

6-2-2014

## Courses Tethering Evidence and Trial Advocacy/ Mock Trial

Chris Behan  
*Advocacy Teaching Blog*

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/aboutggulaw>

 Part of the [Legal Education Commons](#)

---

### Recommended Citation

Behan, Chris, "Courses Tethering Evidence and Trial Advocacy/Mock Trial" (2014). *Articles About GGU Law*. Paper 14.  
<http://digitalcommons.law.ggu.edu/aboutggulaw/14>

This Blog Post is brought to you for free and open access by the About GGU School of Law at GGU Law Digital Commons. It has been accepted for inclusion in Articles About GGU Law by an authorized administrator of GGU Law Digital Commons. For more information, please contact [jfischer@ggu.edu](mailto:jfischer@ggu.edu).

# Advocacy Teaching Blog

In an adversarial legal system the quality of advocacy directly affects the outcome, and hence justice. This blog is for everyone -however they serve our legal system - who is committed to improving the teaching of advocacy skills and ethics so that parties and the community are well served by persuasive and ethical advocates.

---

Home



---

Monday, June 2, 2014

## Courses Tethering Evidence and Trial Advocacy/Mock Trial

The next course outline (see blog post of May 28, 2014 for further explanation) is for a tethered evidence and advocacy program or course. A tethered evidence and advocacy program is one in which the students simultaneously take a trial advocacy course and an evidence course. The two courses are coordinated and often taught by the same instructor. This version is provided by Wes Porter, Director of the Litigation Center and Associate Professor at Golden Gate University School of Law in San Francisco. We have blogged about Wes' tethered Summer Trial & Evidence Program for students who recently completed 1L year– called 1st STEP – [here](#) and [here](#).

This post applies to both the tethered program/course and an independent bridge course between evidence and trial advocacy/mock trial. In our Center, the bridge course is a 2-credit, skills course called “Evidence in the Courtroom” (EIC). We recommend EIC as a co-requisite with evidence, like the lab element that many schools offer, but many students take after evidence. I (Wes Porter) have created materials for EIC.

### Elements that the course designer must include in order to be successful.

For the tethered STEP program or our independent EIC course, the following THREE elements proved most important.

- I. **Emphasize the advantage of intimately knowing the rules of evidence**
- II. **Segregate into “FOUR WAYS” that evidence plays out at trial**
- III. **Progress into advocacy exercises focused on understanding the rules**

**EMPHASIZE THE RULES:** Unlike other electives, we must first convince our students why they need this program/course. It starts with students understanding how the rules of evidence play out at trial as an essential part of trial advocacy. As distinguished from other rules they have learned in law school, mere familiarity with (and exam regurgitation of) these rules is not helpful and the “I’ll look it up when I need it” mentality will not work.

Instead, we teach that the evidentiary rules represent an acquirable language and skill that will

separate them in court – and in the profession. We insist that the rules of evidence shape much of the planning, order, strategy and outcomes at trial, yet also underlies most of the roadblocks that advocates must anticipate, negotiate and overcome. We stress that for the aspiring trial advocate this training can fit anywhere in the timeline of their career-long learning (assuring them that many practicing attorneys (and judges) could benefit from the same).

SEGREGATE INTO THE “4 WAYS”: This method provides the utmost flexibility between the skills training and the substantive rules. My goal is not to “cover” the rules (again), but rather to force students to work through rules as a trial lawyer. Stated differently, in a tethered program, the evidence course offers traditional “coverage” and, to connect to it, we work through the “ways” that evidence plays out in court. And we can use whichever rules the students covered most recently in their evidence course.

Understanding that there are many methods to organize how evidence intersects with trial – I developed these “four ways” that evidence plays out at trial:

1. **Evidentiary arguments in motions in limine**
2. **Objections and responses - at trial in front of the jury**
3. **Knowing your presentation options governed by the rules – focusing on stipulations, modes of impeachment and notice**
4. **Evidentiary foundations - to evade and overcome objections**

My students encounter the rules in these ways as they progress through the tethered program or the independent EIC course. The evidentiary rule at issue is secondary to the skill. For example, throughout the term, we write a handful of motions in limine, responses and judicial orders and argue most motions in court. The motions in limine exercises draw upon a range of different rules – relevance, hearsay, character and witnesses. Later on, the students scrub a new case file for case presentation options: *which witness to call? Which exhibits to admit? Who will sponsor the exhibit? Stipulations? Attack plans for cross examination /impeachment of their witnesses?*

ADVOCACY EXERCISES: By the time the program/course progresses through the “four ways,” the students are ready for advocacy exercises with a distinct focus on the rules. We present witnesses’ direct examinations, introduce and use many exhibits in their case presentation plans, lay foundations, navigate trial objections, and invite opposing counsel to perform a cross examination consistent with *their* plan. The final exercises in this program/course includes written motions in limine, arguments, case presentation plans, direct and cross exams with defined foundations and goals, while an opposing counsel is objecting throughout.

Common pitfalls to avoid if necessary.

- **Avoid RE-teaching evidence (instead, require them to review their notes and the rules before the 1<sup>st</sup> class)**
- **Avoid over-coordinating the substantive rules covered in evidence with your plan in the tethered course**
- **Avoid contradiction with the evidence course - for example, have students play judge and decide motions in limine and objections so that the advocate must accept the ruling and move on.**

It is best for students to understand that the tethered portion of the program/course is about making the best possible arguments under the rules and planning out your case and foundations using the rules. It is not about getting an evidence question “right” or resolving some evidentiary dispute from their evidence course.

Hope this helps some. Please feel free to contact Wes directly for more information about his approach to tethered courses or 1st STEP at [wporter@ggu.edu](mailto:wporter@ggu.edu).

Chris Behan at 10:45 PM

Share



---

No comments:

[Post a Comment](#)

Links to this post

[Create a Link](#)

[Home](#)



[View web version](#)

Powered by [Blogger](#)