PREPARING, EXAMINING, AND CROSS-EXAMINING WITNESSES

LAW 7841-001
Summer, 2011
May 31-June 3, 2011, 9:00 a.m. – 4:00 p.m.
Room 106
Adjunct Professor Richard D. McKelvie
Richard.mckelvie@usdoj.gov, Richard.mckelvie@utah.edu
(801) 325-3221; (801) 231-0610
Suzanne Faddis, Class director
Suzanne.faddis@law.utah.edu

SYLLABUS AND COURSE DESCRIPTION

Opening statements and closing arguments are seen as the trial lawyer’s stock in trade, but trials are won and lost on the witness stand. This course will focus on the preparation, handling and presentation of the witness at trial. The class will emphasize the importance of pre-trial preparation before both direct and cross-examination, and the execution of those skills. We will also deal with witnesses who need specific preparation, handling, and presentation, such as experts, child victims of violent or sex-related crimes, witnesses who are mentally or emotionally disabled, and witnesses who must testify through the use of an interpreter.

The format of the class will be a lecture on the use and presentation of a particular classification of witness, a demonstration of a direct and/or cross-examination of that class of witness by the course instructor and other experienced practitioners, and hands-on participation in the examinations of the witness by students. Rather than using scenarios created in casebooks, we will devise scenarios based on real-world experiences and expertise of members in the class. Each student should anticipate playing the part of witness, examiner, and cross-examiner in a scenario based on information provided prior to the week of class. In addition, our witness participation may be supplemented with witnesses from outside the class as needed to fill specific witness roles.

It is essential that all class participants fill out and return the attached questionnaire, as these will form the bases of our testimonial scenarios. Please return them to Suzanne Faddis by May 25.

GRADING

Submission of questionnaire                  15%
In-class attendance and participation       35%
Detailed witness outline                    50%

Each student will be assigned to a direct examination and a cross-examination of a witness. Due to time constraints, we may not be able to practice both skills, but each
A student will have an opportunity to conduct at least one direct or one cross-examination. The direct examination will include a witness interview prior to the examination, either in front of the class or in isolation.

No later than June 17, 2011 (two weeks after the conclusion of class), students will submit a detailed outline of a witness interview and proposed direct examination. The outline should include the type of case in which the witness is testifying, the party for whom the witness is testifying, a general description of the witness’s testimony, and an abbreviated outline of questions and anticipated answers, based upon the witness interview.

**COURSE SCHEDULE** (This schedule is approximate and may fluctuate as course flow dictates. We will make every effort to cover all topics in the schedule.)

9:00 a.m. to 4:00 p.m. With 1 hour lunch break

**May 31**

Class introduction  
Witness preparation  
The mechanics of direct examination  
The art of direct examination  
The mechanics of direct examination  
The art of cross examination  

The Fact Witness  
   a. The occurrence witness  
   b. The transaction witness

**June 1**

Use of exhibits with witnesses

The Expert Witness  
   a. Expertise based on education  
   b. Expertise based on training and experience  
   c. The “Lay Expert” opinion

The Law Enforcement witness

The crime victim  
   Violent crime – sympathetic victim  
   Financial crime – unsympathetic victim  
   Special needs victims- Children, elderly, mentally or emotionally challenged
June 2
The criminal defendant
Use of interpreters
The non-English speaking witness
The hostile witness
The character witness
Visual Aids

June 3
“You Be the Judge” a presentation by M. John Straley, U.S. Bankruptcy Court
Using multiple witnesses to prove a single fact
Practice, Practice, Practice (classroom exercises)
Course review and conclusion

OFFICE HOURS

I will be available before and after class during the week of class. I will be available at other times by appointment, or via email or phone.
PLEASE FILL OUT THE FOLLOWING QUESTIONARE AND RETURN IT TO SUZANNE FADDIS; PROGRAM DIRECTOR, AT suzanne.faddis@law.utah.edu, no later than Wednesday, June 25.

Name:

Law class (year of graduation)

Law school currently attending

Undergraduate degree

Undergraduate university

Post-graduate degree, if any

Post-graduate university

Do you speak any foreign languages? If so, what language(s)______________________

Level of proficiency:

_____ Native tongue

_____ Fluent

_____ Conversational

_____ Frequently supplement with sign language

In short narrative format, please provide something about which you could testify if you were called as a witness. The idea here is to create a plausible scenario for a direct and cross-examination, in which the witness (you) will have actual recall or expertise. This will enable us to pursue much more realistic scenarios in our class work than is usually the case when a witness is given a role to play, and a fact scenario, without any actual back-story to examine during witness preparation, direct, and cross. Because of our class size, we should have a good cross-section of witnesses and scenarios to work with. Some examples of what we are looking for: If you have a prior profession that would lend itself to expert testimony; if you have a compelling skill, sport, or hobby about which you have a good background of knowledge, or if you have witnessed or been the victim of a crime, or an accident of some sort, or injured is some way, been defrauded, etc.