapevine'? The connection between the song lyrics and the legal issues discussed in class makes a memorable 'hook' for the class.¹⁴

Theme songs can also be used as a springboard for legal analysis. A class on admissions uses Jimi Hendrix's version of *Hey Joe* with its memorable dialogue lyrics:

Hey Joe, I said where you goin' with that gun in your hand?
You know I'm goin' downtown to shoot my old lady,
cause I found her messing round with another man.¹⁵

The song creates a vivid image that is a good basis for hypothetical questions. For example, if Joe is on trial for murder, who would be called as a witness to tell the jury about this conversation? Is Joe's statement admissible if the questioner who testifies is a friend of Joe's? What if the questioner is a police officer? What if Joe has been water-boarded for six hours before the question is asked? What if Fred — not Joe — is on trial for murder? Is the statement admissible then?

Theme songs can present another kind of opportunity for students to participate. Because most of my musical vocabulary was acquired before my students were born, I often ask students to contribute their ideas for theme songs for upcoming classes. Some students bring back song ideas throughout the semester. I ask these students to make the connection between the lyrics and the law. Students often find connections I would not have thought of, extending my thinking

10 For another use of music to change student expectations, see Nancy G Maxwell, 'From Facebook to Folsom Prison Blues: How Banning Laptops in the Classroom Made Me a Better Law School Teacher' (2007) 14 *Richmond Journal of Law and Technology* 4, 30 <<http://law.richmond.edu/jolt/v14i2/article4.pdf>>.

11 Bruner, above n 9, 100.

12 Sonny Boy Williamson II, *Keep it to Yourself* (unknown date). A video recording of Sonny Boy performing the song at a slow speed is available at <<http://www.youtube.com/watch?v=Q0rRvfwrrGc>>.

13 Norman Whitfield and Barrett Strong, *I Heard it through the Grapevine* (1966).

14 In course evaluations, students consistently comment favourably about the use of theme songs to aid memory. One student wrote, for example, '[t]he theme songs were brilliant, relevant and fun. They make it easier to remember parts of the *Evidence Act*'.

15 Billy Roberts, *Hey Joe* (1962).

about the law. They also expand my music collection. But, more importantly, the student who contributes theme songs has been thinking about the class and making connections between lyrics and law. That student has extended his or her thinking about evidence beyond study time — thinking about evidence has become fun. For me, that is a major teaching victory.

Theme songs contribute to my own enjoyment of the class, provide memory cues for students, and — perhaps most importantly — remove some of the discomfort of being in a large lecture hall. By filling the room with sound, rhythm and energy, the theme song changes the atmosphere and communicates my excitement about the subject.

B. *Meat and Potatoes: Using Slides to Promote Engagement*

Legal scholars have recently begun to point out the risks of using PowerPoint slides in the law classroom.¹⁶ When slides are used to summarise or convey the same information that the speaker ‘delivers’ in a lecture format, the slides may encourage passive listening and disengagement. It has been argued that ‘PowerPoint slides lull students into a pedagogical stupor’.¹⁷ The problem, however, is not in the technology. The problem is in the way the technology is used. The challenge is to use slides and images in ways that promote rather than stifle engagement.

Slide presentations are a visual medium. Limiting slide presentations to words (or words with a few standard graphics in the background as illustrated by Figure 1)¹⁸ ignores the vast potential of visual impact on learning. Images can be powerful learning tools. Images can provide context, help tell stories, or even inject a note of humour into a lecture.¹⁹ They can also be very useful in generating interest, which, in my view, is a prerequisite to active learning. If class time is dull, students may swallow the course like a dose of castor oil. They may be able to hold enough information in their short-term memories to be able to pass the final exam, but when they walk out of the exam, they will begin to forget all they have ‘learned’. Interested and engaged students become motivated to study, engage and remember.

Using Google image searches, it is now fairly simple to find and embed multiple, high-impact images into classroom slide presentations.²⁰ Pictures of the litigants or disputed items of evidence add a note of reality to discussion of evidence cases. With a photograph of the murder scene on the screen, the story of the case comes alive. Images of the faces of the real-life victims, witnesses or evidence from an assigned case can be powerful motivators to learn and remember. Students are more likely to incorporate the rule of a particular case into their operational knowledge and be able to analogise its facts to future problems if they have understood and remembered the story of the case.²¹

Images can also be used to make the facts of a case more concrete or vivid — even when the images are not taken from the case itself. For example, in a civil litigation lecture, the topic was dismissal and court delays. The tort case being studied had endured from 1966 until 1982. I could not locate any images of the actual parties who were involved in the case.

