

**TRIAL ADVOCACY – LAW 537
Fall 2020**

Professor:	Melissa Day	
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Office Hours:	No specific hours – please call, text or e-mail to schedule an appointment, if needed. I am available evenings during the week and throughout the weekend, if necessary	
Class Meeting Information:	Thursday, 6:00-8:30 p.m. Courtroom (Room 108)	

Course Overview and Objectives:

The purpose of this course is to build the foundational skills you will need to try a bench trial and jury trial in a courtroom setting. The trial advocacy course will focus exclusively on those skills. The course objectives are three-fold:

- to achieve mastery of basic trial skills, including case analysis, opening statements, closing arguments, direct and cross examinations, and use of exhibits;
- to try two cases in an actual courtroom setting; and
- to develop confidence in public speaking and courtroom procedures.

Weekly Course Rhythm

PRIOR to each class meeting, there will be specific reading assignments that **MUST BE COMPLETED** before you arrive at class. There are also written assignments which are due before most class sessions. Read the syllabus closely to ensure you submit all course materials as required.

Before we get into to the nuts and bolts of the week’s topic, there will be a brief “quiz” regarding the reading assignment for each class. Students will be randomly called upon to answer questions covering all aspects of the assigned chapter.

Following the quiz, we will discuss the assigned materials and how they connect to the particular activity being discussed that evening.

In addition to the discussion of materials, we will discuss the substantive topic(s) set forth in the syllabus. The class will consist of some lecture, a brief review of pertinent articles/videos, skills practice, including evidentiary objections, and the weekly advocacy exercise.

Basic Rules

The Fall Trial Advocacy program, including trials, meets for 14 weeks. It is critical that you adhere to the following rules in order to achieve the goals/objectives referenced above.

1. **Dress:** Unless otherwise noted in the syllabus, you must wear courtroom attire for the class sessions and trials. Less formal attire (think casual Friday) is acceptable for non-trial sessions. For the bench trial and jury trial, trial appropriate courtroom attire is required.
2. **Computers:** Computers are not generally permitted in class. Computers will be allowed for completion of the MPT assignment during the second class session.
3. **Class Participation:** You are never allowed to “note out,” “pass,” or decline to participate whether as an attorney, witness, or observer. ***If you can't live by this rule, please drop the class now so you don't waste everyone else's time.*** Abiding by this rule means you must show up prepared for class, every time. Keep in mind that all trial work takes place in front of other people. You must learn now to overcome embarrassment, self-consciousness, fear of public speaking, and other phobias that might interfere with your effective representation of a client in court.
4. **Punctuality:** Please arrive on time for all classes and stay for the entire class session.
5. **Partners:** The final trial requires students to partner. I will assign partners for the final trial.

Course Materials:

Text: Our course text is Steven Lubet & J.C. Lore, *Modern Trial Advocacy: Analysis and Practice* (5th edition). The book is published by the National Institute for Trial Advocacy (NITA). The ISBN is 9781601564740. This edition of the book has been in print for several years, so it should be quite easy to find used copies of the book online at a reasonable price.

c. **Advocacy Resources.** When assigned, supplemental resources will be available at no charge to you on the course web page.

d. **Video Recordings.** We will record your synchronous session performances, including both trials, on video through MS Teams.

Case Files: We will use two case files in the course. The bench trial assignment will be provided at or before the second class meeting. The jury trial materials will be distributed following the completion of the bench trials.

TWEN: Articles and updates will be posted throughout the duration of the class. Please check the Trial Advocacy Fall 2020 TWEN page at least daily.

Advocacy Resource: when assigned, advocacy resources will be available at no charge to you on the course TWEN page.

Grading:

- A. Grading Philosophy. This course is graded. There are objective evaluation criteria that can be applied to every skill we will learn this term.

- B. How Your Grade is Determined. There are several components to your grade.
 - 1. *MPT Assignment (10%)*. Early in the term, you'll receive a timed, MPT assignment on a trial advocacy problem.

 - 2. *Written Elements and Proof Checklist (10%)*. This is a written elements and proof checklist for the first trial. A template will be provided for you on the course website.

 - 3. *Written Case Analysis Memorandum (20%)*. This is a written case analysis of the final trial case. A template will be provided for you on the course website.

 - 4. *Weekly Advocacy Exercises (Prepared/Unprepared)*. Throughout the semester, you'll perform different advocacy skills live on MS Teams with the rest of the class as an audience, receiving critiques and coaching from me. These exercises are not graded, but if you show a lack of preparation in these exercises, you will receive a .1 reduction in your final course grade for every such lapse. Additionally, any missed class will also result in a .1 reduction in your final course grade.

 - 5. *Graded Trials*. In the graded trials, you will put together the individual skills you've worked on during the weekly advocacy exercises. It is in the trials themselves that you earn a grade.
 - a. First Trial (Bench) (20%). In this trial, you will try a small case with one witness per side. This will give you experience giving an opening statement, conducting a direct and cross examination, and arguing on closing. You will be graded on your performance for each of these skills using a detailed rubric that you will be provided in advance of trial and according to the grading standards listed in subparagraph "c" below.

