

**University of Cincinnati
College of Law**

Witness Preparation Workshop

January 11, 13 & 15, 2011

Faculty:
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**Workshop Syllabus
& Materials**

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|-----------------------|---|
| Title: | <u>PREPARING THE FACT WITNESS TO TESTIFY</u> |
| Description: | Through role play and other means the student in this course will learn the techniques that trial counsel use to prepare themselves and their witnesses to provide testimony that is truthful, engaging, genuine, trustworthy and persuasive. Students will learn how to organize the preparation and testimony, gain the witness' confidence, explain the witness' role, uncover important information, lay necessary foundations, showcase the witness' testimony, reduce the risk and impact of unexpected or damaging testimony, and prepare the witness for cross and redirect examination. Each aspect of witness preparation may also raise ethical issues to be considered. |
| Credit Hours | This 1 credit hour course will be presented in 14 hours over a |
| Format: | 2-3 day period during the winter break. See below. |
| Class size: | Up to 8 (even number) |
| Materials: | |
| Text | <u>TRIAL TECHNIQUES</u> , 6 th , 7 th or 8 th Edition Thomas A. Mauet, Aspen Law & Business, <i>(Only the sections related to certain aspects of trial and witness preparation will be required reading – see below.)</i> |
| Other | Materials containing instruction, logistics, exercises and supplemental reading will be provided as needed. |
| Prerequisites: | Evidence and Trial Practice |

Workshop Format: As in a trial practice class, during the workshop sessions, each student will do a series of exercises. In each exercise, the student role-playing the trial attorney will work with another role-player to demonstrate a specified aspect of witness preparation. Each student exercise will be evaluated against a set of criteria for that exercise. Each exercise will be followed by a critique and discussion.

Evaluation: Grades will be based upon 1) demonstrated preparation and class participation (67%) and 2) a final exercise (33%).

The final exercise will require students to react and adapt to the unexpected things that a witness may do under the stress of testifying.

(Examples would include, forgetting personal information, forgetting dates and sequences, freezing, blurting out unexpected testimony, altering testimony, getting cold feet, trying to outsmart the examiner, outsmarting themselves, challenging the examiner, lying, half-lying, etc.)

Advance Prep: Each student should have a **working knowledge**¹ of the trial practice fundamentals set forth in the following text chapters:

A. TRIAL TECHNIQUES, Thomas A. Mauet, Aspen Law & Business

Chapter II The Psychology of Persuasion

Chapter V Direct Examination

Chapter VI Exhibits *(a good source for sample foundations)*

Chapter VII Cross Examination *(a good checklist for problems encountered on direct examination)*

Chapter XI Trial Preparation and Strategy *(especially the parts dealing with witness/exhibit selection and preparation and cross examination preparation)*

Unless otherwise designated, the sample testimony is not required reading but may be illustrative.

B. Additional Materials will be provided before the workshops begin.

¹ For our purposes, “working knowledge” of these fundamental concepts means that the student understands the concepts, the underlying reasons for the concepts, the application of the concepts in the courtroom and the problems that are likely to arise when a lapse occurs in any one of these fundamentals.

GENERAL WORKSHOP SCHEDULE

| | | |
|-----------------------------|-------------------------------|-----------|
| First Session | | 3.5 hours |
| (T 1/11/11 | 5:00 – 8:30 pm) | |
| Introduction & organization | | 1.0 hour |
| Exercise I | THE BIG PICTURE | 2.0 hours |
| Assign next exercise etc. | | .5 hours |
| Second Session | | 3.5 hours |
| (Th 1/13/11 | 5:00 – 8:30 pm) | |
| Exercise II | TROUBLESHOOTING | 2.0 hours |
| Video exercise | | 1.0 hours |
| Assign next exercise etc. | | .5 hours |
| Third Session | | 3.5 hours |
| (S 1/15/11 | 9:00 – noon) | |
| Exercise III | MARSHALLING THE TESTIMONY | 2.0 hours |
| Video exercise | | 1.0 hours |
| Assign next exercise etc. | | .5 hours |
| Fourth Session | | 3.5 hours |
| (S 1/15/11 | 1:00– 4:00 pm) | |
| Exercise IV | TRIAL RUN FINISHING SCHOOL | 1.5 hours |
| Final Exercise | | 2.0 hours |

