INSTITUTE FOR LAW TEACHING AND LEARNING

Teaching Law Practice Across the Curriculum

Workshop 1B

Integrating Courtroom Practice With Classroom Theory: Merging the Academy, Bar and Bench to Create a Collaborative Legal Learning Community

Myra E. Berman
Touro College,
Jacob D. Fuchsberg Law Center

Institute for Law Teaching and Learning Summer Conference
June 17-18, 2010

Touro College Jacob D. Fuchsberg Law Center's Collaborative Court Program

Spring 2010 Course Offering

Touro Law Center, The Alfonse M. D'Amato U.S. Courthouse and The John P. Cohalan, Jr. State Courthouse.

American Trial Courts: Theory & Practice in the Federal Court *(4 credits)*

American Trial Courts is an exciting experiment in legal education. For the first time in any law school in the country, courtroom practice and classroom theory will converge in one course. Using three required components – 4 hours per week of courtroom observations, enrollment in a related course, and weekly attendance at an integrative seminar – this course offers students a unique opportunity to study the federal court in action, participate in some of its work, and learn from a collaborative team of judges, attorneys, and members of the Touro Law faculty.

COURTROOM OBSERVATIONS
- 4 hours per week
- Rotations

RELATED COURSE
- Correlates with Substance of the Rotations

INTEGRATIVE SEMINAR
- Synthesizes Content of Court Observations and Related Courses

Courtroom Observations

During courtroom observations, students spend a minimum of four hours per week in designated courtrooms and then write about the proceedings they have observed, in the form of a journal. Like medical school interns who study their craft by rotating through hospital departments, our students will rotate through courtrooms. The rotations, and the proceedings to be observed, correlate with the substantive legal areas the students are studying in their related courses. Students may observe proceedings at days/times of their choice, but mornings are preferable.

The Court Rotations are:
U.S. Bankruptcy Court – Three Weeks
U.S. Magistrate Court – Four Weeks
U.S. District Court – Five Weeks

Related Course

As a prerequisite or co-requisite to enrollment in *American Trial Courts*, the student must take a course directly related to the work being observed in the courts. These related courses enhance a student's ability to understand her courtroom experiences, and those experiences bring a real life perspective to the related course.

(Note: Evidence is strongly recommended, but not required, as a prerequisite or co-requisite to *American Trial Courts*)

The Related Course component is satisfied by any ***one*** of the following:

Related Course Options:

Civil Rights Law
Criminal Procedure★
Intellectual Property
Employment Discrimination Law★
Bankruptcy Law★

★ *Offered in Spring 2010 Semester*

Integrative Seminar

The course seminar meets weekly on Thursdays from 4:30-6:20 p.m. Depending on the topic or activity scheduled for specific classes, the seminar meets either at the law school or at the Federal Courthouse. During the seminar sessions, the content of courtroom observations and related courses are synthesized, members of the Bar, the Bench and the Academy present their perspectives on the subjects being explored, and students are given opportunities to develop skills necessary to practice law. The seminar sessions are divided into units, each unit corresponding with a specific court rotation.

The first rotation is in the U.S. Bankruptcy Courts. Students spend three weeks, a minimum of twelve hours in total, observing diverse bankruptcy proceedings. The Integrative Seminar correlates those three weeks of observations with three weeks of seminar sessions devoted to the doctrine and practice of bankruptcy law. Here is how it works:

Bankruptcy Session #1:

The Academy Perspective – Touro Law faculty presents *Bankruptcy Basics* to students. Students who are enrolled in the related course, Bankruptcy Law, are expected to assist in the presentation.

Bankruptcy Session #2:

The Bar Perspective – Practicing Attorneys present the issues they routinely face in their practice, focusing particularly on pitfalls faced by new attorneys. Discussion of cases focus on those cases currently on the dockets of the Eastern District Bankruptcy Judges.

