Trial Advocacy
Course Memorandum & Syllabus
Spring 2018

Clinical Assistant Professor Mark Brittingham (Office 256)
e-mail: mabritt@siu.edu
office phone: 618-453-8744

Weekly Lecture & Lab Wednesday 5-8 p.m.
Courtroom (Room 108)

NOTE: This was Dean Behan’s course. He has graciously allowed me to use his syllabus as the template for this one. I have borrowed liberally and literally from his syllabus. NOTE: In years passed, some students have viewed this course as any easy way to get 3 credits without doing any work. As a consequence, we now have Professor Behan’s rules, which follow. Don’t be put off by them. I believe that this is the best course in law school! Also, grades tend to be higher in this class than in most others, at least for the students who actually do the work. I look forward to seeing you in class.

1. Course Overview and Objectives:

The purpose of this course is to teach you the foundational skills you will need to try a case in a courtroom setting. The basic skills needed by every trial lawyer include case analysis and planning, direct and cross examination, proper use of exhibits, and effective opening statements and closing arguments. The trial advocacy course will focus exclusively on those skills. The course objectives are three-fold: (1) to achieve competency of basic trial skills; (2) to try a case in an actual courtroom setting; and (3) to work hard and have fun along the way.

For each class I expect you to show up having done three things: (1) completed any out-of-class assignments; (2) read the assigned material and watched the assigned videos; and (3) prepared the assigned advocacy exercise. Your written materials for the week’s advocacy assignment (direct examination, cross examination, opening statement, closing argument, etc.) are due—typewritten and printed on paper—at the beginning of class. They must always be turned in to me in hard copy format. No exceptions.

There will be two sessions to each class. First will be a discussion of the evening’s topic. The purpose of this session is to prepare you for the advocacy exercises you’ll be doing later in the class. Following the opening session, we will have a lab during which you will perform the assigned skills for the week.

2. A Few Key Concepts and Rules:

I expect a high level of preparation, professionalism and performance from all students in this class. To the extent possible, we will treat the classroom environment as if it is an actual courtroom.
a. **Dress.** Unless I tell you otherwise, you must wear appropriate courtroom attire.

b. **Computers.** Computers are not permitted in this class, either in the plenary or lab sessions. To alleviate your note-taking concerns, I post on TWEN copies of any PowerPoint slides we use in class. If you would like to use computer files during performances (exhibits, PowerPoint, and so forth), you may put your file on a flash drive and use the classroom computer.

c. **Class Participation.** Here is a key rule: You are never allowed to “note out,” “pass,” or decline to participate, whether as an attorney, witness, or observer. **IF YOU CAN’T LIVE BY THIS RULE, PLEASE DROP THE CLASS NOW SO YOU DON’T WASTE EVERYONE ELSE’S TIME.** Abiding by this rule means you must show up prepared for class, every time. Additionally, keep in mind that all trial work takes place in front of other people. You must learn now to overcome embarrassment, self-consciousness, fear of public speaking, and other phobias that might interfere with your effective representation of a client in court. (NB: Look, you have now been in law school long enough to know that you can’t embarrass yourself in front of your classmates or your instructors. Relax and do your best. This is the most fun class in law school.)

d. **Timeliness.** Please be courteous to your fellow classmates and be on time.

e. **Partners.** There is at least one exercise this year that requires a partner—the final trial. Your partner must come from this class. Depending on enrollment numbers, it is possible that someone may have to try a case without a partner. If you would prefer to work alone, please let me know.

3. **Course Materials:**

a. **Text.** Our course text is Thomas A. Mauet, *Trial Techniques & Trials* (Walters Kluwer) (10th ed. 2013). I used this same book 36 years ago when I took Trial Advocacy, and I still have my copy. It is the ONLY law school text that I continued to use in practice. This book is the gold standard in trial advocacy.

I will also assign readings that I will post on TWEN. These will usually come from the wonderful trial stories of James McElhaney in his book *Trial Notebook.*

b. **Case Files.** You will use two case files for the course. The first, *People v. Steele* is a criminal case. We will use it for our classroom exercises. The second case file will be provided to you during spring break and will be used the rest of the semester and for the final trials. Both case files are provided to you free of charge on the course TWEN page.

c. **Advocacy Resource Center.** Supplemental resources consisting of lectures and other materials from Stetson University College of Law’s Advocacy Resource Center (ARC) are available at [http://www.law.stetson.edu/ARC/](http://www.law.stetson.edu/ARC/). When you navigate to the website, click the **registration form** link and follow the directions. You have free access to this site as a student in this class.
d. **Additional Resources.** On youtube.com you can find excellent instructional materials by Charles Rose and others on many of the things we will discuss in class (e.g., opening statements, closing arguments, objections, evidentiary foundations, etc.). I strongly encourage you to watch some of these videos.

4. **Grading and Workload:**

   a. **Grading Philosophy.** This course is graded. Law school rules allow sections with 12 or fewer students to use a median between 3.1 and 3.4. Unless a section’s collective performance is abysmal, I intend to use a median of 3.4 for each section. Some of you may be worried that advocacy is all about style and therefore cannot be graded. To the contrary, there are objective evaluation criteria that can be applied to every skill we will learn this term. Every graded exercise, including the final trial, has a list of evaluation criteria included in the assignment memorandum.

   b. **How Your Grade is Determined.** There are several components to your grade.

      1. **Written case analysis (20%)**. This is a written case analysis of the Steele case. It is due on Wednesday, Jan. 31, by the beginning of class, turned in using your exam number, and graded anonymously.

