TRIAL ADVOCACY I

COURSE INFORMATION

AND

STUDENT EXERCISES

Spring 2009
During the Fall '84 semester a Proposed Curriculum Outline for a Trial Advocacy Program was submitted to the Law School by a group of Kansas City lawyers who desired to assist the School in implementing and coordinating a broad-scale trial practice program. The proposal was the result of three separate efforts.

The first came from four UMKC Law School graduates, all of whom took Trial Advocacy and Appellate Advocacy I, and represented the School in the National Trial Competition. Some also participated as members of the School's National Moot Court Team. The four are currently engaged in disparate areas of trial practice.

They are:
Leanne DeShong  
Shook, Hardy & Bacon

Tim Dollar  
Stigall, Humphrey, Lucas et al

James Frickleton  
Bartimus Kavanaugh et al

Cindy Reams  
Weinsenfels, & Vaughan

The second effort came from the Young Lawyers Section of the Kansas City Metropolitan Bar Association, acting through its Law School Committee Chaired then by Kathleen Hardee of Gilliland & Hayes. Ms. Hardee is a former Law Clerk to U.S. District Judge Howard Sachs and is a 1979 Alumna of UMKC Law School.

The third effort came from Trial Advocacy Adjunct Professor James Wirken of The Wirken Law Group, a Professional Corporation, who at the time was a member of the Executive Committee of the Kansas City Metropolitan Bar Association, a board member of the Missouri Association of Trial Attorneys, and an active leader in educating the Bar in trial advocacy and skills education. The proposal recognized that in recent years there has been increasing criticism from members of the United States Supreme Court and other judges regarding the competency of lawyers to try cases and stated that much of the concern was shared by the organized bar, including the Kansas City Metropolitan Bar Association. (The proposal noted, however, that the statement of concern in no way detracted from the high quality practice of many experienced trial lawyers in the Kansas City community.) The proposal further observed that budgetary concerns
and a lack of utilization of the availability of skillful, experienced practicing attorneys have restricted the Law School from acquainting large numbers of students with the rudimentary fundamentals of trial practice. The proposal sought to address the problem by calling for a structured comprehensive trial advocacy program. Trial Advocacy I represents the first stage of the program. The faculty of the Law School approved the course during the Fall ’84 semester.

**Catalog Description**

Trial Advocacy I (2 hrs). A practical skills course in advocacy which introduces students to the fundamental components of a typical civil and criminal trial and requires students to perform exercises involving each component and try a mock civil or criminal case from provided problem materials. The course is graded on a pass/fail basis. Prerequisite or Co-requisite: Evidence.

**Nature of the Course & Eligibility to Become a Member of School's National Trial Advocacy Teams**

A two-hour, elective, substantive and practical basic skills course. It is the initial segment of a three-course sequence serving as the process for selection of regional and national trial advocacy competition teams. The team selection process requires that students prepare well for their Trial Advocacy I trials and achieve high marks for their performance if they desire to earn a position on the School's National Trial Competition teams since their performance is a significant factor in determining whether they will be invited to enroll in one of the accelerated sections of Trial advocacy II. Only students who are in the accelerated sections of Trial Advocacy II are eligible to be selected for team membership.

**Objective**

Introduction to the fundamental components of a typical civil and criminal trial with an emphasis on definition, content, and substantive law of trial advocacy as it applies to the scope and method of major components.

**General Format**

Students meet weekly for two hours. Each week, they view a demonstration or hear a lecture of a specific trial component or other matter (e.g., direct examination, making and meeting objections, ethical considerations, etc.). In addition, each week students meet in small group sections with a trial lawyer to discuss the previous lecture and/or perform exercises relating to the topic lectured on. Exercises are critiqued. It is the trial lawyer's function in the group session to emphasize required mechanics, and to help the students understand the trial law covered. Personal techniques are not stressed. Standardized materials are provided to the trial lawyers to assure uniformity of coverage and expectations. The materials include a course book and a teacher's manual (containing instructions to the trial lawyers, exercises and suggested critique format). Following completion of all demonstrations, lectures and exercises, the students try a mock civil or criminal trial from provided from National Trial Competition
problems or other materials. A faculty member supervises the administration of the course to ensure consistency and overall quality.
SYLLABUS
See description of each student exercise for your reading assignment and tasks to be completed prior to class. You must be prepared for each session.

