TRIAL ADVOCACY

LAW 6361 / SECTION 2132

SYLLABUS – SPRING 2013
Judge Stephan P. Mickle

Contact: c/o Linda Curry, lcurry@law.ufl.edu 273-0859

TEXTS:
1. Trial Techniques, Thomas A. Mauet (Aspen)
2. NITA Casefiles:
   (a) Potter v. Shrackle, (NITA Latest), Kenneth S. Broun and James H. Seckinger
   (b) State v. Diamond, (NITA Latest), James H. Seckinger

The University of Florida Levin College of Law Legal Information Center has a number of DVDs relating to trial practice. We recommend that you use this library frequently. It has a collection of trial instruction DVDs from the National Institute of Trial Advocacy (NITA) and the American Bar Association. A recommended categorized listing is attached.

CLASS TIMES:
Monday and Thursday - 4:00 to 6:00 PM in Advocacy Center  Room 209

❖ ATTENDANCE IS MANDATORY ❖
IT IS THE RESPONSIBILITY OF STUDENTS TO KEEP MONDAYS AND THURSDAYS FROM 4:00PM TO 6:00PM AVAILABLE DURING THE SEMESTER TO ACCOMMODATE POTENTIAL RESCHEDULING OF CLASS TO AN OPEN DATE IN THE SYLLABUS

All classes will meet in the Levin Advocacy Center Room 209 unless indicated otherwise on this Syllabus. Should any changes occur, they will be posted on TWEN and sent via TWEN email. All Trial Advocacy students should register on the TWEN site. Workshops are scheduled on the calendar.

Courtroom attire for all workshops.

ABSENCES:

Excused absences: Documented illness, serious sickness in the family, death in the family.

Unexcused absences: Ski trips, job interviews, trial competitions, weddings, vacations, etc.

Note: If you must miss a class, please contact Linda Curry, Trial Skills Programs, Levin Advocacy Center, Room 213, at 273-0859 or email lcurry@law.ufl.edu before 12:00 PM on the scheduled class day.
## CLASS SCHEDULE – SPRING 2013

<table>
<thead>
<tr>
<th>DATE</th>
<th>CLASS</th>
</tr>
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<tbody>
<tr>
<td>Monday, January 7</td>
<td>Class roll finalized</td>
</tr>
<tr>
<td>Adv. Center 209</td>
<td>Course organization and assignments</td>
</tr>
<tr>
<td>Thursday, January 10</td>
<td>Lecture: The Trial Process</td>
</tr>
<tr>
<td>Adv. Center 209</td>
<td>Assignment: Study (not just read) Mauet, Chapters 1 and 2</td>
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<tr>
<td>Monday, January 14</td>
<td>Lecture and demonstration: Jury Selection</td>
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<tr>
<td>Adv. Center 209</td>
<td>Assignment: Study Mauet Chapter 3</td>
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<tr>
<td>Thursday, January 17</td>
<td>Guest Lecture on Jury Selection</td>
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<tr>
<td>Monday, January 21</td>
<td>MARTIN LUTHER KING DAY</td>
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<tr>
<td>Thursday, January 24</td>
<td>Workshop #1: Jury Selection</td>
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<tr>
<td>Adv. Center 209</td>
<td>Assignment: Submit written questions for Jury Selection</td>
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<tr>
<td>Group A:</td>
<td>Be prepared to choose a jury for the defendant in the case of State v. Diamond and for the plaintiff in the case of Potter v. Shrackle.</td>
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<tr>
<td>Group B:</td>
<td>Be prepared to choose a jury for the state in the case of State v. Diamond and for the defendant in the case of Potter v. Shrackle.</td>
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<tr>
<td>Monday, January 28</td>
<td>Lecture and Demonstration: Opening Statements</td>
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<tr>
<td>Adv. Center 209</td>
<td>Assignment: Study Mauet, Chapter 4</td>
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<tr>
<td>Thursday, January 31</td>
<td>Workshop #2: Opening Statements</td>
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<tr>
<td>Adv. Center 209</td>
<td>Assignment: Submit a written Opening Statement</td>
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<tr>
<td>Group A:</td>
<td>Be prepared to deliver the opening statement for the defendant in the case of State v. Diamond and for the plaintiff in the case of Potter v. Shrackle.</td>
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<td>Group B:</td>
<td>Be prepared to deliver the opening statement for the state in the case of State v. Diamond and for the defendant in the case of Potter v. Shrackle.</td>
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<td>Date</td>
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<tr>
<td>Monday, February 4</td>
<td>Lecture: Demonstration on Direct Examination of the Lay Witness</td>
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<tr>
<td>Thursday, February 7</td>
<td>Lecture and Mini Workshop: Demonstration on Direct Examination of</td>
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<td>the Lay Witness (continued)</td>
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<tr>
<td>Monday, February 11</td>
<td>Workshop #3: Direct Examination of the Lay Witness</td>
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<tr>
<td>Thursday, February 14</td>
<td>Lecture: Demonstration and Mini Workshop – Basic Cross Examination</td>
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<td>of the Lay Witness. See <em>State v. Lawson</em> (TWEN)</td>
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</tbody>
</table>
### Workshop #4: Cross Examination

