TRIAL PRACTICE
Spring Semester, 2013

Room: MLAC Courtroom            Professor Jennifer Zedalis
Class Times: Tu/W/Th 1:00 - 1:50pm  Office: 215 Levin Advocacy Center
Workshops: Tuesday Evenings 5:20-8:30pm  E-mail: zedalis@law.ufl.edu
Office Hours: Tuesdays 2:00-4:00 and Thursdays 10:00-12:00.
Open door policy; appointments are also welcome

Final Trials March 22, 23 and April 5, 6
(FINAL TRIALS ARE MANDATORY)

Textbook and Course Materials:
(2) Workshop/Trial Coursebook: available for this course on TWEN and also in hard copy at Wilbert’s
(3) Florida Evidence Code Summary Trial Guide (available at Wilbert's)

Other Good Resources (not required):
Carlson, A Student's Guide to Elements of Proof (Thomson West)
Ehrhardt, Florida Evidence
Ehrhardt, Florida Trial Objections.
Imwinkelried, Evidentiary Foundations
Dubin and Guernsey, Trial Practice (Anderson)
Lubet, Modern Trial Advocacy (NITA)
McElhaney, Trial Notebook (ABA)

Course Schedule

Tuesday, January 8    Introduction to Trial Practice
Reading: Chapters 1 and 2 in Mauet, Trials

The trial is a complex form of dispute resolution. We will consider the ultimate goal of persuasion as well as the mechanics of advocacy at each stage. This course focuses on skills necessary for excellent courtroom practice.

Wednesday, January 9    Relevance, Proof, and Storytelling

Lawyers should prepare for trial by exhausting every avenue of discovery, both formal and informal. In this process issues are framed, and a plan for all necessary proof is developed as well as a plan for challenging and impeaching the other party's case. Ask yourselves this:
What do we need to prove or challenge? How do we prove or challenge it? How do we make it interesting? How do we appeal to the jury’s sense of justice?

**Thursday January 10**  
**Direct Examination**  
**Reading:** Chapter 5 in Mauet, Trials

Lawyers question witnesses and introduce other forms of evidence during direct examination. The sum of a party’s direct exam evidence is the “case in chief.” A skilled advocate presents the witness in a straight-forward, engaging, “interview” style.

**Tuesday January 15**  
**Direct Examination (continued)**

We consider language, chronology, pace, and the best way to phrase questions. How do lawyers present their proof in a clear and interesting manner through their witnesses?

**Tuesday Evening, Workshop:** Be prepared to conduct direct examinations in Problems #1 and #2 in Trial Practice Cases and Materials, *State of Florida v. Sheila Menlo* and *State of Florida v. Cynthia Baker*. All students should prepare their questions in writing as part of the training process. Courtroom attire is worn in the workshops.

**Wednesday, January 16**  
**Cross Examination**  
**Read:** Chapter 6 in Mauet, Trials

We will begin work on cross examination by considering the goals (discrediting, impeaching, exposing weaknesses in the opposition’s case).

**Thursday, January 17**  
**Cross Examination (continued)**

Techniques for controlling the witness and maintaining the focus of the cross examination will be considered. We will address scope and foundations for impeachment. Methods of impeachment will be discussed.

**Tuesday, January 22**  
**Making and Meeting Objections**

In relation to direct and cross examination, we will discuss objections, beginning with relevance, and other common issues like hearsay, objections relating to the form of question, and impeachment.

**Tuesday evening, Workshop:** Be prepared to conduct cross examinations in Problems # 3 and #4 in Trial Practice Cases and Materials, *Winthrop v. Preston’s Tree Service* and *State of Florida v. Strong*. 
Wednesday, January 23  Exhibits and Visual Aids  
Read Chapter 7 in Mauet, Trials

Evidence comes in many forms, such as documents, pictures, audio and video recordings, substances, x-rays, charts, diagrams, firearms, and any other physical item that is relevant in a case. There are other visual elements in a trial that are very important although they are not technically admitted as evidence. Everything the jury can see has significance.

Thursday, January 24  Exhibits (continued)

Foundations for moving items into evidence should become second-nature to the practicing trial lawyer. It is helpful to view foundation as a sort of courtroom 'mini-quiz' to test relevance and reliability. We will begin with the basic foundations for tangible items, pictures, diagrams, and writings.

Tuesday, January 29  Expert witnesses  
Reading: Chapter 8 in Mauet, Trials

Lawyers rely heavily on experts to assist in proving their claims. A properly qualified expert is often needed to give opinions on causation, medical procedures, forensic testing and comparison, and any other area that calls for specialized knowledge. Lawyers need to be skilled in handling expert witnesses.

**Tuesday evening workshop:** Be prepared to lay foundations for real and demonstrative evidence in Problems #5 and #6, Trial Practice Cases and Materials. *State v. Menlo* (exhibits only) and *Gentry v. Antiques-4-Less*. Students should be prepared to introduce the exhibits with the appropriate foundation witness and the appropriate questions. Additionally, students should “use” the exhibits after having them successfully admitted as evidence.

Wednesday, January 30  Expert Testimony (continued)

Preparing and calling expert witnesses, laying proper foundations for expert opinion testimony, and objections that pertain.