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<tr>
<th>DATE(S)</th>
<th>GROUP</th>
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<tr>
<td>WEEK 1</td>
<td>Large*</td>
<td>Intro. to Course; Voir Dire</td>
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<td>Small**</td>
<td>Exercises--Voir Dire</td>
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<td>WEEK 2</td>
<td>Large</td>
<td>Opening Statement</td>
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<td>Exercises--Opening Statement</td>
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<td>WEEK 3</td>
<td>Large</td>
<td>Objections--Making &amp; Meeting</td>
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<td>Exercises--Objections</td>
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<td>WEEK 4</td>
<td>Large</td>
<td>Direct Examination</td>
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<td>Exercises--Direct Examination</td>
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<td>Direct Examination</td>
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<td>Exercises--Direct Examination</td>
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<td>Large</td>
<td>Cross-Examination</td>
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<td>Exercises--Cross-Examination</td>
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<td>WEEK 8</td>
<td>Large</td>
<td>Impeachment &amp; Rehabilitation</td>
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<td>Exercises--Impeachment &amp; Rehabilitation</td>
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<td>WEEK 9</td>
<td>Large</td>
<td>Closing Argument</td>
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<td>Exercises--Closing Argument</td>
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<td>WEEK 10</td>
<td>Large</td>
<td>Trial Motions</td>
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<td>Exercises--Trial Motions--Prepare for class the Motion in Limine to be used in the mock trial</td>
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<td>WEEK 11</td>
<td>Large</td>
<td>Witness Preparation</td>
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<td>Pre-Trial Discussion of Trial Matters, Evidentiary</td>
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WEEK 12  |  No Large Group Session  
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<tr>
<td><strong>Mock Trials--Jackson County Courthouse--415 E 12th Street, Kansas City, Missouri (check administrative bulletin board for trial time, division and date.)</strong></td>
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Introduction of course and large group lecture sessions are given in Courtroom (6:00-7:00 p.m.) Attendance at all sessions is mandatory.

** Small group sessions meet in seminar rooms/courtroom -- see course schedule online for your room assignment.

**Note:** The following weeks there are no Trial Ad classes, the schedule will resume with the next exercise when classes resume.

<table>
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<tr>
<th>First Mini-Term</th>
<th>February 16-20 (No classes except First Mini-Term classes)</th>
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<tr>
<td>Spring Break and Second Mini-Term</td>
<td>March 23rd-27th (No classes except Second Mini-Term classes)</td>
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**STUDENT EXERCISES**

**Voir Dire Exercise**

**Fernandez v. Kastle**

Jesus Fernandez is the father of a seven and one-half year old boy, Phillipe, who was struck by defendant's late-model Cadillac and severely injured as he ran out from between two parked cars. The boy had been playing ball on the sidewalk, on the driver's right, and he was chasing a ball which had rolled into the street. The accident occurred in the middle of the block on Chestnut Street, in Verona, New Jersey, a street bordered by large old houses in an economically depressed neighborhood set well back from the sidewalk. The street is a typical neighborhood street - two moving lanes with room for parked cars on both sides. The lane on the driver's side was well filled with parked cars. Fernandez came to the United States from Puerto Rico with his wife, Estelle, and 6 children, 3 years ago. He is a driver for a taxicab company. His wife is a homemaker.

The defendant, Bernard Kastle, is a physician who was spending the morning making house calls.

The relevant law of the jurisdiction, New Jersey, which is a pure comparative negligence jurisdiction, has been stated to be:

"Both an adult and a minor are under an obligation to exercise reasonable care; however, the 'reasonable care' required of a minor is measured by a different yardstick - it is that measure of care which other minors of like age, experience, capacity and development would ordinarily exercise under similar circumstances."

**TASK:** Students whose last name begins with A-L, prepare to select a jury for plaintiff. Students whose last name begins with M-Z prepare to select a jury for defendant.

Each student selected to perform the exercise will have approximately 10 minutes to ask his or her questions of the potential jurors. A critique will follow by the trial lawyer and the students in the section selected to serve as jurors. A list of potential jurors, containing names, addresses and present occupations will be provided to the students selecting the jury.

