



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

TRIAL SIMULATION

LAW 921

SECTION 03

SPRING 2018

ROOM 203

THURSDAYS

5:00-6:40 PM

**PROFESSOR
STEPHEN W. SMITH**

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THE PROFESSOR

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LOCATION OF COURSE: Room 203

OFFICE HOURS: Thursdays 4:30-5:00 PM Adjunct office

COURSE BOOKS & MATERIALS

1. *Modern Trial Advocacy
Analysis & Practice*
Fifth Edition
Authors: Steven Lubet and J.C. Lore
National Institute for Trial Advocacy publication (NITA)
ISBN: 9781601564740

2. *Fact Investigation* (2d ed.)
Authors: Paul Zwier and Anthony Bocchino
National Institute for Trial Advocacy
ISBN: 978-1-60156-435-1

3. Case file: State v. Delaney

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION/OBJECTIVE:

This is a 2L, introductory trial simulation course. **THIS IS THE BEGINNING, NOT THE END!**

The intent of this course is to continue the transformation of law student to “whole lawyer”, by introducing and allowing for multiple opportunities to practice skills and competencies expected of new lawyers.

Knowledge of substantive law without the ability to effectively apply the law leaves the practitioner ineffective. Knowledge of how to effectively apply the law without a thorough understanding of the substantive law makes a practitioner dangerous.

Trial simulation is where the effective knowledge of substantive law + effective application of that law through practical techniques immersed in social and professional responsibility = a “whole lawyer”; a lawyer who is competent, professional, of high integrity, “client ready”, and “practice prepared”.

To best facilitate this simulation course, each student will perform as trial counsel in a variety of simulated courtroom exercises. Every student will be introduced to and given the opportunity to practice and develop at minimum, the following skills: Voir Dire; opening statements; direct examination; cross-examination, objections; introduction of exhibits, closing arguments; and anything else that your professor deems to be pertinent. In addition, every student will act as counsel in at least one full trial, either jury or bench, as determined by your professor.

Teaching Method

A. Simulated Courtroom:

This course is taught in the simulated courtroom method. Students are expected to perform as trial counsel in one or more advocacy problems. The witnesses will be played by other students.

Each student will be assigned a designated role for purposes of the assignments. Unless you are instructed otherwise, please prepare each assignment according to your role designation.

B. Critique

At various times during each student performance the course instructor may offer a critique. The purpose of critique is to help the student evaluate the strengths and weaknesses of their performance with an eye toward future improvement. The goal in the critique is not to criticize the student either as an advocate or a person, but rather to alert the student to any shortcomings and to offer a prescription for making adjustments that will translate in and beyond the courtroom.

C. Lectures and Demonstrations

Although it is necessary to practice trial skills in order to learn and assimilate them, the theory and analysis of trial advocacy are often best conveyed through lecture and demonstration. This is one of the many reasons that the choice of text book was made. ***Modern Trial Advocacy***, the text book offers video vignettes that demonstrate each of the assigned skill. It is the student's responsibility to read the assigned lessons, **IN ADVANCE** of class and to watch the video vignettes, **IN ADVANCE** for the assigned lessons.

D. Full Trials

Bench trials will be held at the end of the semester.

**Trial Simulation – Spring 2018
Skill Class Schedule**

	<u>Week</u>	<u>Chapter</u>	<u>Skill practice</u>
1.	January 11	1	Introductions
2.	January 18	2-3	Story telling exercise
3.	January 25	14	Voir dire
4.	February 1	10-11	Exhibits/Admitting evidence
5.	February 8	12	Opening Statement
6.	February 15	4 & 7	Direct Examination
7.	February 22	4 & 7	Direct Examination
8.	March 1	5	Cross Examination
9.	March 8	5	Cross Examination
			Spring Break
10.	March 22	6	Refreshing recollection/Impeachment
11.	March 29	13	Closing argument
12.	April 5	13	Closing argument
13.	April 12		Preparation for final trial
14.	April 19		Preparation for final trial
	Weekend of April 21		Final trials

STUDENT LEARNING OUTCOMES

1. Case Analysis for Trial Lawyers

Trials are held to allow the parties to persuade the judge or jury of their client's version of the facts.

- Chapter 1- *Case Analysis and Storytelling.*
- Chapter 2- *Trial Tools*
- Chapter 3- *Persuasion Theory*

Students will learn the art and science of persuasive storytelling.

Students will learn:

1. How to effectively analyze a case, including:
 - a. How to identify the issue(s) of the case;
 - b. How to identify the legal theories of the case;
 - c. How to evaluate the facts of the case and develop a factual theory of the case;
 - d. How to develop a persuasive theory of the case.
2. How to create fact charts that support their theory of the case and that negate the opposing side's theory of the case. (Good facts, bad facts and neutral facts).
3. How to create proof charts for evidence and witnesses;
4. The difference between theories and themes and how to develop themes for their client's side of the case;
5. The ethics of persuasive storytelling;
6. How to effectively use organization to help improve the persuasiveness of their client's story;
7. The importance of their demeanor and their professionalism; and
8. The importance of witness preparation as a trial tool.

