

SYLLABUS

5397 TRIAL STRATEGY AND CASE MANAGEMENT: THE ART OF WINNING AT AN UNFAIR GAME

Spring 2018 Course Information & Syllabus

Professor(s):	J. Michael Solar (ADJUNCT)
Credits	3 Hours
Course Areas	Blakely Advocacy Simulation
Time:	Tuesday 9 am - 12:00 pm
Location:	Room 111 TUII
E-mail:	jmsolar@solarlaw.com
Office Hours:	My office hours are subject to appointment; E-mail me with proposed meeting times and all efforts will be made to accommodate your schedule.
Textbooks	None. Professor will assign recommended materials as needed on an ongoing basis. You will be responsible for checking Blackboard.

THERE IS NO FINAL EXAM IN THIS COURSE

Course Outline

The primary objective of this course is to arm the prospective solo or small firm lawyers aspiring to develop trial skills and a trial docket with the strategic and tactical tools necessary for winning against the odds. You will, among other things, learn about:

1. whether you really want to be a trial lawyer (how to conduct your personal SWOT analysis); the new realities of trial advocacy; difficulties in obtaining trial experience; and the joys and pitfalls of the trial lawyer's life;
2. playing to your native strengths;
3. where to "plant your flag": practice area, location, professional association;
4. how to assess / expand your "capital": intellectual; social; political and financial;
5. how to market your trial practice ethically;
6. how to develop facts and conduct a claim analysis;
7. how to interview and counsel a prospective client in anticipation of trial;
8. how to draft an ethical and enforceable contract of employment;
9. whether to keep a case, associate counsel or refer it out;
10. what to do when things go bad: conflict resolution;
11. organizing and managing your trial docket;
12. the basic aspects of a trial;
13. negotiations associated with trial advocacy; and
14. your SWOT reassessed.

"You will learn how David beat Goliath so you can too!"

NOTE: This course will provide real life insights to all lawyers interested in the identification, evaluation, development and disposition of legal disputes whether or not they intend to be a trial lawyer. This is not a traditional trial advocacy course involving mock trial type presentations.

Many classes will feature guest speakers who will lecture on various topics and be followed by a Q & A session. The class meets on Tuesday from 9:00 a.m. – 12:00 noon. We will begin with lectures until 10:30, followed by a 15-minute break, and a Q & A session from 10:30 until dismissal at 11:45.

The class will be broken down into two or more “law firms / trial teams” (depending on class size). They will periodically address prior presentations as a mock law firm / trial team, or through a designated consensus team presenter, during the term. The periodic journal entries shall demonstrate student “takeaways” vis the readings, lectures, development of their mock law firm / trial team. The journal entries shall contain self-evaluations regarding their “mock law firm / trial teams.”

Even though there is no bound text for this course, you will access reading assignments through links to text or video posted to the Syllabus.

To access the most recently uploaded syllabus for this course:

- Go to the UHLC website at this address:

http://www.law.uh.edu/schedule/class_information.asp?cid=15088

- Scroll down to **Course Syllabus: *Syllabus* revised [date]**
- Click on ***Syllabus***

To access the readings: Once at the syllabus (see directions immediately above),

- Scroll down to the readings for the appropriate week.
- Click on the link for the reading and it should bring up the text or video on your monitor.

There will be 5 data points in the grading rubric, and they are:

- **Individual professionalism, participation and demonstrated skills (25% of total grade);**
- **Journal Entry #1 (20% of total grade) – Personal, managerial, legal and ethical issues related to launching a solo practice.** E-mail assignment before class starts on February 20.
- **Journal Entry #2 (20% of total grade) – Case intake; documentation; collaboration; and conflict resolution.** E-mail assignment before class starts on April 3.
- **Journal Entry #3 (20% of total grade) – Organization and management of legal work and self-assessment.** E-mail assignment before class starts on April 24.
- **Group Skill Assessment (15% of total grade)**

ATTENDANCE POLICY: The Law Center has a **minimum 80% attendance** policy for students. Any student who attends fewer than the minimum percentage of classes may be dropped from the class.