Bankruptcy Session #3:

The Bench Perspective/Student Presentations – All students write a Motion to Vacate A Stay, based on a problem created by a judge, and have the opportunity to argue their motion, in Bankruptcy Court, before participating bankruptcy judges. The judges provide feedback to students on their performance.

Course Requirements

Readings:
Case files from the Civil and Criminal Dockets of the EDNY Courts
Downloads from The Federal Judicial Center
Civil Litigation Management Manual
McKinney's New York Rules: Federal 2009
ABA Criminal Justice Standards
Bankruptcy Basics

Assignments:
Complete readings as assigned
Complete journal entries based upon courtroom observations
Choose ***two*** of the following brief writings to submit:
- Motion to Vacate A Stay (Bankruptcy)
- Motion to Compel Discovery
- 12(b)(1) – 12(b)(5) Motion to Dismiss
- Motion to Suppress Physical Evidence

Argue one of the above motions before a participating judge, in the Federal Courthouse
Complete one final writing assignment: a Motion for Injunctive Relief, or a 12(b)(6) Motion to Dismiss, or a Bench Memo on a substantive matter discussed in the Seminar

Grades:
Final grades are based upon journals (15%), two written motions (30%), oral presentation (15%), and final writing assignment (40%)

Eligibility

All 2L and 3L students, who are not on academic probation, are eligible for enrollment in this course. If more than the allotted number of students register for the course, seats will be awarded by lottery, but graduating students will be given priority.

This course is designed to benefit students by:

Developing Professional Skills and Values

- Problem-Solving Skills
- Legal Writing Skills
- Research Skills
- Organization and Management of Legal Work
- Litigation Procedures
- Oral Advocacy Skills

Recognizing Ethical Issues and Understanding Resolutions

Providing intensive learning and practice opportunities in diverse areas of law

Offering students the opportunity to learn from members of the Academy, the Bench, and the Bar

This course satisfies the Intermediate Skills Requirement

For additional information, contact:
Professor Myra Berman,
Director of Collaborative Court Programs
631-761-7114 or *mberman@tourolaw.edu*

TOURO LAW
Touro College Jacob D. Fuchsberg Law Center

COLLABORATIVE COURT PROGRAMS

1L COURT OBSERVATION PROGRAM

- Mandatory 3-hour observations & discussion
  - Fall - State
  - Spring - Federal
- In the Courts
- Luncheons/Dinners with Judges and Attorneys

2L COURT INTEGRATION: NYS COURTS

American Trial Courts: Introduction to NYS Practice

- Fall Semester
  - District court
  - Family Court
  - Supreme Court
- Spring Semester
  - Civil Court
  - Surrogate's Court
  - Commercial part
  - County Court

PRACTICE MODULES
Family Law
Business Organizations
Trusts & Estates

CLINICS
INTERNSHIPS
EXTERNSHIPS

3L COURT INTEGRATION FEDERAL COURT AND COURT PARTICIPATION

Fall Semester
- American Trial Courts: Theory & Practice in the Federal Court

Practice Skills Offerings
Fall & Spring Semesters
- Clinics
  - Mortgage Foreclosure & Bankruptcy
  - Elder Law
  - Family Law
  - Civil Rights Litigation
- Externships
  - Civil Practice
  - Judicial Clerkship
  - US Attorney Rotation
  - Criminal Law
- Internships
  - Federal Judges
  - State Judges

TOURO LAW
Touro College Jacob D. Fuchsberg Law Center

Presented by Professor Myra Berman, Director of Collaborative Court Programs
June 17, 2010

American Trial Courts: Theory & Practice

In The Federal Courts

(4 credits)

Professor Myra Berman
mberman@tourolaw.edu
Office: Room 314
Telephone: 761-7114

Seminar Meeting Schedule: Thursdays, 4:35-6:25
Room: Alumni Board Room, Located in Dean's Suite
(Three Sessions will meet at the Central Islip Federal Courthouse)

Syllabus

Course Description/Requirements

American Trial Courts: Theory & Practice ("ATC") has three separate but interdependent components: (1) court observations, (2) completion of, or enrollment in, a related course, and (3) participation in the integrative program seminar. Using the federal courts as an educational laboratory, the course examines the connections between classroom theory and courtroom practice.

