



The Advocacy Institute Is Pleased to Announce

PROGRAM ANNOUNCEMENT

BASIC PROSECUTORS' COURSE (PHASE III-B)

February 4-7, 2013

8:30 a.m. to 5:30 p.m.¹

**Middlesex County Prosecutor's Office Police Training Center
11 Patrol Road
Edison, New Jersey**

Program Summary

This intensive 4-day trial advocacy program combines presentations and learn-by-doing workshops, culminating in a mock trial on the last day. The presentations, which will be by experienced assistant prosecutors and deputy attorneys general, will cover direct and cross-examination, advanced cross-examination and impeachment, persuasive use of exhibits, case theory, opening statements and closing arguments, the ethics of witness preparation, and pre-trial motions and making objections. The participants, in turn, will perform in a series of learn-by-doing workshops, in which they will incorporate what they learned from the presentations and others in dealing with discrete phases of the trial process. All participants then will "try" their case in a mock trial on the last day of the program.

Who Should Attend?

This program is intended for new assistant prosecutors and Division of Criminal Justice deputies, attendance for which has been determined by each office. **Please do not attempt to register for this program if you have not been selected by your office to attend this program, selections for which have already been made.**

Who Is the Faculty?

The faculty consists of experienced assistant prosecutors, Division of Criminal Justice deputy and assistant attorneys general and other experienced litigators who have extensive expertise in the subject matter on which they are presenting.

¹ End times will vary during the week, but, in no instance, will go beyond 5:30 p.m.

CLE Credit

NJ CLE Credit: This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for 28.5 hours of total CLE credit. Of these, 1.5 qualifies as hours of credit for ethics/professionalism, and 28.5 qualify as hours of credit toward certification in civil trial law and criminal trial law.²

NY CLE Credit: 26.5 substantive and 1.5 ethics credits (pursuant to the approved jurisdiction policy).

PA CLE Credit: 22 substantive and 1.0 ethics credits (\$34.50 mandatory registration fee required).

How Do I Register?

State Employees

Most State employees are able to register for this course by going to <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> and creating an AGAI Course Registration account. To do so, your computer **must** be attached to the government's Garden State Network. Upon opening the AGAI Course Registration System home page, you will see the Create Account link in the Login Box. Click on it and create your account, which will include you selecting a user name and password. Once you create your account, you can access the AGAI Course Registration System at <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> to register for future courses or to manage your account. Please retain your user name and password for your records.

Non-State Employees or State Employees not Connected to the Garden State Network

If you are not a State employee, or are otherwise unable to access the AGAI Course Registration System through the Garden State Network, kindly email the Advocacy Institute at: AdvocacyInstitute@lps.state.nj.us for an authorization code to allow you access to the AGAI Course Registration System through the My New Jersey portal. **Setting up your account through the portal is a two-step process, the details of which are set forth in the next two paragraphs.**

Once you receive the portal authorization code you will be prompted to go to the My New Jersey portal at <http://www.state.nj.us/> and create a portal account. This is Step 1 of the process, which you need only do once.

Upon setting up your portal account, you need to set up your AGAI Course Registration System account. This is Step 2. To do so, log on to the My New Jersey Portal <http://www.state.nj.us/>.

² These calculations are tentative. The final CLE hours to be awarded may change slightly prior to the beginning of the program, which changes, if any, you will know of before beginning.

Upon opening the AGAI Course Registration System home page, you will see the Create Account link in the Login Box. Click on it and create your account, which will include you selecting a new user name and password. Once you create your account, you can access the AGAI Course Registration System at <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> to register for future courses or to manage your account. Please retain your user name and password for your records.



TRIAL ADVOCACY TRAINING FEBRUARY 4-7, 2013

Program Schedule

Introduction

This trial advocacy skills program will use the “learning by doing” teaching method. The emphasis will be on participant performance of various trial skills followed by constructive faculty critique. **Each participant will be video recorded in designated workshops for an individual review with a faculty member.**

The program is very intensive. There is not much preparation time available during the program. Before arriving at the program, participants should become thoroughly familiar with the problems and prepare for each workshop before it begins. We recommend that participants review Steven Lubet, *Modern Trial Advocacy* (4th ed. 2009); Thomas A. Mauet, *Trial Techniques* (7th ed. 2007); or similar text, to help prepare for the program.

For purposes of this program, each participant has been designated as either an “A” or a “B”. Unless otherwise stated in the program schedule, A’s will represent the State of Nita and the B’s will represent defendant Joseph O’Neill throughout the program.

