

Trial Skills

SYLLABUS

Fall 2013

Adjunct Professor Tim Gresback
Law 954
Tuesdays and Thursdays
Tuesday Lectures: Law School Courtroom
Thursday Exercises: Law School Courtroom and Room 104
3:30-4:45 pm

COURSE MATERIALS

The materials required for this course are:

1. Texts:

Perrin, et al, "The Art & Science of Trial Advocacy," Anderson, 2nd ed. (2011). ISBN: 9781422482230.

2. Required Supplemental Material:

Imwinkelried, "Evidentiary Foundations," 8th ed. (2012). ISBN: 9780769847696.

3. Exercise Materials:

A. Stein & Bocchino, "John Fulbright v. Americraft Industries and Andrew Parker," NITA, 3rd. ed. (2008). ISBN: 9781601560544.

B. Bocchino & Kalo, "Lang v. Anderson," NITA, 2nd. ed., (2001). ISBN: 9781556817410.

CLASS ATTENDANCE AND PARTICIPATION

Class attendance is important. Please show up for class on time and well-prepared. One goal of this course is to develop professionalism and courtesy. As you will find in the practice of law, being on time and prepared are critical aspects of professionalism. Class participation and attendance will make up 25% of your grade. The good news: No final exam.

TUESDAYS AND THURSDAYS

Generally, on Tuesdays there will be a lecture and discussion in the Courtroom. On most Thursdays, in groups of four students, you will be evaluated by a guest faculty on various aspects of a trial, such as Opening Statement and Direct Examination. On Thursdays, half the students will stay in the Courtroom and half the students will go to room 104. However, the first two graded exercises are written assignments you will e-mail to me. In addition, at the end of the semester you will draw upon your new trial skills and conduct a full trial.

Thursday Graded Exercises

Exercise	Date
1. Theory and Theme	9/5
2. Jury Selection	9/12
3. Opening Statements	9/19
4. Direct Examination	10/3
5. Cross-Examination	10/24
6. Impeachment	10/31
7. Direct of Experts	11/7
8. Cross of Experts	11/14
9. Closing Argument	11/21
10. Final Trial	12/2-12/6

GRADES AND COURSE REQUIREMENTS

Your grade will be based on your performance on each of the nine graded Thursday exercises. The nine exercises will be equally weighted and count for 50% of the final grade. The tenth exercise is a full trial which will count for 25% of your final grade.

OFFICE HOURS

You can contact me as follows:

Tim Gresback

Phone: 208-882-2222

Email: <tim@moscowattorney.com>

Office: 210 E. 7th St., Moscow.

Feel free to e-mail me with questions. If you need to see me, make an appointment with my assistant Lisa Morse.

Disability Support Services Reasonable Accommodations Statement

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Students should meet with Disability Support Services (DSS) by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by DSS to Dean Dodge for final approval. DSS serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without DSS first submitting a recommendation. You may contact DSS by:

- Visiting the Idaho Commons Building, Room 306
- Calling 208-885-6307
- Emailing dss@uidaho.edu

It is ultimately the student's responsibility to seek a disability accommodation, and until an accommodation is approved by DSS and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about DSS, visit its website at <http://www.uidaho.edu/studentaffairs/taap/dss>. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

FULBRIGHT MATERIALS

Our mock case this semester will be based on the *Fulbright* material. Read it thoroughly. We will come back to the material often. A little time reading *Fulbright* now will pay rich dividends throughout the semester.

SCHEDULE

Tuesday, August 27

Lecture and Discussion: Introduction to Trial Skills course (Room 104).

Thursday, August 29

Lecture and Discussion: Introduction to Trial Advocacy.
Read Perrin, Chapter 1.
Complete your reading of the Fulbright materials.

Tuesday, September 3

Lecture and Discussion: Case Theory and Theme Development.
Read Perrin, Chapter 2.

Thursday, September 5

Lecture and Discussion: Introduction to Jury Selection.
Assignment #1 due by start of class (e-mail it to me).

Assignment #1: Theory and Theme.

Prepare a written Theory and Theme of the Case for your client in *Fulbright v. Americraft Industries and Andrew Parker*. This should encompass no more than two typewritten single-spaced pages. E-mail your work to me by the start of class.

