

UB/UMD

American College of Trial Lawyers

Advanced Trial Skills Program Master Class

Spring Semester, 2016

CLASS SCHEDULE, TOPICS, & ASSIGNMENTS

ALL SESSIONS

REQUIRED BOOK: NITA Steele v. Kitchener Casefile, ISBN: 9781556818967 (Available online for \$35.00 at the LexisNexis Store.)

SESSION 1 1/11/2016 (UM- Ceremonial Courtroom)

GETTING STARTED:

ACTL FELLOWS: Kathy Howard Meredith and Dan Lanier

TOPIC: About the Program and Introduction to Litigation Skills: This session will focus on what you have not and will not have learnt in law school: How do you decide whether to take a case? What will it cost to try one? Who pays and how much? What are the differences between a plaintiffs' practice and a defense practice? This session also introduces students to the principles of jury selection and persuasion, including *voir dire* practices in Federal and Maryland courts, as well as considerations in presenting opening statements. ACTL Fellows will discuss concepts including jury focus, theory of the case and themes, and juror decision making.

Assignment: Read the **entire case file** in the matter of *Steele v. Kitchener*. Pay particular attention to (read several times) the pleadings and jury instructions; their importance to the trial lawyer cannot be overemphasized. From them, one can, for example, identify areas in which additional pre-trial discovery is needed. In addition, they help the trial lawyer to identify the potential universe of the “relevant evidence” to be offered at trial. Be prepared to discuss the facts of the case from the perspective of plaintiff and defense. Which facts are likely to be disputed and which undisputed? Among the disputed facts, consider which are likely to be inadmissible and the reasons?

SESSION 2 1/25/2016 (UB Room 021 – Ground Floor)

Discovery and Trial Preparation

ACTL Fellow: U.S. Magistrate Judge Mark Coulson and Jim Archibald

TOPIC: A Brief Overview of Discovery, Interrogatories, and Depositions; Pre-trial Conferences.

After a basic introduction to discovery and other pre-trial issues, including e-discovery, a student team will conduct a non-party witness deposition in the case of *Steele v Kitchener*. The team will be given approximately 20-25 minutes (10 or so minutes each) to conduct a portion of the discovery deposition of a witness in the *Steele* case. Students will be selected at class time, so all student teams should be ready to participate. The witness to be deposed and the team will be announced at the January 11 Session. You should try to bring out the most important points you wish to cover, as time will be limited. Remember, discovery depositions are a tool (essentially extended cross-examination) to probe weaknesses in your opponent’s witness’s

testimony and to develop impeachment evidence (inconsistent statements). Instructors will offer comments and discuss issues. Again, there are many fine resource materials available via the Bboard library research page. Several Fellows suggest *Pattern Deposition Checklists*, and *Pattern Discovery (Various Topics)* both are by Douglas Danner and Larry Varn; *Effective Depositions*, Henry Hecht; and a favorite comes from our own, Judge Paul Grimm, Paul M. Sandler and Charles Fax, *Discovery Problems and Their Solutions*. You may also want to look at *Pretrial Discovery: Strategy and Tactics* by Edward Imwinklereid and Theodore Blumoff. These are but a few of the many excellent resources listed in the Discovery section of Bboard research page.

SESSION 3 (UM) 2/8/2016

Interrogation Techniques - Direct and Cross Examination of Witnesses

ACTL Fellows: William Murphy and Frank Daly

TOPIC: Our February 8th session (at University of Maryland) Program will be a continuation of last session's discovery discussion, but this time the selected team of students (and, as before, all must be prepared) will be deposing a party in the *Steele v. Kitchener* case, *i.e.*, Dr. Kitchener. (You must be aware that you will be deposing a litigant who doesn't particularly like you, and who is herself an expert.) The selected team will be allocated approximately 20 minutes. Afterwards, the Fellows will make comments and, time permitting, demonstrate. Discussion by the Fellows will cover many aspects of witness examination, such as the difference between the conduct of direct and cross examinations, the importance of preparation, paying attention to witnesses' answers, eye contact with people in the courtroom, and monitoring jurors' reactions to your presentation and to the witness's testimony.

SESSION 4 (UM) 2/22/2016

Expert Witnesses – Selection of Expert Witnesses and Direct and Cross Examination of Expert Witnesses. (This session will include a discussion of “damages experts.”)

ACTL Fellows: Jim Chason, Tom Kemp; EXPERT: Elizabeth A. Montgomery, M.D.

