

**REVISED TRIAL ADVOCACY**

**TEXTS**

Mauet, Trial Techniques (latest edition)

Flinders v. Mismo Insurance Co. (NITA case file)

State v. O'Neil (NITA case file)

Texas Rules of Evidence

**GENERAL INFORMATION - COURSE COMPONENTS**

**1. LECTURE/DEMONSTRATION (Large Group Session).**

All of the students will meet together each week in a large group to hear a lecture/demonstration on the trial skills that will be worked on the following week's small groups. The lecture/demonstration will be held each Tuesday commencing at 8:00 p.m.

**2. PERFORMANCE (Small Group Session).**

The primary course emphasis will be on you learning trial skills by assuming the role of trial counsel in assigned simulation problems. Students will be divided into small groups that will meet each week to work on the simulation problems. All of the small groups meet on Tuesdays from 6:00 to 8:00 p.m.

You will represent either the plaintiff/prosecution or the defendant in the assigned problems for each week. Each week's assignment will depend on whether you have been designated an "A" or a "B." Your A/B assignment will be emailed to you following the first class meeting. You will also be emailed the names of the faculty members with whom you will be working during the semester, the room in which you will be meeting and the names of the other students in your small group.

During class as many students will perform as trial counsel as possible. Students who are not performing as trial counsel will act as the witness.

You are required to wear courtroom attire to the Small Group sessions unless otherwise noted on the schedule. No hats will be permitted.

**3. VIDEO REVIEW.**

Your class performance as trial counsel will be recorded. You will be given a memory card at the beginning of the semester that will be used to record all of your performances during the semester and must be brought to each Small Group session unless the schedule indicates there will be no recording that evening. You will be required to review your recorded performance with one of your instructors during the class session each week except as otherwise noted in the schedule. You should also view the recorded performance on your own to assess areas on which you need to work. ***THE MEMORY CARD MUST BE RETURNED AT THE END OF THE SEMESTER OR YOU WILL BE CHARGED.*** You may transfer the contents of your memory card to a DVD before you return the card.

4. **DEMONSTRATION VIDEOTAPES.**

The Blakely Advocacy Institute has a large videotape library of skilled trial lawyers performing demonstrations of many of the same skills you will be using during the course of the semester, although not of the same problems you will be preparing. Watching these tapes is a valuable way of learning and improving the skills illustrated. You may check out these tapes for viewing in the BAI Office.

5. **TRIALS.**

Bench trials will be held on **Saturday, October 3, 2009**. Jury trials will be held on **Saturday, November 14, 2009**. Please mark your calendars now.

6. **SPEAKERS SERIES.**

Distinguished trial lawyers will be speaking at the Law Center during the 2007-2008 academic year about their roles as trial lawyers. The scheduled times for the Fall Semester are **September 1, October 6 and November 3**. The talks will begin at noon. The room will be announced at a later date.

You are required to attend these presentations unless you have obtained an excused absence from Professor Hoffman in advance.

7. **ATTENDANCE AND GRADING.**

Attendance at the Lecture/Demonstration and Small Group sessions is mandatory.

The final grade for the course will be based on your performance in the final jury trial, your performance in the Small Group sessions and your performance on other assigned work. There will be no final examination. The performances in the Small Group sessions will be graded and will count for approximately half of your grade. Your performance in your final trial and on other assigned work will count for the other half of your grade.

Attendance at the speaker presentations (see # 6) is mandatory unless Professor Hoffman has approved your absence.

Unexcused absences or apparent failure to prepare for class will reduce your final grade. Failure to attend a required speaker presentation will reduce your final grade.

## **8. ADDITIONAL READING**

There are a number of excellent references and texts you may refer to as a supplement to the assigned text. The following titles are on reserve in the Library.

ABA, Litigation Manual, Trial  
Bergman, Trial Advocacy in a Nutshell  
Jeans, Trial Advocacy  
Hegland, Trial and Practice Skills in a Nutshell  
McElhaney, Trial Notebook

## **9. GENERAL RULES FOR THE SMALL GROUPS**

- A. You must be prepared to play the role of the witness for all problems for which you are assigned to prepare and conduct a direct or redirect examination.
- B. We will follow the Texas Rules of Evidence. Review the rules as necessary before class and bring a copy of the rules to class.
- C. Conduct all examinations of witnesses while seated at the counsel table except when handling documentary or physical evidence or when told otherwise.
- D. We will be following the All Object Rule. Everyone, except the witness, should object whenever there are legal grounds for doing so. Do not hold back for tactical reasons until instructed otherwise.
- E. When objecting or otherwise addressing the judge, stand up immediately and remain standing until the judge rules on the objection. If the witness has given an adverse answer before you had time to object, remember to ask the court to strike the answer and to instruct the jury to disregard the answer.
- F. All objections should be addressed to the judge and should include a very brief statement of the reason for the objection. Do not argue unless invited to do so by the judge. If argument is requested, approach the bench to present your argument. Counsel should present their argument and responses to the judge and should not engage in discussion with each other.
- G. You should be prepared to conduct the examinations and other assigned exercises in their entirety, although usually you will be able to conduct only a portion. You usually will be expected to examine a witness or perform for five to ten minutes. The next performer may be asked to pick up with the witness where previous counsel left off.