      2. **Bench Trial (25%)**. There are seven advocacy exercises. Five are graded. The reading and assignment schedule clearly indicates for you which exercises are graded. Each advocacy exercise has an explanatory memorandum with evaluation criteria and specific assignments. If you skip class on the day of a graded advocacy exercise, you will receive a zero (0) for that exercise and cannot make it up. No advocacy scores will be dropped. Here are the evaluation criteria for advocacy exercises:

         a. **Exemplary (12.5 points).** Prepared and gives an exceptional performance—considerably and objectively much better than the typical student performance for this section—that demonstrates complete mastery of the evaluation criteria and is on par with the performance of an experienced and talented attorney.

         b. **Superior (10 points).** Prepared and gives a very good performance that is noticeably and objectively better than the typical student performance for this section.

         c. **Meets Standards (7.5 points).** Prepared and gives a performance that meets most of the evaluation criteria and is typical of the students for this section.

         d. **Below Standards (5 points).** Prepared and gives a below average performance (for students of this section) that meets some, but not all, of
the evaluation criteria.

3. **Final Trial (45%).** In the final trial, you will be expected to give either an opening statement or closing argument, to conduct the direct examination of at least one witness, and to conduct the cross examination of at least one witness. You will be graded on your performance for each of these skills. In addition, you will be expected to serve as a juror in another group’s trial.

4. **Class Participation & Ungraded Assignments (10%)** You will have ungraded written assignments. Although they are ungraded, you will not pass the class unless you turn these assignments in.

   (1) An initial self-assessment, turned in the first day of class. The form for this is on TWEN.

   (2) A self-analysis journal based on reviewing the video recordings of your lab performances. I will provide a form on TWEN for you to use on each video recording. As you watch your recordings each week, simply fill out the form and turn it in at the beginning of class the next Monday session.

   (3) A self-assessment of your final trial performance at the end of the semester.

   (4) A juror’s assessment of the trial you watched. You must provide a copy of this to me and also to all counsel in the trial you watched.

   While these assignments will not be assigned a grade, ten percent (10%) of your grade will be based on whether you make a reasonable effort to complete them correctly and completely, as well on your participation in class. This is another reason you should show up for class prepared!

5. **All Assignments Must Be Complete to Pass Course.** Although there are weights assigned to each component of the class, you cannot pass unless you complete them all. For example, if you decide not to turn in your case analysis or participate in the final trial, yet complete all other requirements, you will fail the class.

6. **Grade Adjustments.** I reserve the right to adjust your final grade either up or down by as much as .3 on the 0.0-4.0 scale. Positive adjustments may be made for effort, consistent preparation, and demonstrated improvement; negative adjustments may be made for lack of professionalism, consistent failure to prepare, failure to put forth adequate effort.

**NOTE:** Again, don’t be put off by Professor Behan’s description of how the grades are determined. Early in my tenure here at the law school, I taught Trial Ad labs for him. I
recall a student who was very unpolished, found public speaking very difficult and frightening, could not fly by the seat of his pants (or work without notes), and struggled with each and every assignment. Throughout the semester most other students outperformed him. However, he improved each week. I presided over his final trial. Although he still relied on notes and written questions to guide him, he did an admirable job. In addition, he was better prepared than most of his classmates. His grade accurately reflected all of his hard work and improvement. He was not disappointed by his grade, and we were very proud of him. Also, for those of you who fear public speaking, please don’t fret. Remember that you cannot possibly embarrass yourself in front of your law school classmates. Each of you probably has the very same fear, and each of you will be nervous. That’s only natural. This is your chance to overcome your fear of public speaking without fear of making a fool of yourself. It will be fun.

5. Attendance:

In a skills class, it’s difficult to learn if you aren’t present. You may miss two plenary sessions if you have advance permission from me. Permission will be given for good cause shown. Any student who misses more than two classes will receive a .2 negative adjustment on the final grade in the course for each additional class missed. An advocacy course requires your presence so you can learn, and through you, others can learn.

If you are aware of a scheduling conflict for a lab session, you may make your own arrangements in advance to trade with another student in a different section. That student will take your place in your lab, and you will take that student’s place in his or her lab. This applies both to advocacy and witness assignments. You must also obtain permission from me to make the change. You are not authorized to attend another lab section unless you make these arrangements; the lab sections are set at 8 students each for a reason, and all advocacy exercises are predicated on having 8 students in the section. Please note that if you miss a graded lab exercise, you cannot make up the exercise; in addition to the absence, you will also earn a 0 for that exercise.

6. Policy on Recording Class:

You are not authorized to record the plenary classes. To do so without notice to and my consent and others in the class is a potential violation of the Illinois Eavesdropping Act, 720 ILCS 5/14-2. All plenary classes, however, are recorded by the IT department of the law school and are available in streaming video in the computer lab in the library; your participation in my class constitutes consent for the IT department to record it. You may view or listen to them, in the library, whenever you wish and as many times as you wish. You do not have to obtain advance permission to access them. Please be aware that the computers in the library are set up so that you cannot “rip” or copy these recordings in any way.

We will record all advocacy exercises and the final trial. Your participation in the class constitutes permission for others to record your participation as a witness or opposing counsel in their advocacy exercises.

7. Students with Disabilities.
The law school’s policies and procedures regarding students with disabilities may be found on line at http://www.law.siu.edu/. Students with disabilities requiring reasonable accommodations should contact the Registrar’s office.


Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on the BERT’s website at www.bert.siu.edu, Department of Public Safety’s website www.dps.siu.edu (disaster drop down) and in the Emergency Response Guidelines pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The BERT will provide assistance to your instructor in evacuating the building or sheltering within the facility.