16 See, eg, Caron and Gely, above n 7, 554.

17 Ibid.

18 Photo references: <http://jeromeprophet.blogspot.com/2007_08_12_archive.html>; <<http://rocketon.wordpress.com/2008/09/22/woodstock-69-la-madre-de-todos-los-festivales/>>.

19 See Carmine Gallo, *The Presentation Tips of Steve Jobs: How to Be Insanely Great in Front of Any Audience* (McGraw Hill, 2010).



20 To avoid potential copyright and plagiarism problems, be sure to keep a record of the URL where the image was published. In an academic presentation, reference should be made to the source of the image, either by printing the URL on the slide or by adding a list of image references at the end of the presentation.

21 Beate et al, above n 6, 282–3.

Time - Risks for parties who delay, are late, miss deadlines (stale proceedings)

- ⚡ The risk for a party who delays, is late etc is that the case may end or be brought to an end before the party progresses it to adjudication or settlement, no matter the merits of that party's case and without the party's agreement.
- ⚡ Delayed, 'snail's pace' matters -
 - may be found to not be in the interests of justice in the matter – delay may cause prejudice to other parties; and risk the prospects of having a fair trial and achieving a just resolution;
 - are a problem for matter and court caseload management – affected parties do not get resolution; courts do not want to be loaded with volumes of matters in which parties do not have an active interest

The case involved a 1966 motor vehicle collision that was before the court on an application to dismiss for want of prosecution in 1982.

The Who in 1966
The Who in 1982

Figure 1. Both slides above deal with the same ideas, but the one on the right generated vigorous discussion.

I did, however, find photographs of the band, The Who, taken in 1966 and 1982. The changes in clothing and hairstyles and the fatigued look on the faces of the band members in 1982 gave the class a quick laugh, but a vigorous discussion ensued (Figure 1). Quite a few of the students in the class knew the band and its music. A student immediately pointed out that one member of the band had died and been replaced in the interim between the two pictures. This connection to the student's pre-existing knowledge drew the class into a discussion of the kinds of difficulties faced by the parties and the courts when litigation goes on for many years. The images made the delay and its problems concrete.



Figure 2. Students understand why lay opinion is admissible when they try to describe this scene without expressing any opinion.

Images are also an excellent vehicle for presenting practical and contextual material. They capture student interest and permit students to envision how the rule actually works. The slide below (Figure 2) was used in the discussion of the opinion rule.²² Is it possible to describe this scene without expressing any opinion? Can a witness to this scene testify: 'The boat was going *really fast*. Deg was trying to hang on'? Discussion of this slide helps students understand the reasons for the lay opinion exception to the rule.

Practical context can also be presented in visual form. Court procedures can be illustrated in flow charts, maps and graphics.

C. Using Slides to Promote Participation

Being able to articulate a legal argument is an important legal skill. It is also important to the learning process. As students articulate an argument, their reasoning is focused and they are 'forced to evaluate the validity and robustness' of their reasoning.²³ Thus, it is essential to give students multiple opportunities to try out their ability to articulate concepts and arguments. But students in a large lecture are often reluctant to volunteer an answer to a question posed orally. The pressure of articulating difficult concepts in public can operate to inhibit participation, engagement and learning.

22 Photo reference: <http://www.nyfishingreport.com/Fishing%20News_2006.html>.

23 Caron and Gely, above n 7, 553.

I use slide presentations to pose questions in class in a way that facilitates student participation without invoking the kind of social pressure that inhibits students from answering. I sometimes pose a question and ask students to answer in a short free-write.²⁴ Other times I ask students to raise their hands to answer a multiple choice question en masse.²⁵

Pre-test
True or False?

1. In a case in which the prosecution contends that there was a full moon on 7 July 2009, no evidence needs to be introduced to prove that the moon was full that night.
2. Juries are allowed to rely on their common sense and to make inferences from the evidence provided by the witnesses.
3. The judge has no role in determining facts in a jury trial.

