

University of Cincinnati
College of Law
Witness Preparation Workshop
January 5, 7 & 9, 2010
(proposed dates)

Faculty:
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Workshop Syllabus © 2009

- Title:** PREPARING THE FACT WITNESS TO TESTIFY
- Description:** Through role play and other means the student in this course will learn the techniques that trial counsel use to prepare themselves and their witnesses to provide testimony that is truthful, engaging, genuine, trustworthy and persuasive. Students will learn how to gain the witness' confidence, explain the witness' role, uncover important information, lay necessary foundations, showcase the witness' testimony, reduce the risk and impact of unexpected or damaging testimony, and prepare the witness for cross and redirect examination. Each aspect of witness preparation may also raise ethical issues to be considered.
- Credit Hours** This **1 credit hour** course will be presented in 14 hours over a
Format: 2-3 day period during the winter break. See information below.
- Class size:** Up to 8 (even number)
- Materials:**
- | | |
|-----------|--|
| Text | <u>TRIAL TECHNIQUES</u> , 6 th (2002) or 7 th (2007) Edition, Thomas A. Mauet, Aspen Law & Business,

<i>(Only the sections related to certain aspects of trial and witness preparation will be required reading – see below.)</i> |
| Case File | <u>Dixon v. Providential Life Insurance Co. – Problems and Case File</u> , Revised Fourth Edition, James H. Seckinger, National Institute For Trial Advocacy, Inc. 2000 |
| Other | Information about a limited amount of additional reading and specific exercises will be provided as needed. |
- Prerequisites:** Evidence and Trial Practice

**Workshop
Format:**

As in a trial practice class, during the workshop sessions, each student will do a series of exercises. In each exercise, the student role-playing the trial attorney will work with another student role-playing the witness to demonstrate a specified aspect of witness preparation. Each student exercise will be evaluated against a set of criteria for that exercise. Each exercise will be followed by a critique and discussion.

Evaluation:

Grades will be based upon 1) demonstrated preparation and class participation (33%) and 2) a final exercise (67%).

The final exercise will be a video recorded exercise to be completed shortly after the completion of the workshop. The final exercise will allow students to demonstrate their ability to apply skills and strategies learned in the course and articulate the basis for the choices made in the recorded demonstration.

**Advance
Prep:**

Each student should have a working knowledge of the following materials before the workshop begins:

A. Dixon v. Providential Life Insurance Co. – Problems and Case File,

Read pp. 83 – 92 first. - Then:

Section I Problems

Everything except the problems (*some may overlap Mauet*)

Section II Case File

Everything except the testimony of Sharp,
Wilson, Burns & Crowe

(The better you know the case, the more you'll derive from Mauet's book.)

B. TRIAL TECHNIQUES, Thomas A. Mauet, Aspen Law & Business

Chapter II The Psychology of Persuasion

Chapter V Direct Examination

Chapter VI Exhibits (*a good source for sample foundations*)

Chapter VII Cross Examination (*a good checklist for problems encountered on direct examination*)

Chapter XI Trial Preparation and Strategy (*especially the parts dealing with witness/exhibit selection and preparation and cross examination preparation*)

For our purposes, the sample testimony is not required reading but may be illustrative.

GENERAL WORKSHOP SCHEDULE*

First Session		3.5 hours
	(Tue. 1/5/10 5:00 – 8:30 pm)	
	Introduction & organization	1.0 hour
	Exercise I THE BIG PICTURE	2.0 hours
	Assign next exercise etc.	.5 hours
Second Session		3.5 hours
	(Th. 1/7/10 5:00 – 8:30 pm)	
	Exercise II TROUBLESHOOTING	2.0 hours
	Video exercise	1.0 hours
	Assign next exercise etc.	.5 hours
Third Session		3.5 hours
	(Sat. 1/9/10 9:00 – noon)	
	Exercise III MARSHALLING THE TESTIMONY	2.0 hours
	Video exercise	1.0 hours
	Assign next exercise etc.	.5 hours
Fourth Session		3.5 hours
	(Sat. 1/9/10 1:00– 4:00 pm)	
	Exercise IV TRIAL RUN	2.0 hours
	FINISHING SCHOOL	.75 hours
	Assign final out of class exercise	.75 hours

* Times are proposed estimates.

