

COURSE SYLLABUS
CRIMINAL TRIAL PRACTICE 246.1, Section 1
BERKELEY LAW, SPRING 2014

George Cotsirilos & Robin Lipetzky - Instructors

Location: Moot Courtroom (140)

Time: Monday: 6:25-9:05 p.m.

Instructor Contact Information:

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Office Hours: Mondays, 6:00-6:25 p.m., 9:05-9:30 p.m.,
or as otherwise arranged.

A. General Course Description And Goals

Criminal Trial Practice is designed for students who are interested in learning how to properly examine witnesses, conduct a trial, and litigate a case, whether criminal or civil. It is open to second and third year students, without prerequisites. The instructors are practicing trial lawyers with over 55 years cumulative experience between them, who have tried dozens of criminal cases of all kinds, and who have taught criminal trial practice at Berkeley Law for 14 years. While classes include explanatory lectures and some demonstration, they are primarily devoted to student exercises in which students function as advocates.

Students litigate cases *extensively*, on a weekly basis. Following introductory lecture sessions, each week, every student assumes the role of prosecutor or defense lawyer, conducting witness examinations and/or arguments. Case problems, included in distributed materials, are generally derived from modified versions of actual cases. Students learn largely through a process of practicing skills, and by observing and analyzing the performances of others. A class size limit of 16 provides a ratio of no greater than 8 students per instructor, which allows for extensive one on one attention to each student and each skill performance. Each week the class splits into 2 groups, which vary on a weekly basis, allowing students to litigate cases with each

instructor and with each of their fellow students. While student exercises are discussed and analyzed in class, they are also video-recorded to allow for additional self-evaluation and analysis.

Areas covered include, strategy, direct and cross examination, jury selection, objections to evidence, demonstrative evidence, pretrial motions, opening statements, and final arguments. Near the end of the semester, each student will conduct an entire trial at a courthouse before a state or federal judge and a jury.

The goal of the class is to impart trial skills, particularly those most difficult to obtain, like the correct techniques for direct and cross-examination of witnesses, and to inculcate an understanding of the strategic relationship between those skills. The idea is to know how to construct a case strategy, then be able to effectively ask the questions and make the arguments necessary to make that strategy successful. The class format is based upon the theory that, for such skills to be taught effectively, reading and lecture must be accompanied by practice in an environment which allows for appropriate individual attention. Irrespective of initial confidence or skill levels, students leave this class having tried a case to a jury, ready to try another one.

B. Requirements And Assessment

Criminal trial practice is a pass/not pass class; however, this grading policy does *not* make the class easy and exists in order to encourage candid, but constructive class discussion and criticism, motivated entirely by a desire to help each student learn trial skills. There are few firm course requirements; however, as is discussed below, those that do exist are very firm. Much of a student's work is self-imposed because he or she is learning trial skills largely by performing them in class, with an opponent. That performance is recorded and critiqued by the instructors, as well as the other students. We urge students to judge their progress, as well as the value of the class, by assessing the extent to which they have acquired and, hopefully, internalized mechanisms for constantly improving their trial skills. Because successful trial skill acquisition and performance are largely based upon preparation, students are motivated to prepare in order to perform well in front of the class, meet the opposition of the student on the other side of the counsel table, and ensure that class discussions are meaningful.

Generally, no more than four straight forward and brief case examples are assigned per week. Students should read all four of the cases, as opposed to only the one in which the student will play the role of prosecutor or defense counsel. This facilitates class discussions, which are particularly important in this course. The course of study includes a written motion to suppress evidence which will be submitted around the middle of the semester, after which it will be litigated and argued.

Case problems, instructional materials and assignments will be distributed electronically, in class and/or by way of a course reader. We do not have a required text; however, required readings are included in the course reader and we suggest additional optional readings, including sections of L.Pozner & R.Dodd, Cross-Examination: Science And Techniques (Michie Company 1993)(Suppl. 2010), J.Keker & W. Brockett, Effective Direct and Cross Examination (CEB 1986)(Suppl.1996), T. Mauet, Trial Techniques (Aspen Publishers 2007), and S. Lubet, Modern Trial Advocacy (NITA 2009), all of which should be on reserve in the library.

The class culminates with a “final exam” which is a homicide trial, conducted at the Contra Costa County Superior Court, in which each student will prosecute or defend the case before a state or federal judge and a jury.

