

**SYLLABUS**  
**TRIAL ADVOCACY STUDENTS**  
**FALL SEMESTER**

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IMPORTANT INFORMATION FOR FALL SEMESTER 2009  
TRIAL ADVOCACY STUDENTS

ALL STUDENTS ENROLLED IN TRIAL ADVOCACY FOR THE FALL SEMESTER MUST REPORT FOR THE FIRST CLASS SESSION TO **COURTROOM 1304 of the RICHARD J. DALEY CENTER**. CLASS WILL BEGIN PROMPTLY AT 5:50 P.M. ON WEDNESDAY, **AUGUST 26, 2009**. BE SURE TO HAVE A PICTURE I.D. WITH YOU FOR THE SECURITY CHECK. YOU WILL BE ASSIGNED TO YOUR SECTIONS DURING THE FIRST CLASS SESSION.

IF FOR ANY REASON YOU KNOW THAT YOU WILL MISS MORE THAN TWO CLASSES AT THE TIME OF REGISTRATION, PLEASE DO NOT REGISTER. ANY STUDENT WHO FAILS TO APPEAR FOR THE FIRST CLASS WILL BE PRESUMED TO HAVE DROPPED THE COURSE UNLESS PRIOR ARRANGEMENTS HAVE BEEN MADE WITH ASSOCIATE DEAN HOWARD M. RUBIN (312) 362-8298.

I. **Required Materials**

Mauet, Trial Techniques, (Aspen Law and Business; Aspen Publishers, Inc. 7<sup>th</sup>ed.).  
Mauet & Wolfson, Materials in Trial Advocacy, Problems and Cases, (Aspen Law and Business; Aspen Publishers, Inc. 6<sup>th</sup>ed.).

II. **Recommended Optional Materials**

These selected readings will assist you in further understanding the course and in preparing your classroom exercises. Copies are available in the library.

Bailey, Rothblatt, Preparation and Defense of a Criminal Case  
Bennett and Hess, Criminal Investigation  
Bergman, Trial Advocacy (Nutshell)  
Binder and Bergman, Fact Investigation  
Goldberg, The First Trial: Where Do I Sit? What Do I Say? (Nutshell)  
Goldstein and Lane, Trial Techniques (3 volume set)  
Harr, A Civil Action  
Hegland, Trial and Practice Skills (Nutshell)  
Imwinkelreid, Evidentiary Foundations (**STRONGLY recommended**)  
Jeans, Trial Advocacy  
Keeton, Trial Tactics and Methods  
McKelhaney, Effective Litigation  
Nolan, Trial Practice

In addition, the library maintains a large number of civil and criminal practice manuals published by the Illinois Institute for Continuing Legal Education (IICLE). For Illinois law, refer also to:

Hunter, Trial Handbook for Illinois Lawyers  
Cleary and Graham, Handbook on Illinois Evidence  
Ruebner, et al. Illinois Criminal Procedure

### III. **Method and Format**

#### **Class Meetings**

The class meets Wednesdays evenings from 5:50-8:30 p.m. at the Richard J. Daley Center.

#### **Simulation and Critique Method**

The course will be conducted by the simulation and critique method. Each student will be assigned to a section, and one-two instructors will supervise each section. Students will be required to prepare several simulated trial exercises for each class session. Please give us the benefit of your best work in class. Practice the exercises assigned as many times as possible, preferably out loud and in front of anyone who will listen.

Please review the “Points for Evaluation” included in this syllabus. They establish a framework on which the critiques will be based.

During the class time, the instructor will call upon the students, individually or in teams, to assume the role of counsel for one of the parties. The students will then perform the assigned exercise. Performance in class is always followed by critique. The purpose of the critique is not to put you on the defensive but to help you and others in the class develop skills and to enable you to learn from the experience. Be prepared to answer each of the following questions:

- 1) What were you trying to accomplish?
- 2) How did the examination address elements of your cause of action or defense?
- 3) What evidentiary issues did you anticipate from the problem?
- 4) Do you think you succeeded?
- 5) What additional objectives, if any, did you consider and reject?

#### **Preparation and Performance**

Although you may only be called upon to perform one simulation each week, you must be prepared to perform each problem assigned to your team. You will receive a grade for each of your performances.

### **Non-Performance due to Time Constraints**

While an instructor will schedule as many simulations and critiques as class time allows, time constraints occasionally make it impossible for all of the students in each section to perform. If, because of time constraints, you do not perform on a given week, you will not receive a grade for that night. You must, however, inform your instructor the following week, so that you can be called upon early and not risk missing further work or grading.

### **Non-Performance Due to Absence or Failure to Prepare**

In addition to the excused release from performance on a given week described above, each student will have the opportunity to miss one performance. If you are never absent, you will be able to drop your lowest grade, and have your average computed based upon a reduced number of grades and class sessions. Do not waste your “freebie.” If you miss more than one performance for reasons other than time constraints, your average will be computed as if you received an “F” for each of those additional missed classes.