IF A CLASS IS CANCELLED: There will be a make-up class from 9 a.m. to noon on one of the following Fridays: 2/2, 3/2, or 4/6. The make-up class is not available for missing a class under any circumstances other than cancellation of the entire class on a given day.

IT IS INCUMBENT UPON THE STUDENT TO PROVIDE THE PROFESSOR WITH HIS/HER BEST EMAIL ADDRESS.

Houston media will be alerted about UH weather closings and updates. The University of Houston web site <http://www.uh.edu> will announce closings.

A note from the University of Houston:

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

CULTURAL COMPETENCY

“Capitalization learning”: we get good at something by building on the strengths that we are naturally given.”

— Malcolm Gladwell, *David and Goliath: Underdogs, Misfits, and the Art of Battling Giants*

“I never let my schooling interfere with my education”

— Mark Twain

Does your life experience provide you a valuable legal niche? Your parentage, gender; race; ethnicity; religion; linguistic abilities; socioeconomic status; education; prior work; residences; travels; relationships; skills; hobbies; hardships.

Swim *with* the current!

What is cultural competency and why should I care?

“Culture” is defined by Merriam Webster as:

- 1a: the customary beliefs, social forms, and material traits of a racial, religious, or social group; *also*: the characteristic features of everyday existence (such as diversions or a way of life) shared by people *in a place or time*
 - popular *culture*
 - Southern *culture*
- b: the set of shared attitudes, values, goals, and practices that characterizes an institution or organization
 - a corporate *culture* focused on the bottom line
- c: the set of values, conventions, or social practices associated with a particular field, activity, or societal characteristic
 - studying the effect of computers on print *culture*
 - Changing the *culture* of materialism will take time ...—Peggy O'Mara
- d: the integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations

“Cultural competence” refers to *an ability to interact effectively with people of different cultures*. Cultural competence comprises four components:

- a. awareness of one's own cultural worldview;
- b. attitude towards cultural differences;
- c. knowledge of different cultural practices and worldviews; and
- d. cross-cultural skills.

Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures and leads to a 15% decrease in miscommunication. Cultural Competency has a fundamental importance in every aspect of a work field and that includes school and government setting. With the amalgamation of different cultures in American society, it has become imperative for teachers and government employees to have some form of cultural competency training.

To cater to an increasingly globalized society, many hospitals, organizations, and employers may choose to implement forms of cultural competency training methods to enhance transparency between language, values, beliefs, and cultural differences. Trial advocacy is not an exception to effectively communicating with clients, opponents, attorneys, judges, insurance companies or the media.

- **OBJECTIVE**

- Find a valuable legal niche based on your life experience
- Learn the importance of cultural competency to your trial practice.

- **RECOMMENDED READINGS**

- [“Embracing Diversity and Being Culturally Competent is No Longer Optional”](#)
- [Top Five Things to Know About Selecting Your Practice Area](#)
- [Keys to Law Student Success](#)
- [Legendary Trial Lawyer Gerry Spence Offers Advice to Young Lawyers](#)

- **GUEST SPEAKERS**

- Thelma Elizalde: Thelma is the founder of The Elizalde Group. Before beginning her private practice, Thelma was associated with the firm of Weil, Gotshal & Manges, focusing in the area of business reorganization. Her blended background in law, business and government brings a wealth of hands-on experience to her work as an attorney, mediator, trainer and coach. She has conducted high impact training in all 50 states and internationally. As a coach, she gives her clients the skills, knowledge, and confidence they need to achieve peak performance.
- Niya Blair: provides leadership, strategic vision, organization, and administrative oversight of the Center for Diversity and Inclusion and campus wide services and programs partnering with departments and student organizations in the areas of diversity and inclusion. She also provides support that helps recruit and retain students. Ms. Blair is an advocate for social justice, and works with campus and community partners to help advance diversity for the university.

