**TRIAL ADVOCACY I - FALL 2023**

**LESSON PLAN #1 – INTRO TO TRIAL ADVOCACY AND STORYTELLING**

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| **FIRST CLASS:****Large Group Class on 8/24** | **Small Group Classes on 8/28, 8/29, and 8/30**  |
| **Large Group Class Preparation:**  **Read:** Chapter 1 in *Mastering Trial Advocacy* (hereafter *MTA*) – How Trials Work  AND Storytelling Materials posted on Canvas |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** None**In class:** Be prepared to give a short (3-5 minute) story that introduces yourself to your fellow students. You will perform this for your small group instructor and in front of the class.  |
| **Process:** | This will be the first opportunity you have to stand up and speak in front of your classmates. This is a chance to get your feet wet in a relatively unstructured exercise - take advantage of it. You may see other drills that your advocacy professor decides to use to make certain teaching points. Learn from them. It is important that you begin to lay the foundation now for preparation, preparation and preparation. |
| **Outcome:** | You will: * Begin to understand the process of trial preparation
* Get to know your small group professor and what will be expected of you
* Stand up and speak – it’s scarier than you think
* Be forced to let your guard down and do something that doesn’t feel “lawyerly” in order to become a better advocate
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**LESSON PLAN #2 – CASE ANALYSIS AND PREPARATION**

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| **Large Group Class on 8/31** | **Small Group Classes on 9/4 (will be rescheduled by small group instructors), 9/5, and 9/6** |
| **Large Group Class Preparation:**  **Read:** Chapter 2 in *MTA* – Case Analysis and Preparation AND your assigned case |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written case analysis as described in *MTA* Chapter 2 of your assigned case. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.** **In class:** Be prepared to give a short (2-3 minute) statement telling the story of your case from your case analysis. You will perform this for your small group instructor and in front of the class.  |
| **Process:** | During classroom exercises you will begin to develop the fundamental skills of case analysis and trial preparation. In addition to the oral presentation your advocacy professor has the ability to test, push, challenge you as he or she sees fit during this period. Telling a story is something that we are all familiar with but somehow tend to forget about when we get in the courtroom and put on our “lawyer” hat. This will help you develop your story telling skills and apply universal story telling techniques to everything you do in the courtroom. For every single thing you do in the courtroom, you will learn to ask yourself, “how does this tell my story?”  |
| **Outcome:** | You will: * Stand up and speak
* Begin to build the story of your case
* Organize your trial file
* Have your first exposure to critical thinking about what evidence/witnesses/testimony can help and/or hurt your case
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**LESSON PLAN #3 – FINDING THE STORY OF YOUR CASE & OPENING STATEMENTS**

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| **Large Group Class on 9/7** | **Small Group Classes on 9/11, 9/12, and 9/13** |
| **Large Group Class Preparation:**  **Read:** Storytelling Materials posted on Canvas and Chapter 4 in *MTA* – Opening  Statements **Watch:** Presentation on Finding the Story of Your Case posted in Canvas |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** 1. Brainstorm your case and prepare at least three (3) written potential themes and theories of your assigned case. 2. Prepare a written diagram/outline of your opening statement for your assigned case. This document should be sufficient to show your instructor that you have taken the time to prepare, but not be so over written that all you can use it for is to just read it. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** 1.You will share your themes and theories. Be prepared to answer questions and brainstorm with your professors as well as your fellow students on the benefits and challenges of your potential themes and theories. **In class:** 2.You will present your opening statement. It should be approximately 5 minutes long. During this exercise, do not get too bogged down with the law. Focus your time on the story of the case and telling that story to your jurors.  |
| **Process:** | Developing a theme and theory is essential to your case, but is often difficult. By brainstorming with others you can gain insight on whether the message you want to convey is being heard. You can also see the potential weaknesses that opposing counsel can use to counter your theme and theory. Expect the unexpected in this class session. You should be on your feet and talking, even if you aren't quite sure what you are saying yet. In planning your opening statement, think carefully about your theory of the case and the most effective structure for the organization of your opening statement. **REMEMBER TO TELL THE STORY OF THE CASE!** Find your emotional connection to the story, the case, and the facts and present it from there. Remember to emphasize the major factual points that support your theory of the case. Think about how will you address the weaknesses in your case? Show me!In addition to the content of your opening statement, you must also plan its presentation. You may not “read” the opening statement and you should avoid the obvious use of notes. If you wish, you may have a single sheet of paper on the lectern that contains a “key word” outline of the opening statement – to be used only as necessary. You should also not stand behind the podium while giving your opening statement. |
| **Outcome:** | You will: * Learn the importance of a clear theory
* Know how a theme furthers your case
* Understand the significance of testing your theme and theory on others before trial
* Learn that you can be a story teller, an advocate, and a professional simultaneously
* Present an opening statement
* Understand how to prepare an opening
* Take away critique points to make you better the next time you perform an opening statement
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**LESSON PLAN #4 – DIRECT EXAMINATIONS**