### **Administrative Matters**

A list with names, addresses and phone numbers will be distributed within the first few weeks of class. The purpose of this is to facilitate communication among the students. Students are encouraged to work together. When instructors name the students who will act as witnesses the following week, you are encouraged to contact those students to prepare their testimony.

Mary Rita Luecke (847) 679-4922 (mrljd@rcn.com) is the team leader for Wednesday. Any questions concerning weekly assignments or the content of the course should be directed to her. Direct all other comments or suggestions regarding the course to Associate Dean Howard M. Rubin.

## IV. **Method of Evaluation**

You will be graded on your performance in each classroom simulation. You will also be graded on your overall classroom participation and your performance during the trial at the end of the semester. The final trial will account for 1/4 of the final grade. Participation includes, but is not limited to, evidence of preparation for the simulated exercises, quality of involvement in class discussion, and degree of professional skills demonstrated. While instructors will not divulge weekly grades, you are encouraged to discuss your work and progress with them.

A word about the curve: although trial ad is technically exempt from the school-wide curve, there is no guarantee of a high grade. Grades are curved within the class.

Showing up and winging it will not serve you well. By the same token, you need not be the most charismatic person in the world to excel. As with most courses, preparation and attention to constructive critique is key.

There is one additional requirement for this course: Completion of ten hours of courtroom observation (see section VII). This requires the submission of written documentation to Maria Ayala DePaul College of Law Room 737 O'Malley floor is by certain specified dates. **STUDENTS WHO FAIL TO COMPLETE THIS REQUIREMENT WILL RECEIVE A GRADE OF "FX" FOR THE COURSE.**

There is no written final examination.

V. **Professional Attire**

While choice may differ, every successful trial lawyer recognizes the importance of dressing for trial. Professional attire enhances the attorney's image and strengthens the presentation.

Professional attire is required for certain exercises in the course. Whenever you see "PROFESSIONAL DRESS REQUIRED" in the weekly assignments, you must adhere to the dress code or risk being graded down for the exercise.

VI. **Final Trial**

At the end of the semester, each student will participate as co-counsel in the simulation of an entire trial. The assignment for the final trial will be distributed in week eleven (11). Partner Preference sheets are due by **November 4, 2009**. Please submit only one preference sheet per team. The trials will be scheduled according to student and faculty availability.

VII. **Court Observation Requirements **\*\*DEADLINE DATE: WEDNESDAY, November 18, 2009\*\*****

Every student is required to spend a minimum of 10 hours during the semester as an observer of contested evidentiary proceedings in the Dirksen Federal Building, the Daley Center, or the Criminal Court Building at 26th and California. Traffic court observations do not count. If you wish to visit a court other than the three listed, please obtain prior approval from Associate Dean Howard M. Rubin. Students **will not** receive credit for more than four hours observing any one civil or criminal action. Thus, students must visit **at least three** courtrooms in session as part of the 10-hour requirement.

**NOTE:** Student's are required to complete a separate "Court Observation Form" (See form attached) for each courtroom they visit. Each form must describe the nature and extent of proceedings observed, witness examinations or arguments of counsel observed, presence of juries, and your impressions of the court and counsels' understanding of the rules of evidence and trial technique. Please give completed Court Observation forms to Maria Ayala DePaul College of Law Room 737 O'Malley.

## VIII. **Professional Responsibility Issues**

A thorough understanding of the role of professionalism in the trial system is an essential part of preparation for trial advocacy. A first step toward developing this understanding is to know the provisions of the Rules of Professional Responsibility bearing upon the advocate's responsibility as a representative of the client and as an officer of the court. You will develop an ability to recognize the meaning of these provisions in those practical contexts for which the Rules provide clear answers, and to know and understand the different professional opinions regarding issues that are not clearly answered under the Rules.

Some of the problem materials in this course are designed to confront student counsel with issues of professional responsibility in circumstances typical of those in which the issues are likely to arise in practice. In addition, issues of professional responsibility, though not planned in advance as part of an exercise, sometimes arise because of the particular way in which the performance develops.

## IX. **Discrimination and Sexual Harassment**

The department recognizes that sex discrimination and sexual harassment is still a problem in the courts. To increase student awareness of the problem and to promote ideas on how to address it we have placed three articles on reserve in the library that analyze the problem.

It is the policy of the University and Lawyering Skills Department to maintain a program free of sex discrimination and sexual harassment. Any complaints of inappropriate behavior should be directed to Associate Dean Howard M. Rubin (x28298) or Professor Luecke, (847-679-4922).

## X. **Relations with Clerical/Administrative Personnel**

One final word to the wise: During the course of your careers, you will have considerable interaction with clerical and administrative personnel, both in your firm and for the courts. Because of the amount of control they can exert over your daily business, you must make every effort to keep that interaction productive. The most effective way of handling difficult encounters is to remain respectful and courteous.

The Trial Ad program involves more interaction between staff and students than other classes at DePaul. You will do well to have empathy, be civil and show respect in these exchanges as well.

