

COURTROOM STORYTELLING
AS TAUGHT AT THE
UNIVERSITY OF HOUSTON LAW CENTER

SPRING 2014 OUTLINE OF COURSE & ASSIGNMENTS

CLASS STRUCTURE AND RULES

ATTIRE: Dress for class is casual EXCEPT the day when a student has their final exam/closing argument assignment. On that day, it is requested/recommended that students dress as they would if they were making a court appearance. A part of the evaluation of the closing arguments performance will be based on how the student looks.

CLASS ASSIGNMENTS: The following schedule sets out the reading assignments for each upcoming class. Many of the class meetings will involve student participation & exercise. In order to meaningfully participate, a student will need to be familiar with materials assigned for that class. Some classes involve specific assignments for each student by student number.

CLASS ONE – JANUARY 13, 2014 – HOW WE GOT OUR JURY SYSTEM AND WHY WE MUST PRESERVE IT

Through historical & personal stories, I demonstrate various storytelling techniques & principles. The American tradition of permitting citizens to redress wrongs by trial to an independent jury is a proud & noble one. Students are encouraged to understand its history & work to preserve it.

Assignments for January 15 AND January 22, 2014:

Read pages 27-33 and 49-73; *Who Will Speak for the Victim?*

Read pages 139-160; *Winning with Stories*

Read:

- 1) *Tips for Weeding out Juror Bias*; Jim M. Perdue, Sr. TRIAL, July 2005
- 2) The written materials attached

Begin studying the mock trial materials that have been assigned by student number

Students 1 through 3 William Strange v. James Wrigley

WILLIAM STRANGE V. JAMES WRIGLEY

On May 18, 2007, the plaintiff, William Strange, and his friend, Robert Montgomery, were drinking at a local bar. After several drinks, Strange called a friend, David Cunningham, who lived nearby. Montgomery drove Strange to the subdivision where Cunningham lived and mistakenly turned down the wrong street. Montgomery parked near the house of the defendant, James Wrigley, and his wife, Kathy. When Strange walked into the house through the front door, Wrigley shot him two times. Strange has sued to recover for the personal injuries he received.

You are free to prepare any visual aids consistent with the given facts.

STATE V. DELANEY

This is a criminal case in which Ardell Delaney has been charged with a violation of Section 211 of the Criminal Code of the State of Nita, the felony of armed robbery.

The defendant, Ardell Delaney, a professional baseball player, was a top pitcher for the University of Nita baseball team. He was drafted by the Houston Astros, and played for three different Astros farm teams. In the late spring of YR-1 he injured his throwing arm and was on the disabled list throughout the summer of YR-1.

He has been accused of robbing at gunpoint Lexi Waitkus, the assistant manager of Miller's Fine Jewelers in the early evening of September 14, YR-1. The armed robber escaped with approximately \$12,440. On September 21, YR-1, the Nita Police Department arrested Val Cavarretta for possession for sale of cocaine. Detective Alex Lowrey interviewed Cavarretta about the offense, and Cavarretta claimed Delaney had money from a recent robbery of a jewelry store. Detective Lowrey checked with the NCPD ID Section and found that a print from a silver dollar taken from the robbery and found nearby bore seven points of similarity with Delaney's print. Lowrey then obtained a court order to take Delaney into limited custody for a lineup. On September 22, YR-1 Lowrey conducted a lineup in which Waitkus identified the defendant. Delaney was arrested. A preliminary hearing was held on October 20, YR-1 and the defendant was held to answer in the District Court for the County of Darrow.

The defendant pleaded not guilty to the charge, and the case is now set for trial. The defendant contends that this is a case of mistaken identification, and he claims at the time of the robbery he was having his car checked for smog certification.

You are free to prepare any visual aids with the facts provided.

JOHN FULBRIGHT V. AMERICRAFT INDUSTRIES AND ANDREW PARKER

John Fulbright has brought this action against Americraft Industries and Andrew Parker, seeking damages for personal injuries sustained in a car-motorcycle accident that took place on July 20, YR-3.

The plaintiff claims that Andrew Parker was negligent in the operation of his automobile while he was engaged in the business of his employer, Americraft Industries. Defendants have admitted that Mr. Parker was acting in the scope of his employment at the time of the accident, but denied all other material allegations of plaintiff's claims. Defendant affirmatively alleges that plaintiff was negligent, and that the plaintiff's negligence was the sole proximate cause of the accident.

