Office 204 W Law School
Hours: After Class 5:00-6:00p.m.
Or By appointment

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Cell - (763) 670-1236 Best Way to Reach Me

# Trial Advocacy Summer 2012

## Syllabus - Hamline Law School Summer Trial Advocacy

**Class: 9:00 a.m.-5:00 p.m. May 29th, May 30th , May 31st, June 1st**
**Class: 8:00am-12:00pm June 2nd**
**June 2nd- Optional court trial-12:45-4:15pm**
**8:00am-6:00pm June 3rd and 4th - all the other trials**
**All Classes Held In These Classrooms: Moot Courtroom, 200, 240A,**
**Video Critique Rooms 221E, Staff Lounge and PNT Room (next to the courtroom)**
**READ THE SYLLABUS BEFORE THE FIRST CLASS; we have a lot to do in the first class.**

(This is a good definition of a trial attorney – J.A.M.)
"It is not the critic who counts, not the man who points out how * * * the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena; whose face is marred by * * * sweat and blood; who strives valiantly; who errs and comes up short again and again; who knows the great enthusiasms, and spends himself in a worthy cause; who, at best, knows in the end the triumph of high achievement; and who, at worst fails while daring greatly, so that his place shall never be with those * * * timid souls who know neither victory nor defeat." *Teddy Roosevelt*

**REQUIRED TEXT** – Fundamental Trial Advocacy, Second Edition. Charles H. Rose III
**REQUIRED READING: Before the 1st Class Read entire State *v. Chambers* case (National Institute of Trial Advocacy Case) We will use Chambers when we do ALL the graded exercises, including the trials!**
**Required Readings Before 1st Class: Rose 2nd. Edition Chap. 1; Chap. 2; Chap. 3 and Chap. 6.**

**Computers-Please bring your computer; you need a computer for video feedback.**

**CLOTHING – Comfortable clothing except for Saturday and Sunday.**

**LUNCH – Bring your own. Klas Center is available for purchase of sandwiches.**

**OBJECTIVE** – The objective of the course is to provide training in trial advocacy skills for each stage of trial. Areas covered include: ethics, psychology of persuasion, opening statement, direct examination, exhibits, objections, cross-examination, and closing argument. The teaching methods will include lectures, demonstration, discussion, simulation, instructor critique, and video critique.The final exam will be a trial.

**GRADE**: 48% of Grade- 9 Exercises (6 x 8 = 48, I drop your two lowest scores, one exercise is Pass/Fail).
52% of Grade -Final Trial. Final Trials will be on Sat. afternoon, Sunday all day & Monday all day
One day you will be the trial attorney and the next day you will be a witness/critiquer.
You must turn in a Final Trial Notebook & 7-Page Trial Critique Paper-Both are Pass/Fail.

**ATTENDANCE/PREPARATION -** This is a trial skills class for future lawyers. Most lawyers are prepared, on time and only miss a court appearance if there is an emergency. Please be here, be on time and be prepared. We only have 4 ½ days of class, plus the trials, so if you miss class, it will affect your grade. I have been teaching trial skills to lawyers and law students for over 30 years. I'm also bringing in 6 other critiquers; all of them are experienced, well respected trial lawyers and teachers. In addition, you will be given the opportunity to hear lectures on jury selection, exhibits, objections, demonstrative evidence, opening statement, direct examination, cross examination, and closing argument.

## Guide for Students

You will be learning basic lawyering skills by practicing these skills in exercises that realistically simulate law practice. You will then receive individualized feedback from experienced practitioners, who have been trained in the techniques of effective critique. To maximize the learning opportunities afforded by this learning method, you need your own "critique skills" — that is, the techniques of how best to receive and implement critique. The following guidelines should be helpful to you:

- *Listen to the critique with care and an open mind*. Try not to take the critique as personal criticism. Don't get defensive or immediately argue with or reject the critique.
- *Be sure you are clear about what has been said*. If you are not clear or don't understand, ask.
- *Focus on specifics*. Try to learn as specifically as possible things you might do to improve your performance in the future.
- *Keep your perspective*. See the critique as offering you new choices, rather than dictating the one right way to do something.
- *Clarify.* If you disagree with the critique, respectfully — but directly — raise the issue and ask for comment (but only after the instructors have completed their critique).
- *Ask questions.* If you want feedback on a specific matter and didn't receive it, ask (time permitting).
- *Don't overly rely on any one person's critique.* Compare it to the extent possible, with others' (including other students participating in the exercise). Ask others who may know you and whom you trust about the substance of the critique.
- *Pay careful attention to the critique of other participants in the simulation.* This is an opportunity to learn additional aspects of the skills involved. It also is a more objective perspective from which to observe the dynamics of the critique method.
- *Look for ways to use the information.* At the end of the critique session, ask yourself, "What do I know now (or know better than before)?" Write it down. That is the standard of success of a simulation/critique exercise.
- *Look for opportunities to implement what you learned from the critique.*
- *Save your evaluation forms (self and faculty) and any notes of what you learned.* Review them the next time you are about to perform the activity that was the subject of the critique. Learning fundamental skills is an incremental process.

Ralph Cagle
University of Wisconsin Law School

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GROUPS: Students will be assigned to one of three groups of 7-8 members.

**GROUP RULES**

1. You will choose a trial partner. You and your partner may work on daily assignments together. Additionally, you and your partner will complete a final trial together, coordinating themes etc, but you will be graded separately.

2. The class will be divided into three groups, each group will have 7-8 people.

3. Students should bring a written copy of their **outlines** to class. Students must show their outlines to the instructors

4. Students should record their grades for their own records, but do not remove your grading form or the contents of your file from the file box.

5. Instructors will give oral feedback in class as well as written feedback on the grading form.

6. Students must fill out critiquer evaluation forms. Each student must place all evaluations in the file folder labeled "instructor critiques".

7. You will be videotaped for all exercises except Exhibits/Objections and Jury Selection. After you have completed your exercise in your group you will get a video critique in rooms 221E,the Staff Lounge or the PNT room. Each evening you will fill out your Self-evaluation form and turn it in the next morning at the beginning of each class.