# DePaul Law School

## Trial Advocacy

### *Points for Evaluation:*

#### **Direct Examination**

- ✓ Organization
- ✓ Witness introduction & background
- ✓ Background appropriate to witness and purpose of testimony
- ✓ Verbal description of scene from occurrence and other appropriate witnesses
- ✓ Appropriate description of events & damages
- ✓ Logical sequence to questions
- ✓ Theory – developed and clear from questions
- ✓ Completeness
- ✓ Form of Question - Open-ended for most part
- ✓ Good use of who, what, when, where, why and how Q's
- ✓ Exceptions: transition Q's leading to new area of inquiry
- ✓ Foundation Q's for conversations or exhibits
- ✓ Evidence of listening to witness: appropriate follow-up questions
- ✓ Demeanor - professional but conversational
- ✓ Placement in Courtroom – back out of jury's line of vision
- ✓ Pace & delivery of questions
- ✓ Diminishing reliance on notes
- ✓ Strong ending

#### **Cross Examination**

- ✓ Theory – developed and clear from questions
- ✓ Completely addresses all non-frivolous issues raised by the facts
- ✓ Form of Question – single fact leading questions throughout
- ✓ Good witness control – repeat questions to get answers when necessary
- ✓ Organization
- ✓ Questions relating to same point/theory are asked together
- ✓ Placement in Courtroom – in jury's line of vision
- ✓ Demeanor – appropriate to witness
- ✓ Effective beginning and closing questions
- ✓ Evidence of listening to witness: appropriate follow-up questions
- ✓ Diminishing reliance on notes

## **Impeachment by Prior Inconsistent Statement**

Note: prior statements of witnesses provide information for you to use in developing your cross-examination. They do not provide the basis for impeachment unless and until the witness testifies on the stand to something contrary to the information contained in the prior statement.

- ✓ Clear contrast between trial testimony and prior statement
- ✓ The contradiction concerns a material point or is otherwise relevant to your theory
- ✓ On cross, you have recommitted the person to their contrary trial testimony
- ✓ Appropriate accreditation of prior statement
- ✓ Appropriate clarifying questions where contradiction is ambiguous
- ✓ Correct format of questions exposing the contradiction
- ✓ Note: format of questions will vary based on nature of prior inconsistent statement
- ✓ Knowing what to do when the witness denies, is ambivalent about or admits his prior inconsistent statement

## **Objections**

- ✓ Proper basis
- ✓ Timing: objection is made after question is complete, before answer given
- ✓ Basis articulated by short phrase, without argument, to the judge (the judge may ask you to further explain)
- ✓ Stand when objecting
- ✓ Problem is properly analyzed and all non-frivolous objections have been made
- ✓ Ability to correctly respond to opponent's objections
- ✓ Recovery when objections sustained

## **Exhibits**

- ✓ Correct identification of exhibit by name (proponent - # - "for identification" before receipt in evidence by judge)
- ✓ Proper foundation
- ✓ Appropriate use of exhibit within context of entire examination (consider both timing and importance/weight given to exhibit in relation to balance of examination)
- ✓ Ambiguous information on exhibit is explained by witness
- ✓ Clear and appropriate marking by witness of exhibit, when appropriate
- ✓ Create "legend" where appropriate
- ✓ Publication of exhibit to jury

## **Opening Statements**

- ✓ Impact opener
- ✓ Confident delivery
- ✓ Good “storytelling”
- ✓ Clear logical organization
- ✓ Suggests theory of case
- ✓ Clarity of explanation
- ✓ Emphasizes facts, not conclusions (does not overstate)
- ✓ “Broad brush” strokes
- ✓ Use of exhibits where appropriate
- ✓ No first person (“I believe”)
- ✓ Strong ending requesting verdict for plaintiff/defendant stated w/conviction

## **Closing Argument**

- ✓ Impact opener
- ✓ Argument rooted in case as it evolved
- ✓ Develops theory of case
- ✓ Clear forceful explanations of why facts prove theory
- ✓ Refutation of opponent’s case = secondary to proving own case
- ✓ Use of exhibits where appropriate
- ✓ Appropriate use of rhetorical devices (E.g. Repetition, alliteration, rhetorical questions).
- ✓ Strong ending requesting verdict for plaintiff/defendant stated w/conviction
- ✓ Confident persuasive delivery
- ✓ Rebuttal that responds to main points of defense argument and restates key facts supporting the State/Plaintiff’s theory of the case



XII.

**TRIAL ADVOCACY STUDENTS SEMESTER ASSIGNMENTS**

**A. ASSIGNMENT FOR CLASS ONE (Voir Dire)**

1. STUDENTS MUST BE PREPARED FOR THE FIRST CLASS
2. Read pp. 1-60 in Mauet, Fundamentals of Trial Techniques (6<sup>th</sup> Edition.)
3. In Mauet/Wolfson, Materials in Trial Advocacy, Problems and Cases do:
  - a) Problem 1.3 (All Students prepare for Plaintiff and Defendant)
  - b) Problem 1.5 (All Students prepare for Plaintiff and Defendant)
4. Please remind your instructors to designate the students who will act as witnesses for the following week so that you may contact them to prepare them.