Plaintiff claims that he became epileptic as a result of the injuries sustained in the accident, and that this condition prevented him from obtaining a college football scholarship, and has severely limited his income potential as a professional football player, or otherwise. Defendant denies that plaintiff's epilepsy was caused by this accident.

You are free to prepare any visual aids with the facts provided.

WILLIAMSON V. SHRACKLE

This is a civil negligence action brought in the Nita state court by Professor Fergus D. Williamson against Charles T. Shrackle and the Shrackle Construction Company. Williamson claims that Shrackle negligently drove the company's pickup truck, striking Williamson as he was crossing the street, causing him severe injury and continuing disability. Williamson claims that he was acting in the course of the Shrackle Construction Company's business at the time of the event.

Shrackle admits striking Professor Williamson, but claims that he was crossing in the middle of the street, rather than in the pedestrian crosswalk, and that he did not look before entering in to the street in the path of Mr. Shrackle's pickup truck. Defendants deny that Shrackle was negligent and allege contributory negligence on part of the plaintiff, Professor Williamson.

You are free to prepare any visual aids with the facts provided.

Sixty-five percent (65%) of the final grade will be based on your closing argument given from these mock trial materials. Each closing argument will be evaluated by our class peers using an objective form. Evaluations by fellow students are reviewing, but the final evaluation and grade resides in the professor's judgment.

The schedule for the mock trial closing arguments is as follows:

April 16, 2014 (Class Twenty-Five)

William Strange v. James Wrigley

Closing Argument for Plaintiff (Student 1) (20 minutes)
Closing Argument for Defendant (Student 2) (30 minutes)
Rebuttal for Plaintiff (Student 3) (20 minutes)

April 21, 2014 (Class Twenty-Six)

State v. Delaney

Closing Argument for Plaintiff (Student 4) (20 minutes)
Closing Argument for Defendant (Student 5) (30 minutes)
Rebuttal for Plaintiff (Student 6) (20 minutes)

April 23, 2014 (Class Twenty-Seven)

John Fulbright v. Americraft Industries and Andrew Parker

Closing Argument for Plaintiff (Student 7) (20 minutes)
Closing Argument for Defendant (Student 8) (30 minutes)
Rebuttal for Plaintiff (Student 9) (20 minutes)

April 28, 2014 (Class Twenty-Eight)

Williamson v. Shrackle

Closing Argument for Plaintiff (Student 10) (20 minutes)
Closing Argument for Defendant (Student 11) (30 minutes)
Rebuttal for Plaintiff (Student 12) (20 minutes)

Students are free to trade closing argument assignment, but no assignments can be abandoned. In other words, if a student wants to trade their position in one case to another student in another case and assume that student's position, they are free to do so.

HOWEVER: Students are to advise at the beginning of the Class # Twenty-Four on April 14, 2014 of any changes/swapping of case and/or position.

CLASS TWO – JANUARY 15, 2014 – CHOOSING THE AUDIENCE FOR YOUR STORY

Jury selection is the most significant stage of any trial. We will consider techniques of the voir dire process and principles of jury selection.

CLASS THREE – JANUARY 22, 2014 – HOW YOU SAY IT CAN BE MORE IMPORTANT THAN WHAT YOU SAY

To be an effective courtroom story teller, you must have a good voice and know how to use it. We focus on developing the student's speaking ability. The exercises are designed to work just on the voice – how to use it, how to develop it, and why it is important to have a commanding, but pleasant voice in the courtroom.

CLASS FOUR – JANUARY 27, 2014 – MORE OF HOW YOU SAY IT CAN BE MORE IMPORTANT THAN WHAT YOU SAY

Some students sing, then speak the lyrics. Nothing improves emphasis, timing, and use of tone and pitch better than this exercise. We consider orchestration and particularly the use of rising and falling pitch. We move on to working on one of the essentials of persuasive speaking – eye contact.

CLASS FIVE – JANUARY 29, 2014 – A JURY IS NOT AN AUDIENCE OF 12 PEOPLE; IT IS 12 AUDIENCES

Students participate in an NLP exercise.

We discuss the concepts of neurolinguistic programming and how to present to your audience in all three representational systems – 1) visual; 2) auditory and 3) kinesthetic. In an interesting exercise, students learn how to communicate a feeling using only their eyes. Good speakers use pitch, tone and pauses to bring persuasive purchase to their storytelling. Various student exercises are designed to bring an appreciation and understanding of these principles.