<p>2. Direct Examination</p> <p>Direct Examination is your opportunity to present the substance of your case, from your client's perspective.</p> <ul style="list-style-type: none"> - Chapter 4-Direct Examination 	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The purpose of Direct Examination. 2. How to plan the Direct Examination. 3. Questioning Techniques/ Form. 4. The ethics of Direct Examinations. 5. The techniques for Refreshing Recollection.
<p>3. Cross Examination</p> <p>Cross Examination is the ultimate challenge for the trial lawyer.</p> <ul style="list-style-type: none"> - Chapter 5- Cross Examination 	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The purpose of Cross Examination; 2. How to plan and organize the Cross Examination 3. The ethics of Cross Examination.
<p>4. Impeachment</p> <p>Impeachment is the intended discrediting of a witness.</p> <ul style="list-style-type: none"> - Chapter 6-Impeachment 	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. How to effectively impeach a witness. 2. Categories of impeachment. 3. Reasons why to impeach a witness. 4. The ethics of Impeachment.
<p>5. Redirect Examination and Rehabilitation</p> <p>Redirect Examination may be used to respond to cross examination. Rehabilitation may be used to repair damage that may have been done to your witness or their credibility on cross examination.</p> <ul style="list-style-type: none"> - Chapter 7- Redirect Examination and Rehabilitation 	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The purpose of the Redirect Examination. 2. How to conduct a Redirect. 3. The techniques for Rehabilitation.
<p>6. Expert Testimony</p> <p>An expert witness is not limited to personal knowledge and may base their testimony on information that was gathered solely for testifying in litigation. The expert's opinion matters.</p> <ul style="list-style-type: none"> - Chapter 8- Expert Testimony 	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The purpose and importance of Expert Testimony. 2. The techniques that are most effective for conducting a Direct Examination of an Expert witness, including but not limited to qualifying the expert. 3. The techniques that are the most effective for conducting a Cross Examination of an Expert witness. 4. The ethics of Expert Testimony.

<p>7. Objections It is not enough for information to be persuasive or even true...<i>IT MUST BE ADMISSABLE.</i> - Chapter 9- <i>Objections</i></p>	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The purpose and function of Objections. 2. The most effective techniques when urging an Objection. 3. The strategy of making Objections.
<p>8. Foundations and Exhibits - Chapter 10- <i>Foundations and Exhibits</i></p>	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The Foundations for testimonial Evidence. 2. The role of Exhibits. - Including the importance of the “Motion in Limine” 3. The most effective techniques of laying the Foundations for Evidence.
<p>9. Opening Statements The advocate’s first opportunity to speak directly to the trier of fact, (judge or jury) about the merits of the case. - Chapter 12- <i>Opening Statements</i></p>	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The role of the Opening Statement. 2. The law of Opening Statements. 3. The structure and elements of the Opening Statement. 4. The most effective techniques for delivering the Opening Statement.
<p>10. Final Arguments The advocate’s opportunity to tell the story of the case, without interruption. - Chapter 13- <i>Final Arguments</i></p>	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The role of the Closing Argument. 2. The structure and elements of the Closing Argument. 3. The most effective techniques for delivering the Closing Argument.
<p>11. Jury Selection The opportunity to “de-select” your trier of fact. - Chapter 14- <i>Jury Selection</i></p>	<p>Students will learn:</p> <ol style="list-style-type: none"> 1. The role and importance of Jury Selection. 2. How to plan and conduct Voir Dire. 3. The ethics of Jury Selection.

GRADING

The grade for each advocacy exercise will be assigned on the basis of preparation, analysis and execution: How well prepared were you?

The final grade will be determined as follows:

- 1. Preparation and demonstration each class period:.. 50%**
- 2. Final Trial..... 50%**

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

1. Generally	
a. Special Accommodations	All requests for any special accommodations must be first submitted to the Dean of Student Affairs.
b. Final Examination	There is NO Final Examination in this class.
2. Dress	<i>IF YOU WOULD NOT WEAR IT TO COURT OR TO WORK IN A LEGAL OFFICE AS AN ATTORNEY, DO NOT WEAR IT TO CLASS.</i>
3. Class Attendance	
a. Attendance Taken-	Daily.
b. Tardiness-	Excessive tardiness may be marked as an absence.
c. Allowable Number	Refer to The Student Rules of Matriculation.
4. Class Etiquette	
a. Cell Phones	I ask you for directed and committed 50 minutes of concentrated time. Please do not use cell phones in class. This includes but is not limited to MP3ing; texting; talking; videotaping; youtubing; tweeting; face booking; internet searching, etc.
b. Tablets/Smart Phones/MP3	If these tools are not being used to serve as direct class support; then please be respectful and set a professional example by not using them.
c. Professional Decorum	The classroom and the courtrooms are sacred in that they are the places where positive change is defined; discussed; effectuated; and shared with the others. Please act in a manner

	that brings dignity to you; your family and the legal profession.
d. Yielding the Floor	As in the courtroom, if a colleague, professor or speaker is engaged in presentation or inquiry, please yield the “floor” until you can intervene without disruption. As in a courtroom, only one person can be heard at a time.
e. Dismissal	Please do not prepare to leave class until class is dismissed; unless you have told me in advance that you need prior to the dismissal of class.
5. Class Preparation	
a. Student Responsibility	To be prepared to participate in each class session.
b. Text Book	Modern Trial Advocacy Analysis & Practice Fifth Edition Authors: Steven Lubet and J.C. Lore National Institute for Trial Advocacy publication (NITA) ISBN: 9781601564740

ASSUMPTIONS

A. Necessary Assumptions.

1. The student has some basic working knowledge of evidence.
2. Students will act as licensed attorneys.
3. The hypothetical situations (case files) are being treated as real.
4. The cases have been reviewed and accepted by the firm.
5. All necessary conflict checks have been run including but not limited to: potential parties against current and old clients; and case conflicts against firm policies.
6. Retainer agreements have been negotiated and executed.
7. Any necessary waivers have been executed and delivered.
8. Initial client interviews have been conducted.
9. Witness interviews have been conducted.
10. Client and witness preparation has been conducted.
11. The statutes as provided in the files will be followed to the extent they are articulated. If no such rule or statute is articulated, evidence rules will be based on the FRE.