**READING:** The Trialbook, Chapter 4: The Jury Selection Process. Also, review the attached federal and state juror qualification questionnaires and list of names of persons to report for petit jury service at the U. S. District Court for the Western District of Missouri; Western Division. Trial Techniques, Chapter III, Jury Selection.

In advance of the exercise, complete Form 4-1, Jury Selection Worksheet (page 172). Turn a copy of the completed form in to your instructor during the voir dire exercise session.
POTENTIAL JURORS

1:
Ahern, Mrs. Eleanor
471 Williams Street, Verona, New Jersey
Housewife

2:
Bailey, Mrs. Phyllis M.
13 Jacqueline Drive, Verona, New Jersey
Housewife

3:
Braufeld, Lee
345 Landrillo Road, Verona, New Jersey
Office Manager

4:
Rankin, Lee
49 Parker Street, Verona, New Jersey
Unemployed

5:
Fitzgerald, Jerry
13 Larchwood Street, Verona, New Jersey
Interior Decorator

6:
Chasen, Mark
92 Woodland Ave., Verona, New Jersey
Clerk

7:
Sanchez, Miss Rita
32 Chestnut Street, Verona, New Jersey
Social Worker

8:
Lodner, John
49 Lyons Street, Verona, New Jersey
Opening Statement Exercise

You have been provided with mock trial materials (The State of West Columbia v. Barbarrett). The material contains witness statements, exhibits, jury instructions, etc. It is the material from which you will prepare an opening statement, direct examinations and a closing argument for exercise purposes and will be the materials used for the mock trials at the end of the semester. The rules of the National Trial Competition, including time limits for various trial segments are included with the materials. Become familiar with the rules so that you will not violate them during the mock trials. The Federal Rules of Evidence are the applicable rules for the trials and are the rules of evidence applicable to all of the remaining exercises.

**TASK:** If your last name begins with A-L prepare a 5-minute opening statement for the prosecution. If your last name begins with M-Z, prepare a 5-minute opening statement for the defendant. Present it as you think most effective. Be prepared to object to your opponent’s opening statement if it violates the rules governing opening statements.

In advance of the exercise complete the Opening Statement Planning Worksheet (Form 5-1) and Opening Statement Worksheet (Form 5-2). Turn the copies of the worksheets in to your instructor during this exercise session.

**READING:** The Trialbook, Chapter 5: Opening Statement; Chapter 9, Sections 9.1, 9.2, 9.6, 9.8A and 9.9.

Trial Techniques, Chapter IV, Opening Statements

Making and Meeting Objections Exercise

**TASK:** Study The Trialbook, Chapter 9: Objections. Also Trial Techniques, Chapter X, Objections.

During the session you will be tested on your knowledge of the following Trialbook sections: 9.3 A, B, C (first paragraph), E, F, I, J, O, P, Q, R, S, T, U, V, W, X, Y & Z; 9.4, 9.6 & 9.8.

Most of the questions you will be asked on the test will ask you to state the specific, precise legal ground for objection to a question or matter. (See 9.8 (4)). So learn the appropriate generic objection -- they appear as headings to the various paragraphs with perhaps one or two words added. e.g., State the specific, precise legal ground for objection to the following question:

Q. "In your own words, Ms. Smith, tell the jury everything that happened to you on July 1." Objection. "I object. The question calls for a narrative answer." (See 9.3 P).

**THIS IS ONE OF THE MOST IMPORTANT EXERCISES -- LEARN THE GENERIC LABELS AND WHEN THEY ARE APPROPRIATE!**
Laying Foundations Exercise

Berman v. Wirken

Paul Berman has filed suit for damages claiming that the defendant, Melvyn Wirken committed a battery upon his person on January 1 at 2:00 a.m in Mike's Bar by hitting him over the head with a beer bottle for no apparent reason, knocking him unconscious. He further alleges that he and the defendant had not known each other prior to that time.

Defendant admits that he was in the bar, but denies plaintiff's version. He claims that he had purchased a motorcycle from plaintiff two weeks prior to the incident and that when he went into the bar, plaintiff walked up to him, cursed at him and swung at him with a bottle. In self-defense he struck plaintiff with his fist. The force of the blow rendered plaintiff unconscious.

Assume that the police were called and immediately responded to the tavern and questioned witnesses.