**B. ASSIGNMENT FOR CLASS TWO (Direct and Cross Examination)**

1. Name, address & phone lists are being completed tonight. They will be duplicated and distributed next week. The purpose is to facilitate communication among you.
2. Read Mauet, Fundamentals of Trial Technique:

Direct examination	pp. 97-165
Redirect examination	pp. 165-168
Cross examination	pp. 251-277, 303-310
Objections	pp. 447-477

Exercises:

3.9 3.11	All students prepare both direct and cross examinations.
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3. You are to thoroughly analyze the problem from both the State and defense perspective and to prepare draft direct and cross examination of the witness.
4. This class will be spent first in thorough analysis of the problem, followed by student simulations and a faculty demonstration.

C. **ASSIGNMENT FOR CLASS THREE (Direct and Cross Examination cont.)**

1. Foundations: Conversations (face-to-face and phone); Exhibits. Review prior readings and additional pages below.

Conversation	pp. 142-148
Exhibits	pp. 167-246

Exercises:

	<u>Team A</u>	<u>Team B</u>
3.2	Direct	Cross
3.14	Cross	Direct
3.15	Direct	Cross
4.13	Cross	Direct
4.14 (Parts 1 & 2)	Direct	Direct

2. Note: Problem 3.2 incorporates conversations in the direct examination. You are expected to know the relevant foundation questions for: face-to-face conversations (When did it take place? Where did it take place? Who was present?) **and** for phone conversations and to incorporate those foundations into your examination. Problem 4.14 requires you to lay a proper foundation for a written document.
3. We will do two separate direct examinations for Problems 3.14 and 4.13, first without using the exhibit, second incorporating the exhibit into the direct. For the problems involving exhibits, you are to properly identify, authenticate, and introduce the exhibits into evidence, as well as incorporate the exhibit into the witness' testimony when appropriate.
4. Many local shops can make enlargements of the exhibits from the book for a reasonable cost. You will get more out of the exercise, not to mention extra credit, if you bring an enlargement of the exhibit to class this evening.

**D. ASSIGNMENT FOR CLASS FOUR (Objections and Witness Preparation)**

1. Read Mauet:

Objections	pp. 447-481
Rules of Evidence	pp. 547-578

2. Exercise:

	<u>Team A</u>	<u>Team B</u>
<u>Wagner*</u>	Direct	Cross
<u>Monahan*</u>	Cross	Direct
<u>Cunningham</u>	Cross	Direct

3. These problems concern the art of making objections. To prepare the exercises, you will have to review the evidence you have learned, particularly the hearsay rule. These problems can be found at the end of the syllabus.

4. One aspect of litigation is preparing your witness to testify. This included:

- ◆ reviewing questions you will ask on direct,
- ◆ anticipated problems with cross,
- ◆ what to do if the opposing attorney objects,
- ◆ any subjects about which they may not testify because of the Rules of Evidence,
- ◆ in general what to expect of the trial experience

One or two students may be asked to demonstrate how they would prepare Mrs. Monahan for her trial testimony.

5. When assigned to conduct a direct examination, students should, by now, also be preparing the redirect examination. Think ahead about what rehabilitation your witness might need.

6. **Don't forget the courtroom observation requirement.** A list of Chicago area courtrooms is attached to help you fulfill this requirement.

**E. ASSIGNMENT FOR CLASS FIVE (Impeachment)**

1. Read Mauet, Refreshing Recollection, pp. 148-150  
Impeachment, pp. 277-303

Exercises:

3.3 (Part 1	All students prepare direct.
5.2 5.6 5.7 5.9	All students prepare a full cross-examination and redirect examination of the witness

2. Refreshing recollection is a technique that is generally used on direct when working with your own witnesses. Refreshing a witness's recollection requires specific evidentiary procedures and foundation questions. (When you are cross-examining a witness you may simply use a leading question to refresh a forgetful witness's recollection.) If the witness does not remember, you may confront the witness with any document or exhibit (properly identified for the record and shown to opposing counsel) to prompt the memory or prove the point. Evidentiary Foundations by Imwinkelreid is very helpful to understanding both the evidentiary underpinnings and the specific questions that must be asked to lay a correct foundation for refreshing recollection.
  
2. Impeachment is a technique that is generally used on cross for a variety of purposes. When you impeach a witness by his/her prior inconsistent statement. Follow these three steps: (**Note, the order of these steps may vary according to the circumstances.**)
  - 1) **RECOMMIT** the witness to the direct testimony that you will be impeaching. That sets up the impeachment so that the jury knows precisely what the contradiction is. Be sure the prior statement contradicts the direct testimony. Use clarifying questions if necessary to develop the contradiction.
  - 2) **ACCREDIT** the prior statement. Build up the circumstances of the statement that you will use to impeach so that it seems to be more reliable than the direct testimony.
  - 3) **EXPOSE** the impeachment. And at that time, you said..., didn't you?" **DO NOT** start up with "were you lying then or are you lying now?" Some clarifying questions may be necessary to illuminate the implications of the inconsistency. Then leave the impeachment alone and either sit down or go on to something else. You may also argue the implications of the impeachment during closing.