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| **Large Group Class on 9/14** | **Small Group Classes on 9/18, 9/19, and 9/20** |
| **Large Group Class Preparation:**  **Read:** Chapter 5 in *MTA* – Direct Examinations and Pages 363-379 of Chapter 9 in  *MTA* – Direct Examinations and Advanced Direct |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written diagram/outline of the direct examination of ONE of the witness in your assigned case. This document should be sufficient to show your instructor that you have taken the time to prepare, but not be so over written that all you can use it for is to just read the questions to the witness. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** You will conduct the direct exam of the witness you have prepared. Be sure to think ahead and have one of your classmates prepare to be your witness and familiarize themselves with the story.  |
| **Process:** | You should not necessarily write out the questions you intend to ask each witness. Remember to think about your theory of the case when preparing direct examination. Also, employ a logical structure for the direct (ex., personal background of witness, then scene description, action, etc…). Use proper **non-leading, open-ended questions** which begin with: who, what, when, where, why, how, describe, explain, tell us. Avoid the “what happened next?” question and the use of questions beginning with “did, do, was, and were.” While not technically “leading,” these questions are not an effective way to have the witness do the testifying of the advocate. |
| **Outcome:** | You will: * Conduct a direct examination
* Understand how to prepare a direct examination
* Take away one critique point to make you better the next time you conduct a direct examination
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**LESSON PLAN #5 – EXHIBITS**

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| **Large Group Class on 9/21** | **Small Group Classes on 9/25, 9/26, and 9/27** |
| **Large Group Class Preparation:**  **Read:** Chapter 6 in *MTA* - Exhibits |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare written questions necessary to lay the foundation and enter an exhibit into evidence. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** You will question a witness to lay the foundation for your exhibit into evidence. For specific guidance on laying foundation, see pages 219 - 230 in *MTA*.  |
| **Process:** | Laying the foundation for you evidence is essential for its admission into the record. Learning the steps to lay a proper foundation is a skill you will need for every trial. It is important to determine which witness is best to use for laying the foundation and when it is best to admit it into evidence. Sometimes more than one witness can be used or needed. Think about what foundation is required, which witness is best and/or needed, and when in the trial timeline the evidence will be presented.  |
| **Outcome:** | You will: * Use critical thinking to bolster your case
* Determine what evidence needs to be entered in your case
* Determine when the evidence should be entered
* Learn how to lay a proper foundation
* Consider what witnesses are needed to lay a proper foundation
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**LESSON PLAN #6 – CROSS EXAMINATION**

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| **Large Group Class on 9/28** | **Small Group Classes on 10/2, 10/3, and 10/4** |
| **Large Group Class Preparation:**  **Read:** Chapter 7 in *MTA* – Cross Examination and Pages 380-400 of Chapter 9 in *MTA* – Cross Examination and Advanced Cross |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written diagram/outline of your cross examination for one witness in your assigned case. This document should be sufficient to show your instructor that you have taken the time to prepare, but not be so over written that all you can use it for is to just read the questions to the witness.**Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** You will conduct the cross examination of the witness you have prepared. Be sure to think ahead and have one of your classmates prepare to be your witness and familiarize themselves with the story.  |
| **Process:** | When preparing for cross examination, you may assume that the witness testified on direct examination consistently with their previous statements contained within the case file. For cross examination, you MUST use short, incremental, one fact questions that lead inexorably to your goal question. You must be able to explain to your advocacy professor the moral theme, legal theory, or factual theory that is supported by your cross examination questions.Keep in mind the various types of cross examination and the methodology of each. You must select which method of cross works best for the witness you are crossing and which combinations of each work most effectively. Remember that unless you are extremely advanced, i.e 25 year lawyer, that you should NOT ask open ended questions on cross. Also while cross is everyone’s favorite skill to execute and practice, it is often not where the case is won or lost.  |
| **Outcome:** | You will: * Conduct a cross examination
* Understand how to prepare a cross examination
* Use the one fact leading to a conclusion method of cross examination discussed in the book
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**LESSON PLAN #7 – IMPEACHMENT**

