

Trial Advocacy

Fall, '24

Adjunct Professor Stephen Stone

Tuesdays 6:00 p.m. – 8:30 p.m.

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Course Memorandum & Syllabus

### **Course Overview and Learning Objectives**

Thank you for choosing and welcome to Trial Advocacy.

Think of Trial Advocacy like an incubator where transformation will occur. If successful, Trial Advocacy will transform Evidence from theory to practice and from rule to presentation. It will be where the courtroom is transformed from an intimidating and unfamiliar place, to a place where you will feel comfortable and perhaps even long to be. If exceedingly successful, a course in Trial Advocacy will manifest a lifelong desire to forever hone your skills for the betterment of your clients, community, state, and nation.

In this course, you will be introduced to that part of the law practice that occurs inside a courtroom. You will learn basic skills: how to address the Court, its staff, your opponent, witnesses, and a jury. You will learn the structure of a trial: from opening statements, presentation of one's case in chief, defense of your opponent's case in chief, and closing arguments.

You will learn to introduce and oppose the introduction of evidence, lay foundation for evidence, both real and demonstrative, present and cross examine witnesses, both lay and expert, introduce opinion testimony, both lay and expert, and you will learn how to do these consistent with the theory of your case, while developing themes that allow you to advocate and persuade.

Classroom participation is critical. "Classroom participation" means everything that comes before the mock case you will try toward the end of the semester.

Lastly but very importantly, consistent with the profession's continuing efforts to help develop professional identity with a focus on diversity, equity and inclusion, the course will strive to employ strategies of active listening, empathy and effective allyship during classroom discussions and group work, as well as, to critically reflect on one's professional identity, while recognizing the impact of internal and external factors on identity.

### **Grading**

This course is graded. Law school rules allow sections with 12 or fewer students greater leeway on the mean grade, but there remains a requirement to grade nonetheless. As difficult as it may be, motivate yourself to excel not for the grade but for yourself and your classmates. Again, this in an incubator. We want all to transform, and that requires collaboration and comradery.

"Classroom participation" will represent 50% of your grade cumulatively earned in the weeks leading up to the trial.

Your performance at trial will represent the other 50%.

Grading for trial is largely subjective, but the categories that form the bases of your grade include **Professionalism** (attire, appropriate deference to court, interaction with your opponents, witnesses, jurors), **Courtroom Demeanor** (at counsel table, while addressing the Court, your opponent, witnesses and juror); in other words your presence, and movements, recognizing that most communication in a courtroom is non-verbal; **Language and Voice** (projection and

the ability to be heard; comfort with silence, pauses, and the use of proper English); **Theory and Theme; Opening Statement; Closing Argument; Direct Examination; Cross Examination; Knowledge of Evidence and Use of Objections; Trial Organization/Notebook.**

Trial scores will be solely based upon the performance at trial compared to your classmates. Classroom participation scores will not necessarily reflect who was the best, but who through effort and determination, mastered, and by their participation, assisted others in mastering the categories that will be ultimately judged at trial.

To that end, in class, you will be expected to serve as advocates, witnesses, and even judges. You will be expected to professionally encourage and critique each other, understanding that trial advocacy, especially jury trial advocacy, requires us to take into account a multitude of perspectives.

### **Course Objective**

By the end of the course, the objective will be for you:

- to have competence and confidence in a courtroom;
- to master basic trial skills; and
- to be able to competently try a mock case to verdict before a jury.

### **Course Subjects**

The Course will focus on ten main subjects, but not necessarily in the order set out below:

- I. Theory and Theme (Law and Story)
- II. Laying Foundation
- III. Objections
- IV. Direct Examination
- V. Opinion Testimony
- VI. Exhibits
- VII. Cross Examination
- VIII. Opening Statement
- IX. Closing Arguments
- X. Trial Organization

Ideally, these ten subjects will be introduced and significantly explored in the first 8 sessions. The remaining sessions will be focused on trial preparation.

### **ABA Credit Hour Standards**

You might be interested to know that the ABA standards incorporate out of class work in the calculation of credit hours. Under the ABA standards, **you should expect to spend 150 minutes per week in class (2.5 hours), plus (a minimum of) six hours of study a week, for a total of 8.5 hours per week."**

