

FORDHAM UNIVERSITY SCHOOL OF LAW

Trial and Arbitration Advocacy

Semester: Fall 2022
Faculty: Prof. Adam Shlahet
Room 8-111
646-346-5186
shlahet@fordham.edu
Class time: Monday afternoons, 2:00 pm to 4:50 pm
Classroom: 1-03

Learning Outcomes:

- Understand how a trial is organized and how each aspect fits together to ultimately convince the factfinder.
- Use oral and visual storytelling to convey information to a jury in a compelling way.
- Draft and deliver a coherent, persuasive, non-argumentative, opening statement.
- Demonstrate proficiency in goal oriented, well organized, witness examinations.
- Master the basic skills of admitting exhibits into evidence and impeachment by prior inconsistent statement.
- Develop and present compelling arguments in summation.
- Practice making and responding to evidentiary objections in open court.
- Appreciate the preparation required for a professional and effective trial presentation.

Class:

All assignments will be drawn from *McNamara v. Energy Dynamics, Inc.* Second Edition (NITA 2019). Students should also read chapters of Martin, Radvany, Dubin and Guernsey, *Trial Practice*, Second Edition (LexisNexis, 2014) that correspond to the assigned exercises. For example, students assigned to deliver opening statements should read Martin, Chapter Four. In addition, you will have access to video tutorials for each skill that I encourage you to view and review at your convenience.

Students should bring to each class – and be prepared to use – a current copy of the Federal Rules of Evidence. (PLEASE NOTE THE PREREQUISITE THAT EVERY STUDENT TAKING TRIAL ADVOCACY MUST HAVE TAKEN THE COURSE IN EVIDENCE).

Each witness will be portrayed by one of the actors whose names and contact

information are listed on the contact sheet distributed separately. Each student who is assigned a direct examination is responsible for contacting the actor-witness and preparing his/her direct testimony. Such preparation is an integral aspect of the assignment and may not be deferred to the last minute. For example, those students assigned to conduct the direct examination of Sean McNamara should meet with Mr/Mrs. McNamara during the week before our Thursday class on September 26h in order to prepare their testimony.

Our section meets on Monday afternoons in room 1-03.

You will be asked to divide into two “teams” which shall each work together for the balance of the semester. Half of you will be plaintiff’s attorneys and half will be defense attorneys. The assignment for our first class is to read the McNamara case and be prepared for a discussion of all the facts of the McNamara case as set forth below.

It is your responsibility to read carefully through the entire file and to formulate a “theory of the case”, *e.g.*, the theory by which you, as trial attorney, intend to present the case to the jury on behalf of your client.

You are assigned to write a trial memo for the McNamara case, from the perspective of your side of the case. While the memo is due on Sept. 8th, you are encouraged to work on it much earlier so you are not burdened with the assignment over Labor Day weekend.

On September 12th, each student will meet privately with the senior partner (portrayed by Prof. Shlahet) for approximately 15 minutes to discuss your memo.

Each subsequent class will involve student performance of a trial skill and faculty critique. Thus, as you will see below, on September 19th, each member of Team “P” will deliver a brief opening statement for the plaintiff, and each member of Team “D” will deliver the defense opening. I do not expect each of you to prepare and deliver the same opening statement. You will find, however, that by meeting with your teammates to discuss your openings, you will benefit enormously by hearing your colleagues’ ideas about the opening that each of you will deliver.

The class culminates in a final trial, utilizing a new criminal fact pattern, on Sunday, November 20, 2022 at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, NY, NY 10007 (hopefully).

The University mandates that everyone wears masks indoors and expects students to comply by faculty to wear masks in class. Wearing masks is an important safety measure that

helps protect you and others. In our class, I will wear a mask at all times and ask that you do the same.

Should you have any questions or concerns, I will be pleased to discuss them. I can be reached at 646-346-5186 or at shlahet@fordham.edu.

I look forward to working with all of you!

Schedule

- August 29, 2022 Intro, Storytelling, Case Theory
Be prepared for a Good/Bad fact discussion of McNamara v. Energy Dynamics, Inc.
Assignment: Write a trial memo. Imagine a senior partner wants you to analyze the facts of the case and evaluate the apparent strengths and weaknesses. The memo should be as short as possible while still addressing each potential witness and piece of evidence in a thoughtful manner. Should not exceed 8 pages.
Assignment due: September 8, 2021 before 10:00 am.
The memo should be emailed to me in PDF form.
- September 5, 2022 NO CLASS - Labor Day
- September 12, 2022 Partner Meeting
Each student meets privately with the senior partner to go over their trial memo. Approx 15 min each.
- September 19, 2021 Opening Statements (and pre-trial choreography).
Each student will deliver a brief 5-7 minute opening statement.
- September 26, 2022 No class - Rosh Hashanah

- September 28, 2022 10:30 am start
Directs and Crosses
P's direct Sean McNamara
D's cross Sean McNamara
Approx 10 min each
- October 3, 2022 Exhibits, refreshing recollection, impeachments
Enter Exhibit 16
Enter Exhibit 19
Enter Exhibit 5
Enter Exhibit 14
Enter Exhibit 12
Refresh Sean McNamara's recollection
Impeach Sean McNamara by prior inconsistent statement
- October 10, 2022 NO CLASS - moved to Thursday
- October 13, 2021 Directs and Crosses
D's direct MK Phelps
P's cross MK Phelps
Approx 10 min each
- October 17, 2022 Directs and Crosses
P's direct Matt Barron
D's cross Matt Barron
D's direct Logan Castrigano
P's cross Logan Castrigano
Approx 5 min each
- October 24, 2022 Closing Arguments
Each student will deliver a 10-12 minute closing argument

- October 31, 2022 Full trials
Each student, with a partner, will conduct a full trial.
P1 v D1 in 1-03
P2 v D2 in 1-01
- November 7, 2022 Final Trial Prep - Criminal Case
Discuss lessons from first trials, the criminal burden of proof and special considerations for prosecution and defense.
- November 14, 2022 Final Trial Prep
continued
- November 20. 2022 Final trial @ 500 Pearl Street (hopefully!)**