**F. ASSIGNMENT FOR CLASS SIX (Impeachment)**

1. Review last week's readings.

Exercise:

	<u>Team A</u>	<u>Team B</u>
5.8	Cross	Redirect
5.12	Redirect	Cross
5.14	Cross	Redirect
5.19	Direct	Cross

2. Conduct a complete cross examination of the witness incorporating the impeachment into the exam as you deem appropriate. Please note the different contexts in which the prior inconsistent statement can be found and craft appropriate questions for accrediting the prior statement and exposing the inconsistency given its context.
3. On redirect, using open-ended questions give the witness an opportunity to explain, if possible, the inconsistency between this trial testimony and prior statement and/or returning to your original theory of the case and reason for calling returning to your original theory of the case and reason for calling this witness.
4. **REMINDER: Final Trial Partner Preference Sheets are Due Wednesday, November 4, 2009 and Courtroom Observation Forms Are Due Wednesday, November 18, 2009.**

**G. ASSIGNMENT FOR CLASS SEVEN (Closing Arguments)**

1. **As part of this assignment, you must bring to class copies of the relevant Illinois/Federal Pattern Jury Instructions outlining the issues to be proved, for both the prima facie case and any defenses raised by these problems.**
2. Read Mauet, Trial Prep & Strategy, pp. 489-497  
Closing Arguments, pp. 387-445  
Objections, pp. 479-481  
Exercises: **Per handout distributed during class 6.**  
Potential Problems: 7.4, 7.8, 9.3 and 9.10.
3. The team leader for Wednesday night will distribute specific assignments concerning this class to all students one week before this class. You will be

assigned to represent either the Plaintiff /State or Defense on one of the listed problems. The purpose of this class is to help you understand how preparing the closing argument is a tool for developing the theory of the case based on the law and facts of the given problem. Once you understand the theory and the applicable burden of proof for the case, that theory should be used to develop both the closing argument to which you are assigned as well as the direct and cross examinations for Class Eight. (Please also review “Points for Evaluation at page 7 of the syllabus).

4. Closing argument is limited to 8-10 minutes.
5. As part of this assignment, you must bring to class copies of the relevant Illinois or federal Pattern Jury Instructions outlining the issues to be proved for the prima facie case and any defenses raised by the problems. Pattern Jury Instructions may be found in Westlaw or in the reference section of the library. In addition the 7<sup>th</sup> Circuit has both civil and criminal instructions at <http://www.ca7.uscourts.gov>. Where more than one student is assigned to represent the same client, you will both present a closing argument for that client. We encourage you to work with your “co-counsel” to develop your theory of the case and analysis of the problem. You will be graded separately on your individual closing argument.
6. Do not even THINK about reading or even using extensive notes for your closing. This is an exercise in persuasion, not lecture. Remember, use the jury-centered approach. Think about those 12 people at all times: worry less about getting all the facts in and more about convincing people you are right.
7. Please concentrate on the theory of your case, argue the facts (explain how they prove your theory) and PRACTICE, PRACTICE, PRACTICE.

H. **ASSIGNMENT FOR CLASS EIGHT (Strategy/Theory)**

1. Reading Mauet, pp 499-540.  
Exercises: **Per handout distributed during Class 6.**  
Potential Problems: 7.4, 7.8, 9.3 and 9.10.
2. This class is a continuation of the Strategy-Theory/Closing Argument exercise begun during Class 7. Tonight, you will each conduct either a direct or cross

examination of one of the witnesses in your assigned problem. Please continue to work together with your co-counsel to insure that your direct and cross examinations, as a whole, develop your theory of the case.

3. All students should be prepared to incorporate skills from earlier classes into these examinations and to make appropriate objections to admission of the evidence.
4. You will receive a handout this week indicating your mini trial and opening statement/closing argument assignment.
5. **Don't forget the courtroom observation requirement.** A list of Chicago area courtrooms is attached to help you fulfill this requirement.

#### I. **ASSIGNMENT FOR CLASS NINE (Opening Statements)**

1. Reading: Mauet, Opening Statements, pp. 61-95.  
Objections, pp. 478-479.  
Trial Prep & Strategy, pp. 483-525.  
  
Potential exercises:  
7.1 Automobile accident  
7.2 Civil rights/excessive force  
7.4 Home purchase contract case  
7.6 Murder/self-defense  
7.7 Drug Entrapment case  
7.8 Fraud case  
7.9 Armed Robbery/ID case  
7.10 Political Corruption  
9.3 Negligence/Contribution Claim  
9.10 State Bribery
2. Exercises: Each student will present an opening statement for the client s/he is assigned to represent on the mini trial. **These assignments will carry over to the mini trials of the next two classes.**
3. Your opening statements should be brief. Please aim for five minutes in length. Remember, your primary task is to tell a story. Remember your audience. Try to give the opening statement in English and not in legalese. Try also to highlight for the jury what you think will be the key or crucial evidence.

4. Don't even think about reading your opening statements to the jury. If notes are absolutely necessary, make them as inconspicuous as possible.
5. **Your final trial preference sheets (one per team) are due on November 4, 2009.** This allows you to indicate your preference for a partner and the kind of trial you would like to do. Though no guarantees are made, we will do what we can to accommodate your preference.