WHERE TO PLANT YOUR FLAG

- **OBJECTIVE**
 - Define your practice area(s);
 - Learn how to perform a market survey;
 - Learn how to pick your office location; and
 - Define your office needs, i.e., dedicated office, executive suite, shared office space, virtual office, home office, or Starbucks.
- **RECOMMENDED READINGS**
 - [Chapter 2: Office Logistics \(Law Office Tech\)](#)
 - [Office Space & Logistics \(TYLA\)](#)
 - [Career Employment Statistics \(UH\)](#)
- **GUEST SPEAKERS**
 - Tiffany Tucker, Assistant Dean for Career Development: Tiffany joined the UH Law Center's Career Development Office after practicing transactional intellectual property and general corporate law at a large New York law firm and is a member of the New York Bar. Tiffany earned a B.A. in both Psychology and Sociology from Grambling State University, an M.Ed. in Counselor Education from Florida A&M University, and a J.D. from Howard University School of Law. A native Texan, Tiffany is a former mental health counselor and professional development specialist.

Among her responsibilities, her office is responsible for compiling, reviewing, and ensuring the accuracy of the employment statistics submitted to the ABA and all other reporting agencies. She will speak to where current trends are going and opportunities for careers in litigation.
 - John Kantarjian: A native Houstonian, John Kantarjian graduated from Strake Jesuit High School, earned his BA at Fordham University and his MBA at the University of Houston Bauer School of Business. He was awarded a JD at the University of Houston Law Center in 2016. Immediately after passing the bar, John formed NKM Law Firm which focused on family, criminal and immigration law. Six months later, the NKM Law Firm merged with the Law Offices of Ben Dominguez, where John is now a partner and focuses primarily on personal injury litigation.

CAPITAL: INTELLECTUAL; SOCIAL; POLITICAL; AND FINANCIAL

- **OBJECTIVE**
 - Learn how to develop a viable business plan.
 - Learn how to find seed capital.
 - Learn how to develop strategic sources of business.
 - **RECOMMENDED READINGS**
 - [Chapter 1: Business Plan](#)
 - [Business Plan TYLA](#)
 - [Capital TYLA](#)
 - [Chapter 4: Initial Sources of Revenue](#)
 - [Chapter 5: Managing Revenue](#)
 - **GUEST SPEAKERS**
 - Vahid Shariatzadeh: Certified Public Accountant and Certified Financial Planner. He is also a Member Texas Society of Certified Public Accountants, Texas Association Public Accountants, International Board Standards and Ethics for Certified Finance Planners. He has extensive experience in banking professional practices, assisting lawyers in compiling financial statements, presenting them to banks to secure lines of credit, preparing periodic cash flow reports, tax preparation, line renewals, and investments.
 - Jerry Brewer: Vice Chairman of the Bank of River Oaks; Mr. Brewer provides personal and commercial banking services to a wide range of customers including some of the Houston areas most prominent attorneys. The company's business banking services are also comprised of loans, healthcare lending, oil and gas lending, deposit accounts, treasury management, credit cards, business checking, money market accounts and CDs, check reorder, business online banking, business online bill pay, business credit and debit cards.
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FACT DEVELOPMENT & ANALYSIS

- **OBJECTIVE**
 - Acquire the knowledge and skills that will help you recognize and prosecute a winning case: Commercial; Tort; Criminal
- **NOTE:** This IS a macro assessment of a potential claim; it is NOT the actual post conflicts check, in-depth / granular client interview, e.g.
 - Claimants
 - Venue
 - Nature of the matter;
 - Within the realm of your expertise? If not -- consult another attorney?

