

## PREPARING, EXAMINING, AND CROSS-EXAMINING WITNESSES

LAW 7841-001

Summer, 2009

July 7-10, 9:00 a.m. – 4:00 p.m.

Room 106

Adjunct Professor Richard D. McKelvie

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Suzanne Faddis, Class director

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### 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 June 26.

### GRADING

In-class attendance and participation	30%
In-class exercises	30%
Detailed witness outline	40%

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

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 July 24 (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

### July 7

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

### July 8

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

"You be the Judge"

Presented by John Straley, United States Bankruptcy Court

July 8, cont.

The Law Enforcement witness

The crime victim

Violent crime –sympathetic victim

Financial crime –unsympathetic victim

Special needs victims- Children, elderly, mentally or emotionally challenged

The criminal defendant

July 9

Use of interpreters

The non-English speaking witness

The hostile witness

The character witness

Visual Aids

July 10

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.