**J. ASSIGNMENT FOR CLASSES TEN and ELEVEN (Mini Trials)  
PROFESSIONAL DRESS REQUIRED**

During classes 10 and 11, students will conduct mini trials of the case for which they prepared their opening statement. (It will take two classes to accommodate everyone.) You will be responsible for a direct and cross-examination of one witness per side, and for making all trial objections and legal arguments. You will NOT be making either opening statements or closing arguments during these two weeks.

Unfortunately, there is no time for pre-trial hearings. Assume that all pre-trial motions have been denied. Brief motions-in-limine will be allowed. Note: Federal Rules of Evidence apply to evidentiary issues. Refer to Illinois law for other questions of law.

Witnesses may not read from a prepared script, but may take documents with them to refresh their memory. You are strongly encouraged to bring in outside witnesses for these mini trials; however, you may choose other students in your section who are not involved in your case.

There is no additional assignment for class 11. On that evening we will continue the mini trials. Attendance is required of all students for both weeks.

Court observation reports may be turned in anytime between now and **November 18, 2009** to Maria Ayala DePaul College of Law Room 737 O'Malley. Remember to check the syllabus for report guidelines. Your reports should comment on what you observed.

**K. ASSIGNMENT FOR CLASS TWELVE (Closing Arguments)**

1. Reading: Mautet, pp. 387-445, 479-481

2. You will present your closing argument on behalf of the client you represented at the mini trial. Closing argument is limited to 8-10 minutes.
3. Do not even THINK about reading or even using extensive notes for your closing. This is an exercise in persuasion, not lecture. Remember, use the jury-centered approach. Think about those 12 people at all times: worry less about getting all the facts in and more about convincing people you are right.
4. Please concentrate on the theory of your case and PRACTICE, PRACTICE, PRACTICE.

**L. ASSIGNMENT FOR CLASS THIRTEEN (Pre-trial Conference)**

1. The purpose of the pre-trial conference is to address all possible issues arising out of the case file prior to the trial itself, including evidentiary matters, selection of witnesses and jury instructions.
2. For the pre-trial conference, you must prepare a pre-trial memorandum (one per side) that includes:
  - a) A short memorandum, no longer than two pages, addressing your theory of the case and the relevant supporting facts.
  - b) A list of witnesses you intend to call - in person or by stipulation.
  - c) A list of the pre-numbered exhibits you intend to offer into evidence
  - d) Any relevant motions in limine.
  - e) Jury instructions setting forth the issues of the case and relevant defenses. You may use the general jury instructions included in Mauet & Wolfson, pp.667-675. Use Illinois Pattern Jury Instruction for the issues instructions concerning the state/plaintiff's burden of proof and any available defenses in state causes of action and Seventh Circuit pattern jury instructions for federal causes of action.
3. Pre-Trial Motions will be heard this class. All motions to be heard at that time must be in writing and must have been served upon opposing counsel at least 24 hours prior to hearing. Also please give cites to any significant cases on which you will rely to opposing counsel with sufficient time for them to prepare a response. There is no requirement that the motion be filed with the instructor prior to hearing. Responses to motions may be, but are not required to be in writing.

Follow the form for the State Courts of Illinois. Any matters left unresolved at the hearing may be raised, at the discretion of the instructor, during the 30 minute period immediately prior to trial. Written orders summarizing the “Courts” ruling should be prepared immediately following the pre-trial conference. A sample Motion in Limine will be distributed prior to this class.

4. You are encouraged to meet with opposing counsel to resolve any pre-trial matters, such as, stipulations, witness backgrounds, jury instructions, etc. It is your responsibility to take the surprise out of the final trial.
5. The instructors reserve the right to review your “game plans” during the pre-trial hearings and to revise them to suit educational needs.

M. FINAL TRIAL

**PROFESSIONAL DRESS REQUIRED**

1. You are responsible for bringing your own witnesses, preferably non law students and preferably with some background in the appropriate area of expertise. Assume that all witnesses have been subpoenaed.
2. Time is a factor at the trial and may require the Instructor to cut short examinations or arguments if the parties have not been well-disciplined on time usage. Opening Statements are limited to 8 minutes per side. Closing arguments are limited to 12 minutes per side. The primary responsibility for time usage is upon the parties. If necessary students will be restricted or prohibited from conducting redirect and/or recross examinations.
3. Pre-mark all exhibits.
4. Stand while making objections and otherwise addressing the court.
5. Students must allocate trial assignments equally between them. One should give the opening statement; the other closing argument. Each student should do one direct and one cross-examination. The witness backgrounds that you compose

must be realistic or you will be penalized, e.g. no priests from Harvard may testify. Feel free to consult with us in advance for advice. We will not, however, tell you what to argue, how to argue it or how to examine.