DESCRIPTION OF EXERCISES

Through role play, the following aspects of witness preparation will be demonstrated, discussed and evaluated:

the attorney will take the witness through one or more of the preparation steps set forth below (*see pp. 5-6*)

the attorney will also prepare the witness to testify in an assigned witness role about an assigned portion of the testimony

the attorney will introduce the witness to the need for and the procedures for testifying about evidentiary foundations

each witness will be given confidential instructions about the witness' attitude towards testifying and/or any credibility issues faced by the witness.

SAMPLE EXERCISE ROLE PLAY FORMAT*

Student 1 – attorney

Student 2 – witness

Student 1 – witness

Student 2 – attorney

Student 3 – attorney

Student 4 – witness

Student 3 – witness

Student 4 – attorney

Student 5 – attorney

Student 6 – witness

Student 5 – witness

Student 6 – attorney

Student 7 – attorney

Student 8 – witness

Student 7 – witness

Student 8 – attorney

*Assignments w/ attorney and witness roles will be made before the workshop begins.

PREPARING THE FACT WITNESS TO TESTIFY

WITNESS ANALYSIS AND PREPARATION GUIDE © 2009

WITNESS PREPARATION STEPS (FACTS)

These steps should be followed with all witnesses except where the factors in the right hand column require modification of the process.

I THE BIG PICTURE

1. Explain case & witness' role
2. Get overview of witness' knowledge

II TROUBLESHOOTING

3. Get clarification re: inconsistencies etc.
4. Go over witness' statements & documents

III MARSHALLING THE TESTIMONY

5. Organize testimony & details
6. "Coach" witness re: witness skills (Ethics)

IV TRIAL RUN

7. Simulate testimony w/ foundations & exhibits
(repeat as often as necessary)
8. Prepare witness for cross exam & redirect exam

V FINISHING SCHOOL

9. Familiarize witness w/ courtroom, protocol & procedures
10. Put witness at ease - "Just tell the truth."

WITNESS FACTORS

These factors do not relate to any particular step in the left hand column. However, they may alter the preparation for any given witness.

Attitude Factors Credibility Factors

Cooperative *Perception (< >)*

Friendly *Memory*

Uncooperative *Articulation*

Neutral *Bias/Prejudice*

Other *Worldview etc.*

EXERCISE SCHEDULE © 2009

Exercise Topics

Witness Factors

Exercise I

THE BIG PICTURE

Attitude Factor ***Credibility Factor***

- | | |
|---|----------------|
| 1. Explain case & witness' role | To be assigned |
| 2. Get overview of witness' knowledge
<i>Listening</i> | To be assigned |

Exercise II

TROUBLESHOOTING

- | | |
|---|----------------|
| 3. Get clarification re: inconsistencies etc. | To be assigned |
| 4. Go over witness' statements & documents | To be assigned |

Exercise III

MARSHALLING THE TESTIMONY

- | | |
|--|----------------|
| 5. Organize testimony & details | To be assigned |
| 6. "Coach" witness re: witness skills (Ethics) | To be assigned |

Exercise IV

TRIAL RUN

- | | |
|--|----------------|
| 7. Simulate testimony w/ foundations & exhibits
<i>(repeat as often as necessary)</i> | To be assigned |
| 8. Prepare witness for cross exam & redirect exam | To be assigned |

FINISHING SCHOOL

- | | |
|--|----------------|
| 9. Familiarize witness w/ courtroom, protocol & procedures | To be assigned |
| 10. Put witness at ease - "Just tell the truth." | To be assigned |