

**COURSE SYLLABUS
CRIMINAL TRIAL PRACTICE 246.1
BERKELEY LAW, SPRING 2011**

George Cotsirilos & Robin Lipetzky - Instructors

Location: Moot Courtroom (140)

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

Instructor Contact Information:

George Cotsirilos

Telephone: (415) 397-2373

Email: gjc@cots-camp.com

Robin Lipetzky

Telephone: (925) 335-8035

Email: robin.lipetzky@pd.cccounty.us

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 50 years cumulative experience, who have tried dozens of criminal cases of all kinds, and who have taught criminal trial practice at Berkeley Law for over 10 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. 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. Accordingly, 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.

All students must participate in the final trial in order to pass the class. 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 9, 2012
Introduction
Case Inception/Brainstorming/Case Theory
People v. Elderts

2. January 23, 2012
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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3. January 30, 2012
Use of the Rules of Evidence;
Direct and Cross Examination; Objections.

Required Reading: Course Materials; 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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4. February 6, 2012
Examination of Witnesses and Objections.

Required Reading: Course Materials;
People v. Lamb (I & II) (robbery, car theft)
People v. Moody (robbery)
People v. Crenshaw (possession of cocaine)

Recommended reading: Keeker & Brockett, Effective Direct & Cross-Examination, Chapter 2; Pozner & Dodd, Cross-Examination: Science And Techniques, Chapter 12.
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5. February 13, 2012 Search motion written assignment handed out with briefing schedule.
Impeachment.

Required Reading: Course Materials; *Witness Preparation And Examination*; Handout Packet (Distributed on 2/7/11);

State v. Remington(carrying concealed weapon)
State v. Fletcher (1st degree murder)
State v. Teller (theft, burglary)
U.S. v. Canon (espionage)

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

6. February 27, 2012
Preliminary Hearings;
Witness Examinations and Argument.

Required Reading: Course Materials: *Preliminary Hearings*;
People v. Gary (attempt to pass drugs into jail; poss of heroin)
People v. Patton (robbery)
People v. Cornelius (robbery, forgery)
State v. Lawrence (theft, assault)

7. March 5, 2012
Search and Seizure Motions (written assignment);
Witness Examinations and Argument.

Required Reading: Course Materials;
People v. Nino (DUI)
People v. Leeds (possession of a firearm)
People v. Est (possession of drugs for sale)
People v. Williams (possession of cocaine)

8. March 12, 2012
Voir Dire And Jury Selection.

Required Reading: Course Materials; *A Note On The Current State And Use Of Counsel Voir Dire*; People v. Johnson.

Recommended reading: Mauet, Trial Techniques, Chapter III.

9. March 19, 2012
Opening Statement.

Required Reading: Course Materials; *Opening Statements*.
People v. Lamb (robbery, car theft)
People v. Walker (possession of cocaine for sale)
People v. Arthur (assault w/deadly weapon)
People v. Patton (robbery)

Recommended Reading: Mauet, Trial Techniques, Chapter IV.

10. April 2, 2012
Examination of Witnesses at Trial-Cumulative Witness Examination Skill Application.

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

Required For both April 4 and April 11
Course Materials;
People v. Edwards (robbery)
People v. Camp (assault on a police officer)
People v. Walker (possession of cocaine for sale)
State v. Bentley (possession of marijuana for sale)

11. April 9, 2012
Closing Argument/Demonstrative Evidence.

Required Reading: Course Materials; *Final Argument*;
People v. Edwards (robbery)
People v. Camp (assault on a police officer)
People v. Walker (possession of cocaine for sale)
State v. Bentley (possession of marijuana for sale)

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

Final Trial Problem Distributed

12. April 16, 2012
Final Trial preparation.

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

Sat.-April 21, 2012- Final Jury Trial

13. April 23, 2012
Trial Performance Analysis and Course Review.