## ASSIGNMENTS

Case Files: *Flinders v. Mismo* and *State v. O'Neill*

**The Building Blocks, non-case file problems and all other documents referred to below may be found on the UH Law Center website at: <http://www.law.uh.edu/litigation/documents.html>**

**Week 1                      DIRECT EXAMINATION (Building Block #1)                      August 25**

Required Reading:                      Mauet, pp. 1-11, 97-141, 160-162, 500-505, 506-508

Problems:                      No Small Group session this week. Instead, students will remain in the Lecture/Demonstration group from 6:00 until 9:00 pm to watch a trial demonstration.

**[Casual Dress; No Videotaping]**

**Week 2                      CROSS EXAMINATION (Building Block #2)                      September 1**

Required Reading:                      Mauet, pp. 165-168, 251-277, 310-311, 508-511

Problems:                      1 (see website) A's prepare and conduct a direct examination of Investigator Bier; B's prepare and conduct a direct examination of Dan Jones

**Week 3                      FOUNDATIONS (Building Block #3)                      September 8**

Required Reading:                      Mauet, pp. 142-155, 169-249, 307-308, 505-506, 539-541

Problems:                      1 (see website) A's prepare and conduct a cross examination of Dan Jones; B's prepare and conduct a cross examination of Investigator Bier.

**Week 4                      OBJECTIONS (Building Block #4)                      September 15**

**Note: For Weeks 4 through 7 the class will work on the *Flinders v. Mismo* case file. This will also be the case file for the bench trials. A's will represent the plaintiffs; B's will represent the defendants.**

Required Reading:                      Mauet, pp. 447-481

Problems:                      A's prepare and conduct a direct examination of John Anderson and a cross examination of Sonia Peterson; B's prepare and conduct a direct examination of Sonia Petersson and a cross examination of John Anderson. **You MUST use an exhibit as part of your direct examination.**

**Week 5**                      **IMPEACHMENT (Building Block #5)**                      **September 22**

Required Reading:                      Mauet, pp. 156-160, 277-307, 308-310

Problems:                      A's prepare and conduct a direct examination of Marie Williams and a cross examination of Arthur Jackson; B's conduct a direct examination of Arthur Jackson and a cross examination of Marie Williams. **You MUST use an exhibit as part of your direct examination.**

**Week 6**                      **EXPERTS (Building Block #6)**                      **September 29**

Required Reading:                      Mauet, pp. 313-386  
For Bench Trials, Mauet, pp. 527-546

Problem:                      2, 3 (see website) A's conduct a cross examination and impeachment in Problem 2 and a redirect examination in Problem 3; B's conduct a redirect examination in Problem 2 and a cross examination and impeachment in Problem 3.

**[No Videotaping]**

***BENCH TRIALS***

***OCTOBER 3***

**Week 7**                      **CASE THEORY (Building Block #7)**                      **October 6**

Required Reading:                      Mauet, pp. 13-29, 490-495, 508-523  
Jim Perdue, Inspiring With Your Trial Story (Distributed in class; reprinted with permission of the State Bar of Texas)

Problem:                      A's prepare and conduct a direct examination of Robert Glenn; B's prepare and conduct a cross examination of Robert Glenn.

**Week 8**                      **JURY SELECTION (Building Block #8 & 9)**                      **October 13**

**For the remainder of the semester the class will work on State v. O'Neill. This will also be the case file for the final trials. A's will represent the defendant; B's will represent the prosecution.**

Required Reading:                      Mauet, pp. 31-60, 4497-499

Problems:                      Case Analysis for the side you will be representing in your final Trial. You will be conducting an analysis of the case for the side you will be representing in your final trial, concentrating on the development of:

- (1) Legal Theory of the case  
(why the law allows your client to win);
- (2) Factual Theory of the case  
(what happened and why);
- (3) Persuasive Theory of the case (why your client should win as a matter of fairness and justice).

Prosecution and Defense counsel will meet separately.

**[Casual Dress; No Videotaping]**

**Week 9                      JURY SELECTION (Building Blocks #8 & 9)                      October 20**

Problems:                      Prepare and conduct voir dire examination. Limit your questioning to a maximum of two issues

**[No Videotaping]**

**Week 10                      OPENING STATEMENT (Building Block #10)                      October 27**

Required Reading:                      Mauet, pp. 61-95, 495-497

Problems:                      Continue conducting voir dire for the side you were assigned.

**[No Vidotaping]**

**Week 11                      CLOSING ARGUMENT (Building Block #11)                      November 3**

Required Reading:                      Mauet, pp. 387-445, 495-497, 511-513

Problems:                      Present an opening statement of no more than 8 minutes for the side you are representing.

**Week 12                      PRETRIAL PROCEDURE (Building Block #12)                      November 10**

Required Reading:                      Mauet, pp. 162-165, 483-490, 523-525

Problems: Present a closing argument for no more than 8 minutes for the side you are representing.

***FINAL JURY TRIALS***

***NOVEMBER 14***