



# Trial Advocacy

Prof. Mavrova Heinrich

Welcome to Trial Advocacy! Fall semester will be busy and challenging, but also fun and rewarding. In this document, you will find information about the readings, topics, and assignments for the course. I look forward to spending a great semester with you as I introduce you to the basics of trial advocacy.

**DISCLAIMER:** The assignments are subject to modification and supplementation. Any changes will be announced in class and posted on the course’s TWEN page.

## Class 1 - August 22

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Syllabus;</b></p> <p><b>Lubet:</b> Chapter 2 – 2.1 (pp. 13 – 16) &amp; 2.3 (pp. 19 – 21); Chapter 11 – 11.1 – 11.5 (pp. 323 – 357)</p>	<p>It's a TED Talk! Prepare a short presentation in a TED Talk format (7 minutes). You can tell a personal story, pitch an idea, explore an issue you are passionate about, advocate for a cause, give a lesson on how to do something, or, as the TED slogan goes, share any “idea[] worth spreading.” Be creative. Be bold. Be prepared. For this session only, you may, though you certainly need not, use technology during your performance.</p> <p>To learn more about TED talks and get inspired, please visit <a href="http://www.ted.com/talks">www.ted.com/talks</a></p>	<p>Introduction to Trial Advocacy; Case Analysis &amp; Storytelling; Opening Statements</p>

**Class 2 – August 29 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 3 – 3.1 – 3.4 (pp. 37 – 66);</p> <p><b>FRE:</b> Rules 601 – 603 and 611</p>	<p><b>Bocchino:</b> Problem 11, <i>Myers v. Nita Day School</i> (disregard the procedural information on p. 168)</p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Plaintiffs):</b> Deliver the opening statement for plaintiffs, the parents of John Myers</li> <li>❖ <b>Group B (Defendants):</b> Deliver the opening statement for the defendant, Nita Day School</li> </ul> <p>In addition to the information in the problem, the following also applies:</p> <p>Under Nita law, a school commits the tort of negligent supervision if the school fails to use ordinary care to protect its students from injury under circumstances where such conduct would reasonably have been foreseen and could have been prevented by the use of ordinary care.</p> <p>To prove the tort of negligent supervision, a plaintiff must prove: (1) the school had a legal duty to use ordinary care to protect the plaintiff from reasonably foreseeable harm; (2) the school breached that duty; (3) the breach was the proximate cause of the resulting injury; and (4) plaintiff suffered actual damages to his person or property. It is well established in Nita’s jurisdiction that a school has a legal duty to protect its students from reasonably foreseeable harm.</p> <p>The trial court denied Nita Day School’s motion to dismiss on sovereign immunity grounds, and the case will proceed to trial as scheduled.</p>	<p>Direct Examination</p>

**Class 3 – September 5 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 9 – 9.1 (pp. 223 – 225); 9.3 – 9.4 (pp. 246 – 265); 9.6 (pp. 280 – 284)</p>	<p><b>Bocchino:</b> Problem 1, <i>Nita Liquor Commission v. Cut-Rate Liquor and Jones</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Plaintiffs):</b> Conduct a direct examination of Investigator Bier</li> <li>❖ <b>Group B (Defendants):</b> Conduct a direct examination of Dan Jones</li> </ul> <p>You can assume that all the exhibits have been stipulated to be admissible during the pretrial conference and may be used, as appropriate, during the examinations of the witnesses.</p>	<p>Advanced Direct Examination: Foundations &amp; Exhibits</p>

**Class 4 – September 12 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 11 – (pp. 189 – 221); Chapter 9 – 9.2.2.3 – 9.2.2.6 (pp. 233 – 246)</p>	<p><b>Bocchino:</b> Problem 3, <i>State v. Lawrence</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Defendants):</b> Conduct a direct examination of James Lawrence using Exhibit 8 (the map)</li> <li>❖ <b>Group B (Prosecution):</b> Conduct a direct examination of Gale Fitzgerald using Exhibit 9 (the map) and/or Exhibit 10 (the purse)</li> </ul> <p>I will provide an enlarged copy of Exhibits 8 and 9. You may also use a hard copy of each exhibit or a digital copy to display on the TV screen in the courtroom. I will also provide the stolen purse. The purse will be marked as “State’s Exhibit 10.” The purse is a beige/brown Gucci bag with a dark brown shoulder strap that was broken during the struggle between Ms. Fitzgerald and her attacker. If asked about it, Ms. Fitzgerald will testify that she got the purse as a present from her mother for her twenty-fifth birthday.</p>	<p>Making and Responding to Objections</p>