DESCRIPTION OF EXERCISES

Through role play, the following aspects of witness preparation will be demonstrated, discussed and evaluated:

the attorney will take the witness through one or more of the preparation steps set forth below (*see pp. 5-6*)

the attorney will also prepare the witness to testify in an assigned witness role about an assigned portion of the testimony

the attorney will introduce the witness to the need for and the procedures for testifying about evidentiary foundations

each witness will be given confidential instructions about the witness' attitude towards testifying and/or any credibility issues faced by the witness.

SAMPLE EXERCISE ROLE PLAY FORMAT*

Student 1 – attorney

Student 2 – witness

Student 1 – witness

Student 2 – attorney

Student 3 – attorney

Student 4 – witness

Student 3 – witness

Student 4 – attorney

Student 5 – attorney

Student 6 – witness

Student 5 – witness

Student 6 – attorney

Student 7 – attorney

Student 8 – witness

Student 7 – witness

Student 8 – attorney

*Assignments w/ attorney and witness roles will be made before the workshops begin.

PREPARING THE FACT WITNESS TO TESTIFY

WITNESS ANALYSIS AND PREPARATION GUIDE © 2009

WITNESS PREPARATION STEPS (FACTS)

These steps should be followed with all witnesses except where the factors in the right hand column require modification of the process.

I THE BIG PICTURE

1. Explain case & witness' role
2. Get overview of witness' knowledge

II TROUBLESHOOTING

3. Get clarification re: inconsistencies etc.
4. Go over witness' statements & documents

III MARSHALLING THE TESTIMONY

5. Organize testimony & details
6. "Coach" witness re: witness skills (Ethics)

IV TRIAL RUN

7. Simulate testimony w/ foundations & exhibits
(repeat as often as necessary)
8. Prepare witness for cross exam & redirect exam

V FINISHING SCHOOL

9. Familiarize witness w/ courtroom, protocol & procedures
10. Put witness at ease - "Just tell the truth."

WITNESS FACTORS

These factors do not relate to any particular step in the left hand column. However, they may alter the preparation for any given witness.

Attitude Factors

Credibility Factors

Cooperative

Perception (< >)

Friendly

Memory

Uncooperative

Articulation

Neutral

Bias/Prejudice

Other

Worldview etc.

The Witness Preparation Checklists are intended to provide a more detailed guide to preparing the witness concerning several key aspects of witness preparation. They are a supplement to the guidance provided in the text.

EXERCISE SCHEDULE © 2009

| <u>Exercise Topics</u> | <u>Witness Factors</u> |
|--|--|
| <u>Exercise I</u> | |
| THE BIG PICTURE | <i>Attitude Factor</i> <i>Credibility Factor</i> |
| 1. Explain case & witness' role | To be assigned |
| 2. Get overview of witness' knowledge <i>Listening</i> | To be assigned |
| <u>Exercise II</u> | |
| TROUBLESHOOTING | |
| 3. Get clarification re: inconsistencies etc. | To be assigned |
| 4. Go over witness' statements & documents | To be assigned |
| <u>Exercise III</u> | |
| MARSHALLING THE TESTIMONY | |
| 5. Organize testimony & details | To be assigned |
| 6. "Coach" witness re: witness skills (Ethics) | To be assigned |
| <u>Exercise IV</u> | |
| TRIAL RUN | |
| 7. Simulate testimony w/ foundations & exhibits <i>(repeat as often as necessary)</i> | To be assigned |
| 8. Prepare witness for cross exam & redirect exam | To be assigned |
| FINISHING SCHOOL | |
| 9. Familiarize witness w/ courtroom, protocol & procedures | To be assigned |
| 10. Put witness at ease - "Just tell the truth." | To be assigned |