8. Students will be responsible for handling the video camera.

9. Students will be responsible for timing the exercises, the critiques and the breaks.

****Students are responsible for insuring that their file folders are complete! Students should check their folders each day to verify that all completed self-evaluations and grading forms are in their folders. If your grading form is not in your file folder you will not get a grade.**

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# Assignments/Schedule

## Critiquers:

Michael Bennett, Presentation Coach
Katie Lockwood, Trial Attorney
Cindy McCollum, Trial Attorney
Jim Morrow
Rex Tucker, Trial Attorney
Wolanda Shelton, Trial Attorney
Bill Ward, Trial Attorney

**Tuesday, May 29th – Everyone Meet at 9:00AM in Moot Courtroom Law School**
**Required Readings Before Class: Rose 2nd Edition Chap. 1; Chap. 2; Chap. 3 and Chap. 6, Read State v. Chambers**

**9:00 - 10:30** - Courtroom- Intro, choose trial partners, lecture/drills on opening, direct, cross & closing-Morrow
**10:30 - 10:45** - Break
**10:45 - 12:15** – Courtroom-Brainstorming theme/theories - State v. Chambers –Bill Ward
**12:15 - 1:00** - LUNCH
**1:00 - 1:45** - Courtroom Cross/Impeachment Lecture/Demo/Drill– Morrow
**1:45 -2:15** - Split into pairs and practice Cross/Impeachment
**2:15 - 3:45** - **Cross Exercise (5-6minutes)**
**Group 1 -** Courtroom–Morrow; After Group Critique: Video Critique-Bennett-Staff Lounge
**Group 2** - Room 200 –McCollum; After Group Critique: Video Critique- Shelton-221E
**Group 3 -** Room 240A – Ward; After Group Critique: Critique Yourself- PNT Room

**3:45 - 4:00** - Break
**4:00 - 4:45** - Courtroom - Opening Statement Lecture/Demo/Drill – Morrow/McCollum
**4:45 - 5:00** - Courtroom - Questions and Planning for Wednesday - Morrow

**Wednesday, May 30th Meet 9:00AM IN YOUR GROUP ROOM BELOW**
**Required Reading Before Class: Chap. 4 & 5 Rose 2nd Edition**
**Schedule:**

**9:00 - 11:00** -. **Opening Exercise (6-7minutes)**
**Group 1 -** Room 240A – Ward: After Group Critique: Critique Yourself – PNT Room
**Group 2 -** Courtroom– Morrow: After Group Critique: Video Critique – Bennett Staff Lounge
**Group 3 -** Room 200 – McCollum: After Group Critique: Video Critique – Lockwood 221E
**11:00 - 11:15** - Break
**11:15 - 12:15** - Moot Courtroom – Direct Lecture/Demo/Drill – McCollum/Morrow
**12:00 - 1:15** - LUNCH and practice
**1:15 - 3:15** - **Direct Exercise (6-7 min)**
**Group 1**– Room 200 –McCollum: After Group Critique: Video Critique – Shelton 221E
**Group 2 –** Room 240A – Ward: After Group Critique: Critique Yourself – PNT Room
**Group 3 –** Courtroom – Morrow: After Group Critique: Video Critique – Bennett Staff Lounge
**3:15 - 3:30** - Break
**3:30 - 4:45** - Courtroom-**Exhibits/Objections Lecture/ (Exercise: Pass/Fail)** – Morrow/Bennett
**4:45 - 5:00** - Courtroom-Questions/ Planning ; Students will pick Prosecution or Defense - Morrow

**Thursday May 31st Everyone Meet at 9:00AM in Moot Courtroom Law School**

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**Required Readings For Today's Exercises: Chap. 14 & 15 Rose 2nd Edition**

**Schedule**

**9:00 - 9:30** - Courtroom-Jury Selection Lecture –McCollum and Morrow
**9:30 - 9:45** - Practice
**9:45 – 11:15** - **Jury Selection Exercises (5-6 minutes)** **NO video critique**
**Group 1** – Courtroom - Morrow
**Group 2 -** Room 200 –McCollum
**Group 3 -** Room 240A – Ward
**11:15 - 11:30** - Break
**11:30 – 12:15** - Courtroom-Closing Argument Lecture/Demo/Drill– Ward
**12:15 - 1:30** - LUNCH and practice -
**1:30 – 3:30** - **Closing Exercises (6-7 minutes)**
**Group 1 –** Room 240A – Ward: After Group Critique: Video Critique - Bennett Staff Lounge
**Group 2 -** Courtroom- Morrow: After Group Critique: Video Critique - Lockwood 221E
**Group 3 -** Room 200 – McCollum: After Group Critique: Critique Yourself – PNT Room
**3:30 - 4:30** - Brainstorming- Prosecutor's Group - Room 240A - Morrow
Defendant's Group - Courtroom-Ward
**4:30 - 5:00** - Team Planning - on your own.

**Friday, June 1st**

**Readings Before Class:Skim Chap. 8 & Skim Chap. 10- Practice/Practice/Practice**

**Schedule**

**9:00 - 9:30** – Courtroom-Impeachment/Questions - Morrow
**9: 30 -11:30** - **New groups - Trial Direct/Trial Cross Exercises (6-7 min)**
**Group 1 –** Room 200 –McCollum: After Group Critique: Critique Yourself – PNT Room
**Group 2 -** Rm 240A – Tucker: After Group Critique: Video Critique-Bennett Staff Lounge
**Group 3 -** Courtroom- Morrow: After Group Critique: Video Critique Shelton 221E
**11:30 - 1:00** - LUNCH and Practice
**1:00 - 3:00** - **New groups - Trial Direct/Trial Cross Exercises (6-7 min)**
**Group 1 –** Courtroom- Morrow: After Group Critique: Video Critique-Lockwood 221E
**Group 2 -** Room 200 –McCollum: After Group Critique: Critique Yourself – PNT Room
**Group 3 -** Rm 240A – Tucker: After Group Critique: Video Critique – Bennett Staff Lounge
**3:00 - 3:15** - Break
**3:15 - 4:15** - Courtroom-Discussion/Lecture – Openings/Closings/Visual Aids - Morrow
**4:15 - 5:00** - Team Planning on Openings and Closings – on your own

**Saturday, June 2nd – DRESS FOR COURT TODAY!!**

**Readings: None -Just Practice/Practice/Practice**

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**Schedule:** Mike Bennett will be available to work with students until 4:00 p.m. today