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| **Large Group Class on 10/5** | **Small Group Classes on 10/9, 10/10, and 10/11** |
| **Large Group Class Preparation:**  **Read:** Chapter 8 in *MTA* - Impeachment |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare written questions for a cross to impeach a witness. This should be an outline of the necessary questions to correctly impeach the witness. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.** **In class:** You will conduct the cross examination of the witness you have prepared. Be sure to think ahead and have one of your classmates prepare to be your witness and familiarize themselves with the issue you will be using for impeachment or refreshing recollection.  |
| **Process:** | It is essential for you to know how to properly impeach a witness. You will have one of your classmates take the witness stand and say something that is inconsistent with their prior statement. If this is a witness that you would have called, you will refresh their recollection. If this is an opposing witness, you will use impeachment by prior inconsistent statement.  |
| **Outcome:** | You will: * Know how to determine if you should impeach a witness
* Understand the seven (7) primary means of impeachment
* Know how to lay the proper foundation for impeachment
* Conduct an impeachment
* Use the 3 C’s of Commit, Credit, and Confront
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**LESSON PLAN #8 – CLOSING ARGUMENT**

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| **Large Group Class on 10/12** | **Small Group Classes on 10/16, 10/17, and 10/18** |
| **Large Group Class Preparation:**  **Read:** Chapter 10 in *MTA* – Closing Argument |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written diagram/outline of your closing argument for your assigned case. This document should be sufficient to show your instructor that you have taken the time to prepare, but not be so over written that all you can use it for is to just read it. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** You will present your closing argument. It should be approximately 5 minutes long. Deliver a closing argument that combines your legal theory, factual theory, and moral theme in a persuasive fashion utilizing appropriate rhetorical techniques. Do not forget to use exhibits and technology where appropriate. |
| **Process:** | Note that a keyword in your assignment is “argument.” This is not an opening statement, so do not merely rehash the facts (after all, the jury was also in the courtroom). Use the law – the jury instructions – to support your argument. Weave the evidence (proven facts) into the law to persuade the jury of your argument. You must not “read” the closing argument. While you may use a one page "key Word” outline or a checklist of points to be covered, you must not rely on your notes except to refresh your memory - in the unlikely case they are needed. Remember that eye contact is essential to an effective closing argument. Use of notes detracts from your presentation. You should also not stand behind the podium while giving your closing argument. |
| **Outcome:** | You will: * Present a closing argument
* Utilize exhibits and rhetorical methods of persuasion
* Incorporate your theme and theory into your argument
* ARGUE
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**LESSON PLAN #9 – EXPERT WITNESSES**

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| **Large Group Class on 10/19** | **Small Group Classes on 10/23, 10/24, and 10/25** |
| **Large Group Class Preparation:**  **Read:** Chapter 9 in *MTA* – Expert Witnesses |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written section of a direct or a cross examination to qualify/attack the qualifications of a witness to give expert testimony. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.** **In class:** You will conduct the direct or cross examination of the witness you have prepared. Be sure to think ahead and have one of your classmates prepare to be your witness.  |
| **Process:** | Laying the foundation for your witness to testify as an expert can be a difficult process, especially when opposing counsel thinks your expert is not qualified and challenges you. It can be very easy to just give up; sometimes it feels like you will never lay the proper foundation in the heat of your examination and objections. You will learn to establish your expert clearly and know exactly what you need to say to get that expert qualified. Your client is paying a LOT of money for this person to testify; you CANNOT give up, you MUST KNOW exactly how to qualify this person.  |
| **Outcome:** | You will:* Learn how to establish a witness as an expert in a given area
* Learn how to attack the ability of a witness to give expert testimony
* Think on your feet and respond to the answers that the witness is giving to attach their expertise
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**LESSON PLAN #10 – MOTIONS AND OBJECTIONS**