**Class 5 – September 19**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 4 – (pp. 73 – 112);</p> <p><b>FRE:</b> Rule 611</p>	<p><b>Bocchino:</b> Problem 5, <i>State v. Carlin</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Prosecution):</b> Conduct a direct examination of Mark Warden</li> <li>❖ <b>Group B (Defendants):</b> Conduct a direct examination of Al Carlin</li> </ul> <p>As you prepare your examinations, please account for both the information provided in the summary for Problem 5, the statement of Mark Warden, and the grand jury testimony of Al Carlin. You may incorporate the exhibits, as appropriate, in your examinations. Each side should anticipate and prepare for making and responding to objections.</p>	<p>Cross Examination</p>

**Class 6 – September 26 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 5 – (pp. 113 – 150); Chapter 3.2.5 – (pp. 41 – 42) and demonstration 5 in the Visual Appendix;</p> <p><b>FRE:</b> Rules 404, 607, 608, 609, 612, 613, 803(5)</p>	<p><b>Bocchino:</b> Problem 1, <i>Nita Liquor Commission v. Cut-Rate Liquor and Jones</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Plaintiffs):</b> Conduct a cross examination of Dan Jones</li> <li>❖ <b>Group B (Defendants):</b> Conduct a cross examination of Investigator Bier</li> </ul> <p>You can assume the witnesses have completed their direct examinations and have testified consistently with their statements in the case file. Exhibits 1 and 1A have been admitted into evidence during the direct examination of Investigator Bier.</p>	<p>Impeachment &amp; Refreshing Recollection</p>

**Class 7 – October 3 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>TWEN:</b> Final Trials Rules &amp; Final Trial File</p>	<p><b>Bocchino:</b> Problem 28, <i>Gentry v. Smith</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Defendants):</b> Conduct a cross examination of Taylor, limited to the matters raised in Problem 28.</li> <li>❖ <b>Group B (Plaintiffs):</b> Conduct a cross examination of Officer Klein, limited to an impeachment using the report (Exhibit 3).</li> </ul>	<p>Final Trials</p>

**Class 8 – October 10**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 7.1 – 7.5 (pp. 157 – 188);</p> <p><b>FRE:</b> Rules 701 – 705</p>	<p><b>NONE.</b> This week will mark the beginning of the Expert Witnesses unit—a collaboration between UND School of Law and UND Graduate Forensic Psychology Program.</p>	<p>Experts: Direct &amp; Cross Examinations</p>

**Class 9 – October 17**

Reading	Performance Exercise	Lecture Topic(s)
<p><b>Lubet:</b> Chapter 12 – (pp. 365 – 418)</p>	<p><b>NONE.</b> We will be conducting trial advocacy drills instead, focusing on the more challenging skills up to this point and experimenting with some advanced persuasive techniques.</p>	<p>Closing Arguments &amp; Rebuttal</p>

**Class 10 – October 24 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
NONE	Expert Witnesses Examinations, as assigned at the end of Class 8.	NONE

**Class 11 – October 31 – Recording Session**

Reading	Performance Exercise	Lecture Topic(s)
	<p><b>Bocchino:</b> Problem 11, <i>Myers v. Nita Day School</i></p> <ul style="list-style-type: none"> <li>❖ <b>Group A (Defendants):</b> Deliver a closing argument for the defendant, Nita Day School plaintiffs, the parents of John Myers</li> <li>❖ <b>Group B (Plaintiffs):</b> Deliver a closing argument for the plaintiffs, the parents of John Myers</li> </ul> <p>In addition to the information contained in the problem and the information provided under the Class 2 – August 29 syllabus entry above, please review the jury instructions applicable to the case. The jury instructions have been taken from the Nita Model Jury Instructions and reflect the current law in the State of Nita. The instructions are available on TWEN under “Jury Instructions.” Please be advised that, in Nita, the court instructs the jury on the law after closing arguments.</p>	Final Trials

**Classes 12 – 13 – FINAL TRIALS**

**NOTE:** The final trials will be scheduled during the period of November 7 – November 17. More information on the final trials will be provided during the Class 7 session on October 3.