(1) To satisfy the court observation component, you are required to spend a minimum of four hours per week, as your schedule permits (mornings are preferred), rotating through the federal Bankruptcy, Magistrate and District courts, observing courtroom proceedings and recording your observations and comments in a journal. Your journal entries must be submitted at the conclusion of each of the three units.

At least 1-2 days in advance, you will be advised of proceedings on the court calendar and should plan your observation hours accordingly. Frequently, documents related to the calendared case will be available for your perusal in advance of the court date. I will try to post the calendars and have the materials available at a centralized location – to be determined.

Notes: (1) you are not permitted to bring cell phones into the Federal Courthouse; (2) you ought not bring laptops to court as several judges will not permit you to use it during proceedings; (3) please wear your Touro IDs while in court; if the Judges notice it, it is possible that they will speak with you after proceedings, time permitting.

(2) The related course is a prerequisite or co-requisite to enrollment in ATC. You should bring your substantive knowledge of that course to the Program Seminar and facilitate discussions that center on the subject matter of that course.

(3) The two-hour Program Seminar meets weekly and is built around the substantive work of the Bankruptcy, Magistrate, and District courts.

For the seminar, you will be required to:

- Complete readings on procedure and substantive law
- Complete journal entries
- Read copies of case materials related to the proceedings you will be observing in court
- Choose two of the following writings to submit:
    - Motion to Vacate a Stay OR Motion to Preserve Stay (Bankruptcy)
    - Motion to Compel Discovery OR Motion to Protect from Discovery OR Motion to Quash a Subpoena
    - Bail Application Motions or Motions Opposing Bail
- Argue one of the above motions before the Court
- Final writing assignment: "Report and Recommendation" on a habeas corpus motion

Your final grade will be based upon your journals (15%), your two motions (30%), your oral presentation (15%), and your final writing assignment (40%).

ATC satisfies the Intermediate Skills Requirement.

Course Materials

The readings will be posted on TWEN or distributed as handouts. Not all students will be required to do all readings; some assignments will be allocated to specific students

Downloads from The Federal Judicial Center, www.fjc.gov/library/fjc_catalog.nsf
Benchbook, Civil Litigation Manual, Bail Reform Act
Downloads from the EDNY website, www.edny.uscourts.gov
Downloads from the U.S. Bankruptcy Court website, www.nyeb.uscourts.gov
McKinney's Federal Rules, New York, 2009
Federal Rules of Civil Procedure – Available on LEXIS or Westlaw
United States Code Annotated, Title 28
Case Files From Selected Civil and Criminal Dockets of the EDNY
Supplement to Storming the Courts, Selected Chapters

I. INTRODUCTION TO THE FEDERAL COURTS

Seminar #1: Federal Court: Learning the Basics

Jan. 14th
Hon. Leonard D. Wexler, U.S. District Court Senior Judge, EDNY
Peter Ausili, Law Clerk to the Hon. Leonard D. Wexler
Robert Rando, President, Federal Bar Association, EDNY Chapter
Nicole Boeckmann, Assistant U.S. Attorney, U.S. Attorneys Office, EDNY, Acting Chief of the Long Island Criminal Section
Readings:

- "Inside the Federal Courts"
- "Understanding the Federal Courts"

Seminar #2: Inside the Federal Courts

Jan. 21st
Robert C. Heinemann, Clerk of Court, EDNY
Readings:

- Review Federal Rules of Civil Procedure (*See* Title 28 of the United States Code Annotated)
- Local Rules, EDNY
- Division of Business Rules, EDNY
- Criminal Justice Act Plan, EDNY

II. BANKRUPTCY UNIT

Seminar #3: Overview of Federal Bankruptcy Law

Jan. 28th
Professors Sharon Pocock & Ann Nowak
Reading:

- Bankruptcy Basics, www.uscourts.gov/bankruptcycourts/bankruptcybasics.html

Seminar #4: The ABC's of Practicing Bankruptcy Law

Feb. 4th
From the Bar: Richard Stern, *Bankruptcy Attorney & U.S. Trustee, Chapter 7*
Reading:

- ECF Case Filings

Seminar #5: Bankruptcy Presentations – CLASS BEGINS AT 3:45PM at the Federal Courthouse

Feb. 11th
Oral Arguments: Motion to Vacate a Stay
On the Bench*: Hon. Dorothy Eisenberg, Hon. Robert Grossman, Hon. Alan Trust,* U.S. Bankruptcy Court, EBNY

III. CIVIL LITIGATION UNIT

Seminar #6: Overview of Employment Discrimination Law

Feb. 18th *Professor Douglas Scherer*

Readings:

- *McDonnell-Douglas Corp. v. Green,* 411 U.S. 792 (1973)
- *Griggs v. Duke Power Company*, 401 U.S. 424 (1971)
- *Texas Dep't.of Community Affairs v. Burdine*, 450 U.S. 248 (1981)
- *St. Mary's Honor Center v. Hicks,* 509 U.S. 502 (1993
- Civil Complaint, *Monahan v. East Islip Union Free School District, et. al.,* CV 08-3262 (LDW)(WDW)

Seminar # 7: Initiating Civil Litigation

Feb. 25th *Jeffrey Nagel*, *Esq.,* Gibbons, P.C

E-Discovery in Employment Discrimination Cases

Readings:

- E-Discovery, Pocket Manual for Judges
- Zubulake Cases
    - 217 F.R.D. 309 (SDNY, May 13, 2003)
    - 216 F.R.D. 280 (SDNY, July 24, 2003)
    - 220 F.R.D. 212 (SDNY, Oct. 22, 2003)
    - 229 F.R.D. 422 (SDNY, July 20, 2004)

Robert Rando, President Federal Bar Association, EDNY

- Civil Litigation Management Manual, pp. 4-26, 43-56

Seminar #8: Post-Twombly Civil Litigation - CLASS BEGINS AT 3:45PM

Mar. 4th *Professor Rodger Citron*

Readings:

- Storming the Court, Foreward,Chapters 1-2, notes 5-8 and pp. 45-52.

Fred T. Isquith, Esq., Wolf Haldenstein

- *Bell Atlantic v. Twombly,* 550 U.S. 544 (2007)
    - *Twombly - Complaint,* 2003 WL 2562984 (SDNY, Apr. 14, 2003)
    - *Twombly - Motion to Dismiss,* 2003 WL 25629872 (SDNY, May 12, 2003)
    - *Twombly – Plaintiff's Memorandum in Opposition to Motion to Dismiss*, 2003 WL 25629873 (SDNY, June 20, 2003)
    - *Twombly – Defendant's Reply Memorandum in Support of Defendant's Motion to Dismiss,* 2003 WL 25629867 (SDNY, June 30, 2003)
- *Ashcroft v. Iqbal,* 129 S. Ct. 1937 (2009)

Seminar #9: Student Presentations – Federal Courthouse

Mar. 11th Motions to Compel Discovery or Motion to Dismiss
Hon. Kathleen Tomlinson, U.S. Magistrate Judge, EDNY
Peter Ausili, Law Clerk to the Hon. Leonard D. Wexler, EDNY

IV. CRIMINAL PRACTICE UNIT

Seminar #10:Criminal Practice in Federal Court – CLASS BEGINS AT 4:00PM

Mar. 18th Overview of Criminal Process, from Arraignment to Sentencing
Hon. Joseph Bianco, U.S. District Court, EDNY
"Readings" – Video Presentations, I and II [Available on DVD]

- Goodstein, A., Criminal Litigation Before Magistrate Judges: Part I
- Miller, Carr & Morgan, Criminal Litigation Before Magistrate Judges: Part II