**8:00 - 8:15** -. Courtroom-Questions-Morrow

**8:15 - 10:15** - **New Groups - Trial Openings & Closings Exercise (6-7 minutes)**

**Group 1 –** 240A – Shelton: After Group Critique: Video Critique – Bennett Staff Lounge

**Group 2 -** Courtroom- Morrow: After Group Critique: Video Critique – Lockwood 221E

**Group 3 -** Room 200 –McCollum: After Group Critique: Critique Yourself – PNT Room

**10:15 - 10:30** - Break

**10:30 - 12:00** - Pre-trials and trial questions

**1:00-4:00- Optional Workout Sessions with Judge Morrow**

## Final Trials Schedule

**Saturday, June 2nd- 12:45 - 4:15 - Courtroom – Optional First Court Trial – McCollum**

**Sunday, June 3rd – 3 trials – AM Court Trial- McCollum-8:00-11:30-240A**

**AM Court trial is from 8:00am-11:30pm- Morrow- Courtroom**

**PM Court/Jury trial 12:30pm – 5:00pm-Morrow- Courtroom**

**Monday June 4th – 2 trials. – AM Trial from 8:00-12:30pm – Morrow - Courtroom**

**PM Trial from 1:30-6:00pm – Morrow - Courtroom**

1. Everyone will do the Chambers case; prosecution or defense: you will choose a court trial or jury trial.
2. If you choose to do a jury trial, you must bring in 2 jurors for someone else's jury trial.
3. Everyone will be a witness in someone else's trial.
4. Everyone will do a 7-page paper (not a research paper-stream of consciousness is ok) evaluating/critiquing another team's trial, including your evaluation of their themes/theory of the case, openings, directs, exhibits, crosses, objections and closings.

6.**Suggested Trial Time Limits:** Each side has 80 minutes total, excluding jury selection.

For example: Opening 11-13 minutes
Two directs – 35 minutes
Two crosses – 16-17 minutes
Closing – 11-13 minutes

For jury trials only - Jury Selection: Each attorney gets 5 min. (10 minutes. per side)
After trial there will be 30-45 min. critique by your judge/critiquer.

**7.Witnesses** – Each side will call only 2 witnesses
Prosecution: Officer Goodfellow and Dr. Callahan; Defense: Chambers and Dana Allison

**8.Opening Statements and Closing Arguments**
One attorney does the opening and the other attorney does the closing.

9.**Direct and Cross**
For the Prosecution: One attorney will direct Goodfellow and cross Allison
The other attorney will direct Callahan and cross Chambers
For the Defense: One attorney will direct Chambers and cross Callahan
The other attorney will direct Allison and cross Goodfellow

10. **Objections-** Each attorney will make their own objections; their partner can help, but the actual attorney doing the direct/cross must make the objection.

11. **Use of technology** – appropriate technology can be used.

## Surviving Trial Advocacy

I was a student in Judge Morrow's trial advocacy class in Spring 2005. It was the most challenging law school class for me because I am naturally quiet and introverted. This was also the first public speaking course I had ever taken in my life. I made myself take this class because I wanted to learn the skills necessary to be an effective trial attorney. I always told myself that I am too shy and quiet and that I could only be a transactional attorney. I don't think I gave myself enough credit and wanted to show that I could excel at something that took me out of my comfort zone.

At first, the class was very intimidating. I did not have much confidence in myself. The first motion we argued was a motion in limine. I did a terrible job. I received a "C" for a grade. Of the people in my group, I received the worst grade. I felt awful. I didn't think there was any way I was going to survive trial advocacy. However, I knew that if I was going to improve I needed to change my attitude. Being at the bottom only gave me more incentive to do better. First of all, I learned that I had to have more confidence in my abilities. I knew the material well enough and I did not need to read my notes when arguing my motions. I also learned to develop a thicker skin. Although some of the critiques can be a bit harsh, the judges do it because they genuinely want to see you improve. Each judge had a unique style and had helpful advice to give. Take what the judge says to heart and use it to improve on the next exercise. Also, I did not focus so much on getting the perfect grade and instead focused on just learning some skills. When I did this, I was able to relax and be myself. By doing these things I improved my skills (and my grade – an A on the final trial) and was able to enjoy trial advocacy. I know you will too. - Anonymous (What a great attitude this student has, see the next page)

## ATTITUDE

"The longer I live, the more I realize the impact of attitude
on life. Attitude, to me, is more important than facts.

It is more important than the past, than education,
Than money, than circumstances, than failures, than success,
That what other people think or say or do.
It is more important than appearance, giftedness, or skill.
It will make or break a team…a church…a home.

The remarkable thing is we have a choice every day
Regarding the attitude we will embrace for that day.
We cannot change our past…We cannot change the fact that
People will act in a certain way. We cannot change the inevitable.
The only thing we can do is play on the one string we have,
and that is our attitude…
I am convinced that life is 10% what happens to me
and 90% how we react to it. And so it is with you…
We are in charge of our Attitudes.
-Charles Swindoll

## A METHODOLOGY FOR THE PREPARATION OF A TRIAL
## A CHART FOR PREPARATION

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by

Joseph. L. Daly
Professor of Law
Hamline University School of Law

[based on the teaching of Judge Herbert Stern]

First: Legal Theories – e.g., contract, tort, or elements of the crime.

Second: FACTS: Good | Bad

Third: Theory of Case – central theme – must deal with both good and the bad facts.

Fourth: Closing Argument – central theme applies.

Fifth: Cross of the opposing witnesses using your themes.

Sixth: Organize opening – tell a story emphasizing your factual themes.

Seventh: Direct – facts from your opening thru the direct of your witnesses.

Eighth: Redo good fact/bad facts

Ninth: Redo closing, then make it the opening

Tenth: Do nothing contrary to your theory and your opening.

**SELF-EVALUATION FORM**

**Put in your file BEFORE the next**

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**Exercise** _____

**Your Name** _____ **Date** _____

1. What did you perceive to be your strengths during this exercise?

2. What did you perceive to be your weaknesses during this exercise?

3. Pick one thing you would like to improve during your next exercise. What is it? What can you do to improve in this area?

