**Trial Advocacy**

**McGeorge School of Law**

**University of the Pacific**

**Fall 2023**

**Professor Cary Bricker (she/her)**

**Professor Reza Rezvani (he/his)**

**Professor Selena Farnesi (she/her)**

# General Course Information

**Class Day/Time:**

Workshops: A typical week for each section will consist of one hour of faculty lectures and demonstrations in the Courtroom and two hours of student practices with faculty commentary. The last weeks will consist of jury trials.

**Lecture** Monday: 5:05 to 6:05 p.m.

**Workshops**: Tuesday: 1:30 to 3:30

Wednesday: 6:15 to 8:15

Wednesday: 9:00 to 11:00

**Class Location**: Courtroom

**Class Web Page**: TWEN

**Office Hours**: Bricker- Monday and Tuesday 4:00 – 6:00 pm or by appointment

Rezvani- TBD

Farnesi- By appointment: <https://sacsappointmentschedule.as.me/?appointmentType=36839202>

**Contact Info:**

Bricker: cbricker@pacific.edu

Rezvani: rrezvani@pacific.edu

Farnesi: sfarnesi@pacific.edu

# Required Texts

* Skills Text: Lubet and Lore, *Modern Trial Advocacy*, 6th Edition, ISBN-13: 9781601568984 ISBN-10: 1601568983, Wolters Kluwer.
* Additional Text: Hunter and Johnson, *The Articulate Advocate: Persuasive Skills for Lawyers in Trials, Appeals, Arbitrations, and Motions*, 2nd Edition, ISBN-10:

1939506034 ISBN-13: 978-1939506030

* Case File: *State v. Delaney* or *Chen v. Miller* (choose civil or criminal), but **do NOT buy the case file until trial pairings are announced on or around week three.**
* The Federal Rules of Evidence will be used throughout the course. If you decide not to buy one of the many booklets available from publishers, please out bring your own copy from http://www.uscourts.gov/rules-policies/current-rules-practice-procedure (Links to an external site.). Click on the link for FRE, download it as a PDF, and print out in booklet form, which will come to 11 pages. You must bring your copy to every Class.

# Goals of the Course

Students will learn basic skills of trial advocacy, the rules of evidence by application in the trial context, and gain experience in public speaking and persuasion. The course deals with all phases of trial work including opening statements, direct and cross-examination, impeachment, introducing exhibits, making and responding to objections, the use of technology in the courtroom, making and responding to *motions in limine*, jury selection and closing argument. Each student conducts a full half-day jury trial before a real jury and a judge or seasoned practitioner.

# ADA Accommodations

The Americans with Disabilities Act (ADA) is a federal anti-discrimination statute that provides comprehensive civil rights protection for persons with disabilities. Among other things, this legislation requires that all students with disabilities be guaranteed a learning environment that provides reasonable accommodation for their disabilities. If you believe you have a disability requiring accommodation, please submit a request on the following webpage:

https://www.pacific.edu/student-life/student-services/services-for-students-with-disabilities. If you have questions about getting started, please contact the Student Services Office at 916-7397089 or sacstudentaffairs@pacific.edu.

# Name/Pronoun

Students have the right to be addressed and referred to in accordance with their personal identity. We will gladly honor your request to address you by an alternate name or gender pronoun. Please advise us of these requests early in the semester so that WE may make appropriate changes to my records. If you would like additional assistance regarding communication about your name or pronoun, please contact the Office of Student Affairs, sacstudentaffairs@pacific.edu, or the Office of the Registrar, sacregistrar@pacific.edu, to make an official name change.

# Diversity and Inclusion

All participants in this course come from individually distinct circumstances and experiences. Individual differences add value to the course and our community. Views of people of all ethnicities, races, genders and gender identities, sexual orientations, socio-economic backgrounds, religions, national origins, and ages are welcome and make for a richer class environment. We all lose out if everyone does not feel comfortable participating. If you feel shut down or excluded from the conversation, please let us know. If you experience bias in the classroom, and do not want to talk to us, please contact the Office of Student Affairs, sacstudentaffairs@pacific.edu, or submit a bias incident report through the University bias reporting form.

# Absence Policy

Four hours of absence – whether from the Lectures, the Practice Sessions, or a combination of the two – may be taken without penalty. Beyond that there are no “excused” absences, and further absences may, within the Professors’ discretion, affect the student’s eligibility for Honors or result in a lowered grade. Please note that the purpose of this policy – beyond ensuring good learning by attendance – is to allow for emergencies, such as illness, family situations, flat tires, etc. For that reason, such events do NOT constitute opportunities to apply for a waiver of the policy; therefore, please do not ask the professor teaching your practice session to grant you an excused absence. In extreme cases (e.g., a death in the immediate family), apply to Prof. Bricker.

# Lectures

Lectures are held during the first hour of each Class. Attendance at lectures is mandatory. Please see above regarding the absence policy. Out of courtesy to the instructors and other students your attendance is expected to be timely.