- Resources required? (lawyer time; discovery; experts cost; incubation time);
- Clients ability to pay;
- Recoverability of damages

What basic facts are necessary? Conflicts check; Client background check; Legal research; Damage profile; Recoverability

- **RECOMMENDED READINGS**

- [Initial Interview with a Potential Client](#)
- [Client Intake Form](#)
- [General Intake](#)
- [Criminal Intake](#)

- **GUEST SPEAKER**

- Dan Richardson: Dan W. Richardson was born June 22, 1965, in Houston, Texas. He graduated from Spring Branch High School in Houston. Dan went on to earn his undergraduate degree from the University of Houston and his Law degree from South Texas College of Law.

After law school Dan went to work for the Harris County District Attorney's Office. While at the DA's office he tried more than 70 jury trials. Dan was promoted to Chief Prosecutor of Harris County Criminal Court at Law 13. There he was responsible for supervising and training new prosecutors. As a felony prosecutor Dan tried the most serious cases including murder, aggravated robbery and aggravated sexual assault.

- Clyde "Jay" Jackson: With over three decades of wide-ranging experience, Jay has the knowledge to help clients with virtually any type of wrongful death or personal injury case. Jay is intelligent, honorable, and passionately dedicated to his clients. To this end, Jay takes time to inform his clients about what to expect from the legal process and guides them through it. He is personable, easy to talk to, and understands the concerns, fears, and worries that clients face at difficult times in their lives.

Over the years, Jay has represented many people in motor vehicle injuries and death cases, including trucking and fire cases. He has also handled workplace injury cases, along with maritime and railroad cases. Jay further has experience with product liability cases, such as tires and firearms. In addition, Jay handles select commercial cases. Prior to joining Abraham Watkins in 2002, Jay served as an Assistant District Attorney of Harris County, Texas.

Journal Entry #1 (20% of total grade) – Personal, managerial, legal and ethical issues related to launching a solo practice E-mail before class starts on February 20th

WEEK 6

February 20

ADVERTISING YOUR PRACTICE ETHICALLY

- **OBJECTIVE**

- Learn strategies and tactics that will assist you in ethically promoting yourself and your practice

- **RECOMMENDED READINGS**

- [Social Media 101](#)
- [Get Attention](#)
- [Using Social Media for Your Law Practice](#)
- [Developing a Website](#)
- [Marketing Your Law Firm](#)
- [Rules for Dealing with Reporters](#)

- **GUEST SPEAKERS**

- **Mary Flood:** Mary Flood is a Harvard-educated lawyer and a media relations, marketing, crisis and litigation consultant for law firms. She has 30-years' experience in newspaper reporting, many of them covering the legal system for the Houston Chronicle and the Wall Street Journal. She has won more than 50 awards for excellence in writing and reporting including some for her coverage of the Enron trials in Houston where she broke many national stories. Flood currently consults with lawyers about the media at Androvett Legal Media & Marketing in Houston. She practiced law in Washington, D.C. and Houston and is a frequent speaker at universities and CLEs on courts and the media and high-profile trials.
- **Gene Major:** Gene Major began his association with the State Bar of Texas in 1998. He was the Director of Lawyer Referral Information Service and served as the compliance officer for local bar referral service certification. He has worked on various projects at the State Bar such as the 1998 Referendum, the 2004 Referendum and The Committee Remake Team.

As the Attorney Compliance Division Director, he oversees the Minimum Continuing Legal Education (MCLE) program; Lawyer Referral & Information Service (LRIS) and Client-Attorney Assistance Program (CAAP) Departments of the State Bar.

In his capacity as the Director of the Advertising Review, he works as the staff contact for the Advertising Review Committee and Liaison with the Chief Disciplinary Counsel. In addition, he assists in the operations and appointment process for the 33 Standing Committees of the Bar, the election process for President-elect and Board of Director members.

WEEK 7

February 27

INTERVIEWING & COUNSELING

- **OBJECTIVE**

- Learn how to interview a prospective client for key facts.
- Learn how to counsel a prospective client.