Answers at the end of class.

Figure 3. A short pre-test at the beginning of class can stimulate interest and help students check their understanding.

rules of evidence in class, to discuss them with their peers, and to come up with what they think is the best answer. Teams record their answers on a sheet that is then exchanged with another team at the end of each round. Each team scores the answer sheet of another team as the best or ‘correct’ answers are discussed. The answers to several of the questions are arguable — and I leave plenty of room for argument. As the game progresses, students seem to forget that they are in a law lecture. Instead of listening with their heads down, they interject to defend their team’s answers. They articulate legal concepts; they offer arguments in support of their views. The game has changed the social dynamic and made arguing a point more acceptable and fun.

The time spent in class ‘playing’ trivia games is valuable learning time. Students frequently comment in their course evaluations about the value of the multiple choice questions and quizzes. For example:

The hearsay quiz was valuable ... it made the most of complex material.

The pop quiz was extremely helpful for cementing hearsay into my brain!

The multiple choice questions [on slides in class] were good for illustrating particular points.

An introductory slide with a pre-test is a good way to give students a sneak peek at what they can expect from the class (Figure 3). This kind of pre-test is not used for assessment, but rather to pique interest in the subject to be discussed that day; to engage students actively in answering; and to provide students with prompt formative feedback about how well they understand the material.

Games are another good way to generate participation and discussion. The most extensive use I make of slide quizzes is during trivia-style contests. I divide the class into teams of five students each to answer multiple-choice questions. The questions require the students to read and interpret the

THE CRITERION COLLECTION

1. In a case against a group of animal rights activists who broke into a research centre and vandalised the labs, the plaintiff Lab seeks to adduce the testimony of Koko, a gorilla who speaks in sign language. Koko can understand the difference between the truth and a lie and can hear, understand and respond appropriately to questions.

What is the appropriate objection to Koko's testimony? Cite a section in support.

KOKO
A TALKING GORILLA
A FILM BY BARBET SCHROEDER

Figure 4. This slide from an end-of-semester review quiz reviews the witness competency rule. Photo reference: <http://www.criterion.com/films/782-koko-a-talking-gorilla>

²⁴ In the process of writing for two or three minutes, students not only have an opportunity to clarify their thoughts, but also become more invested in their views. In the ensuing discussion of the question, students are thus more willing to challenge views offered by other students.

²⁵ Where the technology is available, ‘clickers’ or CPS units can allow students to answer anonymously and see how their response compares to the majority response: see Caron and Gely, above n 7, 560–3.

The games, questions and slides do not, by themselves, ‘cement’ the difficult evidentiary concepts into the students’ brains. Instead, the slides facilitate the kind of engagement that transforms information into usable (and memorable) knowledge.

Finally, slides can be used to pose simple but important questions. One of the questions I frequently pose in a slide is, ‘Why is that important?’ or ‘Why do we care about this rule?’ These questions push students to reflect on and have their own answers about the significance of the material. I find that, when pushed, students often come up with keen insights about why a seemingly arcane or obscure rule makes a real difference to real people. Understanding why and how a rule matters is a powerful motivator for study. My energy, enthusiasm, images, stories and even games may not be sufficient to sustain student interest and engagement. I was reminded of this some years ago when a student wrote in a course evaluation: ‘[s]he makes the course material more interesting than it really is’. After I finished laughing, I realised that I had not succeeded in helping this student to find his own reasons to be interested in evidence law. I realised that students need to be asked to think deeply about the course material and find their *own* motivation to study.

D. Fancy Dishes: Video for Context and Dynamics



Figure 5. A sample video clip is posted at www.youtube.com/watch?v=7zcXG0WmrI8. Further clips are available from the author.

To provide context and convey the dynamic nature of courtroom interactions, some law teachers assign students to visit a courtroom. In some situations, ‘[w]itnessing litigation in action is an ideal way for students to develop a sense of “how it all works” in practice.’²⁶ There are, however, a number of potential drawbacks to sending students into the courtroom. When students arrive at court, the case they hoped to see in trial may have settled; the trial might proceed for several hours without raising an evidentiary issue; or the barristers involved may not exemplify good practice. Even worse, with no opportunity to ask questions, students may walk away from their courtroom experience with little or no understanding of what they watched.