**Assignments:**
1. Submit written cross examinations
2. Be prepared to perform the following:

   **Group A:**
   3. Perform the Cross Examination of Estelle Mason from the case of *State v. Diamond*.
   4. Oppose the Cross Examination of Marilyn Kelly from the case of *Potter v. Shrackle*.

   **Group B:**
   3. Perform the Cross Examination of Marilyn Kelly from the case of *Potter v. Shrackle*.
   4. Oppose the Cross Examination of Estelle Mason from the case of *State v. Diamond*.

**Notes on Assignments:** No demonstrative aids are to be used in the exercise this week.

### Thursday, February 21

**Adv. Center 209**

Lecture and Demonstration: Evidence

**Assignments:**
Study Mauet, Chapter 6

### Monday, February 25

**Adv. Center 209**

Guest Lecture: Evidence

### Thursday, February 28

**Adv. Center 209**

**Workshop #5: Introduction and Use of Real and Demonstrative Evidence**

**Assignments:**
1. Review the case of *State of Florida v. Frankie Tone*
2. All students submit written preparation for introducing into evidence the following items:
   Consider the case against Frankie Tone at trial. Officer Gray is on the stand and you represent the State:
   - Graffiti Photos
   - Wal-Mart diagram
   - Paint Cans
   - Cell phone Records
   Consider the civil case of Ms. Rose Hughes at trial and you are representing the plaintiff, Ms. Hughes. Introduce the medical records (produced by custodian of the records from the hospital):
   - Medical Records – Rose Hughes (see TWEN as part of Tone case file)
3. All students should be prepared to introduce all items of evidence.