Assume further, that a police photographer took pictures of the plaintiff and defendant shortly after the incident. The picture of the plaintiff shows him lying on the floor unconscious and his face severely bruised. An unbroken beer bottle is on the floor next to him. Plaintiff is 5 feet 5 inches tall and weighs 155 pounds. The picture of the defendant shows him standing with a smile on his face and he appears unmarked, although a bit ruffled. Defendant is 6 feet, 4 inches tall and weighs 225 pounds.

TASK 1:

Note: For all tasks requiring introduction of evidence through witness testimony you are to select a fellow student in the class to be such witness and prepare the witness to testify prior to class. CONFINE QUESTIONS MAINLY TO FOUNDATION ONES. THE QUESTIONS SHOULD MEET THE ELEMENTS NEEDED TO BE PROVED.

(a) For the plaintiff, be prepared to introduce the photographs of the plaintiff and defendant into evidence through the testimony of a witness selected at your option.

(b) For the defendant, be prepared to oppose the offer.

Assume the police took possession of the bottle lying next to the plaintiff on the floor shortly after the fight.

TASK 2:

(a) For the Plaintiff, introduce the bottle into evidence through the testimony of a witness selected at your option.
(b) For the defendant, oppose the offer. Assume that the police took possession of the beer bottle shortly after the fight, but that somehow the bottle was lost while in the possession of the police.

**TASK 3:**

(a) For the plaintiff, introduce a bottle like the one allegedly used by Wirken into evidence through the testimony of a witness selected at your option.

(b) For the defendant, oppose the offer.

Assume that the defendant has a hand-written letter signed Paul which states:

“Melvyn,

Your check bounced. The next time I see you I'll get you for that.

Paul”

**TASK 4:**

(a) For the defendant, introduce the letter into evidence through the testimony of a witness selected at your option.

(b) For the plaintiff, oppose the offer.

**TASK 5:**

(a) Prepare a simple diagram (not drawn to scale) of the area in which the incident took place in the bar before class and for the plaintiff lay a foundation for the use of the diagram by a witness selected at your option through the testimony of the witness.

(b) For the defendant, oppose its use.

**READING:** The Trialbook, Chapter 7: Exhibits; Chapter 9, Sections 9.1, 9.3(A-L), 9.4, 9.8A.

Trial Techniques, Chapter VI, Exhibits.

Prepare Form 7-2 for each exhibit and turn a copy of the forms in to the instructor during the session.

**Direct Examination Exercise**

**TASK:** Refer to the Mock Trial materials you have been provided.
Those of you with last names beginning with A-L should prepare a written direct examination of CM Chaney. Select a student in the class to be Officer Gaffbey and prepare the witness to testify prior to class. Write or type your questions and anticipated answers out. Turn into your instructor a copy of your questions and anticipated answers at the beginning of the session.

Those of you with last names beginning M-Z shall prepare a direct examination of Barbara Barrett. Select a student in the class to be Barbara and prepare the witness to testify prior to class. Barbara may provide additional facts to you consistent with his being a real person, living in the real world but you may not add facts not in the record or those that are drawn as reasonable inferences therefrom. Write or type your questions and anticipated answers out. Turn into your instructor a copy of your questions and anticipated answers at the beginning of the session.

Required reading: The Trial Book, Chapter 6, Direct Examination.
Trial Techniques, Chapter V, Direct Examination

Cross-Examination Exercise

TASK: Refer to the Mock Trial materials you have been provided.

If your last name begins with A-L, be prepared to conduct a cross-examination of Barbara Barrett. Write or type your questions and anticipated answers out. Turn a copy in to your instructor at the beginning of the session.

If your last name begins with M-Z, be prepared to conduct a cross-examination of Officer Chaney. Write or type your questions and anticipated answers out. Turn a copy in to your instructor at the beginning of the session.

READINGS: The Trialbook, Chapter 8, Cross-Examination
Trial Techniques, Chapter VII, Cross-Examination.

Note: Be sure to read the memorandum on the following page dealing with your student mock trials.
MEMORANDUM

Re: Coordination of End of Semester Trials

As you are aware, the student trials are scheduled for the last week of classes. At the present time, efforts are being made to arrange for use of the Jackson County Courthouse for presentation of your trials. You are entitled to team up with any individual who is enrolled in the Trial Advocacy I course as your partner. **Your partner's name and side preference (whether prosecution or defense) must be submitted to your instructor during the regularly scheduled class NO LATER THAN MARCH 26, 2008, who will transmit the information to the Trial Advocacy Coordinators.** Every reasonable effort will be made to accommodate your team's preference. If you do not have a partner, please so inform your instructor. In such an event, the Trial Ad Coordinators will team students up among students who do not have partners.