6. The testimony of any additional witnesses identified in the problem should come in by stipulation. These stipulations should include testimony that would reasonably be solicited both during direct and cross-examinations of that witness. At the discretion of the faculty member, third witnesses may be called to testify rather than testify by stipulation.
7. Don't forget motions for directed verdict in both civil and criminal cases. Attorneys representing the State: Your case can be directed out if you fail to establish venue: i.e. that the alleged criminal act occurred in the City of Chicago, County of Cook, State of Illinois.
8. Please remember that the Federal Rules of Evidence apply to evidentiary questions. Look to Illinois law on substantive issues of law.
9. Motions to exclude witness will not be granted; however examinations should be prepared as though they were.
10. Critiques will be done at the discretion of the presiding faculty member.

### **State v. David Wagner**

This is a prosecution of the defendant David Wagner for Attempted Armed Robbery, Battery and Aggravated Assault. The defense is identification.

Lance Hightower states that on December 10, (-1), he was at the Blue Note Tavern on 61<sup>st</sup> and Carpenter in Chicago, where he consumed several beers and one shot over a period of about four (4) hours. At about 1 a.m., he left the bar and went to his car which was parked in the lot behind the bar. As he opened the door to his car, a person, who he later identified as the defendant, pushed him from behind. Hightower turned and observed a second offender who stated "Let's roll this guy Dave, he looks juiced." The defendant grabbed at Hightowers' pockets and stated "give me your money, all of it." He stated he had a knife and threatened to kill Hightower if he didn't give him what he wanted. Hightower yelled "Help" and the defendant struck him in the face. All of a sudden, a car pulled into the lot and someone yelled "Hey! What's going on?" Both offenders then fled.

Hightower states that he went back into the tavern to call the police. He told the bartender that a guy named Dave tried to rob him and the bartender told him that the same guy had caused trouble in the tavern before. When the police came, he gave them the name "Dave" and told them that the guy was wearing blue jeans and a black leather jacket. About fifteen minutes later, the police got a call on their radio that another car had stopped a subject fitting the description about four blocks away. Hightower was brought to that location where he identified the defendant who was seated in the back of the police car. He heard the defendant tell police that they had the wrong guy and that there must be some mistake.

Chicago Police Department records show that Hightower was sentenced to one year court Supervision on a plea of guilty to the charge of Battery on March 15, (-4).

For the Prosecution, conduct a direct/redirect examination of Hightower.  
For the defense cross-examine him. Both sides must be prepared to make/respond to appropriate objections.

**Sylvia Monahan v. Jewel Food Store, Inc.**

This is a slip and fall personal injury case brought by the plaintiff Sylvia Monahan against the defendant Jewel Food Stores, Inc. Mrs. Monahan is seeking damages in the amount of \$10,000 against Jewel Food Store.

Mrs. Monahan states that on February 16, (-1), she and her husband Bob were leaving the Jewel at 31<sup>st</sup> and Pulaski after buying groceries. Mrs. Monahan was pushing the cart between two cars in the parking lot when she slipped on a patch of ice and fell. She twisted her right ankle and landed on her shoulder. Her head hit the ice. She immediately told her husband that she thought her ankle was broken because it hurt so much. Her husband picked her up, put her in the car and took her to the Emergency Room at Mt. Sinai Hospital. X-rays were taken and the ER doctor (Fowlkes) said that she suffered a mild concussion and a severely sprained ankle. He prescribed bed rest, heat and Tylenol #3 as needed. For the next several days, Mrs. Monahan was able to get around on some old crutches that she had kept from an incident several years earlier in which she sprained her ankle.

On Feb. 21, Mrs. Monahan drove to Jewel to do her weekly shopping. While she was there she talked to the Services Manager on duty (Donna) about the accident. Donna stated, "We've had lots of problems with people falling in the lot." Donna also stated. "The plow comes as soon as it snows but the snowbanks melt and the water in the lot freezes." Donna then gave Mrs. Monahan a claim form, told her to fill it out, and that the claim would be turned over to their insurance company who would handle everything. As she left the store Mrs. Monahan noticed the cartboy spreading salt in the parking lot.

Mrs. Monahan's hospital bills of \$357.89 were paid by her insurance company. She had an estimate for the damage to her car caused by the cart hitting it for \$279.56.

For the plaintiff, conduct a direct/redirect examination of Mrs. Monahan.  
For the defense, cross-examine her. Both sides must be prepared to make/respond to appropriate objections.

### **Cunningham vs. Kelly**

On July 3<sup>rd</sup> (-1) at 6 p.m. 17 year old Johnny O'Connor was sitting on his front steps on the northwest corner of Monroe and Chicago Avenue, talking to his girlfriend on a cell phone. His friend Jimmy was shooting baskets on the driveway. "Johnny's house faces south. The garage and driveway are on the east side of the house with entry to the driveway from Monroe. The basketball hoop is attached to the garage roof". Suddenly, he heard a loud crash and looked to the intersection where he saw an eastbound Blazer driven by the plaintiff Tim Cunningham which had collided with a northbound Lexus driven by the defendant Nancy Kelly. The cars were in the middle of the intersection angling northeast with major damage to the front of the Blazer and the left side of the Lexus. There are stop signs for the north/south Monroe traffic but none for Chicago Avenue traffic.