CLASS SIX – FEBRUARY 3, 2014 – FOR EVERY MOVEMENT THERE IS A PURPOSE; FOR EVERY STORY THERE IS A BEGINNING

Movement, gestures, even the way a lawyer handles exhibits sends a subliminal message to a jury. We consider these principles together with the concept of creating and using physical anchors. Students learn the concepts of hooks, headlines, and other techniques that can be used to get the attention of the audience.

Assignment for February 5, 2014:

Students will take the personality profile test contained in course material before attending class. Results will be discussed.

CLASS SEVEN – FEBRUARY 5, 2014 – WHO YOU ARE SPEAKS SO LOUDLY I CANNOT HEAR WHAT YOU SAY

We cover the results of the personality test that is in the course materials. What type of personality each student is and what this tells us about them.

Personality types are contrasted with the new concept of E.Q. (emotional quotient). We consider ways to use your persona and demeanor to connect with juries. We begin working on the principle “the past tense can cripple a message in the courtroom”. Students learn the persuasive magic of present tense story telling in the examination of witnesses, opening statements and closing arguments.

Assignment for February 10, 2014:

Students will take the test in course materials to distinguish the different ways people learn. Results will be discussed.

CLASS EIGHT – FEBRUARY 10, 2014 – YOU DON’T HAVE A CASE IF YOU DON’T HAVE A STORY; YOU DON’T HAVE A STORY IF YOU DON’T HAVE A MORAL; YOU DON’T HAVE A MORAL IF YOU DON’T HAVE EMOTION

We go over the results of the learning test that tell what kind of learner you are. Different kinds of learners perceive information differently and process it differently. This will assist you in dealing with juries, who in all probability will have the four types of learners on it and also in dealing with preparing witnesses for trial. We will consider some interesting exercises that relate to the judgments people make and begin a consideration of “code words”, a concept pioneered by Clotaire Rappiello and “framing” as taught by political consultants Frank Luntz and George Lasko.

Assignment for February 12, 2014:

Read pages 37-48; *Winning with Stories*

Read:

- 1) *Bringing Drama to the Courtroom*; Jim M. Perdue; TRIAL, September 1997.
- 2) *Putting the Pieces Together*; Jim M. Perdue, Sr. and Jim M. Perdue, Jr.; TRIAL, Medical Negligence, May 2003.
- 3) Read the written materials on crafting stories contained in Class Eight

FIRST WRITTEN ASSIGNMENT **DUE AT CLASS NINE (25% OF FINAL GRADE)**

Each student may select any appellate decision from any era or jurisdiction, criminal or civil. From the facts set out in the appellate decision prepare an opening statement choosing either side. The draft should be double spaced and exceed eight pages.

I have had students complain at the conclusion of the semester about being challenged to draft an opening statement this early in the semester. The purpose of this exercise is for me to get an idea of your present level of trial advocacy. You will not know all you need to know about crafting an opening statement until the conclusion of the class, and even then, the main thing you will have learned is that there is so much more for you to learn. One of the best learning exercises is to take the opening statement you prepare at this stage of the class, review it after your final arguments/examinations and compare it with the way you would approach it given the concepts you have learned throughout the semester.

CLASS NINE – FEBRUARY 12, 2014 – A GOOD TRIAL LAWYER TELLS WHAT HAPPENED; A BETTER TRIAL LAWYER TELLS WHY IT HAPPENED; THE GREAT TRIAL LAWYER TELLS HOW IT FELT

TURN IN FIRST WRITTEN ASSIGNMENT (25% of final grade)

Each student is given an assignment of a scene that they use their creative abilities to describe. As you set the scene, think in terms of the total story you would tell using this scene. This will be done within 3 minutes. After setting the scene, we will go to some other exercises that flow off of that. We will also be considering case themes, schemas, and the differences between opening and closing argument.

Assignment for February 17, 2014:

Read pages 49-62; *Winning with Stories*

Read:

- 1) *Touched by an Angel*; Jim M. Perdue, Sr., TRIAL, March 2000

The course materials contain an article that was published in the March 2000 edition of *Trial* magazine of the hardest case I ever tried. Your written assignment for Class Ten is not a 'for grade' assignment. You will be asked to prepare a narrative, a story, of the hardest thing you've ever done. This should not exceed 3 pages double-spaced and should be without any identification by way of name or student number. This helps in our exercise about the important of character.

CLASS TEN – FEBRUARY 17, 2014 – FINDING THE "WHO" IN YOUR STORY

We will talk about character development as an essential to any courtroom story. The type of characters that we want to pull for and the type that we want to see lose. Unlikeable characters. We consider the concept of motive and the role it plays in character and the story. We discuss the different ways to conduct a direct examination of a plaintiff and other witnesses at trial and hopefully improve the student's direct examination skills. There will be student exercises using some of those from Jerry Spence's trial college in Wyoming.