Assume that each exercise will be conducted in a simulated courtroom setting as if it were an actual jury trial. Assume further that the Federal/State Rules of Evidence govern the proceedings. There will be a time limit for each performance. When preparing your assigned exercises, it will often be obvious that you cannot complete the full exercise in the time allotted. *Please do not try to complete a 20-minute examination in 7 minutes.* Your performance, for whatever duration, should reflect what you would do in the courtroom if you were actually trying a case.

During the program, each participant will be assigned to examine a witness. **Participants should also prepare to play their side’s witness as well. Playing a witness is part of the program.** We believe that you will find it to be a valuable learning experience. Witness roles must be realistic; participants should attempt to portray the actual personality of the witness.

MONDAY, FEBRUARY 4, 2013

Welcome; *Fundamentals of Direct and Cross-Examination* Program; Direct and Cross-Examination Workshops; *Introduction & Use of Exhibits* Presentation; and Case Theory Workshop

This morning will begin with the presentation: *Fundamentals of Direct and Cross-examination*, which is intended to provide the participants with a basic overview of the methods of direct and cross examination, and to help them develop a technically sound and persuasive approach for their examinations during this program.

The morning's workshop involves the direct and cross-examination of Mary Wilson, and is designed to help each participant develop his or her direct and cross-examination skills. Faculty critiques will focus primarily on question form and organization. Assume also for purposes of this session that the admissibility of all exhibits in *State v. O'Neill* has been stipulated. *Utilize exhibits as appropriate.*

The first afternoon workshop involves the direct and cross-examination of Catherine Hoover, and is designed to help each participant develop his or her direct and cross-examination skills. Faculty critiques will again focus primarily on question form and organization. Assume also for purposes of this session that the admissibility of all exhibits in *State v. O'Neill* has been stipulated. *Utilize exhibits as appropriate.*

Following the afternoon workshop there will be the presentation: *Introduction and Use of Exhibits*, which is designed to assist the participants in preparing to introduce exhibits correctly and persuasively in tomorrow's Using Exhibits workshop, and throughout the remainder of the program.

The day ends with the case theory workshop. A unified case theory is a critical part of any trial. The A's and B's will separately "brainstorm", discuss "good" and "bad" facts, and devise alternate case theories and themes for the trial of *State v. O'Neill*. For purposes of this case theory session, you should be prepared to discuss your case theory for your client. Case theory operates on three levels: legal theory; factual theory; and persuasive theme. Legal theory is why, as a matter of law, your client should prevail. Factual theory is a construction of the facts of the case that explains what really happened and why: it includes an analysis of the "good" and "bad" facts in the case and how they can be harmonized in a way favorable to your client. Persuasive theme is a way of looking at the case that makes the jury want to find in favor of your client. The persuasive theme gives the jury a reason for why it is right thing for your client to prevail. Once you have determined your case theory, the rest of your case planning should revolve around that theory.

A's prepare: Direct examination of Mary Wilson
Cross-examination of Catherine Hoover
Case Theory Session for State of Nita

B's prepare: Direct examination of Catherine Hoover
Cross-examination of Mary Wilson
Case Theory Session for Defendant Joseph O'Neill

8:30 a.m. - 9:00 a.m.	Faculty Meeting & Registration
9:00 a.m. - 9:15 a.m.	Welcome
9:15 a.m. - 10:30 a.m.	Presentation: <i>Fundamentals of Direct & Cross-Examination</i> Brian McDonough, Assistant Attorney General
10:30 a.m. – 10:45 a.m.	Break
10:45 a.m. - 12:15 p.m.	<p>Workshop: Direct and Cross-Examination of Mary Wilson (This session will be recorded)</p> <p>A’s should conduct a direct examination of Mary Wilson, which should be consistent with the legal, factual, and persuasive theories of their case. A’s should focus their examination of Mary Wilson on the following:</p> <ul style="list-style-type: none"> (a) her personal history, including her late husband’s tenure as a judge and her relationship with Helen O’Neill; (b) her knowledge of the relationship between the Defendant and Helen O’Neill up to the night of the shooting, and her relationship with the Defendant during this period; (c) what happened on the day Helen O’Neill was shot up to the shooting itself; (d) the events of September 10, one year prior; and (e) any other relevant area of inquiry. <p>B’s should cross-examine Mary Wilson, bearing in mind the legal, factual and persuasive theories of their case.</p>
12:15 p.m. - 1:15 p.m.	Lunch (On your own)
1:15 p.m. - 2:45 p.m.	<p>Workshop: Direct and Cross-Examination of Catherine Hoover (This session will be recorded)</p> <p>A’s should conduct a direct examination of Catherine Hoover, which should be consistent with the legal, factual, and persuasive theories of their case. A’s should focus their examination of Catherine Hoover on the following:</p>