Thursday, January 31  Motion practice and Objections  
Read Chapter 10 in Mauet, Trials

A trial lawyer must ask the court to exclude irrelevant or otherwise inadmissible evidence in order to protect the client's right to a fair trial. We will discuss various types of motions and procedures for making objections to evidence pretrial and during trial.
**Tuesday, February 5**  
Motions and Objections continued.

**Tuesday evening workshop:** Examination of Expert Witnesses and Key Witnesses: Problems #7 and #8 in Trial Practice Cases and Materials  
*State v. Harris* (full direct/cross) and *Justine Minor v. Paradise Police Department*  
Be prepared to conduct full direct and cross examinations.

**Wednesday, February 6**  
Voir Dire  
Read Chapter 3 in Mauet, Trials

We will consider the goals and the process of jury selection and ways in which lawyers can best serve the interests of clients at this stage of a trial. Basic procedures and juror questionnaires will be discussed.  
*** Trial assignments will be posted in order to give all students a chance to think about voir dire in their assigned cases. The trial practice cases are all “filed” in state court.

**Thursday, February 7**  
Voir Dire (continued)

Discussion and Demonstration: (1) Who are the potential jurors and (2) How will they react to the case? (3) How do we intelligently exercise our challenges? Jury selection involves careful listening and observation, pre-supposing that a lawyer is skilled in getting jurors to express themselves. We must know the potential jurors well enough to make an educated guess about their reactions to the people and the facts of the case. Thorough and accurate case analysis is critical to a lawyer's decision making during the jury selection process.

**Tuesday, February 12**  
Opening Statements  
Read Chapter 4 in Mauet, Trials

What do the jurors need to hear from us before we present our evidence? Jurors want to know what happened and who is responsible for it. They want to know what the big issues are. They want to be interested and engaged at the outset. We will discuss ways of opening the case in the best manner possible.

**Tuesday evening workshop:** Voir Dire: Be prepared to ask at least three significant questions (and follow-up) based upon your case and your client or party. What do you need to know about these potential jurors in order to decide whether they will be receptive to your case and fair to your client? How would you exercise your challenges?
Wednesday, February 13          Closing Arguments
    Read Chapter 9 in Mauet, Trials

What do the jurors need to hear from us before they are sent to the jury room to decide the case? Closing is the time to argue the merits of the case, and challenge the credibility or weight of the other side's evidence. Closing arguments can be very powerful.

Thursday, February 14        Opening Statements and Closing Arguments (continued)

We will discuss persuasion. We will also discuss objections that arise during opening and closing and what pitfalls to avoid.

Tuesday, February 19        Preparing for Trial

We will work on planning and preparation for trial.

**Tuesday evening workshop: Be prepared to conduct an opening statement and a closing argument in your assigned trial case.

Wednesday, February 20        Preparing for Trial (continued)

Thursday, February 21        Professionalism and Civility

Tuesday February 26        Intensive Review Phase One (presentation skill)

Wednesday February 27        Intensive Review Phase Two (foundations & objections)

Thursday February 28th        TBA

March 4-8 is SPRING BREAK...Have a good one!
****PRACTICE TRIALS BEGIN ON EVENING OF MARCH 12****

All practice trials begin at 5:20pm in your workshop rooms

(5:20pm)

Tuesday, March 12 (regular workshop date) Darcy v. Beauchamp & Mobile Medic
Thursday, March 14 ***(please note this is Thursday) State v. Wynn
Tuesday, March 19 (regular workshop date) Temple v. Prime Global Ins.

(There is no 1pm lecture class during the practice trials)

Wednesday, March 20 Plaintiff/Prosecution Trial Review Class (1pm)
Thursday, March 21 Defense Trial Review Class (1pm)

All students should be preparing for final trials at this time

During trial preparation, remember this: Trials are searches for truth, justice, conflict resolution, or closure. The rules of evidence should operate to ensure that the jury will only consider relevant and reliable information in this search. It is essential that trial lawyers understand how to analyze every bit of information in a case in terms of relevance, probative value, and reliability based upon the evidence code. Lawyers also need to be appealing, professional, and persuasive.

Final Trial Schedule

All final trials will be held at the Criminal Justice Center on South Main Street unless otherwise posted/ announced in class.

Friday, March 22  5:00pm  Trial and Critique, Round I.
Saturday, March 23  8:30am  Trial and Critique, Round II.
Saturday, March 23  1:30pm  Trial and Critique, Round III.
**Courtroom attire is required for Tuesday evening workshops and for all lawyer assignments during final trials (during witness or critiquing roles at trial, you may wear business casual clothing). Each student will be assigned a witness role for the final trials. All witnesses are expected to be well prepared. Workshops on direct exam, cross exam, expert witnesses, and opening/closing will be videotaped, and students are required to review their own performances. Additionally, each student is required to have one video critique with an assigned advanced student. Details will be explained in class. Attendance is important in this course because we are developing advocacy skills. All absences must be excused in advance. The final trials are considered our equivalent of final exams and participation is mandatory. Laptop use will not be permitted during the lectures due to the nature of the course (trial work).**

Professor Zedalis may be reached at 273-0814 or by e-mail at zedalis@law.ufl.edu

Office Hours: Tuesday 2:00- 4:00 and Thursday 10-12. Additionally, walk-ins are welcome. Prof Z. has an open-door policy. Students are invited and encouraged to make appointments or just drop in for help or discussion.