- **RECOMMENDED READINGS**

- [Justice 101](#)
- [Initial Client Meeting and Interview, Criminal](#)

- [Client Information Intake Form](#)
- [Attorney Injury Intake Questionnaire](#)
- [A Paralegal's Guide to Forming Client Interview Questionnaires](#)
- [Divorce Intake](#)

- **GUEST SPEAKER**

- Harold Eisenman is a seasoned civil trial lawyer having graduated from the University of Texas Law School in 1972. He is certified by the Texas Board of Legal Specialization in Personal Injury law. He is also licensed in Louisiana

Harold has a highly specialized boutique international maritime law practice involving all aspects of maritime personal injury and death; Offshore drilling injuries and death; FELA (railroad) cases; as well as all other types of matters involving serious injuries and death.

He is admitted to practice in the US Supreme Court ; Fifth Circuit Court of Appeals ; Eleventh Circuit Court of Appeals ; Louisiana Western District Court ; Texas Eastern District Court ; Texas Northern District Court and the Texas Southern District / Bankruptcy Court

- Leslie Ashby obtained her JD from the University of Texas in 1991. Her practice provides advice and support to businesses to assist and manage their legal affairs. Her private practice focuses on state and federal commercial litigation, including shareholder and partnership disputes, breach of contract claims, commercial collection matters, covenants not to compete, trade secret matters, employment counseling and litigation matters, construction lawsuits, and product liability claims.

Ms. Ashby also has extensive experience in defending environmental and toxic tort claims and representing individuals and companies in libel, slander and other matters involving First Amendment issues.

Her work includes representing clients at both the trial court level and on appeal. She serves as an attorney ad-litem and guardian ad litem by appointment for several state district courts in Harris County, Texas

POSSIBLE MAKE UP DAY FOR WEEK 1

Friday, March 2

WEEK 8

March 6

DOCUMENT DRAFTING

- **OBJECTIVE**
 - Learn to draft an ethical and enforceable contract of employment.
- **RECOMMENDED READINGS**
 - [Representation Agreement, Divorce](#)
 - [Representation Agreement, Criminal](#)

- [Representation Agreement, Contingency](#)
- [Declination Letter, General](#)
- [Declination Letter, Conflict of Interest](#)
- **GUEST SPEAKER(S)**
 - Information to be supplemented

WEEK 9

*** SPRING BREAK ***

Monday March 12 - Friday March 16

WEEK 10

March 20

- **TOPIC**
 - Collaboration
- **OBJECTIVE**
 - Learn to develop the facts of a case
 - Learn to analyze a case with the goal of deciding whether to
 - Keep the case
 - Associate counsel on the case
 - Refer the case out
- **RECOMMENDED READINGS**
 - Information to be supplemented
- **GUEST SPEAKER**
 - Information to be supplemented
- **SKILLS/ACTIVITY** (Q&A / Presentation)
 -

Journal Entry #2 (20% of total grade) Case intake; documentation; collaboration; and conflict resolution. Student will e-mail completed assignment to professor before class starts on April 3

WEEK 11

March 27

- **TOPIC**
 - Conflict Resolution
- **OBJECTIVE**
 - Learn what to do when things go wrong.

- **RECOMMENDED READINGS**
 - [Grievance/Malpractice 101](#)
- **GUEST SPEAKER**
 - Information to be supplemented
- **SKILLS/ACTIVITY** (Q&A / Presentation)
 -

WEEK 12

April 3

- **TOPIC**
 - Organization and Management of Legal Work
- **OBJECTIVE**
 - Learn how David beat Goliath and how you can, too.
- **RECOMMENDED READINGS**
 - Information to be supplemented
- **GUEST SPEAKER**
 - Information to be supplemented
- **SKILLS/ACTIVITY** (Q&A / Presentation)
 -
 -
 -

POSSIBLE MAKE UP DAY FOR WEEK 1

Friday, April 6

WEEK 13

April 10

- **TOPIC**
 - Trial Practice
- **OBJECTIVE**
 - Don't reinvent the wheel. Learn where to find:
 - the best "how to" resources;
 - standardized forms;
 - trial notebooks; and
 - re-usable visual aids.