Video can provide a ‘substitute experience’²⁷ that may actually be superior to a courtroom experience. When teaching in the US, I had many video clips that I could draw on from movies, television dramas or Court TV to illustrate court procedures. Because cameras are not permitted in Australian courtrooms, comparable videos applicable to the Australian court system did not exist.²⁸ Working with colleagues and practising lawyers, we filmed a video that presents evidence problems as they might arise in an Australian courtroom (Figure 5). It provides the students with an accurate context and provides a platform for skills teaching.

26 Jacqueline Horan and Michelle Taylor-Sands, ‘Bringing the Court and Mediation Room into the Classroom’ (2008) 18 *Legal Education Review* 197.

27 Sally Kift, ‘Lawyering Skills: Finding their Place in Legal Education’ (2008) 18 *Legal Education Review* 43, 65.

28 The ABC has recently produced a five-part documentary series, *On Trial*, which was filmed in the courtroom. It may contain scenes which could be used for discussing evidentiary rulings. Episodes may be available to download from <<http://www.abc.net.au/tv/documentaries/>>. Thanks to James Booth for bringing the documentary series to my attention.

Before they see any of the trial video, students receive a fictional case file that develops the evidence. The documents in the case file include witness interviews, photographs, phone records and expert reports relating to a fictional murder case. The evidentiary material in the file is ambiguous and contains numerous items that might not be admissible in court. The case file begins with a fictional indictment of David Douglass for the murder of Barry Clemson. The evidence in the file shows that Douglass admits that he shot Clemson in the chest as Clemson attempted to climb through a first floor window at the back of the residence. Douglass contends, however, that the shooting was purely accidental. He contends that his gun went off accidentally as he fell backwards in surprise and fear when Clemson appeared at the window. The prosecution contends that Douglass was sitting in his study, waiting for Clemson to appear, and intentionally shot and killed him.

The video presents 34, two- to three-minute segments of witness examination. Each segment presents an evidentiary question arising from a different rule. The evidence being presented may or may not be admissible. Objections or questions are raised at the end of each segment, but the application of legal rules is carefully left out. The judge in the case generally does not make a ruling. This allows an opportunity for the students to engage with the material. Students read the rules, apply legal reasoning, exercise judgment, and the class discusses what the appropriate ruling might be.

Portions of the case file that are not explored in the video segments can be elaborated during tutorials. Having seen a realistic witness examination in the video helps the students to have the confidence they need to role-play witness examinations during tutorials. These role-playing exercises give students an opportunity to engage in the kind of strategic decision-making and argumentation that they would use in court. In this way, the video experience not only provides the context for an understanding of the courtroom dynamics, but also presents the opportunity for students to build their skills by making arguments and decisions after the video is turned off.

E. Food for the Road: Active Learning beyond the Classroom – Onto the Web and into the Moot Court

Active student engagement with contextualised and dynamic material need not end when the lecture is over or the tutorial is finished. One of the advantages of the trial video segments is that they can be posted to the course website along with questions, quizzes or commentary. Students can view the video clips again, take a quiz, or post commentary or questions about the issues raised.

For students who have lived their entire lives in an internet connected world, a website provides a familiar forum for learning. Web-based learning opportunities can be blended with class time (face-to-face) to extend learning.²⁹ A wide variety of kinds of resources can be posted on a website to cater for different student learning styles. Using web-based materials empowers students to be self-directed in their learning.³⁰ They may pay more attention to the materials that are more interesting or difficult for them; or they may take time to revise or re-listen to material that they did not understand in class. Web-based questions or quizzes can be configured to give students prompt feedback about their learning. A course website can also enable collaborative or group work. For example, using a web-based forum, students may follow up on course-related questions, find study partners or collaborate on a course assignment.

One of the most successful uses of the web in my class has been in helping to set up and run a mid-term assessment exercise. In this exercise, students choose either (1) to write a fairly lengthy submission to the court on an evidentiary issue; or (2) to make a very short written submission and appear to argue the issue orally in a moot court exercise. Typically, students

29 Randy Garrison and Heather Kanuka, 'Blended Learning: Uncovering Its Transformative Potential in Higher Education' (2004) 7(2) *The Internet and Higher Education* 95.

