


4-7-2015

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Recommended Citation

Kuckes, Niki, "Trending @ RWU Law: Professor Niki Kuckes's Post: Litigation Academy Returns" (2015). *Law School Blogs*. 402.
https://docs.rwu.edu/law_pubs_blogs/402

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Professor Niki Kuckes's Post

Litigation Academy Returns

Posted by Niki Kuckes on 04/07/2015 at 04:51 PM



Forty years ago, one in ten civil cases in federal court was resolved at trial. Today, that number is closer to one in 100.

The “vanishing trial” has been lamented by academics, trial lawyers and judges alike. One consequence of this trend is the diminishing opportunity for citizens to participate in the judicial process through jury service, an important value in American democracy. But another, less noted, result of the vanishing trial is the lack of opportunities for newer lawyers to become real “trial lawyers,” with hands-on experience in such skills as how to question a witness, make objections, appeal to a jury, and persuade the court to



admit evidence. “When I was a young lawyer, I learned how to try a case by actually trying cases, under the guidance of more senior lawyers,” according to Brooks Magratten,

an experienced federal court lawyer. "Lawyers just entering practice today do not have the same opportunities."

This concern motivated Chief Judge William E. Smith of the United States District Court for the District of Rhode Island to found the Litigation Academy— a creative partnership between the federal court, Roger Williams University School of Law, and the Rhode Island Chapter of the Federal Bar Association, a group of federal court lawyers and judges.

The mission of the Litigation Academy is to create intensive, hands-on training opportunities for newer lawyers to practice trial-related skills.



"Given that fewer and fewer trials are held in the federal courts," said Judge Smith, "it is important to everyone – including not only lawyers but others whose lives are touched by the legal system, whether as parties, witnesses or jurors – to find some way to get less experienced lawyers the training they need." From the start, it was important to Judge Smith to create high-quality, low-cost programming that would be available to lawyers starting out in many different practice settings, from solos to non-profit settings to large firms.

The Litigation Academy officially launched in October of 2014 with a Deposition Training program that used real actors as witnesses, and provided the twenty-four lawyers participating with the opportunity to question these "witnesses" in a mock deposition setting. Lectures alternated with practice sessions under the tutelage of experienced trial lawyers drawn from the Rhode Island bar.

The program was co-directed by Magratten, an experienced federal court lawyer who also teaches as an adjunct professor at RWU Law, and myself, as a teacher of civil procedure at the law school, where I also serve as Assistant Dean for Strategic Planning. The faculty included federal court judges – including

Judge Smith, Judge John J. McConnell, Jr., and Magistrate Judge Patricia Sullivan – as well as experienced Rhode Island federal court trial lawyers James T. Murphy, Miriam Weizenbaum, J. Scott Kilpatrick, Deming E. Sherman, Stacey E. Nakasian, Patricia Rocha, Matthew T. Oliverio, Dennis J. McCarten, John S. Foley, and Marc DeSisto, all of whom graciously volunteered their time to serve as lecturers, instructors, and mentors.

Providing training in deposition skills made sense as a first step for the Litigation Academy. Deposition skills, which require a lawyer to become adept at questioning a witness under oath, are critical, and transferable, skills for any lawyer working in litigation.

One of the most difficult skills to teach in law school is how to work with live witnesses. A student can excel in such skills as legal research, writing, and oral advocacy to a judge, yet find it a real challenge to work with a witness and ask the right questions to get the information the lawyer needs to build her case. Training in how to take and defend a deposition helps to fill the gap between the skills students can learn in classes and the real-life practice skills they will need to succeed as lawyers.

The first program was a tremendous success, and the Litigation Academy is poised to offer a repeat of the Deposition Training program in May of 2015, this time with slots for 32 lawyers.

The upcoming program is already at capacity. Space and administrative services for the program are donated by the court, the law school helps with the registration process, and the lawyers serving as faculty give their time on a volunteer basis. This has allowed the Litigation Academy to offer this multi-day, intensive training at a fraction of the cost of similar training programs (for example, the Deposition Training cost students only \$300 for a three-day program that gave them 13 Continuing Legal Education (CLE) credits). High quality training for practicing lawyers is offered by some private groups, such as the National Institute for Trial Advocacy, but can cost thousands of dollars, which can be prohibitively expensive for many newer lawyers.

The new model created by the Litigation Academy has sparked interest in other federal court groups about the possibility of exporting the model for use by other districts. Meanwhile, the newer lawyers in Rhode Island are, from all indications, benefiting from the training provided by the Litigation Academy. According to one lawyer who took the training, Matthew Parker, questioning the actors playing witnesses provided useful practice in handling a difficult witness, such as an “evasive witness, a confrontational witness, an emotionally distressed witness, or one under the influence of substances.” Parker concluded, “It’s better to learn about that in a classroom in a simulation than to have to learn the hard way in a real deposition that could have very high stakes.”

The Litigation Academy is already planning to put on a program this coming Fall in a new area – cross-examining witnesses at trial – and has an ambitious agenda to provide training that covers all of the stages of trial practice, from opening arguments to evidentiary objections. Judge Smith deserves kudos for the inspiration – and for making the program happen here in Rhode Island.

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