- **RECOMMENDED READINGS**
 -
- **GUEST SPEAKERS**
 - Information to be supplemented
- **SKILLS/ACTIVITY** (Q&A / Presentation)
 -

WEEK 14

- **TOPIC**
 - Negotiation
- **OBJECTIVE**
 - Learn how to break down the negotiation process
 - Learn negotiation techniques.
 - Remove anxiety from negotiating on behalf of yourself.
 - Make negotiating a comfortable part of your life, no matter what your style or experience level.
- **RECOMMENDED READINGS**
 - [7 Elements of Effective Negotiation](#)
 - [William Ury TED The Walk from No to Yes--Transcript](#)
 - [William Ury TED The Walk from No to Yes -- Video](#)
- **GUEST SPEAKERS**
 - Information to be supplemented
- **SKILLS/ACTIVITY** (Q&A / Presentation)
 -

Journal Entry #3 (20% of total grade) Organization and management of legal work and self-assessment.
Student will e-mail completed assignment to professor before class starts on April 24

WEEK 15

- **TOPIC**
 - Self Evaluation
- **OBJECTIVE**
 - Learn whether or not you have what it takes to be an entrepreneur.
- **RECOMMENDED READINGS**
 - Information to be supplemented
- **GUEST SPEAKERS**
 - Information to be supplemented
- **SKILLS/ACTIVITY (Q&A / Presentation)**
 - Group discussion of
 - interests,
 - issues, and
 - their reconciliation

**MAKE UP FOR JANUARY 16 CLASS THAT WAS
CANCELLED DUE TO WEATHER**

MARCH 3 or APRIL 6

“GETTING STARTED”

- **OBJECTIVE**
 - Learn:
 - about vanishing jury trials;
 - about the difficulties in acquiring the knowledge, skills and experience necessary to become an effective trial lawyer;
 - about your ability to meet your professional and ethical responsibilities to clients and the legal system;
 - about your own confidential SWOT analysis;
- **RECOMMENDED READINGS**
 - [Angela Lee Duckworth: Grit, The power of passion and perseverance, TED Talk](#)
 - [\[For Lawyers\] To Be A Trial Lawyer](#)
 - [A Civil Justice System With No Trials – Beck, Texas Bar Journal](#)
 - [Trial by Jury, a Hallowed American Right, Is Vanishing](#)
 - [Ten Tips for Law Students Dealing with Stress, Mental Health, and Substance Use Issues](#)
 - [Career Planning from MindTools](#)
 - [Personal SWOT Analysis Worksheet](#)

- **GUEST SPEAKERS**

- Dr. Edward Fann: Auburn University, 1951-1955, B. S. Degree; Medical College of Alabama, 1955-1959, M.D. Degree; Fellowship, University of North Carolina; Professor of Pharmacology, Medicine, Psychiatry, & Family & Community Medicine; Baylor College of Medicine; Coordinator, Clinical Pharmacology Consortium of the Texas Medical Center; Forensic Expert
- Chris Ritter, J.D.: Chris Ritter is a graduate of Baylor University (B.A. Political Science and Philosophy, 1994) and the University of Texas School of Law (J.D., 1998). He was a trial lawyer in West Texas for 15 years until he joined TLAP in 2014. Chris has served on charitable and civic boards and has been recognized as an outstanding attorney by his peers. While practicing, he was a partner in a prominent insurance defense firm, a partner in a plaintiff's personal injury firm, an Assistant Criminal District Attorney, and a solo practitioner.

If you need to meet with Professor Solar, you may contact him via email jmsolar@solarlaw.com or you may text to (713) 557-2524. **Always identify yourself** as a student in his class in the "subject line" of the email or in the 1st line of the text. All adjuncts for the semester will also be listed on the student webpage, to which you will receive access after the class begins.