Please note that it is very important that you prepare well for your trial and achieve high marks for your performance if you desire to earn a position on the School's National Trial Competition teams since your performance will be a significant factor in determining whether you will be invited to enroll in one of the accelerated sections of Trial Advocacy II. Only students who are in the accelerated sections of Trial Advocacy II will be eligible to be selected for team membership. Therefore, consider the trial a competition to qualify for an accelerated section and remember that being in an accelerated section of Trial Advocacy II is a prerequisite to make the team.

Your trial date, time, and side will be emailed to you no later than April 9, 2009. The time limits for your trial are generally the same as those set forth in the rules of the National Trial Competition (which are contained in your packet). Each team is responsible for managing allocation of the time available for presentation of its case. Because this can be a difficult task, it is recommended that you use the suggested time limits set forth in the rules of the national trial competition (10 minutes for direct examination, 8 minutes for cross-examination, 5 minutes for redirect examination and 2 minutes for re-cross examination) as a guideline. Review the rules of the national trial competition and the Addendum to Mock Trial (Local) Rules which follow this memorandum for other procedural information relative to your trial.

If you have any questions or concerns regarding the trial competition, do not hesitate to talk with your small group instructor or with Trial Advocacy Coordinators, James C. Wirken (jwirken@wirkenlaw.com) and Charlene Wright (cwright@lathropgage.com). We are confident that your trials will go smoothly. You have had ample opportunity through the semester to familiarize yourself with the trial problem prepared especially for you. Remember that the focus of your trial is to provide a forum for application of the fundamental skills you have acquired during this course. No one expects a "Perry Mason" performance; however, everyone expects you and your witnesses to be prepared. Witnesses should not be reading from a script; nor should you! Performances which reflect an understanding of the fundamentals of trial advocacy will be expected. Your small group instructors will be available to assist you in answering questions about the trial problem or the administration of the trials.

Reading: The Trialbook, Chapter I, Trial Preparation.
Trial Techniques, Chapter I & XI, Trial Process, Preparation and Strategy.
Addendum To Mock Trial (Local) Rules
Adopted April 8, 2004

Office of Trial Advocacy Coordinator
University of Missouri Kansas City School of Law

Rules of Evidence
1. The Federal Rules of Evidence (FRE) and Federal Rules of Criminal Procedure shall control. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory or case law shall be cited except for what is provided in the fact pattern. Students may argue the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written trial briefs or motions, trial notebooks or other written materials should be presented to the court, other than motions en limine which may be filed and argued as set out in the Mock Trial Rules.

Participation/Witnesses
2. Team members acting as advocates must participate in three of the six phases of the trial. Opening statement and summation may not be done by the same person.

3. Every effort has been made to make the parties and witnesses to this case gender neutral. In some instances the language would have been too awkward. You may use either sex and the appropriate pronouns for any witness.

4. The same attorney conducting direct examination of a witness shall also conduct any redirect examination. Witnesses may not be re-called.

5. All witnesses are previously sworn.

6. "The Rule" of sequestration of witnesses will not be invoked during any trial.

7. All evidence and witnesses have been properly disclosed and exchanged between the parties.

8. Each side will only call two witnesses in their respective case-in-chief as set out in the Mock Trial Rules.

9. During the presentation of their cases, participants and their witnesses may only use the facts contained in the problem. However, witnesses and attorneys may draw reasonable inferences from facts contained in the problem, when facts are not material, such as a witnesses’ background.

10. The order of summation is first plaintiff then defendant. The plaintiff will be permitted to make a rebuttal summation.
**Facts Outside The Record**

11. Teams must confine their presentation to the facts given in the fact pattern and inferences which may reasonably be drawn therefrom (“the record”) and any matters judicially noticeable under Rule 201 of the Federal Rules of Evidence. An “inference” is not any fact you might wish to be true; rather, it is a fact that is likely to be true, given the other facts in the case. Except during closing argument and redirect, no objection shall be made that the opposing team is “going outside the record,” and any breach of the rule shall be addressed instead by means of impeachment.

