CIVIL TRIAL ADVOCACY
Fall Semester 2012
Thursdays, 6:25-9:05 p.m.
Room 140

Contact Information:
Jonathan U. Lee
Assistant United States Attorney
United States Attorney's Office
9th Floor, Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 436-6909 (Direct Dial)
Jonathan.Lee@usdoj.gov

Overview & Structure

This is a "learning by doing" course in which the organizing principle is to have you perform as a trial advocate. While there will be brief lectures, you will get real and repeated experience in standing, questioning, objecting and persuading in court. You will work at the basic tools of trial work: direct and cross examination, introduction of exhibits into evidence, opening statement and closing argument, and the goal is for you to become familiar with the practical application of the rules of evidence and making objections. In each class, we will focus on a particular task(s) that you will face in trial. Week by week, you will perform one or more of the assignments, and those performances will be done in role in a courtroom setting. During your performance, other students typically will serve as the witness as well as opposing counsel.

You will need (1) Modern Trial Advocacy, 4th Edition, Steven Lubet (NITA), (2) Problems in Trial Advocacy: 2011 Edition, (NITA), and (3) *Dixon v. Providential Life Insurance Company* (NITA). I will supply additional supplemental materials, such as transcripts from one of my trials, as the semester progresses. I will also give a brief lecture on the task to be performed the next week. These lectures will supplement the assigned reading. It is essential that you keep up with the reading assignments.

The course will culminate in a final trial. Pairs of students will oppose each other in the jury trial. The trials will last approximately 3-4 hours.

Course Requirements & Grading

To meet the requirements of this course, you will be expected to do the following:

(1) Attend every class.
(2) Keep up with the assigned reading.
(3) Prepare each task and perform the task in class.
(4) Complete any assignment that may be given.
(5) Conduct a final trial, including preparation of a trial notebook.

Your grade will be based on two factors: (1) class performance and participation; and (2) performance in the final trial, including preparation of a trial notebook. These two factors are weighted 50% and 50% respectively.

Class Performance

Class performance means preparing for class, performing assigned tasks, and participating in objections and class discussions.

Attendance at all classes is required. Any student unable to attend a class must contact me to explain his or her absence. Failure to attend class without an excused absence may result in a lower grade.

The class will be recorded and you are strongly encouraged to watch your videotaped performances consistently throughout the term. A 1-2 paragraph written self-critique of your videotaped performances is due on **December 7, 2012.**

Final Trials

Final trials are the final examination for this course. You will try a case, working with a partner. Please feel free to select your own partner. If you do not have a partner with whom you want to work, I will choose a partner for you. Trial partner selections will need to be finalized by **October 11, 2012.**

The trials will have a four hour time limit, two hours for each side. The two hour limit encompasses opening statement, direct examination of your witnesses, cross-examination of the other side's witnesses and closing argument. You and your partner shall divide up the tasks as you see fit, with two qualifications. First, each of you must do a direct examination and a cross examination. Second, one of you will do the opening statement, and the other doing the closing argument.

Students shall dress in appropriate court attire and remain in role at all times. Each trial will be heard by a jury. Each trial team will recruit and prepare all witnesses they intend to call. Each student also must supply three people to serve as jurors. The jury will deliberate in front of the students and render a verdict.

While you and your partner will present your case as a team, you will be graded separately. Your grade will not depend on the outcome of the trial but on the quality of your presentation.

Performance Criteria for the Final Trials

Your performance in the final trial will be graded using the following criteria:

(1) selection of a convincing theory of the case;

(2) use of sound trial tactics, including what subject matter to include or exclude, approach to the witnesses, word choice and selection of images;
(3) personal presentation in the courtroom, including ease of manner, voice projection, reliance on notes, avoidance of distracting mannerisms, use of simple language, control of the courtroom, ability to hold attention and ability to inspire confidence;
(4) ability to make an effective opening statement;
(5) ability to conduct direct examination: setting of tone, clarity of presentation, control of witness and setting forth the qualifications of the witness;
(6) use of demonstrative evidence: marking and handling of evidence, the ability to get the evidence admitted and effective use of exhibits;
(7) ability to cross-examine: use of leading questions, control of the witness and development of case theory;
(8) knowledge of and use of the rules of evidence, including the making and meeting of objections;
(9) adaptability: listening to the answers, dealing with unexpected answers and handling adverse rulings; and
(10) ability to make a persuasive closing argument.