*** Place this form in your individual folder before the tomorrow. ***

# TEN COMMANDMENTS OF CROSS-EXAMINATION

## BY JUDGE IRVING YOUNGER

1. Be brief
2. Short (questions) statements - plain words; Voice should go down, not up.
3. Nothing but leading (questions) statements.
4. Never ask a question to which you don't already know the answer.
5. Listen to the answer.
6. Never quarrel with the witness, unless you are an experienced trial attorney.
7. Never (hardly ever) permit the witness to explain-control.
8. Don't give the witness an opportunity to repeat their story.
9. Avoid the one question too many.
10. Save the ultimate point for summation.

## OTHER CROSS "COMMANDMENTS"

1. Start strong/end strong. Recency/primacy.
2. Throw away most of your notes; use a brief - BIG FONT outline
3. Control the witness in a professional manner (not by being rude, interrupting, etc.)
4. Control the witness by repeating the question word for word. (several times if needed)
5. One fact, one statement.
6. Strong, confident demeanor – tone is very important.
7. Don't show your feelings if you get a bad answer. (See Younger's commandment #4.)

## ESSENTIAL SKILLS NEEDED IN THE CROSS TOOL BAG

By William M. Ward, Chief Public Defender Hennepin County

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Everyone can accomplish any project so long as s/he has the right tools and takes the time to practice the craft.

The "Bible" for organization and ideas: ***Cross Examination Science and Techniques*** by Larry S. Pozner and Roger J. Dodd.

We want to tell our story of innocence or reduced culpability throughout the trial – including cross-examination

1. **Don't "ask" questions.**
   - Make statements.
   - Don't "Inquire". Don't use who, what and why type questions.
2. **One fact per statement.**
   - Short + concise = Control
   - Control is key.
   - Break the rule – lose control
   - Example. "You're wearing a red and white striped shirt".
3. **Simple short statements without tag lines.**
4. **Goal is "Yes" answer (sometimes "No").**
   - Yes mode gives you credibility.
   - Jurors think you know what you are talking about.
   - Jurors will look to you for information.
   - Helps set your pace.
   - Keeps witness from squirming and equivocating.

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- Forces lawyers to choose better language/words – like a fine craftsman.
- Actually enables you to look/act like you are "winning" even if you are not.

**5. "Storytelling".**

- To be successful, trier of fact must agree with your "story"/theory.
- Need to tell your client's story with each witness – this is your goal.
- "Picture words".
- Descriptive words.
- Visualize the scene.
- Use all of your senses.

**6. Other Tools.**

- Pace.
- Pause.
- Silence.
- Repetition.
- Demeanor.
- Looping.

**7. Organization.**

- Use of "Block" / "Chapter" Method

    1. Areas for Cross:

        a. Facts that cast doubt on W's/State's assertions

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b. Conceded by State but need to be highlighted
c. Likely to be omitted by State in direct but need to be added for defendant theory
d. To "qualify" as a potential area for cross it must contain a fact(s) that assist attorney in developing theory

2. Blocks/Chapters to construct

a. Must break down the areas developed for cross even further.
b. Identifiable goals
c. Series of questions/facts that lead to one fact goal
d. "Cross on individual detailed facts NOT global assertions"

**8. Use of Transitions.**

- Order of Examination. Primacy and Recency.
- Start strong. "We can agree that…"
- End Strong.

**9. Impeachment**

- How to do it?
- What are you really trying to accomplish?
- "RAC" vs. "ARC"
- Impeach or refresh recollection?
- Importance of Accrediting the prior statement/report/action/training etc.

**Sample Defense Cross With Indexing**

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| | |
|---|---|
| Toby used to go to Rainbow Daycare | Paragraph 9 |
| You switched her to X daycare | |
| It was closer to your work | P9 |
| It was more convenient for you | line 48 |
| You believe Jo Campbell smoked around Toby | Line 117 |
| You Believe smoke caused her asthma attack (complaint) | |
| Smoking is very harmful to your baby | |
| It could trigger an asthma attack | |
| You usually picked Toby up from Daycare | P11 |
| Usually dropped her off | P11 |
| You smelled smoke on Toby's clothes | P15 |
| Several times | P15 |
| After you smelled smoke on her clothes you never took her to X daycare. | |
| You used to smoke cigarettes | |
| You were addicted | 14 |
| You smoked when you were pregnant | 18 |
| You smoked when you were pregnant with Toby | |
| For the entire pregnancy | |

**GRADING FORM - - CROSS EXAMINATION**

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INSTRUCTOR: _____ STUDENT: _____ DATE: _____

Grading Key:

10 (= A) An excellent accomplishment
9 (= A-)
8 (= B+)
7 (= B)
6 (= B-) An average accomplishment with some major and minor deficiencies
5 (=C) Insufficient preparation
4 A poor accomplishment with significant deficiencies
3
2
1

Critiquers are not required to give a grade for #1-7; they're only guidelines.

**CROSS EXAMINATION**

Outline: Yes / No

1. Short simple questions,
   Examination conducted in orderly fashion with effective transitions
   Grade: _____

2. Effective, supportive cross-examination
   Questions and answers supported cross-examiner's case (themes/theory) Grade: _____

3. Effective discrediting cross-examination Grade: _____

4. Non-objectionable questions and responses
   Student understood evidentiary rules Grade: _____

5. Objections
   Student made proper objections to opponent's direct
   Student responded well to objections by opponent Grade: _____

6. Demeanor and presence: Appropriate eye contact, voice projection, facial expressions, physical posture, and avoidance of distractions Grade:_____