Your Theory should address each of the following:

(1) Summary of Legal Theory: Write a short statement taking into account the elements of your claim, and setting forth the legal theory by which your side will be able to prevail given the facts as you understand them.

(2) Summary of Factual Theory: Write a statement setting forth your view or interpretation of the facts in a way which allows your party to win. In doing so, you must remember to integrate both the “good facts” and the “bad facts” into a coherent, consistent story that will be credible to the jury.

(3) Summary of Proof: Identify the primary evidence on which you will rely to prove each part of your case theory. This can come from testimony, as well as documentary and real evidence.

(4) Summary of Problem Areas and Solutions: Identify the important legal and factual disputes you anticipate in your effort to prove your theory. Outline ideas of how to solve or deal with those areas of difficulty.

(5) Further Factual Development: Identify areas where your command of the facts is incomplete and needs further attention and investigation. Consider what additional information you need in order to prepare for trial.

Your Theme should be a concise phrase or idea that will resonate with the jury. This theme will serve as a “hook” to which the jury will return to over and over again. The theme should be something they will remember when they go into deliberations.

Tuesday, September 10

Lecture and Discussion: Jury Selection.
Read Perrin, Chapter 4.

Thursday, September 12

Lecture and Discussion: Introduction to Opening Statements.
Assignment #2 due by start of class (e-mail it to me).

Assignment #2: Jury Selection.

Prepare a list of at least ten written questions to be used in the voir dire. The planned voir dire should include a brief introduction, and then address what you believe to be particular areas of concern about potential juror attitudes.

Tuesday, September 17

Lecture and Discussion: Opening Statement.
Read Perrin, Chapter 5.

Thursday, September 19

Your first exercise evaluated by guest faculty.

Assignment #3: Opening Statement.

Prepare and deliver an opening statement, not to exceed 12 minutes in length, for your side of the case in *Fulbright v. Americraft Industries and Andrew Parker*.

Tuesday, September 24

Lecture and Discussion: Exhibits and Foundation.
Read Perrin, Chapter 7.
Read Imwinkelried, Chapters 1 and 2.

Thursday, September 26

Guest Lecture TBA.

Tuesday, October 1

Lecture and Discussion: Introduction to Exhibits, Foundations, and Direct Examination.

Thursday, October 3

Assignment #4: Direct Examination

Plaintiffs: Prepare and present the direct examination of Jackie Fulbright, covering the following matters:

- (a) Introduction of the witness;
- (b) Setting the scene leading up to the accident;
- (c) The accident itself.

Defendants: Prepare a direct examination of Andrew Parker, including the following:

- (a) Introduction of the witness;
- (b) Setting the historical scene, e.g., the relationship of the parties, the nature of the lunch, etc.;
- (c) Setting the physical scene;
- (d) The accident.

All plaintiffs should be prepared to play Jackie Fulbright and all defendants should be prepared to play Andrew Parker. Work to produce a direct which demonstrates your ability to lead the witness through the subject matter, without *leading* the witness. Student attorneys should be prepared to oppose the direct exams as well, making appropriate and timely legal objections.

Tuesday, October 8

No class. Please attend the Bellwood lecture.

Thursday, October 10

Lecture and Discussion: Introduction to Cross-Examination.
Read Perrin, Chapter 8.

Tuesday, October 15

Guest lecture on Cross-Examination.

Thursday, October 17

In this class we are going to look ahead and plan your final trial for the week of December 2. We are also going to have a friendly competition between Plaintiffs and Defendants on who best understands Direct, Cross, Foundations, and Exhibits.

Tuesday, October 22

Lecture and Discussion: Motions.
Read Perrin, Chapter 3.

Thursday, October 24

Assignment #5: Cross-Examination

Plaintiffs: Be prepared to cross-examine (a) Andrew Parker, who has testified substantially in accordance with his deposition, and (b) Kim Anderson, who has testified substantially in accordance with her deposition.

Defendants: Be prepared to cross-examine (a) William “Billie” Brown, who has testified on direct substantially in accordance with his statement to the police, and (b) Jackie Fulbright, who has testified substantially in accordance with his deposition.

NOTE: You will also need to be prepared to play the role of the witness during cross-examination by counsel on the other side of the case. Once again, try to conduct yourself in the way you think a real witness might; that is, your instinct will not be to cooperate with the cross-examiner, but instead to take any opportunity given to avoid or explain what you see as an effort to discredit your testimony.