30 Manuela Paechter and Brigitte Maier, 'On Line or Face to Face? Students' Experiences and Preferences in E-Learning' (2010) 13(4) *The Internet and Higher Education* 292.

have written papers before and are fairly confident in their ability to succeed at option (1). They may be less confident, however, in their ability to argue an issue in court and may therefore hesitate to choose option (2). The web-based administration of the moot arguments helps to overcome this confidence gap. It also facilitates collaboration and reduces the administrative burden of organising the court schedule.

Oral arguments are done in teams, with two students appearing for the prosecution and two for the defendant. Using an online program, students are able to find a teammate and collaborate effectively, even if their on-campus schedules do not allow much face-to-face meeting time. They are also able to sign up for a court appearance at a time that suits them and change their appearance time to other available times, until the appearance schedule fills up. Although the exercise is not a competition, students are often concerned about which team they will face during the court appearance. Using the web program, they can see who their ‘opponents’ will be. They can (actually, they are required to) exchange their written submissions with the opposing team. In this way, they find out what arguments will be presented by the other side and are able to prepare well in advance. This gives the students a sense of confidence and control about the moot court process and encourages them to participate. And there are sound educational reasons for them to participate. Students who prepare to stand in court and orally answer questions about a legal issue must actively engage with and integrate the material in a way that allows them to speak about it fluently. For some students, that requires a depth of understanding that is not achieved in writing.³¹

I have argued elsewhere that the law school curriculum over-emphasises adversarialism and competition.³² An evidence law course is, however, an appropriate place for students to learn the skills necessary to present an argument in an adversarial context. In presenting the moot exercise, I emphasise that the goal is for each team (working collaboratively) to put together and present a well-grounded legal argument for their client. The goal of the exercise is not to ‘beat’ the other team. Nevertheless, if this were a real case, one side would win and one side would lose on each issue. After the argument, students often want to know who won. That is fair — they have worked hard and have treated the moot exercise as if it were a real case. To provide perspective on the exercise, it is important to take time to explain what the court ruling on each issue might be and to identify excellent arguments that might not carry the day. Students need feedback on their efforts. They also need to learn that, although the trial process is adversarial, it is not a competition. When appearing in court, the lawyer’s responsibility is not to ‘win’ but to put forward the best available legal arguments. In doing so, the advocate may lose some cases, but will build an invaluable asset — a reputation for intelligence and integrity.

III. CONCLUSION

Active, engaged students learn more. Classes full of active, engaged students are more enjoyable to teach. There is no single best way to engage students, just as there is no best menu for a feast. How you choose the right combination of sweet, salty and savoury dishes will depend on many factors. How many guests will there be? What do they like? What ingredients are available? What can be prepared in the time remaining before the guests arrive?

The goal of this paper has been to share ideas for putting an active learning feast on the table — a feast suitable for a large group of students in a compulsory course. Theme songs animate the classroom; high-impact images improve students’ ability to recall doctrinal information and to relate it to their experience; and quiz games, question slides and video give students

31 For a fuller discussion of other benefits of mooting and the advantages of using technology to improve the mooting experience, see Jennifer Yule, Judith McNamara and Mark Thomas, ‘Mooting and Technology: To What Extent Does Using Technology Improve the Mooting Experience for Students?’ (2010) 20 *Legal Education Review* 137.

32 See Molly Townes O’Brien, ‘Facing Down the Gladiators: Law School’s Hidden Adversarial Curriculum’ (2011) (forthcoming) *Monash Law Review*.

the opportunity to ‘pick up a knife’ and engage in in-class legal decision-making to build their legal skills. Beyond the classroom, students can use the web to advance active learning and to collaborate with their colleagues. These methods may all work together to create an active learning experience that provides context for understanding and motivation for advanced study. Otherwise, a few of these methods may be incorporated into another teaching scheme. I have found that each additional technique, each active learning dish, reaches a few more students. I keep adding more dishes to the smorgasbord, because I have found that when students are actively engaged, teaching evidence can be terrific fun.