# Format

We will cover what you will be applying during the class. We will lecture and demonstrate and may periodically call on students to participate in demonstrations.

# Note Taking and use of laptops

While you may take notes, we will also provide the PPTs from the lectures from each session and record lectures. We will urge you to keep laptop use to a minimum in this learning-by-doing teaching setting.

# Practice Sessions

If you know in advance you will be absent, it is important to notify us immediately by email to cbricker@pacific.edu, as practice-session assignments are made on the assumption that you will be present. In addition, out of courtesy to the instructor and other students, we expect your attendance to be timely; please note that substantial lateness, without explanation, may be counted as an absence.

# Working with Partners During Practice Sessions

During the course of the semester and for your final trials you will each be working with a partner who is another member of your 12 student practice sessions. Either select someone from your section and submit your “partner request form” by noon, Thursday, August 17th or the profs will pair you randomly with another classmate. Both ways work equally well.

# Witnesses During Practice Sessions

It is as important to prepare to be a witness as it is to handle the attorney role. We encourage you to "get in the role," to become the person you are playing. While you may not make up facts that are inconsistent with the given facts, you may testify in a very limited fashion to incidental facts that are inferable from the facts given (such as background, description of the scene, etc.). Students are evaluated for their performance as witnesses just as they are for their attorney performances. *Note that students assigned to direct examinations should practice with their witnesses (partners) before that week’s practice session.*

# McGeorge Student Learning Outcomes

In your work in this course, we set as goals for and with you the following specific Outcomes, adapted from “Pacific McGeorge Student Learning Outcomes.” Each student will:

1. Demonstrate the ability to identify and understand key concepts in substantive law, legal theory, and procedure.
2. Apply knowledge and critical thinking skills to perform competent legal analysis, reasoning, and problem solving.
3. Demonstrate the ability to conduct domestic legal research.
4. Demonstrate communication skills, including effective listening and critical reading, writing in a persuasive style and oral advocacy and other oral communications.
5. Collaborate effectively with others in a variety of legal settings and contexts.
6. Apply knowledge of professional ethics to representation of clients, performance of duties as an officer of the courts, and to the resolution of ethical issues.
7. Demonstrate professional judgment and professionalism through conduct consistent with the legal profession’s values and standards.

# Preparation for Trial

You should prepare as a team with the partner you worked with all semester. This requires working together, sharing and getting each other's ideas and practicing all direct examinations with that partner as well as with your chosen witnesses in advance of trial.

# Jury Trials

Jury trials are scheduled for the last two to three weeks of the course-–and potentially other dates to follow shortly thereafter. Each student must participate in one trial as an attorney and then one as a witness or a bailiff. We may alter this date for some of the trials by agreement of all trial participants.

# Witnesses for Jury Trials

Each team is required to supply its own witnesses to present its side of the case. You may use members of the faculty, friends, family members, other law students, or classmates from Trial Advocacy. (However, you may not use as witnesses any student from your trial opponents’ Trial Advocacy section unless you get a written waiver from them to allow you to do so.) You are responsible for preparing the witnesses to know their roles as convincingly as possible, and to perform as you would expect your witnesses to perform in a real-life trial. Witnesses will not be permitted to read a script while testifying. Note that every student in the Trial Advocacy course must serve as either a witness or a bailiff for one other trial during the course, so asking a classmate is a good place to start.

# “Graded” As an Option

Students are automatically enrolled in the course for a letter grade. Those who wish to change that, to take the course for Pass/No Credit, must submit the Add/Drop Form (https://law.pacific.edu/sites/default/files/users/user242/add-drop-request-form.pdf) no later than the last day to add/drop courses in each term. There is a column on the far right to indicate the Pass/No Credit mode. Students must sign their form, but do not need any other signatures to approve the form, just their own. No changes may be made after the Add/Drop period -- no exceptions.

Forms should be submitted to sacregistrar@pacific.edu.

If you choose to take the course for a letter grade, your grade will be calculated as follows:

35% - Your averaged scores for performance in Practice Session

5% - Written Assessment of Closing Argument Exercise (due October 9th uploaded on TWEN)

2.5%- Written *Motion in Limine* (due October 29th uploaded on TWEN)

2.5%- Oral Argument on *Motion in Limine*

50% - Final Trial Performance

5% - Professionalism (attendance and assessments of your professionalism during preparation for the final trial, conduct of the trial, and your performance as a witness or bailiff during your classmates’ trial.)

# Top Honors

Top Honors are awarded to three students each semester who best demonstrate excellence in performance in BOTH class practice sessions AND their jury trial. Top Honors award winners receive a small honorarium and are invited to a special ceremony held in the Courtroom in May.

**SYLLABUS**

# CLASS 1 August 14-16

**Topic: Introduction to Trial Advocacy; Theory of the Case; Direct and Cross Examination**

**The following topics will be covered:**

1. Course mechanics
2. Texts and other materials
3. Practice Sessions and assignments
4. Trials

Text: Lubet, pp. 1-55; Hunter, pp. 1-64

Exercise: Icebreaker Drills on Direct and Cross Examination

# CLASS 2 August 21-23

**Topic: Direct, Cross, and Redirect Examination**

Evidence: FRE 401, 402, 403

Text: Lubet, pp. review pp. 57-153, 205-209; Hunter pp. 65-104

Exercise: Direct and Cross-Examination from the *NITA Liquor v. Cut-Rate & Jones* problem.