Tuesday, October 29

Lecture and Discussion: Impeachment, Rehabilitation, and Objections.
Read Perrin, Chapter 9.

Thursday, October 31

Assignment #6: Impeachment and Rehabilitation.

Plaintiffs:

All plaintiffs' counsel should be prepared for the following:

A. Prepare to impeach Kim Anderson, who has testified on direct examination by the defendant that Andrew Parker only had one white wine and soda during the lunch and looked and acted absolutely normal. Leslie Brown, one of Anderson's co-workers, has told Plaintiff's investigator that Anderson told Brown that Anderson attended a meeting between Anderson's boss and Andrew Parker one month prior to trial, during which the lawsuit and the lunch meeting were discussed. Anderson further indicated to Brown that at the meeting Anderson was encouraged by Anderson's boss to get the story straight.

B. Prepare an impeachment of Andrew Parker from his deposition assuming that he has testified on direct examination that he saw the motorcycle, and that he checked his side view mirror and turned his head to look for traffic before pulling away from the curb.

C. Prepare a cross-examination of George Markham with the following additional information added to the facts: George Markham pleaded guilty and was convicted of misdemeanor shoplifting on September 28, (YR-4) in Nita City. Conduct an impeachment of Markham on the following points:

1. Bias;
2. Criminal record;
3. Assume Markham has testified on direct examination (for defendant) that Parker did not appear intoxicated, and that he told the police that Parker did not seem a little intoxicated and they got it wrong. Please conduct an impeachment of Markham from his deposition and statement.

Defendants:

All defense counsel should be prepared to perform the following problems:

A. Prepare to impeach Jackie Fulbright, who has testified on direct examination that his headaches lasted about three weeks after the incident, that he had intermittent double vision for about five weeks, and that he didn't tell anyone because he was afraid that a medical problem might interfere with his senior football season.

B. Prepare to impeach Kim Anderson, who has testified on direct examination by the plaintiff that after the lunch Andrew Parker was unsteady on his feet, he was slurring his words, and he definitely was feeling the drinks. In addition, Anderson testified on direct that the motorcycle may only have been going approximately 30 miles per hour. Leslie Brown, one of Anderson's co-workers, had told the defendant's investigator that Anderson told Brown that Anderson had, subsequent to the accident and prior to trial, had two dates with Parker, but the two had an argument on the second date and haven't spoken since.

C. Conduct a Federal Rules of Evidence 608(b) impeachment of Jackie Fulbright based on statements in his deposition.

NOTE: For this exercise you will not be permitted to prepare a witness. Each student must be prepared to conduct either the impeachment or rehabilitation following impeachment, if designated by the instructor.

Each student must be prepared to play the role of the witness; this will require putting yourself in the witness's shoes and thinking about how you might respond to impeachment efforts. You should make an effort to respond to the questioning as you think a real witness might; take whatever opportunity is given you to justify any inconsistency in your statements and to reaffirm your present testimony.

Tuesday, November 5

Lecture on Experts.
Read Perrin, Chapter 10.

Thursday, November 7

Assignment #7: Direct and Cross Examination of Experts, Part 1.

Plaintiff directs Dr. Barron; Defendant then crosses. Expert witnesses should try not to read.

Tuesday, November 12

Lecture and Discussion: Refresher on direct, cross, experts, and motions. We will also look ahead and discuss your final trial.

Thursday, November 14

Assignment #8: Direct and Cross Examination of Experts, Part 2.

Defendant directs Dr. Rosenberg; Plaintiff then crosses.

Tuesday, November 19

Lecture and Discussion: Closings.

Read Perrin, Chapter 11.

Thursday, November 21

Trial Skills Assignment #9: Closing Argument

Plaintiffs and Defendants: Present a closing argument, not exceeding twelve minutes in length, addressing both liability and damages.

December 2-6: Final Trial

Assignment #10: Lang v. Anderson Trial

Each student will serve as counsel in a full trial of the case. Plaintiffs and defendants will switch sides. Those who served as plaintiffs for the *Fulbright* exercises will serve as defendants, and those who represented the defense in that case will serve as plaintiff's counsel in *Lang v. Anderson*. Witnesses are not allowed to testify from any outline or notes.