### March 4-8

**SPRING BREAK**
<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>Monday, March 11</td>
<td>Adv. Center 209</td>
<td>Lecture: Demonstration and Discussion – The Expert Witness</td>
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<td>* Assignment: Study Mauet, Chapter 8</td>
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<tr>
<td>Thursday, March 14</td>
<td>Adv. Center 209</td>
<td>Guest Lecture: Examining the Expert Witness</td>
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<td>* Assignments:</td>
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<td></td>
<td>1. Submit written preparation for direct or cross examination</td>
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<td>2. Be prepared to perform the following:</td>
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<td><strong>Group A:</strong></td>
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<td>Problem A Perform direct examination of Dr. Pierce in <em>State v. Diamond</em>.</td>
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<td>*Problem B Perform cross examination of Dr. Macdonald in <em>State v. O’Reilly</em>.</td>
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<td><strong>Group B:</strong></td>
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<td></td>
<td>Problem A Perform cross examination of Dr. Pierce in <em>State v. Diamond</em>.</td>
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<tr>
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<td></td>
<td>*Problem B Perform direct examination of Dr. Macdonald in <em>State v. O’Reilly</em>.</td>
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<td><strong>Note:</strong> Problem B, <em>State v. O’Reilly</em>, assigned for this workshop, is not in your textbook. Materials are to be picked up from Linda Curry, Room 213, Martin Levin Advocacy Center.</td>
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<tr>
<td>Thursday, March 21</td>
<td>Adv. Center 209</td>
<td>Lecture and Demonstration: Closing Argument</td>
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<td>Assignment: Study Mauet, Chapter 9</td>
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<tr>
<td>Monday, March 25</td>
<td>Adv. Center 209</td>
<td><strong>Workshop #7: Closing Argument</strong></td>
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<td>* Assignments:</td>
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<td>1. Submit written closing argument</td>
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<td>2. Be prepared to deliver the closing argument (see below)</td>
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<tr>
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<td><strong>Group A:</strong></td>
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<td>Be prepared to deliver the closing argument for the defendant in the case of <em>State v. Diamond</em> and for the plaintiff in the case of <em>Potter v. Shrackle</em>.</td>
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<td><strong>Group B:</strong></td>
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<td>Be prepared to deliver the closing argument for the state in the case of <em>State v. Diamond</em> and for the defendant in the case of <em>Potter v. Shrackle</em>.</td>
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<td>* Assignment: Read articles and prepare to discuss problems from the packet available from Linda Curry.</td>
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</table>

**Lecture: Demonstration and Discussion – The Expert Witness**

**Assignment:** Study Mauet, Chapter 8

**Guest Lecture: Examining the Expert Witness**

**Workshop #6: The Expert Witness**

**Assignments:**

1. Submit written preparation for direct or cross examination
2. Be prepared to perform the following:
   - **Group A:**
     - Problem A Perform direct examination of Dr. Pierce in *State v. Diamond*.
     - *Problem B Perform cross examination of Dr. Macdonald in *State v. O’Reilly*.
   - **Group B:**
     - Problem A Perform cross examination of Dr. Pierce in *State v. Diamond*.
     - *Problem B Perform direct examination of Dr. Macdonald in *State v. O’Reilly*.

**Note:** Problem B, *State v. O’Reilly*, assigned for this workshop, is not in your textbook. Materials are to be picked up from Linda Curry, Room 213, Martin Levin Advocacy Center.

**Lecture and Demonstration: Closing Argument**

**Assignment:** Study Mauet, Chapter 9

**Workshop #7: Closing Argument**

**Assignments:**

1. Submit written closing argument
2. Be prepared to deliver the closing argument (see below)
   - **Group A:**
     - Be prepared to deliver the closing argument for the defendant in the case of *State v. Diamond* and for the plaintiff in the case of *Potter v. Shrackle*.
   - **Group B:**
     - Be prepared to deliver the closing argument for the state in the case of *State v. Diamond* and for the defendant in the case of *Potter v. Shrackle*.

**Discussion: Professionalism – “The Lawyer as Liar”**

**Assignment:** Read articles and prepare to discuss problems from the packet available from Linda Curry.
Format for Workshop Preparation Assignments

Your assignments should be typewritten with your name, date and workshop title located at the top. Include your fully-developed objectives and reasoning, as appropriate for the specific assignment.

**Two copies required: Please submit one copy of your workshop assignment PRIOR to each workshop to my assistant, Linda Curry. She will log-in receipt of your papers. Your original will be useful to you as you prepare for the workshop.

Format for Workshop Video Review

You will review your workshop performance online after each workshop and complete the video review form (see p.7 in Syllabus). Go to https://connect.ufl.edu/law/video and enter your GatorLink username preceded by UFAD\.[E.g., UFAD\]lcurry] Use your GatorLink password. Then click on Link for Trial Advocacy at top of page. Only students registered for this class will have authorized access.