During the workshop, each student on the Plaintiff’s side should be prepared to conduct a five-minute direct examination of Investigator Bier and receive feedback from the professor. Each student from the Defense side should be prepared to conduct a five-minute cross-examination and receive feedback from the professor.

# CLASS 3 August 28-30

**Topic: Form of Objections, Responses**

Evidence: FRE 404

Text: Lubet, pp. 251-294; Hunter pp. 105-148

Exercise: Objections - More Direct and Cross from *NITA Liquor*

During the workshop, each student on the Defense side should be prepared to conduct a five-minute direct examination of Dan Jones and receive feedback from the professor. Each student on the Plaintiff’s side should be prepared to conduct a five-minute cross-examination of Dan Jones and receive feedback from the professor. All students should be prepared to make objections and respond.

# CLASS 4 September 5-6 (taped lecture/demo on TWEN instead of in-person presentation because no classes on Labor Day)

**Topic: Impeachment, Refreshing Recollection and Prior Inconsistent Statements**

Evidence: FRE 607, 608, 609, 612, 613

Text: Review Lubet, pp. 155-203; Hunter pp. 149-180

Exercise: Each student will impeach a witness or refresh recollection from impeachment problems from *NITA Liquor.* Impeachment problems will be uploaded to TWEN.

Exercise: Assigned Impeachment Problems

# CLASS 5 September 11-13

**Topic: Case Analysis, Theme, Theory**

Evidence: Hearsay I – What Is / Is Not Hearsay -- FRE 801-802, AND students should objection-proof their chosen case file – what objections do you foresee making / being made against you, and how will you argue the issues of admissibility?

Exercise: Students will brainstorm good facts, bad facts, evidence issues, and theme and theories for the two case files, *State v. Delaney* or *Chen v. Miller.*

# Class 6 September 18-20

**Topic: Closing Argument**

Text: Lubet, pp. 461-517

Exercise: Each student should prepare a complete closing argument for their assigned trial. Each student will have 6 minutes to perform. You will not be able to complete the entire closing. Each student should select those areas that are most important and give them as the student would in the trial and prepare your “recency” prayer for relief. Your written review of the video of your performance is due on October 9 by 11:59 p.m. Submit your review on Canvas. NOTE that it counts as 5% of your overall course grade.

# CLASS 7 September 25-27 WE WILL HOLD REGULAR CLASS ON MONDAY

**Topic: Exhibits**

Evidence: FRE 104, 403, 611, 901-903, 1001-1008

Text: Lubet, pp. 295-407

Exercise: Exhibits Drills and Entering Exhibits from Case File

# CLASS 8 October 2-4

Topic: **Technology Workshop**

Topic: Hearsay II – the Exceptions -- FRE 803-807

Text: Review Lubet, pp. 13-36.

Exercise: Students will do five minutes of a direct examination or cross-examination of a witness from their case file and enter an exhibit using TrialPad, redacting the exhibit to adapt to any evidentiary ruling.

# CLASS 9 October 9-11

**Topic: Opening Statements**

Text: Lubet, pp. 409-459 *[cont’d next page]*

Exercise: Each student will practice the opening statement from their trial case. You will be able to deliver only the first six minutes and then give the final minute of the opening statement.

# CLASS 10 October 16-18

**Topic: Advanced Cross: Controlling the Difficult Witness**

Text: Review Lubet, pp. 131-145

Exercise: Each student will perform five minutes of cross-examination of the witness of their choice from their case file, with the professor playing the witness role and being a difficult witness. The students will practice witness control techniques. We will also focus on ways to rehabilitate the witness on redirect.

# CLASS 11 October 23-25

**Topic: Direct Exam 201 / *Motions In Limine***

Evidence: FRE 401, 403, 404, 801-807

Text: Lubet pp. 324-325

Exercise: Students will perform six minutes of direct examination of a witness of their choice from their case file.

Written *Motions In Limine* are due SUNDAY, October 29 by 11:59 p.m. They must be submitted on Canvas. Each person on the team must submit an individually prepared motion, though you may collaborate with your partner. Written motions are 2.5% of your overall course grade.

# CLASS 12 October 30-November 1

**Topic: 1) *Putting it All Together*: how trials work, order of events, where to sit and stand, what to bring, time limits, interaction with jury. AND *Ethics/Professionalism*: collegiality in the Courtroom**

Exercise: Students will argue their pretrial motions in class. Oral arguments on pretrial motions are 2.5%of your grade, based on a rubric we will distribute.

Final trials will begin Saturday, November 4th coand nclude November 18. They will be scheduled on Tuesdays, Fridays, and Saturdays and worked around students’ class schedules and availability.