7. Effective control of the witness Grade: _____

8. **OVERALL** (not necessarily an average of 1-7 above) **GRADE:** _____

**COMMENTS:**

_____
_____
_____
_____

## FYI Excerpts of Students' Video/Self Evaluations –Cross

| Weaknesses | What to improve |
|---|---|
| Student 1: Experience. Some ?'s are too long. | Sharpen up, focus the cross- know themes. Tell story with inflection |
| Student 2: Don't be married to structure, practice. No open ended questions | Good exercise, instructions were clear |
| Student 3: Organization, transitions. Hand Gestures. | Work on hand gestures |
| Student 4: Line of questioning- I beat up on Ms. Darngood way too much. | Use inflection more emphatically. |
| Student 5: Voice variation, relied on notes when they weren't needed. | More voice variation, more practice |
| Student 6: Couldn't get desired response, Ran out of time. | Time management, practice with timer |
| Student 7: Speed, get to points quickly, keep focus | Completing during time allotted, prepared |
| Student 8: Too many exhibits, one was not needed. Used notes too much | Do it without notes. |
| Student 9: Move on after you get witness to concede | Less reliance on notes |
| Student 10: Nervous, too long of quotes, move too much | Work on standing still, talk slower |
| Student 11: Could've left out certain Questions. | Clearer impeachment |
| Student 12: Questioned myself, made too many last minute changes. Nervous, shorten questions, listen to answer. | Voice variety, don't be argumentative, use exact words from statement, repeat question |
| Student 13: Witness was not responsive, lost story. | Thinking on the fly, anticipate dialogue |
| Student 14: Annoying verbal tics, too nice | Concentrate on removing verbal tics. |
| Student 15: Looked at notes a lot when waiting for an answer | Maintain eye contact, less use of notes. |

# Opening Statements

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1. Start Strong – First 2 minutes – Explain using factual themes why you should win.
    a. Have a "theme" and start immediately with your theme.
        i. Throw away most of your notes, use a brief outline with BIG FONT.
    b. Don't start by
        i. Thanking the jury;
        ii. Explaining what an opening is for.
2. Tell a story.
    a. Give the jury an outline of your case through the use of a compelling or interesting story.
    b. Make the story linear and logical.
        i. You want the jury to be able to follow the story and have a vision in their mind of what your case is all about.
    c. Use active language
        i. Office Jones found the cocaine under the driver's seat **vs.** the cocaine was located in the motor vehicle beneath the driver's portion of the front seat…
    d. Use plain language
        i. Avoid legalese
        ii. Avoid formal language
    e. Humanize your client
        i. Don't use language like my client, etc.
        ii. Refer to your client by his or her name.
    f. Avoid interjecting, "this witness will testify…" just tell a story
    g. Refer to the burden of proof and/or the law briefly – DOJ (depends on the judge).
3. Use your own style
    a. Do not read your opening
    b. Do not use a podium
4. Move around occasionally (but don't dance) and engage the jury.
5. Use exhibits that have been cleared with the judge and opposing counsel.
6. Point out your weaknesses in the middle of your story.
    a. Anticipate what the other side is going to say (or has said) and address it with whatever evidence you will present against it.
7. Build a rapport with the jury.
    a. Check to see that the jurors are engaged.
    b. Make eye contact with the jurors.
    c. Draw them in with your body language and your voice.
8. Close strong!
    a. Reemphasize your themes as you close.
    b. Tell your jurors the conclusions they will draw from the evidence.

## Sample Plaintiff Opening

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May it please the court (pause)

Pat Cartwright (defendant.) knew. The defendant knew that underage kids were drinking and gambling in his barn. And the defendant didn't care. The only thing the defendant cared about was money. When the defendant found out about the bar and casino, the 1st thing the defendant did was raise the rent. In fact, the only thin the defendant. did, was raise rent. After the defendant took the money, he ignored the alcohol, he ignored the gambling, he ignored the danger. Because the defendant ignored the danger of an electrical overload, the defendant's barn burned down with Jamie Franklyn(J.F.) inside. Jamie Franklyn suffered severe burns that will be with her the rest of her life.

The defendant was negligent. We will prove the defendant was negligent by a preponderance of the evidence. Negligence is a failure to exercise reasonable care. The defendant did not use reasonable care because the defendant did not look in his barn. Not once did he look in his barn to discover the dangerous mix of electricity and alcohol. The defendant's negligence was the proximate cause of Jamie Franklyn's injuries. The defendant owed J.F. a specific duty because J.F. was an invitee of the defendant. Under the law, an invitee is one who is permitted to enter or remain on the premises of the owner for a purpose of the owner. J.F. was invitee because the defendant was making money off her and all the other underage kids who used the casino and bar. The defendant owed J.F. the duty of warning her of any hazardous conditions, which the defendant could have reasonably discovered. The defendant failed in his duty and did not discover the hazardous condition that caused the barn fire. The defendant's negligence was the proximate cause of J.F.'s injuries.

The evidence will show the following: In the beginning of June, 2003, the defendant rented his barn to Alice Logan and Evan Hoyt for $100 dollars a week, cash. The defendant rented the kids the barn so they could store their lawn care equipment. Towards the end of June, Logan and Hoyt were hanging out at the barn after work and drinking beer. Soon their friends found out and the place became very popular. Several students were showing up each night to hang

out and drink. Logan and Hoyt charged a cover and the next night they made $150 dollars. By mid July, Logan and Hoyt turned the defendant's barn into a bar and casino filled with pinball and slot machines, a 200-watt stereo system, and a fully stocked bar. So by the end of July they had a well known fully operating bar and casino and were clearing a $1000 dollars a night. Each night the barn would be packed with kids, with 25-30 cars parked outside. By August 1st, the defendant knew what was going on inside his barn.

The defendant knew something was going on because in mid July Mrs. Smith approached the defendant and warned him that underage kids were hanging out at his barn in the evenings, drinking beer. The very next Sunday, the defendant's pastor told him the exact same thing Mrs. Smith had already told him. But the defendant didn't care. He responded, "What's the big deal?" When the defendant was a teenager, he was sneaking out to bars, smoking, and gambling – and according to the defendant, "It was all innocent fun."

Because the defendant knew what was going on, he raised the rent. On Aug. 1st, the defendant called Logan and told her that he knew they were using the barn for something other than sorting their lawn care equipment. The defendant demanded $250 dollars a week instead of $100 dollars a week. The defendant said to Logan, "I rented you the barn to store lawn care equipment and you've put it to some other use. If you want to keep it up, you've got to pay. So Logan did pay and Logan did keep it up, but on August 16th, the barn burned down. And in this barn fire, Jamie Franklyn was severely burned.

Your Honors, after hearing all of the evidence today, we are confident you will find the defendant negligent, and that the defendant's negligence was the proximate cause of Jamie Franklyn's injuries.