Readings:

- Benchbook for U.S. District Court, FJC, pp. 1-70

Seminar #11:Criminal Practice in Federal Court

Mar. 25th *Jacob Oslick,* Law Clerk to the Hon. Joanna Seybert, EDNY
Readings:

- Habeas Corpus Training Materials, www.edny.uscourts.gov.
- Discussion of Habeas Case – ECF Materials

April 1, 2010: No Class

Seminar #12: Criminal Practice – Arraignments/Bail

Apr. 8th *Randi Chavis*, Attorney-in-Charge, The Federal Defenders
Nicole Boeckmann, U.S. Attorney's Office, EDNY, Acting Chief, Long Island Criminal Division
Readings:

- ABA Standards for Criminal Justice: Prosecution Function and Defense Function
- Adair, David, The Bail Reform Act of 1984

Seminar #13: Student Presentations – Federal Courthouse – CLASS BEGINS AT 4:00PM

Apr. 15th Bail Hearings
Hon. Joseph Bianco, U.S. District Court Judge

V. LAW-MAKING IN THE COURTROOM

Seminar #14: Judges and Lawyers as Law-Makers: A Final Theoretical Perspective

Apr. 22nd Student Teams – Presentations on Readings

Readings:

- Holmes, Oliver W., "The Path of the Law"
- Ely, John Hart, "Discovering Fundamental Values"
- Judge Jack B. Weinstein, "Making Law for Mass Cases," July 16, 2009
- Excerpts from Confirmation Hearing Transcripts of Chief Justice Roberts and Associate Justice Sotomayor
- NY Times, July 12, 2009, "Umpires v. Judges"

American Trial Courts: Introduction to the NY State Courts

ROTATION #1: **DISTRICT COURT** (4 Weeks)
Arraignments, Prisoner Part, All Purpose Trial Part, DV and Drug Court, Landlord-Tenant Court

Week One
Arraignment Court/Prisoner Part

1. Chambers – Judge Richard Horowitz
2. Courtroom – Judge Horowitz
3. Courtroom – Judge John Iliou

Week Two
All Purpose Trial Part

1. Courtroom: Judge Chris Kelly
2. Courtroom: Judge Patricia Filiberto

Week Three
Domestic Violence/Drug Parts

1. Chambers – Judge Madeline Fitzgibbon
2. Courtroom – Judge Glenn Murphy
3. Courtroom – Judge Fitzgibbon

Week Four
Landlord-Tenant Court (Ronkonkoma)

1. Courtroom – Judge Dennis Cohen
2. Chambers – Judge Cohen

ROTATION #2: **FAMILY COURT** (5 Weeks)
Support Magistrates, Custody/Visitation, Article VIII Proceedings, Article X Proceedings, PINS, Warrants

Week Five
Child Support

Courtrooms of 6 Support Magistrates (3 students per magistrate for full session)

1. Cheryl Joseph-Cherry
2. John Raimondi
3. Isabel Buse
4. Denise Livrieri
5. Rachel Parisi
6. Aletha Fields

Week Six

Custody and Visitation

Courtrooms of Court Attorney Referees:

1. Heather James (2 students)
2. Kerry Lektrekker (8 students)
3. Roseann Orlando (8 students)

Week Seven

Family Drug Treatment, PINS, Warrants

1. Courtroom of Referee Burke
2. Courtroom of Judge Quinn

Week Eight and Week Nine

Article VIII and Article X Proceedings

1. Courtroom of Judge Freundlich
2. Courtroom of Judge Whalen

ROTATION #3: **SUPREME COURT** (3 Weeks)

Matrimonial, Integrated Domestic Violence, Guardianship

Week Ten

Matrimonial

Courtroom of Judge Garjulo

Week Eleven

Integrated Domestic Violence

Courtroom of Judge Crecca

Week Twelve

Guardianship

Courtroom of Judge Leis