12. Witnesses must admit, if asked, and if true, that the facts they have testified to are not in their deposition or otherwise in the record. Witnesses may not qualify this admission in a misleading way by saying, for example, that they were not asked about these facts during their deposition, or that the facts were contained in some other portion of the deposition, which was omitted from the record. The answer should simply be: “No, I did not say that in my deposition.” The judges will be instructed concerning the significance of this form of impeachment in the mock trial context, and they are likely to account for unfair additions to the record (i.e., inferences which may not reasonably be drawn from the record or matters not judicially noticeable under Rule 201 of FRE) in their scoring of the witness’s team. On redirect an objection may be made as to information being outside the record, and this objection may be argued to the Court.

**Substantive Law/Objections**

13. Assume that the instructions provided in the fact pattern are the only instructions to be given and are not subject to motion or modification. They are the only statements of the applicable substantive law. No additional instructions may be tendered. These instructions may be referred to during closing arguments.

14. No team shall break the trial fiction by objection “outside the fact pattern” or referring to the competition or problem. Any reference to the fact pattern may be made by describing the “local rules.”

15. Objections must be brief, citing the legal grounds. Any argument must be requested. Any oral arguments regarding objections must be requested to be side bar, which will be a constructive side bar not actual. The jurors should be allowed to hear such argument.

16. Any team may request a directed verdict or other appropriate verdict under the federal rules at any appropriate time. However, the judge will not make any ruling which will end the trial before closing arguments are completed.

17. Jurisdiction and venue are proper in this Court, but the prosecution must proffer evidence which establishes jurisdiction and venue.
Exhibits
18. The use of demonstrative evidence is limited to that which is provided in the fact pattern. Participants are free to enlarge any diagram, statement, exhibit or portion of the fact pattern, only if substantially identical.
19. Counsel and witnesses may draw or make simple charts and drawings in court for the purpose of illustrating the direct or cross-examination of argument. They may not be prepared in advance. However, no demonstrative evidence outside the given facts may be "created" for the purpose of this competition.
20. All exhibits are authentic and genuine, and assume that they have been authenticated for trial purposes. However, competitors may challenge their admission.
21. Teams may use dry erase boards or drawing pads during any phase of the trial. However, no drawing may be made before the commencement of trial.
22. Teams may not make the use of PowerPoint displays or of overhead projections of any kind.

Scoring Criteria
23. Performance at trial will be evaluated by the Judge who presides over each trial. The Judge may award up to five points in each phase of trial for both the plaintiff and defendant. A sample score sheet is attached for your review. The following criteria for scoring trial performances are set forth to assist both the judge and student advocates. Judges are not limited to these criteria and may consider other aspects of strategy, technique, etc., which they view as important.

OPENING STATEMENT
Did Counsel...
  1. Generally confine statement to outlining the evidence that would be presented?
  2. Clearly present counsel's theory of the case?
  3. Persuasively present counsel's theory of the case?
  4. Personalize self and client?
  5. Allow opposing attorney to make argument during opening statement?
  6. Make unnecessary objections?

EXAMINATION OF WITNESSES
Did Counsel...
  1. Ask questions that generated a minimum of valid objections?
  2. Make/fail to make objections with tactical or substantial merit?
  3. Respond appropriately to objections made?
  4. Know the rules of evidence and express that knowledge clearly?
  5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did direct examiner...
9. Unnecessarily use leading questions?
10. Develop testimony in an interesting and coherent fashion?
11. Follow up on witness' answers?
12. Present the witness in the most favorable light?

Did cross-examiner...
13. Appropriately use leading questions?
14. Control witness?
15. Follow up on answers and elicit helpful testimony?
16. Use impeachment opportunities?

**CLOSING ARGUMENT**

Did Counsel...
1. Present a cohesive theory of the case pulling all the positive arguments together?
2. Deal effectively with the weakness in counsel's own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Was the rebuttal properly confined to rebuttal matters?
8. Was the rebuttal effective in countering the opponent's speech?
Impeachment and Rehabilitation Exercise

STATE v. DOLLAR

The state has charged Jack Dollar with the crime of carrying a concealed weapon. Officer Moenssens, while working off-duty in full police uniform at a tavern, the House of Brew, arrested Dollar on December 3, YR-1, at approximately 11:30 p.m. The officer’s offense report follows this problem.