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**GRADING FORM - OPENING EXERCISE**

INSTRUCTOR: _____ STUDENT: _____ DATE: _____

Grading Key:

10 (= A) An excellent accomplishment
9 (= A-)
8 (= B+)
7 (= B)
6 (= B-) An average accomplishment with some major and minor deficiencies
5 (=C) Insufficient preparation
4 A poor accomplishment with significant deficiencies
3
2
1

Critiquers are not required to give a grade for 1-7; they are only guidelines

**OPENING EXERCISE**

Outline: Yes / No

1. Effective organization and structure of presentation
   Start strong and end strong Grade: _____

2. Effective and persuasive story Grade: _____

3. Summary of important facts and an explanation of your theory of the case without argument Grade: _____

4. Application of facts to support legal elements Grade: _____

5. Describe case weaknesses Grade: _____

6. Use of Visual Aids Grade: _____

7. Demeanor and presence: Appropriate eye contact, voice projection, facial expressions, physical posture, and avoidance of distractions Grade: _____

8. **OVERALL** (not necessarily an average of 1-7 above) **GRADE:** _____

**COMMENTS:**_____

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# FYI Excerpts of Students' Video/Self Evaluations—Opening

| Weaknesses | What to improve |
|---|---|
| Student 1: I am argumentative, Need to remove those simplify the story a little. Need to work on likability. | Soften the presentation just a tad and work sections. Need to on a greater tone and inflection. |
| Student 2: Do not let the brain freezes affect what I'm saying. Good no notes but need to practice more because that will help diminish the brain freezes | Calm down; Practice!! |
| Student 3: I tried to go without notes. This is good But I need to make sure that I don't try to memorize. | Work on not memorizing and go more with the flow; Practice. |
| Student 4: Was argumentative at the beginning. Need to focus on the case. | Focus on the facts of the case to open with a big Opening phrase. |
| Student 5: Not enough voice variation. Hands-work On neutral position | Voice and stance |
| Student 6: Too short. Forgot: Hurried driving manual, injuries, consumed vs. drank, no change in tone, faster or slower | Change in tone, practice out loud |
| Student 7: Didn't close well; just faded out. Didn't use the entire time. | Better prepared |
| Student 8: Used argumentative phrases | Get rid of argumentative phrases |
| Student 9: Moving around, argumentative | Tell story more thoroughly, add in my own bits |
| Student 10: Used terms like "consumed alcohol" | Tailor it to a bench trial |
| Student 11: I should be more forceful, leave damages until closing | More exposition and humanizing of character |
| Student 12: Argumentative, nervous | Plant myself. It is the way you say things |
| Student 13: I missed opportunities to be persuasive. Nerves affected me, no outline | W/out an outline, I need to think on the fly |
| Student 14: Nervous, poor ending | Work on transitions, powerful ending |

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# Direct Examination

1. **Preparation** – Meet with your witness; go over the facts and themes. Do at least two mock questions and answers.
   -Remind witness to look at the fact finder-jury or judge.
   -Remind witness to keep their hands away from their face.
   -Remind witness to stay away from "I believe", "I think", "I guess."

2. **Mechanics.** A good direct sounds like an interesting conversation.
   -Stand as close to the jury box as the judge will let you.
   -Only ask open-ended questions. (Except preliminary/foundation Q's)
   Example: "What, Where, When, Why, How, Describe or Explain."
   -Ask short, simple, clear questions.
   -Eight to ten word maximum with few exceptions.
   -Don't ask "Do you recall?" "Do you remember?"
   -Prepare/write out answers, not questions.
   - Throw away most of your notes; use a brief outline with BIG FONT.

3. **Chunking/Blocking**.
   Use headlines or themes.

   -Chunk/block. Each chunk or block will have a beginning, middle, and end.

4. **Personalize your witness**. Don't be afraid to give extensive background information so that the jurors identify with the witness.
   -Jurors find witnesses credible who they like and trust.
   -An important part of personalization/likeability is bringing out important feelings.
   -Example: "How did you feel when you were told you were fired?"
   "How does your lower back pain make you feel?"

5. **Set the Stage with sufficient background and context.**
   -Before you get to the important action part of the direct, make sure you've asked all the preliminary background and context questions.
   Example: In a rape case, which occurred in an apartment, have the witness thoroughly describe the entire apartment and various rooms, etc.

6. **Fully develop the action**.
   -Tell an interesting story, usually chronologically.
   -Freeze the action for important points.
   -Example: "I want you to stop right there or Excuse me, would you explain."
   -Use very specific questions.
   -Example: "I want to back up; tell me exactly blah, blah, blah."

7. **Emphasize important testimony**.

-Double direct/Looping/Coupling

Example: Use the last answer in your next question. (Don't overuse or you'll get a repetitive objection sustained.)

-"Parking" on important testimony/defining and clarifying answers.

8. **Use exhibits and demonstrative aids to tell the story again.**

-To Explain, illustrate, reinforce witness's testimony.
-They increase jury retention.
-They make the complex simple.
-They organize the witness's testimony.

9. **Disclose witness' weaknesses**.

- It diffuses the cross
-You enhance the credibility of your witness's testimony.
-Do it in the middle of your direct.

10. **Be likeable and thus credible**

-Get rid of any of your distracting mannerisms
--Listen to the witness's answers.
-Do not echo the answers, Ex. "ok" "ok" "ok".

11. **Redirect.**

-Don't ask leading questions; you can lead to the question or the topic.

Example: Remember, counsel's question regarding the color of the light. Would you explain your answer?

-Object if the other side leads on redirect. Objection: Leading.