Assignment for February 19, 2014:

Read pages 63-74; *Winning with Stories*

CLASS ELEVEN – FEBRUARY 19, 2014 – FINDING THE ESSENCE OF YOUR STORY

Students learn how to find the essence of their story utilizing the telegram exercise, a novel concept of storytelling developed by Katherine James and Allan Blumenfield, California actors who have helped many trial lawyers become more effective advocates in their advance workshops they put on all over the country. As part of the exercise, we work more on the essential of eye contact. We will talk about how to put together a trial notebook. I present the concept and principles of organizational structure for an opening statement and where the speaker begins the story is so critical.

Assignments for February 24th, February 26th, March 3rd & March 5th, 2014:

Refer to the chapter "opening Statement" authored by Jim M. Perdue, Sr. in the 6 volume treatise **ATLA LITIGATION TORT CASES** and prepare a brief opening statement from the case that has been assigned to you for closing argument. The opening statement should not exceed 12 minutes.

CLASS TWELVE – FEBRUARY 24, 2014 – OPENING STATEMENT EXERCISE (STUDENTS 10-12)

Students will be called upon to give a short opening statement lasting no longer than twelve (12) minutes. Students may use for their opening statement, either the case which they prepared the written opening statement or the mock trial case they are working on and from which they will give their closing argument.

CLASS THIRTEEN – FEBRUARY 26, 2014 – OPENING STATEMENT EXERCISE (STUDENTS 7-9)

CLASS FOURTEEN – MARCH 3, 2014 – OPENING STATEMENT EXERCISE (STUDENTS 4-6)

CLASS FIFTEEN – MARCH 5, 2014 – OPENING STATEMENT EXERCISE (STUDENTS 1-3)

Assignment for March 17, 2014:

Read chapters from Rick Friedman and Patrick Malone's book, *Rules of the Road* attached in your course materials. Be prepared to offer the suggestions for the "Rules of the Road" that you would attempt to prove in your mock trial case.

CLASS SIXTEEN – MARCH 17, 2014 – EVERYONE SHOULD PLAY BE THE RULES

Rules play a unique position in the courtroom story. Almost every cause of action imaginable is based upon the idea that someone broke the rules; either some established rules in writing or some common sense, everyday rules. We consider the concepts set out in the Rick Friedman and Pat Malone's recent book, *Rules of the Road*.

Assignment for March 19, 2014:

Read pages 149-156 and 267-318, *Winning with Stories*. Be prepared to offer an analogy, a metaphor and a simile you would use from the mock case assigned to you.

Read:

- 1) *Words for the Wise*; Jim M. Perdue; TRIAL, July 1990

CLASS SEVENTEEN – MARCH 19, 2014 – ONLY THE BEST WORD WILL DO

In this class, we consider the use of various rhetorical techniques such as labels, metaphors and similes. We study more on the concept of framing, which today, is a mainstay of all political campaigns. Throughout this course, we discuss some of the revolutionary concepts of the disciplines of archetypology, linguistics and psychology.

Assignment for March 24, 2014:

Read pages 167-183, *Winning with Stories*

CLASS EIGHTEEN – MARCH 24, 2014 – PEOPLE DONT BELIEVE WHAT THEY SEE AS MUCH AS THEY SEE WHAT THEY BELIEVE

This will be a lecture covering the use of Power Points and demonstrative aids in the courtroom. Why they are important and how to best use them.

Assignments for March 26th AND March 31st, 2014:

Read pages 74-79, *Winning with Stories*

Read pages 185-211, *Winning with Stories*

Read:

- 1) *The Petard Objection*; Jim M. Perdue; TRIAL, July 1995

**CLASS NINETEEN – MARCH 26, 2014 – DIRECT AND CROSS-EXAMINATION EXERCISE
(STUDENTS 7-9 & 10-12)**

Using the mock case assigned, students select from their group one student to play witness, one to do a direct examination, and one for cross-examination. During the presentations, we will be working on how to connect with the jury and also how to disconnect opposing witnesses from the audience.

**CLASS TWENTY – MARCH 31, 2014 – DIRECT AND CROSS-EXAMINATION EXERCISE
(STUDENTS 4-6 & 1-3)**

Assignment for April 2, 2014:

Read pages 89-102, *Winning with Stories*

CLASS TWENTY-ONE – APRIL 2, 2014 – DEVELOPING A COGNITIVE THEME – MAKING IDEAS STICK

Students will be given assignments of social/political/economical topics on which they will present arguments supporting their propositions not to exceed 3 minutes.