- (a) her personal history, including her criminal record;
- (b) her relationship with Joseph O’Neill, including her knowledge of the Defendant’s relationship with Helen O’Neill and his relationship with Mary Wilson prior to July one year prior;
- (c) her relationship with Joseph O’Neill after he returned as a boarder in July one year prior until September 10, one year prior, including her knowledge of the Defendant’s relationship with Helen O’Neill and his relationship with Mary Wilson during this period;
- (d) the events of September 10, one year prior; and
- (e) any other relevant area of inquiry.

A’s should cross-examine Catherine Hoover, bearing in mind the legal, factual and persuasive theories of their case.

2:45 p.m. - 3:00 p.m.	Break
3:00 p.m. - 4:15 p.m.	Presentation: <i>Introduction and Use of Exhibits</i> Anthony Picione, Deputy Attorney General
4:15 p.m. - 5:15 p.m.	Workshop: Case Theory (This session will not be recorded)
All A’s	Andrew Fried, Deputy Attorney General H. Rutherford Livengood, Deputy Chief AP [Ret.]
All B’s	Sally Fields, Senior Deputy Attorney General Anthony Picione, Deputy Attorney General

TUESDAY, FEBRUARY 5, 2013

Exhibits Workshop; *Advanced Cross-Examination & Impeachment* Presentation; Direct and Cross-Examination Workshops; *Effective Opening Statements & Closing Arguments* presentation; and Special Impeachment Problems Workshop

The morning's first workshop will afford each participant the opportunity to use exhibits smoothly and persuasively. This workshop is designed to provide a hands-on experience with the technical requirements for the introduction of photos, tangible objects, illustrative aids, and documents. Faculty critiques will focus on the technically-proper and persuasive way for introducing and using exhibits. With regard to each exhibit, participants should: 1) be able to show the purpose for which the exhibit would be introduced at trial; 2) lay a persuasive foundation for the exhibit - showing through questioning why the jury should give value to the exhibit; 3) lay a legal foundation - showing through questioning why the judge should allow the exhibit in evidence; 4) make use of the exhibit after it has been introduced; and 5) consider how the exhibit could be made more persuasive by the use of graphics, highlighting, demonstrative aids, etc. **Faculty will serve as witnesses for this workshop.**

Following the morning workshop, there will be the presentation: *Advanced Cross-examination and Impeachment Techniques*, which is intended to help facilitate the cross-examination of the remaining witnesses, including helping each participant develop effective impeachment techniques.

The first afternoon workshop involves the direct and cross-examination of Frank Novak, and is designed to help each participant refine his or her direct and cross-examination skills. Faculty critiques will focus on form of questions, examination structure, and use of exhibits to enhance the persuasiveness of your witness examination. Each participant will, depending on his or her assignment, work on direct or cross-examination skills in the context of a workable case theory. Each participant is encouraged to push the theme of his or her case on direct examination and, to the extent possible, in cross-examination. Faculty critiques also will focus on your examination of Frank Novak, especially how your examination advances your case theory/theme.

The second afternoon workshop involves the direct and cross-examination of Joseph O'Neill, and is designed to help each participant refine his or her direct and cross-examination skills. Faculty critiques again will focus on form of questions, examination structure, and use of exhibits to enhance the persuasiveness of your witness examination. Each participant will, depending on his or her assignment, work on direct or cross-examination skills in the context of a workable case theory. Each participant is encouraged to push the theme of his or her case on direct examination and, to the extent possible, in cross-examination. Faculty critiques also will focus on your examination of Joseph O'Neill, especially how your examination advances your case theory/theme.

The second presentation of the day is: *Effective Opening Statements and Closing Arguments*, which is intended to help each participant develop his or her opening statement and closing argument and deliver the opening statement and closing argument in a way that effectively conveys the participant's case theory.