After the crash Jimmy said to Johnny "Man, did you see that Lexus run the stop sign?" Johnny told his girlfriend "We just saw an accident, I'll call you later". He then dialed 911 and told the dispatcher "Two cars had an accident at Monroe and Chicago". The dispatcher asked "Is anybody injured?" As he approached the corner, Johnny replied "It looks like the lady in the Lexus is hurt. She's just sitting there with blood all over her face".

When they reached the corner, the driver of the Blazer was out of his car yelling at the woman in the Lexus "That was your fault lady, you blew that stop sign". She answered back, "No I didn't. I stopped and when I pulled out you came from nowhere. You weren't looking and you were speeding. It was your fault".

The police and paramedics arrived. Ms. Kelly was given a ticket for failure to yield the right of way and taken to the hospital. On her court date, her lawyer entered a plea of guilty on her behalf and requested Supervision which was granted.

For the plaintiff conduct a direct exam of Johnny O'Connor. For the defense make any preliminary evidentiary motions and objections to his testimony. Is the defendant's plea of guilty admissible in the plaintiff's case in chief? To impeach her testimony? Does it matter if she rather than her lawyer enters her plea?

**TRIAL ADVOCACY**

**Fall 2009**

**FINAL TRIAL PREFERENCE SHEET**

**WEDNESDAY NIGHT**

*(Please submit one form per team.)*

1) Your Name \_\_\_\_\_ (Section \_\_\_\_\_)

Partners Name \_\_\_\_\_ (Section \_\_\_\_\_)

2) Civil or Criminal (Please circle your preference.)

3) Plaintiff/Prosecutor or Defense (Please circle your preference.)

4) Final Trials will be scheduled on the following dates. Please **circle** any time period when you **CANNOT** be available for the final trial and give a brief explanation below.

November 21 AM. \_\_\_\_\_ November 21 PM.

(8:30AM to Noon) \_\_\_\_\_ (1:00 to 4:30 PM)

REASON:

WHILE WE ARE REQUESTING YOUR PREFERENCES FOR THE FINAL TRIAL and will try to will try to accommodate your requests to the best of our abilities, we are not promising that that you will receive everything that you have requested.

Students who indicate no preferences or whose form is not in by the deadline date will be randomly assigned to a partner and a case file.

Please give your completed form to Professor Luecke or Maria Ayala DePaul College Room 737 O'Malley no later than **Wednesday, November 4, 2009.**

**TRIAL ADVOCACY  
COURT OBSERVATION FORM – FALL 2009**

STUDENTS NAME: \_\_\_\_\_ SECTION: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME SPENT OBSERVING: \_\_\_\_\_

LOCATION: Dirksen Bldg. \_\_\_\_\_ Daley Center \_\_\_\_\_ Criminal Court Bldg. \_\_\_\_\_  
(check one) (26th & California)

COURTROOM #: \_\_\_\_\_ JUDGE: \_\_\_\_\_

NAME OF CASE: \_\_\_\_\_

FACTS OF CASE:

ISSUES ARGUED:

RESOLUTION, if known:

STRENGTHS OF PROSECUTING ATTORNEY:

WEAKNESSES OF PROSECUTING ATTORNEY:

STRENGTHS OF DEFENSE ATTORNEY:

WEAKNESSES OF DEFENSE ATTORNEY:

GENERAL OBSERVATIONS:

## SURVEY OF CHICAGO AREA COURTROOMS STATE COURTS

Daley Center, Washington & Dearborn Streets County Department: Note—the “Jury Room” on the 17<sup>th</sup> Floor has a list of courtrooms where juries are being sent.

Law Division (Contracts and Torts exceeding \$15,000.00) Daley Center Trial Section- Floors 19 through 26 also room 1503, 1606, and 1610

Chancery Division (Injunctions, specific performance, partition, foreclosure, trusts, accounting, etc). Rooms: 2108, 2201, 2302, 2305, 2308, 2402, 2403, 2407, 2408, 2502, 2508, 2510

### Criminal Division

Criminal Courts Building  
2600 S. California Ave.  
Clerks Office Phone (773) 869-3140

Skokie Civic Center  
5600 Old Orchard Road  
Skokie, IL 60077  
Phone (708) 470-7500

Bridgeview Civic Center  
Phone (708) 974-6542

Markham Civic Center  
16501 South Kedzie Parkway  
Phone (708) 210-4220

Misdemeanor Jury Trials  
1340 South Michigan Ave - Rooms 501, 502, (Branch 46)

Juvenile Division - 1100 S. Hamilton Avenue Roosevelt & Odgen

Municipal Department - Daley Center

- ✓ Tort and Contract jury trials, less than \$15,000.00:
- ✓ Personal Injury: Jury and non-jury, Room 1501

Federal Court Dirksen Building, 219 South Dearborn ([www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov))

U.S. District Court – generally motions heard in the morning, trials in the afternoon. Check \*DLB for judges, courtrooms and times.

Note: The Clerk's office on the 20<sup>th</sup> floor posts a list of scheduled cases on the bulletin board