**TRIAL ADVOCACY**

**SYLLABUS**

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW**

**SPRING 2020**

**Course:** Trial Advocacy

Law 820

Section 412

**Instructor:** Patricia McLane

[Patricia.McLane@usdoj.gov](mailto:Patricia.McLane@usdoj.gov)

410-209-4942 – office

301-529-5404 – cell

**Days/Time:** Thursday, 6:15-9:00 p.m.

**Location:** Room assignments are available through MyUB

**Course Description**

This course is devoted primarily to developing trial advocacy lawyering skills by engaging students in exercises that simulate trial practice. Students prepare lay and expert witnesses, perform exercises including direct and cross-examination and opening and closing statements, learn to develop and implement a case theory, and practice making and responding to objections. Students consider ethical and technical issues arising in in the trial process. Students conduct regular self-evaluations of their preparation and performance, and the exercise are critiqued with respect to substance, strategy, and courtroom demeanor. At the conclusion of the course, students, acting in teams, take part in full trials.

Prerequisite: Evidence

**Course Materials**

**Required:** Stein et al., *State v. Sanchez Case File (*NITA, 2nd edition)

Mauet, *Trial Techniques and Trials* (any edition)

Bocchino, *Problems in Trial Advocacy* (2013 or 2015 edition)

**Student Learning Outcomes:**

By the end of this course, successful students will be able to: (1) identify relevant sources of evidence to prove and defend criminal and civil cases; (2) conduct pretrial preparation of witnesses and documentary evidence to effectively address issues relevant to their theory of the case; (3) deconstruct factual scenarios during direct and cross-examination of witnesses to highlight key evidentiary points; (4) organize factual and legal arguments to persuasively summarize evidence during opening statement and closing argument; and (5) utilize their unique presentation skills and courtroom demeanor during the trial process to tell their client’s story and maintain the focus and attention of the fact-finder. After completing this course students will be able to conduct an opening argument, direct and cross examinations, and a closing argument. Students will also be able to object and respond to objections and admit evidence. Students will know everything to give them confidence when stepping into a courtroom.

**Course Expectations:**

Welcome to Trial Advocacy! This is a course in methodology for attorneys. Over the course of this semester, you will learn to become an effective trial attorney and advocate for your clients by trying cases and watching your peers do the same. You will be asked to play the roles of attorney, witness, and principal evaluator in both criminal and civil trials. This requires you to read the case scenario, think through potential issues and trial strategy, and then thoroughly prepare to execute your role in class.

The majority of the classes will be devoted to the direct and cross-examination of witnesses by student-attorneys. We will also discuss the rules of evidence as they apply to each problem. The Federal Rules of Evidence are controlling.

Witnesses will be prepared by the attorneys who call them to the stand. Each witness is expected to be “in role” and aware of any prior testimony or statement that he or she has given with regard to the case. It is very important that you are well prepared to testify as a witness, because your performance in that role will be important to your classmates and will be considered as part of your grade for the exercise.

In this class, critiques by your colleagues are an important tool for developing the skills needed to become a confident and effective advocate. One student will be assigned to the role of principal evaluator for each class. The role of the evaluator is an important one requiring sufficient feedback based not just on style, but on the qualities of a competent litigator by analyzing the student’s knowledge of the facts, witness preparation, understanding of the legal issues, presentation, form and style, and all other criteria necessary to effectively examine witnesses and argue one’s case in a trial setting. The students not assigned a role in the case, or as a principal evaluator, will be asked to give a brief critique of each attorney’s performance using the same guidelines used by the principle evaluator.

**This is a simulation course that depends on the preparation and participation of everyone who is assigned a role for a particular class exercise. If you find it necessary to miss a class in which you have a role to play, you must arrange for a classmate to fill that role.**

The American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

**Basic Rules**

It is critical that you adhere to the following rules in order to achieve the goals and objectives referenced, in particular, the expectations a court will have when you enter a courtroom for the first time (and frankly, every time):

1. Dress: When you are presenting a trial exercise, you must wear appropriate courtroom attire.
2. Computers: This is a simulation class, you learn by *doing and watching*

*others.*  Little can be achieved by staring at a computer screen during class. Exceptions to the computer ban can be made on an individual basis by the instructor.

1. Class Participation: You are ***never*** allowed to decline to participate,

whether as an attorney, witness, or observer. ***If you can’t live by this rule, please drop the class now so you don’t waste everyone else’s time.*** Abiding by this rule means you must show up prepared for class, every time. Additionally, keep in mind that all real world trial work takes place in front of other people (opposing counsel, judge, court reporter, co-counsel, students, bailiffs, etc.). Now is the time to learn to overcome embarrassment, self-consciousness, fear of public speaking, and other potential phobias that might interfere with your effective representation of a client in court.