**GRADING FORM - - DIRECT EXAMINATION**

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INSTRUCTOR: _____ STUDENT: _____ DATE: _____

Grading Key:

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8 (= B+)
7 (= B)
6 (= B-) An average accomplishment with some major and minor deficiencies
5 (=C) Insufficient preparation
4 A poor accomplishment with significant deficiencies
3
2
1

Critiquers are not required to give a grade for #1-6; they are only guidelines

**Outline: Yes /**

**DIRECT EXAMINATION**

1. Effective structure
   Examination conducted in chronological or orderly fashion Grade: _____

2. Detailed, Interesting and persuasive story
   Developed and maintained an effective story Grade: _____

3. Short/Simple questions
   Questions were understandable Grade: _____

4. Non-objectionable questions and responses
   Student understood evidentiary rules Grade: _____

5. Student listened and clarified answers Grade: _____

6. Demeanor and presence: Appropriate eye contact, voice projection, facial expressions, physical posture, and avoidance of distractions Grade: _____

7. **OVERALL (not necessarily an average of 1-6 above) GRADE:** _____

**COMMENTS**_____
_____
_____
_____
_____
_____

## FYI Excerpts of Students' Video/Self Evaluations-Direct

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| | Weaknesses | What to improve |
|---|---|---|
| Student 1 | Need to keep the questions very direct and short and work on pulling out the emphasis of certain testimony. | I need to be more economical and deliberate about what questions I wasn't to ask due to time constraints |
| Student 2 | Tried to cover too much, didn't extract the most important points; | No notes |
| Student 3 | I didn't like my transitions from the foundation of the medical records. I need to use the medical records better. | I want to be better at transitions; more likeable |
| Student 4 | Although I was standing close to the witness due to the room, I could have talked louder to make my questions appear to address the room as well. | If I could do it again, I would make sure I directed the witness to speak louder and speak to the jury more. |
| Student 5 | Voice variation; relied on notes when I didn't need them | More voice variation, keep practicing |
| Student 6 | Multiple questions; over exaggerated; didn't get to weaknesses | Do more practice with witness |
| Student 7 | I need to start off a little more confident/comfortable. | More inflection when I'm talking: I felt a little robotic; because I was so focused on the questions, |
| Student 8 | Too tied to my notes; Not enough eye contact with the witness | I would like to make more eye contact with my witness and not look at my notes as much |
| Student 9 | Needed stronger questions; I prepared questions based on my goals. Guess I missed the goal about light. | Good questions that are critical. |
| Student 10 | I didn't get through as much as I thought I would. I needed to make my questions maybe less open. | I need to make my trial direct flow better to make sure I can get all the info out I needed. |
| Student 11 | I could have left certain questions out. | I would be more clear in impeaching. |
| Student 12 | Thinking up questions on the fly; pulling info out of witness | I want to come across as friendlier. |
| Student 13 | Did not finish in time; stumbled with introducing evidence. | Manage my time effectively |
| Student 14 | I was well practiced but I didn't need an outline. However, I used one and it hurt me because I was looking down. | No outlines, even if allowed. |
| Student 15 | Eye contact! Lack of it | More details in less questions. |
| Student 16 | I kept asking the wit. to "tell me about…" rather than "tell the jury about…" | Slow down everything! I talk way too fast! |
| Student 17 | Didn't fully develop bias –must break up questions into simpler components; | Try to hit "rhythm"/ "pace" earlier in the process – |
| Student 18 | I stumbled when witness did not know answers; Had to refer to notes, missed key point/ I was trying not to look. | Prepare witness much more. Lead a little more to develop background. |

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# Exhibit Procedure

1. Exhibit is pre-marked.

2. Your Honor may I **approach** the witness.
   (show opposing counsel)

3. "**Showing** you what's been marked for identification as exhibit number 1, do you recognize exhibit number 1?"

4. **What** is exhibit number one?

5. **How** do you know that?

6. For most exhibits ask – "is exhibit number one in substantially the same condition as it was the last time you saw it?" OR
   (Photos "fair and accurate") OR
   (Drugs, blood, and bodily fluids etc. you must have a chain of custody.)

7. Your Honor, we **offer** exhibit number 1.

8. Ask more questions of your witness about exhibit number 1.

9. Your Honor, may I show exhibit number 1 to the jury?

**A.** _____

**S.** _____

**W.** _____

**H.** _____

**O.** _____

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# Exhibits – DRILL

Form a line and move repeatedly through the courtroom using the proper language and movements for offering an exhibit.

Assume the exhibit is pre-marked.
(If it is not premarked, ask to approach the bench to have the clerk or court reporter mark the exhibit.)

1) Ask to **approach** the witness:

A) "**Showing** you what has been marked as 'Exhibit 1 for identification' do you recognize it?"

B) "**What** is exhibit #1?"

C) "**How** do you recognize it?"

D) "Is exhibit #1 in substantially the same condition as it was when you last saw it?"

OR

"Does exhibit #1 fairly and accurately represent_____?"

AND/OR

"Would exhibit #1 help you in your testimony?"

2) Take the Exhibit over to opposing counsel and show it to him/her while saying?

"Your Honor, we **offer** 'Exhibit #1"

3) If the Exhibit is received in evidence, USE the Exhibit with the witness for whatever reason you sought to have it admitted. You can show it, read it, and generally, with permission (Depends on the Judge – "DOJ") use the overhead or give individual copies of the Exhibit to the judge or the jury.

4) When you are done with the exhibit, give it to the clerk, court reporter or judge as the court dictates. (DOJ – so ask!)

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# Exhibit Exercise

1. Before the exhibit is offered the offering attorney should lay foundation and set the scene sufficiently. After the exhibit is received, the offering attorney **must** use the exhibit in his/her direct examination

2. You can call any witness or witnesses you want to introduce your exhibit. Often times in real trials, attorneys have to call several witnesses to get an exhibit introduced. Your partner will play the witness or witnesses that you call. You should know how to introduce at least one exhibit. Most likely you will have a chance to introduce that exhibit as well as others.

3. There will be no opposing attorney in this exercise; (we want you to learn the exhibit procedure thoroughly without distractions); there is an all objections rule (anyone in the group can object to foundation and hearsay only)

4. The presiding judge/critiquer may ask questions regarding foundation, hearsay, relevancy, or admissibility, etc…(the attorney offering the exhibit should be able to explain)

Remember, this is pass/fail, so don't psych yourself out.

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# A DOZEN PRACTICAL TIPS FOR WINNING OBJECTIONS
## (By Winning Credibility with the Court) By J. Morrow

1. Study and know the important evidence and procedure rules.
   Know <u>your</u> Judge's evidentiary rules and ground rules.

2. Prepare your trial notebook with anticipated objections. List the witness, the Rule of Evidence, and possible case law. You must know the theory of your case because you have a split second to make an objection at the proper time. In other words, you must plan your objection strategy, just as you plan your opening, closing, direct and cross.