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| **Large Group Class on 10/26** | **Small Group Classes on 10/30, 10/31, and 11/1** |
| **Large Group Class Preparation:**  **Read:** Chapter 11 in *MTA* – Motions and Objections |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written Motion in Limine for your assigned case. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** Use a direct examination you have previously prepared in a prior assignment. The professor will act as the witness so the professor can respond with objectionable answers.  Students will take turns acting as the examiner and making objections. As many students as feasible should be allowed to make objections during any given direct or cross-examination. |
| **Process:** | Pretrial motion provide attorneys the opportunity to know in advance some of what will be heard or not heard by the jury during trial. Think about what information is most helpful or harmful to your case that should be dealt with in pretrial. If you wait until trial it may be too late. Pretrial motions are an essential part of trial preparation. Objecting, and doing it effectively is one of the most difficult parts of any trial. Not only do you have to listen to the question and the answer for any objectionable material but you also have to think ahead to your own direct or cross exam of the witness on the stand. Once you realize that the testimony is objectionable, you must then stand up and suddenly say something intelligent! It’s not always an easy process. Learning the rules of evidence and putting them into practice are much different. |
| **Outcome:** | You will: * Stand up and speak
* Further explore what evidence/witnesses/testimony can help and/or hurt your case
* Learn how to present and argue a pretrial motion
* Learn how to think on your feet
* Learn how to listen for key questions and answers that are almost always objectionable
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**LESSON PLAN #11 – JURY SELECTION**

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| **Large Group Class on 11/2** | **Small Group Classes on 11/6, 11/7, and 11/8** |
| **Large Group Class Preparation:**  **Read:** Chapter 3 in *MTA* – Jury Selection |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** Prepare a written diagram/outline of a **brief** (5 minutes) voir dire on one of the major issues in your assigned case utilizing the principles of jury selection outlined in the text. **Assignment must be turned in through Canvas by 5:00 p.m. the day of your small group class. If you turn it in late you must turn in two (2) of this assignment by 5:00 p.m. November 30, 2023.****In class:** Perform a voir dire designed to identify challenges for cause. The class should act as your jury and your goal should be to elicit as many responses from your classmates as possible. Do not forget to request individual voir dire when appropriate. |
| **Process:** | Voir dire is one of the most difficult skills for an advocate to learn because it requires the advocate to ask questions to which they do not know the answer. Not only must they ask, they ask them in the presence of a group of people who may all be as affected by the answer. The only way to master this skill is to practice it. In voir dire, it is important to identify each venire person for the record either by name or number. Get in the habit NOW of making sure your record is clear. Anything that cannot be understood from the WORDS ALONE needs to be identified verbally for the record.  |
| **Outcome:** | You will: * Exercise group building and advanced skills
* Identify issues that result in a challenge for cause based upon your theory of the case
* Prepare voir dire designed to identify bias that supports a challenge for cause
* Conduct voir dire to support a challenge for cause
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**LESSON PLAN #12 – POST TRIAL MATTERS**

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| **Large Group Class on 11/9** | **No Small Group Classes** **Final Trials the week of 11/13 to 11/17** |
| **Large Group Class Preparation:**  **Read:** Chapter 12 in *MTA* – Post Trial Matters |
| **Small Group Class Preparation:** | **Homework to be turned in through the Canvas prior to your small group class:** NONE |
| **Process:** | Preserving the record is essential at every step of the trial process. Any hope for appeal in the event you do not get the result you wanted is lost if you do not have a record. Appellate attorneys develop their case from the work of the trial attorney. Properly making and preserving the record is essential to effectively representing your client. |
| **Outcome:** | * Learn the importance of making a record of a case
* Understand the importance of preserving the record
* Understand how pretrial motions affect post trial matters
* BE READY TO TRY YOUR CASE

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**GOOD LUCK ON YOUR TRIAL!**