1. Punctuality: Please arrive on time for all classes. The instructor reserves

the right to take late arrival into consideration during final grading.

1. Professionalism: It goes without saying that your professionalism shall

be considered by the instructor during final grading. This means not only being prepared as previously mentioned above, but also how you comport yourself during the class. When there is a trial exercise you are expected to act as if you are in a real courtroom where side discussions, texting, walking out without permission of the court, is simply not tolerated.

**Grades:**

The course will be graded on the basis of in-class performances as an attorney, witness and principal evaluator, and the final exam, which is a mock trial. Factors to be considered when awarding grades include preparedness, organization, and improvement over the course of the semester. Specifically, each exercise will be evaluated on how well the presenter 1) identified the issues; 2) thoroughly explored the issue(s) through questions or argument; 3) advocated their view of the case; and 4) courtroom demeanor.

The method of grading is as follows (percentages translates into points for a possible total of 100):

Direct Examination 10%

Cross Examination 10%

Opening Statement 10%

Closing Argument 10%

Mini Exercises 10%

Final Mock Trial 50%

**Attendance**:

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

|  |  |  |
| --- | --- | --- |
| Regular Semester Hours | | |
| Credit Hours | Meetings Per Week | |
|  | 1 | 2 |
| 2 | 2 absences | 5 absences |
| 3 | 2 absences | 5 absences |
| 4 | -- | 5 absences |

**Course Website:**

There is no TWEN page for this course.

**Cellphones:**

Cell phone usage is prohibited except during class breaks.

**Class Cancellation:**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

**Office Hours:**

The professor is available to meet with individual students at the classroom before or after the scheduled class period, and outside the classroom by appointment.

**Academic Integrity:**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at <http://law.ubalt.edu/academics/policiesandprocedures/honor_code/>.

**Title IX Sexual Misconduct and Nondiscrimination Policy:**

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

**Disability Policy:**

If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University’s facilities, please contact the Office of Academic Affairs, at [ublawacadaff@ubalt.edu](mailto:ublawacadaff@ubalt.edu) or (410) 837-4468.

**Course Evaluations**

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

**Assignments:**

Prior to attending the first class on January 17, 2020, please read and be prepared to generally discuss the case file, State v. Sanchez. As a class, we will discuss the facts of this case and decide which are the “good” and “bad” facts, from both a defense and prosecution perspective. We will be working with this case file for most of the semester. In addition, please read Chapter 1 in Mauet, “The Trial Process”.

For each class following our introductory session, students will be asked to prepare and conduct a direct or cross examination, give an opening statement or closing argument, play a witness, and/or serve as an evaluator. The assignments will be based upon hypothetical case scenarios in the required textbooks.

The assignment list will be distributed after the first class. Below is the required chapters from Mauet to aid you in your preparation. Depending on your edition of Mauet the exact pages may be different, but the topics and sections are the same.

1/23 – “Direct Examination,” pages 109-139 (Sections 5.1 - 5.4)

1/30 – “Cross Examination,” pages 197-221; 249-254 (Sections 6.1 - 6.6; 6.8-6.9)

2/6 – “Foundation Procedure (How to get exhibits into evidence),” pages 271-282 (Sections 7.1-7.2); “Using/Marking Exhibits and Visual Aids,” pages 366-374 (Section 7.6); “Redirect Examination,” pages 190-192 (Section 5.15)

2/13 - “Refreshing a Witness’s Recollection,” pages 184-186 (Section 5.13)

“Impeachment,” pages 199-201; 221-248 (Sections 6.2; 6.7)

2/20 – “Lay Witness Opinions,” pages 177 -178 (Section 5.11); “Character Trait Witnesses,” pages 168-173 (Section 5.9)

2/27 – “Opening Statements,” pages 73-98 (Sections 4.1-4.5)

3/5 – “Experts,” pages 377-382, 384-407 (Sections 8.1 - 8.3, 8.5)

“Experts - Cross-Examination,” pages 421-436 (Section 8.7)

3/12 – “Business Records,” pages 322-331 (Section 7.4)

3/26 – “Trial Notebook,” pages 192-195 (Section 5.16)

4/2 – “The Psychology of Persuasion” pages 13-29 (Chapter 2); “Closing Arguments,” pages 443-464 (Sections 9.1 - 9.6)

4/9 – Final Exam: Mock Trial #1

4/16 – Final Exam: Mock Trial #2

4/23 – Final Exam: Mock Trial #3