Students will be expected to do their own independent research on behalf of their assigned proposition.

We will work on the concept of the cognitive theme – the idea that holds the facts and science together. We will be talking about focus groups and how they help prepare for trial and find the theme. We will go through some exercises designed to teach students how to narrow their story down to its basic and critical element.

Assignment for April 7, 2014:

Read chapters from David Ball's book, *David Ball on Damages*, 2nd Ed. attached as part of course materials.

Read pages 249-345 in *Who Will Speak for the Victim?*

Read articles in course materials:

- 1) *Arguing Comparative Negligence for the Plaintiff*, Jim M. Perdue; Texas Bar Journal, December 1987
- 2) *Comparative Negligence*; Jim M. Perdue; TRIAL, May 1998

CLASS TWENTY-TWO – APRIL 7, 2014 – WHAT IS THE HARM WORTH? PLAINTIFF'S DAMAGES AS PART OF THE STORY

The goal of this class is not to produce "cookie cutter trial lawyers"; rather it is to help the students in gaining a better understanding of themselves from their natural speaking abilities and insight into their unique personalities. Every lawyer brings to the courtroom their own "style" still, there are fundamentals to any successful closing argument, such as explaining the meaning of the court's charge, giving a jury an understanding of the legal definitions, integrating the evidence into a cohesive story, making clear to the jury what you desire by way of a verdict and then motivating and empowering the jury to return that verdict.

Few souls are converted by great oratory after the evidence is completed. Most jurors have already made up their mind as to which of the two competing stories they believe. Experienced trial lawyers understand that the purpose of the closing argument is to give those who have accepted and believed your story the arguments they can use to convince others.

Various techniques can be used to increase damages. We will consider some of the strategies from David Ball, one of the premier jury consultants in this country who has written landmark treatises on this subject. We will consider the use of life care plans and other modern techniques used in personal injury cases.

Assignment for April 9, 2014:

Prepare to give a speech applauding the virtue of condemning the vice assigned to you. You made trade assignments as before.

Read pages 87-126, *I Remember Atticus*

Read pages 251-266, *Winning with Stories*

CLASS TWENTY-THREE – APRIL 9, 2014 – “WILL IT EAT ME OR CAN I EAT IT?” – APPEALING TO THE REPTILE

The course materials contain a handout that is a checklist of things to consider as empowering themes and a list of motives, goals and values to consider when constructing an affective theme. We talk about affective themes, how they are used and why they are important. The student exercise is to give a 3 minute talk on the virtue that they have been assigned in their course materials.

Assignment for April 14, 2014:

Prepare Third Assignment due April 14, 2014

CLASS TWENTY-FOUR – APRIL 14, 2014 – DON’T ASK PEOPLE WHY THEY DO THE THINGS THEY DO – THEY DON’T KNOW

SECOND WRITTEN ASSIGNMENT
DUE AT CLASS TWENTY-FIVE (10% OF FINAL GRADE)

For the second written assignment, I have students prepare a narrative of the most helpful and interesting things learning this class. It should not exceed 6 pages double-spaced.

Students to advise of any trades/swaps made regarding closing argument assignments

CLASS TWENTY-FIVE – APRIL 16, 2014 – CLOSING ARGUMENT AND EVALUATION

Turn in second written assignment (10% of final grade). Fifty percent (50%) of your final grade is determined by how you perform in your closing argument. As I have indicated on any of these assignments whether it is setting the scene, discussing the virtue, or closing arguments, you can trade assignments, but you can’t abandon them. In other words, you can agree with another student that you will take her assignment if she will take yours. At the closing demonstration, each student will be given a sheet to be used to grade their fellow students. I expect each of you to use the honor code and to grade fairly. We are not playing “Survivor” in this classroom. We are here to help each other and pull us all up and knock anyone down. I do not use the student evaluations for a final grade; only to get a sense of how a student’s peers evaluate performance. The final grade is my sole prerogative.

CLASS TWENTY-SIX – APRIL 21, 2014 – CLOSING ARGUMENT AND EVALUATION

CLASS TWENTY-SEVEN – APRIL 23, 2014 – CLOSING ARGUMENT AND EVALUATION

CLASS TWENTY-EIGHT – APRIL 28, 2014 – CLOSING ARGUMENT AND EVALUATION