

Trial Practice: Criminal Defense
Friday 1:30 - 4:30
Spring 2011

Reading Materials

Trial advocacy is best learned by doing. We have tried to reduce the amount of required reading. Based on past experience we have found less required reading and much more time spent thinking about and practicing the assigned exercise gets much better results. There is no substitute for practice. And we will very much be able to determine who is spending the thinking about and practicing the given skills.

This year we have incorporate a book which we found very helpful in last years class, *Cross Examination, Skills for Law Students*, by Larry Pozner and Roger Dodd. In addition there are other readings which are required and posted on TWEN. Most of the reading for the class is non-case material, including journal articles, chapters of select books etc. Reading assignments are posted on the TWEN site. As in the real life practice of law, you may need to do your own research as it relates to the reading assignments.

As a criminal defense lawyer, you will hear about a case which may “help” you on one of your cases. You must then locate the case. The same will apply to any cases assigned for class. We will provide the case cite, you will have the responsibility of locating, reading, and understanding the case.

Recommended Optional Materials

While not required, these will assist you in understanding the course material and preparing your assignments. Those with an asterisk are books you will turn to again and again if you end up being a litigator

Bergman, *Trial Advocacy*, Nutchell

Inwinkelreid, *Evidentiary Foundations*

*Pozner and Dodd, *Cross Examination: Science and Technique*, 2nd Ed.

Katz, *Ohio Criminal Procedure*

Mauet, *Trial Techniques*

Hirshorn and Blue, *Blues Guide to Jury Selection* (formally known as Bennett's Guide to Jury Selection)

*Sunwolf, *Practical Jury Dynamics*, 2nd Ed.

Class Format

The class will meet Fridays from 1:30 to 4:30 p.m. at the Hamilton County Courthouse. The courthouse is at 1000 Main Street. We will be notified on Thursday of the room number we will all meet in to begin class. The room may vary, depending on courtroom availability. ***Our default room is 580.*** We will meet there unless you are notified to the contrary.

A brief lecture by an instructor will precede the student presentation of simulated trial exercises. The simulations may be as an entire class or in smaller groups. Each student may be required to prepare several simulated trial exercises for each class session. Please plan on presenting your best work in class. This will require preparation and practice.

In addition to class lectures, you may be given lectures on disk which you will also be responsible for reviewing. These lectures will be by some of the best criminal defense attorneys in the country.

The class is taught from the perspective of being an effective and zealous advocate for the accused. Students must be conscious of, and work within, the limitations imposed by a fundamental principle governing criminal defense work: Do no harm to the client

You will be expected at time to answer such questions as: What is your Theory of Defense? What is your theme? What were you trying to accomplish? Did you succeed? What evidentiary issues did you anticipate?

During the class time, the instructor(s) will call upon a student to perform an assigned exercise. Performance in class is always followed by critique. The purpose of the critique is not to put you on the defensive but to help you and others in the class develop skills and to enable you to learn from the experience.

This is one of the few classes in law school where you are encouraged and expected to be an advocate for your client. Approach the class as if the life and freedom of another human being depends on the course of action you take, because in the real world of criminal defense, it often does. “Law school” answers are not expected nor encouraged. **Remember, be an advocate for your client.**

Following the student performed exercises, there will be a demonstration of the particular skill by an instructor.

Preparation and Performance

You will receive a grade for each of your performances.

Non-Performance due to Absence or failure to prepare

In addition to an excused release from performance in a given week, each student will have the opportunity to miss a performance. If you are never absent, you will be able to drop your lowest grade. Do not waste this free opportunity. If you miss more than one performance your average will be computed as if you received an "F" for the missed classes.

Evaluation

You will be graded on your performance in each classroom simulation. You will also be graded on your overall participation and performance at the end of the semester. Participation includes, but is not limited to, evidence of preparation, quality of involvement, and degree of professional skills demonstrated. While grades will not be disclosed as the class proceeds, you are encouraged to discuss your work and progress with the instructor(s).

Successful completion of the class also requires eight hours of court observation. You are required to document your observations on the attached form. Failure to complete the requirement will result in a failing grade for the course.

There is no written final trial as in most trial practice classes. The final project will be discussed in detail in class. In short, you will be assigned to perform one of the skills covered in class.

Court Observation

Every student is required to spend a minimum of 8 hours during the semester as an observer of a contested criminal matter. This means a jury trial. This does not include minor misdemeanor, traffic or criminal offenses which are tried to the court. It does include DUI/OVI jury trials. Observation may be done in Federal Court or any of the Common Pleas or Municipal Courts of Hamilton, Clermont, Warren or Butler County. You must visit at least two different courtrooms as a part of this requirement.

Each county and federal court handles things differently. But generally, Monday mornings are not good for observation. Afternoons usually are better than mornings.

The easiest way to accomplish this observation in Hamilton County is by contacting the Hamilton County Jury Commissioner, Fritz Meyer. Mr. Meyer's office number is 946-5879. A call to his office on Monday in the early afternoon will allow you to know what courtrooms have trials and what the expected length of the trial is. Because of the logistics of getting a jury impaneled, calls on Monday morning will probably not provide you with very much information.

You are responsible for finding a case on trial, attending a portion of the proceedings, and completing the attached observation form for each case. The forms are due before the last class of the semester. You may complete the observation and submit your form at any time during the semester. You do not have to wait until the end of the semester.

Professional Responsibility Issues

A thorough understanding of the role of professionalism in the trial system is an essential part of preparation for trial advocacy. Some of the exercise are designed to confront counsel with issues of professional responsibility in typical circumstances which arise in criminal practice. Experience has taught us unanticipated issues arises based on the progress of the class. These often provide great learning opportunities. So as much as we try to plan each class, we may go where the class interest and development takes us.

Contact

Questions, comments and other contact can be made by phone or email to any instructor

Jay Clark	587-2887	notguilty14@aol.com
Hal Arenstein	651-5666	halalawyer@aol.com
Lindsey Gutierrez	587-2887	tigsy45@yahoo.com