TOPIC: Selection of Expert Witnesses and Direct and Cross Examination of Expert Witnesses. (This session will include a discussion of “damages experts.”) For student teams: Outline your interviews with the lead experts, Dr. Mason for the plaintiff and Dr. Sanders for the defense. Two teams will be chosen, and the actual interviewee will be a real-life, highly-credentialed Johns Hopkins pathologist. Plan on spending about 10-15 minutes on the actual interviews. Afterwards, there will be a Master Class discussion of the importance of expert testimony and demonstration of expert witness interrogation by our Master Class ACTL Fellows. The selected teams will each have about 10-15 minutes allotted for their interviews.

SESSION 5 (UB) 3/7/2016

Evidence

ACTL Fellows: Richard Burch

Faculty Presenters: Profs. Deise, Smalkin, & Sparks

TOPIC: Relevance, Hearsay, Foundations and Authentication, Use of Evidence at Trial – Real, Documentary and Scientific. In this session, we shall discuss common evidentiary issues that arise at trial. Having lots of evidence relevant to the case is nice, but unless you can get it

before the jury, it is useless. The most common objections raised at trial fall into three categories: Relevance, Hearsay, and Form. The point is, you must plan to get in what you want in and keep out what you don't want in. As in all other matters, preparation is the key, including understanding the motion *in limine*. Also, despite massive discovery, evidentiary issues can arise at trial. We will refer to some of the material in *Kitchener v. Steele*, but the focus will be on discussion of the subjects mentioned above, and perhaps some *ad hoc* scenarios in class. Consider how evidence may be woven into a cohesive and compelling story that persuades the jurors by appealing to their intellect (what Aristotle, in *The Art of Rhetoric*, called *logos*), their emotions (*pathos*) and their sense of ethical propriety – i.e., it is the right thing to do (*ethos*).

SESSION 6 (UB) March 21, 2016

Alternative Dispute Resolution (ADR) – Arbitration, Mediation and Case Evaluation

ACTL Fellows: Bob Hanley, Natalie McSherry, and Harriet Cooperman

Faculty Presentes: Judge Smalkin & Professor Sparks

TOPIC: Pre-trial settlement. Here, we shall simulate a mediation session. (We shall also briefly address arbitrations.) Judge Smalkin has done many mediations, both as a judge and as a private mediator. One student team will be selected to represent the plaintiff, and another, the defendant. One of the ACTL fellows will be playing the role of your client, but remember that, in the case of Dr. Kitchener – as is the case in all defense settlements – the real player at the defense mediation table will be the insurance carrier's representative, who will also be portrayed. Again, the teams that do the actual mediation will be selected at class time. As you prepare, think of the things in fact and law that make your case both strong and weak and think the same way about your

opponent's case. Think of what a reasonable compromise of the case might be. Think also about the defendant-insurer relationship. They might have different feelings and motivations about settlement. Which do you represent? Which hires you and pays your bill?

SESSION 7 (UM) April 4, 2016

Closing Argument

ACTL Fellows: Paul Bekman and Dale Adkins

TOPIC: This session will focus on putting the Humpty Dumpty of evidence together into a coherent story that wins the day. Together with the opening statement, the two bookends of the trial really do have lots to do with determining the outcome. They both must be prepared with foresight and the proper approach to jury persuasion. We shall focus on the differences in form and content between the opening statement and the closing argument. Your assignment is to have your team ready to deliver a brief closing argument for both sides in the *Steele* case. Our Fellows will present some of the best closing arguments you will ever hear.

SESSION 8 (UB) April 18, 2016

Litigation in the Techno-Electronic Age

Presenters: Baltimore County Circuit Judge The Hon. Mickey Norman, James Gentry, Esq., & Richard Burch

TOPIC: This is a first for our Class. You will have experts discussing and demonstrating the utilization of the most modern electronic aids to presenting your case to a 21st Century jury. We are living in an age where paper and, to an extent, verbal testimony are being displaced by email, videos, PowerPoints, spreadsheets, and other sorts of nontraditional evidence, while the means of presenting and summarizing evidence and arguments are changing, as jurors spend more and more

time watching devices and less and less time reading papers and watching people. Also, software is constantly being created and refined for the legal profession, including software for use in discovery and otherwise. Our expert presenters will address these topics and, perhaps, venture some predictions of what you might see in the years ahead.