The defendant, Jack Dollar, has filed a motion to suppress all evidence seized and to dismiss the case on the grounds that Officer Moenssens did not have reasonable cause to “frisk” him and that, therefore, the discovery of the weapon was tainted and illegal. The prosecution contends that officer Moenssens never had an opportunity to “frisk” the defendant, as he went for his gun right after the officer had asked him for his identification.

The motion to suppress is now before the court for a hearing. Assume that officer Moenssens is called as a witness for the state and on direct examination, he testified as follows:

Q. When did you first observe Mr. Dollar in the House of Brew?

A. Mr. Dollar first caught my attention when he was walking towards me and he stopped suddenly. He looked at me and then started walking away toward the side bar.

Q. How were you dressed?

A. I was in full police uniform.

Q. What did you do then?

A. I watched him and then I thought I recognized him as one of the individuals I’d seen on our wanted sheet. I thought there may be a warrant out for him so I approached him to check his identification.

Q. What happened?

A. When I got up to him--about a foot away--I started to ask him for his identification when his hand went inside his sports jacket, and he reached for a gun, which was tucked in his waistband. I reached for his wrist and forced him to drop the weapon. I cuffed him and patted him down for further weapons. I recovered three bullets and a pocketknife from his pocket.

Q. Before the defendant reached for the gun, what did you say to him and what did you do?

A. I started to ask him for identification when he suddenly went for his gun. I just got out the words, “May I see your--” when he reached for the gun. I didn’t really get a
chance to ask him for identification.

TASK 1:

(A) For the defendant, conduct a cross-examination and impeachment of officer Moenssens.

(B) For the state, conduct any necessary redirect examination.

=================================================================================================

Kansas City Police Department
Interdepartmental Correspondence

To: Stickup Detail, Narcotics, and Captain Berman
From: J. Moenssens 68-14


While working off-duty at the House of Brew, located at 500 E. 13th Avenue, at about 11:30 p.m. on 12-3-YR-1, I observed Jack Dollar, whom I believed to be wanted. I contacted Dollar and requested identification, at which time I patted him down for weapons. At this time Dollar moved back and began reaching with his left hand inside his sport jacket for a gun which was in his waistband, at which point I grabbed his hand and forced him to drop the gun. I placed Dollar against the bar and began to handcuff him when I observed a Robert L. Colt toss a checkbook behind his back onto the floor behind him. I immediately recovered the checkbook and found it to contain three hand-rolled marijuana cigarettes. The checkbook was issued to Robert L. Colt of 225 Gilpin Street, Kansas City, account #37-09787. Dollar was placed under arrest for CCW and Colt for illegal possession of narcotics (marijuana).

At this time, one Victoria Tyler began protesting the arrests and swearing in the presence of patrons, both male and female. Some statements made by Tyler were, "You bastard," "You pig," etc. Tyler, when told she was under arrest, went wild and had to be restrained until she was handcuffed. Tyler was charged with 847.1 (Interference), and 823.8 (Filthy language). Dollar and Colt were both verbally advised of their Miranda warnings at the scene and again at headquarters.

The revolver seized was an INA .38 Special 4" blue steel-serial #074977 fully loaded with five cartridges. An additional three cartridges were recovered from Dollar’s left front pants pocket. The gun is apparently clear and registered to Steven Jackson of 1477 Race Street.
All evidence remained in the custody of the recovering officer and was placed in the Custodian’s Office to be held as evidence and analysis after being tagged and sealed. All parties lodged in the Jackson County jail.

Respectfully submitted,
(Signature)
J. Moenssens

December 4, YR-1

People v. Bill Jones

Bill Jones is charged with possession of marijuana with intent to distribute, a felony. Officers Smith and Wesson have testified that on January 4, YR-0, they observed Jones speed by their parked car on the Interstate within their jurisdiction. Their radar clocked Jones at 78 mph. The speed limit was 65 mph. The officers immediately initiated pursuit and pulled Jones over. Smith walked to Jones’ car and saw him lean toward a brown paper bag on the front seat. Fearing for his safety, Smith ordered Jones out of the car and drew his revolver. Jones was very indignant and got out of his car, asking what this was all about. Smith then had Jones put his hands behind his head and proceeded to pat him down. He did not find any weapon.