 - b. Final Trial (40%). In the final trial, you will be expected to give either an opening or closing statement, to conduct the direct examination of at least one witness, and to conduct the cross examination of at least

one witness. You will also serve as a witness in another trial. You will be graded on your performance for each of these skills—including your performance as a witness—using a detailed rubric that you will be provided in advance of trial. In addition, you will be expected to serve as a juror in another group's trial.

6. *Ungraded Assignments.* Aside from the draft assignments related to specific skills, you will have two ungraded written assignment – *Reflections on the Bench Trial* and *Final Self-Assessment Memo*. Although these are ungraded, you will not pass the class unless you turn each of these assignments in. The guides/templates for these assignments will be posted on TWEN.
7. *All Assignments Must Be Completed to Pass the Course.* Although there are weights assigned to each component of the class, you cannot pass unless you complete them all. For example, if you decide not to turn in your case analysis or participate in the final trial, yet complete all other requirements, you will fail the class.

Workload:

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fourteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, consisting of two combined weekly plenary and lab sessions. The amount of assigned reading and out of class preparation should take you, on average, about six (6) hours per class week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending an average of 9 hours per class (3 in class and 6 preparing for class) on course-related work. Please understand from the beginning that this class carries a heavy workload. I make no apologies for the demands placed on your time during the term (and when you practice, neither will your supervisors, judges, clients or opponents).

Attendance:

In a skills class, it's difficult to learn if you aren't present. An advocacy course requires your presence so you can learn, and through you, others can learn. If you are aware of a scheduling conflict for a class, please bring this up with me at the earliest possible time to see whether makeup arrangements are possible. If you do not make arrangements in advance, you will receive a .1 reduction from your final course grade for every such missed class. Missing more than two classes may result in expulsion from the course. All students are expected to attend all student trials.

Audio/Visual recordings:

You may be required to record certain advocacy exercises and/or the bench and jury trials. Your participation in the class constitutes permission for others to record your participation as a witness or opposing counsel in their advocacy exercises.

ADDITIONAL INFORMATION AND LAW SCHOOL AND UNIVERSITY POLICIES:

See the standardized syllabus attachment available at https://pvcaa.siu.edu/_common/documents/provost-memos/syllabus-attachment-fall-2020.pdf

CLASS SCHEDULE AND READING ASSIGNMENTS – Fall 2020*

**Additional assignments may be posted intermittently on TWEN – Please check TWEN daily*

Reading and Assignment Schedule

Week	Dates	Topic	Reading Assignment & Lecture	Advocacy Assignment (written draft due by 5 pm the night before class unless otherwise specifically noted)	Written Assignment (when assigned, emailed to instructor by 5 pm the day before class)
1	August 20	Course Introduction Trials and Storytelling	Lubet Chapter One Storytelling materials available on TWEN		One-to-two-page memo addressing any courtroom experience you have to-date and what you hope to gain from this course.
2	August 27	Case Analysis Theory Development Developing Trial Notebook	Lubet Chapter Two and Three	Merit letter (MPT assignment) – to be completed in class Case file for first trial available on TWEN prior to class.	In class MPT assignment. You may use your laptops to complete the MPT assignment.
3	Sept. 3	Closing Arguments Working in Reverse	Lubet Chapter 13	AE1: Closing Argument	Draft Closing
4	Sept. 10	Intro to Direct Examination Objections	Lubet Chapter Four Lubet Chapter Nine Objection cheat sheet on TWEN	AE 2: Direct Examination --performance as counsel --performance as witness	Draft Direct Examination
5	Sept. 17	Intro to Cross Examination	Lubet Chapter Five	AE 3: Cross Examination --performance as counsel --performance as witness	Draft Cross Examination

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6	Sept. 24	Opening Statements Bench Trial Review/Final Preparation	Lubet Chapter 12	AE 4: Opening Statement	Draft Opening
7	Oct. 1	Bench Trials: One and Two		AE 5: First Trial:	Reflections on First Trial (use template provided on course webpage) due by 5:00 p.m. October 15.
8	Oct. 8	Bench Trials: Three & Four			
9	Oct. 15	Case Analysis, Theme and Theory Development for Final Trial	Review Lubet Chapter Three Case File for Second Trial	Work with professor in class on case analysis and theory and theme development. Students will receive final trial assignments and case files after the bench trials are completed.	Draft case analysis memo
10	Oct. 22	Voir Dire and Jury Strategy	Lubet Chapter 14 Article: Evidence Without Rules	--Performance as Counsel --Performance as Juror	Identify bias of assigned jurors and prepare proposed questions
11	Oct. 29	Direct Examination with Exhibits	Lubet Chapter Ten and 11	AE 6: Direct Examination with Exhibits using assigned case file for Trial 2. --Performance as Counsel --Performance as Witness	Direct Examination with Exhibits
12	Nov. 5	Cross-Examination and Impeachment Rehabilitation	Lubet Chapter Six and Seven	AE 7: Cross-Examination and Impeachment using Case File 2 --Performance as Counsel --Performance as Witness	Final Case Analysis Memo Cross-Examination and Impeachment
13	Nov. 12	Final Trial One (as assigned by instructor)		AE 8: Final Trial	Final Self-Assessment Memorandum Due via email to Professor Day no later than 5:00 p.m. Sunday, December 6, 2020
14	Nov. 19	Final Trial Two (as assigned by instructor)			