Trial Notebook

Each team will prepare a trial notebook for use during the pretrial conference and the trial. The notebook should provide the foundation and structure of your case. At a minimum, it should include:

(1) a tactical analysis of the case, evaluating the strengths and weaknesses of your side and your opponent's side;
(2) a summary of your theory and theme of the case;
(3) an analysis of all evidentiary and procedural issues, including motions in limine;
(4) a list of witnesses you will present, in order of their appearance and including the evidence to be used with each witness and what elements of your case each will address;
(5) a list of exhibits to be used, including which witness or witnesses will lay the foundation for each exhibit;
(6) outlines of opening statement and closing argument;
(7) outlines of direct examination of each of your witnesses;
(8) outlines of cross examinations for your opponent's witnesses; and
(9) copies of all documents and transcripts to be used as exhibits or with any witnesses.

CLASS SCHEDULE (subject to change)

August 23 - Introduction to Trial Advocacy, Anatomy of a Trial
Reading: Lubet, Chapters 1-4
Assignment for next week: *Anatomy of a Murder* excerpt (bartender Paquette)

- Nita Liquor Commission v. Cut-Rate (James Bier & Dan Jones)
- Meyers v. NITA Day School (Emmy Beskind & John Meyers)

August 30 – Direct Examination

Assignment for next week: Lubet, Chapter 9

- Quinlan v. Kane Electronics (Roberta Quinlan & Brian Kane)
- State v. Williams (Alex Clark & Joseph Williams)

September 6 – Direct Examination with Objections

Assignment for next week: Lubet, Chapter 10

- Brown v. Byrd (Photos)
- Cipriano v. Byrne (Baseball Bat)
- MacArthur v. Rodgers (Computer Printouts)

September 13 – Exhibits/Documents/Things

Assignment for next week: *The Verdict* excerpt (Kaitlyn Costello Price)

- Gilton v. NITA Beverages (Photos)
- US v. Potter & Dobbs (Drugs)
- Quinlan v. Kane Electronics (Letters: Exhs 1 & 2)

September 20 – Exhibits/Documents/Things (continued)

Assignment for next week: Lubet, Chapter 8

- MacArthur v. Rodgers (Kristen Lovell)
- NITA Sports & Expo Authority v. Parsons (Matson)

September 27 – Direct Exam of Experts

Assignment for next week:

- Jerry's Wiring v. Smith (Accountants)
- Jenkins v. Manchester (Saul Winer)

October 4 – Direct Exam of Experts with Demonstrative Aids

Assignment for next week: Lubet, Chapters 5-7

My Cousin Vinny excerpts (cross of Tipton, Crane and Reilly)

- Nita Liquor Commission v. Cut Rate
- Quinlan v. Kane Electronics
- State v. Williams
- Meyers v. NITA Day School

October 11 – Cross Examination

Assignment for next week:

- Gentry v. Smith (Taylor & Smith)
- Manning v. Carelton (Carleton)
- Quinlan v. Kane Electronics (Quinlan & Kane)

October 18 – Impeachment
Assignment for next week: Lubet, Chapter 11-12
- MacArthur v. Rodgers (Kristen Lovell)
- NITA Sports & Expo Authority v. Parsons (Matson)

October 25 – Cross Examination of Experts
Assignment for next week: Lubet, Chapter 13
prepare visual aid to accompany your opening statement

November 1 – Opening Statement
Assignment for next week: prepare visual presentation to accompany your closing argument

Saturday, November 3 – Settlement Conferences, time and location TBA

November 8 – Closing Argument
Assignment for next week: prepare trial notebook

November 15 – Trial Notebook & Pretrial Conferences regarding Motions in Limine & Trial Briefs

FINAL TRIALS – Friday, November 16 & Saturday, November 17, 2012