You will complete the video review form (see p. 7 of syllabus) and submit to Linda Curry. Review forms are due no later than the evening of the next workshop (but you may submit at any time prior). The review sheet for the final workshop (Closing Arguments) is due by Friday of the next week after the workshop.
TRIAL ADVOCACY
VIDEO REVIEW FORM

Name: ___________________________________________________________

Date of Performance: ___________________________ Date of Review: __________

Workshop Title: ___________________________________________________

VOICE:

POSTURE:

DEMEANOR:

GESTURES:

MOVEMENT:

PACE:

JURY'S FOCUS:

USE OF NOTES:

CLOTHING:

COURTROOM ETIQUETTE:

OVERALL IMPRESSION TO JURORS:
Library Listing of Tapes/DVDs on Reserve for Judge Mickle - Trial Advocacy (some may indicate Trial Practice)

**DIRECT AND CROSS EXAMINATION (NITA TAPES)**
*These are on 1 disc:
413-4  Direct Examination  
413-5  Cross Examination

**DIRECT AND CROSS SERIES**
438-2  Direct and Cross in a Criminal Case  
438-3  Direct and Cross of a Party in a Civil Case  
438-7  Direct and Cross of a Defendant in a Criminal Case  
438-8  Comparative Cross Exam of a Witness, Criminal

**DIRECT AND CROSS EXAMINATION (non-NITA TAPES)**
*These are on 1 disc:
613    Science of Cross Examination
636-1  A.B.A. The Art of Cross Examination Pt. 1
636-2  A.B.A. The Art of Cross Examination Pt. 2

**EXPERT WITNESS (NITA TAPES)**
435-9  Discovery of and About Expert Witnesses

**EXPERT WITNESS SERIES**
436-3  Direct and Cross of an Expert Pathologist  
436-4  Direct and Cross of a Medical Records Custodian  
436-5  Direct and Cross of a Psychiatrist  
436-6  Direct and Cross of an Expert Witness

**EVIDENCE (NITA TAPES)**
413-3  Laying Foundations for Exhibits and Witnesses  
413-8  Demonstrative Evidence  
*These are on 1 disc:
435-13 Developing and Using Tangible Evidence Pt. 1  
435-14 Developing and Using Tangible Evidence Pt. 2

**EVIDENCE (non-NITA TAPES)**
635    A.B.A. Basic concepts in Evidence: The Ten Commandments of Cross Examination

**EXHIBITS-SERIES**
440-1  Liturgy of Foundation  
440-3  Introduction and Use of Exhibits  
440-4  Evidentiary Objections  
440-5  Problem Witness Tactics

**EVIDENCE (non-NITA TAPES)**
391  Evidence Update: Faust Rossi  
392  Experts: Law of Evidence: Edward Stein Pt. 1  
393  Experts: Law of Evidence: Edward Stein Pt. 2  
394  Demonstrative Evidence: Thomas Singer
JURY SELECTION (NITA TAPES)
413-1 Jury Selection
538-7 The Art of Advocacy: Persuading the jury in a criminal case

JURY SELECTION (non-NITA TAPES)
651 Tipping the Scales: Jury Research and Selection

PICKING AND PERSUADING A JURY-SERIES
*359-1 to 4 of Selecting a Jury on 1 disc
359-1 Selecting a Jury Pt. 1
359-2 Selecting a Jury Pt. 2
359-3 Selecting a Jury Pt. 3
359-4 Selecting a Jury Pt. 4
359-5 The Jurors Perspective
359-8 Persuading the Jury
387 Jury Selection: General and Specific
388 Jury Selection: Charles Becton
389 Jury Selection: Communicating Information
538-5 Selecting the Jury in a Criminal Case
541 The Jury Trial

OPENING STATEMENTS
Opening Statements: A Modern Approach-*This item is shelved by title in the library DVD collection NITA (Under Zedalis).
694-1 to Jerry Spence in Trial:
694-7 How To Win In the Opening Statement
*694-1, 2, 3 and 4 of Jerry Spence are all on separate discs.

CLOSING ARGUMENTS (NITA TAPES)
*These are on 1 disc:
413-9 Closing Statements Pt. 1
413-10 Closing Statements Pt. 2

CLOSING ARGUMENTS (non-NITA TAPES)
396 Closing Arguments-Civil Case-Personal Injury
454-8 Making the Closing Argument
512-8 Closing Arguments