Firm course requirements are:

1. Punctual Class Attendance Is Mandatory.

Most classes include litigation against an opponent and a student’s failure to attend on time undermines the class experience of that student’s opponent, as well as general class discussion. Moreover, because lecture is kept to a minimum in favor of class performance, failure to attend the few lecture classes will cause a student to miss important instruction on the fundamentals of trial practice, for which it can be difficult to compensate. We recognize that illness and extenuating circumstances occur from time to time; however, we expect as much advance notice as possible in the event of such circumstances. Any absence *must* be explained and excused. Recurrent absence is not excused. Absence without appropriate notice and/or a legitimate reason may result in loss of credit for the class as a matter of instructor discretion.

2. The Final Trial.

The 2013 final trial is scheduled for **Saturday, April 19, 2013**. All students must participate in the final trial in order to pass the class. Before signing up for this class, students should carefully consider the final trial date to make certain they can be present. In light of the logistics involved in arranging a final trial at a county courthouse, over which full time judges will preside, the trial cannot be rearranged to accommodate a change in an individual student's schedule. The judges at the final trial treat student lawyers pretty much the same way judges treat lawyers on a daily basis. The instructors and the judges expect students to arrive on time and prepared.

C. COURSE SCHEDULE

Subject to change as needed, the following is our weekly schedule:

1. January 6, 2014
Introduction-The Trial Process
Case Inception/Brainstorming/Integrated Case Theory and Trial Strategy

2. January 13, 2014
Direct & Cross Examination- Direct/Cross Lecture-Demo; Objections.

Required Reading: Course Materials; *Tips On Trial Advocacy*; *Witness Preparation And Examination*.

Recommended reading: Keeker & Brockett, Effective Direct & Cross-Examination, Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12.
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Maue, Trial Techniques, Chapters V-VII; Lubet, Modern Trial Advocacy, Chapters 4-5.

3. January 27, 2014
Use of the Rules of Evidence;
Direct and Cross Examination; Objections.

Required Reading: Course Materials; *Witness Preparation & Examination*, *Common Objections*; *People v. Elderts*

Recommended reading: Keeker & Brockett, Effective Direct & Cross-Examination,

Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12.
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Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12;.
Mauet, Trial Techniques, Chapters V-VII; Lubet, Modern Trial Advocacy, Chapters 4-5.

4. February 3, 2014
Examination of Witnesses and Objections.

Required Reading: Course Materials; *Witness Preparation & Examination, Common Objections*; Distributed Case Materials;

Recommended reading: Keeker & Brockett, Effective Direct & Cross-Examination,
Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12.
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Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12;.
Mauet, Trial Techniques, Chapters V-VII; Lubet, Modern Trial Advocacy, Chapters 4-5.

5. February 10, 2014 (Search motion written assignment handed out with
briefing schedule).

Impeachment.

Required Reading: Distributed Cases; Course Materials; *Witness Preparation And Examination*.

Recommended reading: Lubet, Modern Trial Advocacy, Chapter 6.

6. February 24, 2014
Pretrial and Preliminary Hearings;
Witness Examinations and Argument.

Required Reading: Distributed Cases; Course Materials: *Preliminary Hearings*;

7. March 3, 2014
Motions (written assignment);
Witness Examinations and Argument.

Required Reading: Distributed Case & Course Materials

8. March 10, 2014
Understanding The Fundamentals Of, And Integral Relationship Between Voir Dire, Opening Statement, & Final Argument

Voir Dire And Jury Selection

Required Reading: Distributed Course Materials: *Voir Dire, Opening Statements, Final Argument; People v. Johnson*

Recommended Reading: Mauet, Trial Techniques, Chapters III, IV & IX; Lubet, Modern Trial Advocacy, Chapters 12-14.

9. March 17, 2014
Opening Statement.

Required Reading: Distributed Cases and Course Materials; *Opening Statements*.

Recommended Reading: Mauet, Trial Techniques, Chapter IV; Lubet, Modern Trial Advocacy, Chapter 12.

10. March 31, 2014
Examination of Witnesses at Trial-Cumulative Witness Examination Skill Application.

Required Reading: Course Materials; *Witness Preparation And Examination*.
Distributed Case Materials For both March 31 and April 7.

11. April 7, 2014
Closing Argument/Demonstrative Evidence.

Required Reading: Course Materials; *Final Argument*; Cases from March 20, 2014.

Recommended Reading: Mauet, Trial Techniques, Chapter IX; Lubet, Modern Trial Advocacy, Chapter 13.

- 12.** April 14, 2014
Final Trial preparation.

Required Reading: Final Trial Problem
Recommended: Individualized Course Review.

Sat.-April 19, 2014- Final Jury Trial

- 13.** April 21, 2014
Trial Performance Analysis and Course Review.