The final workshop of the second day focuses on the special impeachment problems. These problems, which were distributed yesterday for use this afternoon, are designed to teach the basics of impeachment by inconsistent statement (affirmative statements and omissions), as well as the rehabilitation of a witness who has been impeached. The testimony in the problems will be inconsistent with the previous testimony or statement of each witness, which are found in the Case File. You need to review the previous testimony or statement in the Case File to identify the inconsistency. Faculty critiques will focus on each participant's ability to effectively and efficiently impeach the witness with his or her prior inconsistent statement.

A's prepare: Direct examination of Frank Novak
Cross-examination of Joseph O'Neill
Special impeachment problems (Distributed Monday) -Impeachment of Joseph O'Neill and rehabilitation of Mary Wilson. **Faculty will serve as witnesses for this exercise.**

B's prepare: Cross-examination of Joseph O'Neill
Direct examination of Frank Novak
Special impeachment problems (Distributed Monday) - Impeachment of Mary Wilson and rehabilitation of Joseph O'Neill. **Faculty will serve as witnesses for this exercise.**

A's and B's prepare to introduce *and use* two exhibits of your choice from the case file through witnesses of your choosing. **Faculty will serve as witnesses for this exercise.**

8:00 a.m. - 8:30 a.m. Faculty Meeting

8:30 a.m. - 10:00 a.m. Workshop: Using Exhibits (This session will not be recorded)
Each participant should prepare to use at least two exhibits from the case file during a direct examination of his or her witnesses. Participants should also prepare to oppose the admission of each exhibit by opposing counsel.

10:00 a.m. - 10:15 a.m. Break

**10:15 a.m. - 11:30 a.m. Presentation: *Advanced Cross-Examination and Impeachment*
H. Rutherford Livengood, Deputy Chief AP [Ret.]**

11:30 a.m. - 12:30 p.m. Lunch (On your own)

12:30 p.m. - 1:45 p.m. Workshop: Direct and Cross-Examination of Frank Novak (This session will be recorded)

Participants will be asked to introduce and use an exhibit of their choice to further their case theory/theme. A's should focus their examination of Frank Novak on the following:

(a) his personal background, including his work history and training and what he was doing on September 10, one year prior, up to receiving the radio dispatch concerning the shooting of Helen Wilson O'Neill;

(b) what he observed upon arriving at the Wilson residence at 1751 Madison Street, and his what he did and observed until he left the scene with his partner to find the Defendant;

(c) what he did upon leaving the scene, and what occurred while he and his partner were at Catherine Hoover's residence at 800 Fillmore Avenue;

(d) what happened after he and his partner left 800 Fillmore Street with the Defendant; and

(e) any other relevant area of inquiry.

B's should cross-examine Frank Novak, bearing in mind the legal, factual and persuasive theories of their case.

1:45 p.m. – 2:00 p.m.

Break

2:00 p.m. - 3:15 p.m.

Workshop: Direct and Cross-Examination of Joseph O'Neill (This session will be recorded)

Participants will be asked to introduce and use an exhibit of their choice to further their case theory/theme. A's should focus their examination of Joseph O'Neill on the following:

(a) his personal background, including his relationship with Mary Wilson and Helen O'Neill prior to November 15, two years prior;

(b) his relationship with Helen O'Neill and Mary Wilson from November 15, two years prior, until their break up in July one year prior;

(c) his relationship with Helen O'Neill and Mary Wilson between July one year prior and September 9, one year prior;

(d) the events of September 10, one year prior; and

(e) any other relevant area of inquiry.

A's should cross-examine Joseph O'Neill, bearing in mind the legal, factual and persuasive theories of their case.

3:15 p.m. - 3:30 p.m.

Break

3:30 p.m. - 4:30 p.m.

**Presentation: *Effective Opening Statements & Closing Arguments*
Christine Hoffman, Deputy Attorney General**

4:30 p.m. - 5:30 p.m.

Workshop: Special Impeachment Problems (This session will not be recorded)

WENESDAY, FEBRUARY 6, 2013

Pre-trial Motions & Handling Common Objections* Presentation; *Opening Statements Workshop*; *Witness Preparation & Ethics* Presentation; *Closing Arguments Workshop*; *Trial Preparation with Partner - Meeting with Opposing Counsel Workshop*; *Pre-trial Conference Workshop*; and *Trial Preparation Session

The day begins with the presentation: *Pre-trial Motions and Handling Common Objections*, which is intended to help each participant prepare for today's pre-trial conference and tomorrow's trial.

The morning's first workshop will allow each participant to deliver his or her opening statement. Faculty critiques will focus on whether all three elements of the participant's case theory (*i.e.*, legal factual and persuasive) are present, and whether the presentation is persuasive in capturing the jury's attention and setting the scene for an effective presentation of the evidence.