### **Attendance**

In accordance with ABA Standard 308(a), the right to take exams, as well as the privilege of continuing as a student at the School of Law, is conditioned on regular attendance and satisfactory completion of coursework. Unless the instructor has announced a rule allowing fewer absences, or except for

extraordinary circumstances, however, a student enrolled in a first-year course may not accumulate class hour absences in excess of twice the credit hours in any particular course during the term, and a student enrolled in any other course may not accumulate class hour absences in excess of three times the credit hours in that course during the term. Class hours will be calculated on a fifty-minute basis. Absent agreement of the instructor, missing all or part of a class counts as missing all of the class minutes for that class. Attendance will be taken in class and attendance records will be kept for one year. Violation of this attendance rule shall subject the student to the penalties of section (g) below. The attendance requirement is not subject to modification by a professor, nor may a professor excuse an absence. If the absences allowed under this provision have been exhausted, the Associate Dean for Academic Affairs may grant leave and relief from the regular attendance requirement in extraordinary circumstances, including but not limited to: (1) military service; (2) representing the law school at a moot court, mock trial, law review, or official function; (3) jury duty; (4) religious observances; (5) the birth of a child; (6) the death of an immediate family member to include grandparents; (7) major non-elective surgery or a prolonged hospital stay; or (8) to comply with federal or state antidiscrimination laws, other applicable laws, or SIU policies. Students must provide proof of the reason for the absence. The Associate Dean for Academic Affairs may consider the reasons why a student exhausted their absences prior to seeking leave, as well as whether the number of classes missed impairs the student's ability to learn the course content. The Associate Dean for Academic Affairs will not grant leave from the rules requiring regular attendance unless the request shows extraordinary circumstances or an unavoidable circumstance. If leave is not granted, the Associate Dean for Academic Affairs will discuss with the student options for withdrawing from a course and retaking in a future semester

### **Your Mock Trial**

You and a classmate will serve as co-counsel and will try the case of *Dixon v. Providential Life Insurance Company*, representing either the widow of Judge Dixon, who was found dead in his home, having succumbed to head wounds from the discharge of a firearm, or the Providential Life Insurance Company, which denied the widow's claim based on the contractual defense of suicide. The case file will be provided to you free of charge. You will find the case file on reserve in the Law Library for use during the term.

### **Partnerships**

Your mock trial will require you to have a partner. Your partner must be someone in this class. Depending on enrollment numbers, it is possible that someone may have to try a case without a partner. This will be determined as needed.

### **Textbooks**

Required Course Materials:

There are dizzying number of text books dedicated to Trial Advocacy. None necessarily follow the rhythm of an introductory course.

Underlying all advocacy, however, are the Rules of Evidence so I require the Illinois Rules of Evidence Handbook by John Barkai. ISBN # 979-8-6784-7912-9. This is a keeper, and you will find it useful if you practice in Illinois, and useful, because your Mock Trial Problem will incorporate the law of Illinois.

The second book is *Trial Techniques and Trial* by Mauet & Easton, by Aspen Publishing, ISBN # 978-1-5438-2531-2. This too is a keeper, and you will find it useful wherever you practice.

You are encouraged to explore any and all sources beyond these texts: Supplemental resources include The Advocacy Teaching Blog, Charlie Rose's Advocacy YouTube channel, Wes Porter's Advocacy YouTube channel, the National Institute for Trial Advocacy YouTube channel, Younger on Cross Examination YouTube (The Ten Commandments of Cross Examination).

## Class Recordings

Video and Audio Recordings. The school makes use of video and audio recordings of class.

## Professor's Plea

Being a trial lawyer is humbling, so please check your ego at the door. Each of you will have a natural skill set that will serve you well in some aspect of advocacy. Few, however, naturally possess a skill set that will serve you well in all aspects of advocacy. We will endeavor to identify your strengths and your weaknesses, so be open and prepared to learn that Trial Advocacy is not a "one size fits all" course.

## Dress

At the beginning of the semester, you may but are not required to dress in courtroom attire. At trial, however, you will be expected to dress in courtroom attire. A great deal of one's competency depends on being comfortable in the courtroom, so if introducing formal dress will impact your comfort level, you should dress professionally early.

## Phones, Tablets, Laptops, and Artificial Intelligence

Use of a cell phones, a Tablet, or Laptops for anything unrelated to class is not permitted. Use of Artificial Intelligence platforms is prohibited.

## Other Important Stuff

### SYLLABUS ATTACHMENT

### SIU SCHOOL OF LAW – Fall 2024

**EMERGENCY PROCEDURES:** We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

**DISABILITY POLICY.** SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or [disabilityservices.siu.edu](http://disabilityservices.siu.edu). You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Please send approved accommodations to your faculty through the DSS online portal.

**SALUKI CARES and COUNSELING & PSYCHOLOGICAL SERVICES (CAPS).** The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students, and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or [siucares@siu.edu](mailto:siucares@siu.edu), <https://salukicare.siu.edu/>. Associate Dean Angela Upchurch ([aupchurch@siu.edu](mailto:aupchurch@siu.edu) or (618) 536-8314) is available at the School of Law to help students access university resources. Additionally, counseling services are available through CAPS ([Counseling and Psychological Services \(CAPS\) | Student Health Services | SIU](#)). A counselor is at the law school every Wednesday from noon until 4:30pm in Room 268 for drop-in appointments.

**SAFETY AWARENESS FACTS AND EDUCATION** Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>