While Jones was engaged in these activities, Officer Wesson searched Jones’ car and found a packet of marijuana in the brown paper bag on the front seat. [No Fourth Amendment issues need be raised here. Assume the motion to suppress the evidence was made and denied prior to trial.] When Wesson showed the marijuana to Jones, he blurted out, “That’s not mine; Where did that come from?” Jones was then handcuffed and taken to the police station.

At the station house Jones, acting very upset, told the desk sergeant that he was being framed because Wesson must have planted the marijuana in his car.

At trial Jones testified that he had never seen the bag or the marijuana before Wesson showed it to him, contending that he was being framed by Wesson: “I have never had marijuana anywhere near me before. In fact, I didn’t even know what marijuana looked like before that day!” said Jones.

TASK 2:

(A) For the prosecution, cross-examine the defendant using his prior criminal record (to the extent you can under the federal rules of evidence)

(B) For the defendant, conduct any necessary redirect examination.

Present Offense: Possession of Marijuana with Intent to Distribute

Where Committed: I-70, near Oak Street Exit
**Where detained for trial:** Jackson County Jail

**Prosecuting attorney:**

**Officer who worked on case:** Smith; Wesson

**Prior Record:**

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<tr>
<th>Arrest Date</th>
<th>Place</th>
<th>Charge</th>
<th>Disposition</th>
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<tr>
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<td>JaCoMo</td>
<td>Felony Ass &amp; Batt</td>
<td>Unknown</td>
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<tr>
<td>12/24/YR-4</td>
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<td>Burglary</td>
<td>Plea, Misd.Petty Larceny; 3 mo prob 3/20/Yr-3</td>
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<td>6/30/YR-3</td>
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<td>Burglary</td>
<td>Guilty/2 yr 9/19/YR-3 rev’d Sup Ct. 2/10/Yr-2</td>
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<td>2/14/Yr-2</td>
<td>ClayCoMo</td>
<td>Misd. Assault</td>
<td>Guilty/30 days, susp’d 2/28/YR-2</td>
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<td>Poss Marijuana/Intent to Distr</td>
<td>Plea Guilty/6 mos</td>
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<td>JaCoMo</td>
<td>AttemptRape</td>
<td>Not guilty 10/2/ YR-1</td>
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<td>9/11/Yr-1</td>
<td>JaCoMo</td>
<td>Perjury</td>
<td>Plea Guilty/30 days 9/30/YR-1</td>
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<td>JaCoMo</td>
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**READINGS:** The Trialbook, Chapter 8, Cross-Examination, Section 8.5-8.7; Trial Techniques, Chapter VII, Chapter V, Section 5.14.
Closing Argument Exercise

Task: Refer to the Mock Trial material you have been provided. If your last name begins with N-Z, prepare a 15-minute closing argument for the prosecution, reserving time for rebuttal. If your last name begins with A-M, prepare a 15-minute closing argument for the defendant.

Reading: The Trialbook, Chapter 10, Closing Argument.
Trial Techniques, Chapter IX, Closing Arguments

In advance of the exercise, complete Form 10-1, Closing Argument Worksheet. Turn a copy of the completed form in to your instructor at the beginning of the session.
THE TRIAL MOTIONS EXERCISE

1. **Motion in Limine:**

   A. **Facts of the Exercise**
   
   Refer to the Mock Trial materials you have been provided.

   B. **Assignment**
   
   If your last name begins with A through L, you will represent defendant. Your task is to prepare a Motion in Limine asking the court to preclude the introduction into evidence of any information contained in the letter found next to the deceased. Draft a brief (1-2 pages) written motion and be prepared to argue in support of it to the court.

   If your last name begins with M through Z, you will represent the State of Missouri. Your task is to prepare a Motion in Limine asking the court to rule to preclude the admission of Barbara Barrett’s subsequent statement written several weeks after her sworn confession.

   The State's counsel(s) should be prepared to argue against defendant's motion. Defendant's counsel(s) should be prepared to argue against the State's motion.

   Turn in a copy of your motion to the instructor at the beginning of the session.

   C. **Reading**

   The Trial Book, Chapter 2, Trial Rules and Motions.

   Trial Techniques, Chapter X, Sections 10.1 & 10.2.