The morning session will end with the presentation: *Witness Preparation & Ethics*, which is intended to give each participant an understanding of the issues one commonly faces in terms of preparing witness for trial, and the ethical concerns that may arise in doing so.

The purpose of the pre-trial conference and the trial, you will already have been assigned a partner. You also will have been assigned opposing counsel. During the lunch/workshop period, partners should meet first to plan proposed stipulations and pre-trial motions and discuss any other procedural and substantives issues they expect to discuss with opposing counsel and with the court during the pre-trial conference. Opposing counsel should then meet and confer concerning these issues.

The second workshop of the afternoon will allow each participant to present his or her closing argument. Faculty critiques will focus on whether the beginning of your argument captures the jury's attention and makes a clear statement of your case theory; whether the facts elicited on direct and cross-examination support the your theory, including any inferences and conclusions you want to make; and whether the presentation as a whole is persuasive in convincing the jury to find in favor of your side.

The last workshop will be the pre-trial conference. Unlike any pre-trial conference you will attend, the judge will not attempt to settle the case. Counsel should be prepared to address all stipulations, pre-trial motions, and other anticipated procedural and substantive issues. Unless objections are raised at the pre-trial conference, all exhibits are admissible in evidence. Counsel should agree on the exhibit numbers. All *in-limine* motions must be made at the pre-trial conference or the objections are waived. At the conclusion of the pre-trial conference, counsel should prepare a joint pre-trial order that captures the results of the conference, a copy of which should be given to the trial judge before the trial. See Rules of Court for tomorrow's trials.

A's prepare: Opening Statement for State of Nataga
Closing Argument for State of Nataga

B's prepare: Opening Statement for Defendant Joseph O'Neill
Closing Argument for Defendant Joseph O'Neill

A's and B's prepare: For purposes of the Pre-Trial Conference session, you should be prepared to: (1) identify any pre-trial motions you might want to file on behalf of your client, and (2) to discuss the arguments for and against each motion.

8:00 a.m. - 8:30 a.m. Faculty Meeting

8:30 a.m. - 9:30 a.m. **Presentation: *Pre-Trial Motions and Handling Common Objections***
Sally Fields, Senior Deputy Attorney General

9:30 a.m. - 11:00 a.m. Workshop: Opening Statements (This session will be recorded)
Each participant will present his or her full opening statement, which should not exceed 7 minutes.

11:00 a.m. - 11:15 a.m. Break

11:15 a.m. - 12:30 p.m. **Presentation: *Witness Preparation & Ethics***
Joseph Micheletti, Deputy Attorney General

12:30 p.m. – 2:00 p.m. Lunch (On Your Own) & Workshop: Trial Preparation with Partner - Meeting with Opposing Counsel (This session will not be recorded)

2:00 p.m. – 3:30 p.m. Workshop: Closing Arguments (This session will be recorded)
Each participant will present his or her full closing argument, which should not exceed 7 minutes.

3:30 p.m. - 4:30 p.m. Workshop: Pre-trial conferences

THURSDAY, FEBRUARY 7, 2013

THE TRIAL

A.M. SESSION

8:30 a.m. - 11:00 a.m.	Trials
11:00 a.m. - 11:30 a.m.	Faculty Critique
11:30 a.m. – 12:00 p.m.	Wrap up and Evaluations

P.M. SESSION

12:30 p.m. – 3:00 p.m.	Trials
3:00 p.m. – 3:30 p.m.	Faculty Critique
3:30 p.m. – 4:00 p.m.	Wrap up and Evaluations

RULES OF COURT FOR FULL TRIALS

Morning Trials begin promptly at 8:30 a.m. and end by 11:30 a.m.

Afternoon Trials begin promptly at 12:30 p.m. and end by 3:30 p.m.

Time limits for the trials are as follows:

- a. Opening Statements - 10 minutes per party
- b. All Witness Examinations - 45 minutes per party
- c. Closing Arguments - 15 minutes per party

Work load for the trial should be divided so that each lawyer conducts an opening statement *or* a closing argument, and each lawyer conducts at least one direct examination and one cross-examination. Partners will play each other's witnesses.

Unless objections are raised at the pre-trial conference, all exhibits are admissible in evidence. Counsel should agree on the exhibit numbers.

All *in-limine* motions must be made at the pre-trial conference or the objections are waived. All motions will be decided pursuant to the Federal Rules of Evidence.