

COURTROOM STORYTELLING
AS TAUGHT AT THE
UNIVERSITY OF HOUSTON LAW CENTER

SPRING 2018 OUTLINE OF COURSE & ASSIGNMENTS

TEXTBOOK INFORMATION:

Prior to class beginning, you will receive word from the Blakely office on how to order your textbooks for the class. **You will receive a special link from Texas State Bar to purchase the 3 textbooks at a significant discount.** The books to be used are the following all written by Jim M. Perdue:

1. *Winning with Stories* – (author: Jim Perdue, Sr.; ISBN #: 9781892542229)
2. *I Remember Atticus* – (author: Jim Perdue, Sr.; ISBN #: 9781892542212)
3. *Who Will Speak for the Victim?* – (author: Jim Perdue, Sr.; ISBN #: 9780938160540)

Each student will also be assigned a specific NITA case file, which you will pick & purchase from the Blakely office prior to class. The case files require a **\$40 CASH (non-refundable) payment.** The Blakely office will send you information on this prior to class beginning.

GRADING INFORMATION:

Your final grade is based on a combination of attendance, preparation, participation & performance throughout the semester. The 1st written assignment counts for 20%, the 2nd written assignment does not count for a grade. The closing argument performance counts for 70%, which are given by students during the last 4 class days. The closing argument is considered your final exam. The remaining 10% is made up of attendance, preparation and class participation. Please note: each student will receive a substantial amount of individual mentoring throughout the semester as well from Professor Perdue.

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 17, 2018 – 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 17 AND January 22, 2018:

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.

Students 4 through 6 State v. Delaney

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.

Students 7 through 9 John Fulbright v. Americraft Industries and Andrew Parker

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.

Students 10 through 12 Williamson v. Shrackle

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.

Seventy percent (70%) 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 11, 2018 (Class Twenty-Three)

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 16, 2018 (Class Twenty-Four)

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 18, 2018 (Class Twenty-Five)

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 23, 2018 (Class Twenty-Six)

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-Two on April 9, 2018 of any changes/swapping of case and/or position.

CLASS TWO – January 22, 2018 – 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 24, 2018 – 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 29, 2018 – 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 31, 2018 – A JURY IS NOT AN AUDIENCE OF 12 PEOPLE; IT IS 12 AUDIENCES

We discuss the concepts of neuro-linguistic 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 5, 2018 – 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, as well as the dramatic technique of the L-Cut. Students learn the concepts of hooks, headlines, and other techniques that can be used to get the attention of the audience.

Assignment for February 7, 2018:

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

CLASS SEVEN – February 7, 2018 – 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 12, 2018:

Students will prepare a three (3) minute emotional story for presentation at Class Eight. The story should have an identifiable moral that appeals to an emotive reaction.

CLASS EIGHT – February 12, 2018 – 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 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.

Students present their three (3) minute emotional story.

Assignment for February 14, 2018:

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

CLASS NINE – February 14, 2018 – A GOOD TRIAL LAWYER TELLS WHAT HAPPENED; A BETTER TRIAL LAWYER TELLS WHY IT HAPPENED; THE GREAT TRIAL LAWYER TELLS HOW IT FELT

Each student is given an assignment of a scene that they use their creative abilities to describe. These assignments are found in the course syllabus. As you set the scene, think in terms of the total story you would tell using this scene. This will be done within three (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 19, 2018:

Read pages 49-62; *Winning with Stories*

Read:

- 1) *Touched by an Angel*; Jim M. Perdue, Sr., TRIAL, March 2000
- 2) 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 TEN – February 19, 2018 – EVERYONE SHOULD PLAY BY 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 February 21, 2018:

Students should prepare a three (3) minute speech/story on someone you admire. This may be a friend, relative or historical figure.

CLASS ELEVEN – February 21, 2018 – 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.

Students give their three (3) minute emotional presentation of a person they admire.

Assignment for February 26, 2018:

Read pages 63-74; *Winning with Stories*

CLASS TWELVE– February 26, 2018– 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 March 7, March 19, March 21 & March 26, 2018:

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.

Assignment for February 28, 2018:

Read pages 149-156 and 267-318, *Winning with Stories*.

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

FIRST WRITTEN ASSIGNMENT
DUE AT CLASS THIRTEEN (20% OF FINAL GRADE)

Prepare a written opening statement for the case assigned to you for closing argument. The draft should be double spaced and NOT to 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.

TURN IN FIRST WRITTEN ASSIGNMENT (20% of final grade) Due February 28, 2018 (Class Thirteen)

CLASS THIRTEEN– February 28, 2018 – 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 5, 2018:

Read pages 167-183, *Winning with Stories*

CLASS FOURTEEN – March 5, 2018 – 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.

CLASS FIFTEEN – March 7, 2018 – 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 should use for their opening statement, the mock trial case they are working on and from which they will give their closing argument.

CLASS SIXTEEN – March 19, 2018 – OPENING STATEMENT EXERCISE (STUDENTS 7-9)

CLASS SEVENTEEN – March 21, 2018 – OPENING STATEMENT EXERCISE (STUDENTS 4-6)

CLASS EIGHTEEN – March 26, 2018 – OPENING STATEMENT EXERCISE (STUDENTS 1-3)

Assignments for March 28 and April 2, 2018:

Read pages 74-79, *Winning with Stories*

Read pages 185-211, *Winning with Stories*

Read: *The Petard Objection*; Jim M. Perdue; TRIAL, July 1995

CLASS NINETEEN – March 28, 2018 – 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 – April 2, 2018 – DIRECT AND CROSS-EXAMINATION EXERCISE

(STUDENTS 4-6 & 1-3)

Assignment for April 4, 2018:

Read pages 89-102, *Winning with Stories*

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.

CLASS TWENTY-ONE – April 4, 2018 – DEVELOPING A COGNITIVE THEME – MAKING IDEAS STICK

Students present their three (3) minute political argument.

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 9, 2018:

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

Prepare Second Assignment due April 11, 2018

CLASS TWENTY-TWO – April 9, 2018 – DON'T ASK PEOPLE WHY THEY DO THE THINGS THEY DO – THEY DON'T KNOW

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.

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.

SECOND WRITTEN ASSIGNMENT **DUE AT CLASS TWENTY-THREE (NOT GRADED)**

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-THREE – April 11, 2018 – CLOSING ARGUMENT AND EVALUATION

Turn in second written assignment (NOT GRADED). Seventy percent (70%) 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, 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.

CLASS TWENTY-FOUR – April 16, 2018 – CLOSING ARGUMENT AND EVALUATION

CLASS TWENTY-FIVE – April 18, 2018 – CLOSING ARGUMENT AND EVALUATION

CLASS TWENTY-SIX – April 23, 2018 – CLOSING ARGUMENT AND EVALUATION

If you need to discuss class issues, please contact Professor Perdue directly to set up a time at jperdue@perdueandkidd.com

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html