3. Educate the Judge. Always make a motion in limine regarding evidentiary rules, preferably in writing, or at least orally before trial starts. Be sure you know and have clarified the Court's pre-trial evidentiary rules. You will lose a lot of credibility with the Court if you violate his or her pre-trial evidentiary ruling. Make sure to object if the other side violates the judge's pre-trial ruling.
   Educate the jury during jury selection if you plan to make a lot of objections. Lawyers have an obligation to their clients to make objections.

4. Stand up, speak up. Be assertive and persistent. However, don't be afraid to be reasonable; e.g., withdraw your objection if you find out you're wrong; e.g., deposition objections. When making an objection, you may give more than one reason.

5. No speaking objections. Don't argue in front of the jury, but argue forcefully at the Bench or outside the presence of the jury.

6. <u>Only object if it's inadmissible, it hurts, and you will win the objection (or you are making a record for appeal</u> – Remember, trial judges have a great deal of discretion in evidentiary rulings and the appellate court rarely reverses the trial judge's evidentiary decisions.)

7. Look to the Judge for cues, both nonverbal and verbal. The Judge will often tell you with his or her body language, facial expressions, and eye contact that he or she wants an objection.

8. When the other side objects, stand up to let the Judge know you want to make a response to the objection. If you want to do more than quote a rule, ask to approach the Bench. At the Bench, only talk to the Judge. Never talk to opposing counsel, even if he or she is talking to you. Look for the Judge's signal when you're supposed to talk. Make sure that the Judge rules. "Your Honor, has the Court made a ruling?"

9. If the objection is overruled, repeat what you said, word for word. If the objection is sustained; Don't Pout! Just go on with your examination; or "May I be heard, Your Honor?"

10. It's okay to ask the Judge to explain his or her ruling, but be careful and selective about it. If the Judge will let you, ask to approach the Bench rather than asking in open court, "Judge, would you explain the reason for your ruling?"

11. Make a good offer of proof, (preferably Q and A). Not only will it make a record for appeal, but it gives the Judge a second chance to consider your objection. Good judges will sometimes change their mind after you educate them.

12. Ethics. You must have a good faith basis to object. You can't be playing games. If you are, you'll lose credibility with the Court. Minnesota Rules of Professional Responsibility 3.1 – 3.4.

*A trial lawyer's credibility with the Court*
*and jury is his/her most important resource*

JUDGE JIM MORROW
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**Our lives improve only when we take chances – and the first and most difficult risk we can take is to be honest with ourselves.**

**- Walter Anderson**

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# FORM OBJECTIONS – NOT IN THE FEDERAL RULES

The Trial Court Has Great Discretion

1. Repetitious (asked and answered). If the attorney is asking the same question or essentially the same question, you can object as repetitious.

2. Cumulative. The cumulative objection means that you're calling three or four or more witnesses to prove the same exact point. Contrasted with repetitious, which just deals with the same witness.

3. Assumes facts not in evidence. A question that assumes something that has not been brought into evidence. A typical, although not politically correct example, is: "When did you stop beating your wife?" See Berger, 295 U.S. 78 (1935).

4. Misstates the evidence. Often this objection is made in final argument, but it's also made in the course of a trial. See Berger, 295 U.S. 78 (1935).

5. Non-responsive. Witnesses are supposed to answer the specific question put to them, not add more (some judges prefer "asked & answered") or not answer the specific question at all. They can explain on redirect or with another question. Always move to strike when you object as non-responsive.

6. Vague or overbroad. Example: "What happened next?"

7. Narrative. Normally an attorney asking a specific question gets a specific answer. If the witness keeps going and adds more than the question calls for, besides non-responsive, you can also object, "This is turning into a narrative." If a witness tells a long story in response to a vague question, the objection could be, "The question calls for a narrative." Example: "Tell us what happened after your birth." The danger is that inadmissible evidence can easily slip in with the narrative answer.

8. Speculative. The witness is guessing; he/she does not have personal knowledge. Often contains the word "if" or "possible".

9. Multiple – compound. The multiple question asks two or more questions at once. It's very confusing (which question is the witness answering). The multiple question often contains an "and".

10. Argumentative. Questions are supposed to develop information. If the purpose of the question is only to make a little speech to the jury and not provide any new information, it's often argumentative. (Tone is important) See **Berger,** 295 U.S. 78 (1935).

11. **FRE 611 (c) – Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.**

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# OBJECTIONS CLASS 5/30/12

## *Problem One – P v. D – Civil Case*

P sues D for allegedly hitting her with a motor vehicle while she was crossing the street on September 23rd. D's answer denies hitting P and alleges contributory negligence. At trial, P is called as the first witness. After the preliminary foundational questions are asked, P's attorney asks her, "Where were you on September 23rd?" Objection, leading. Rule and explain. The next question is, "Did D drive her car into you on September 23rd?" Objection, leading. Rule and explain.

## *Problem Two – U.S. v. D – Criminal Case*

D is charged with assaulting V. D is 5'2" and weighs 95 lbs. V is 6'7", weighs 240 lbs. and is a professional wrestler. At D's trial, the first witness is the arresting officer, O. On cross, the defendant elicits testimony from O regarding D's size and then asks. "Isn't it a fact that the evidence shows, beyond a reasonable doubt, that D is too small to beat up V?" What is the proper objection?

## Problem Three – U.S. v. D – Criminal Case

D is charged with murdering her husband by shooting him in the head. There are no eyewitnesses and D has an alibi. At trial, after the prosecution rests, D takes the stand and maintains her innocence. On cross, the prosecution asks the following questions:

Q: Why did you kill your husband?

Q: Can you give the jury one reason why you shot and killed your husband?

What would be the proper objections?

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## P v. D. – Civil Case
## DIRECT EXAMINATION ("Class Action," the movie)

BY PLAINTIFF'S ATTORNEY**:**

Q Dr. Pavel, let's talk about the Meridian (a car) blinker circuit. In your capacity as a research scientists at Argo, did you have occasion to test it?

A Oh, yes, sir, I did.

Q Did you have any problems with it?

A It wasn't a problem, sir. That circuit is garbage. Blew up the gas tank. I said so in the report to Mr. Getchel. It was his big invention, Mr. Getchel, so I just gave him the report, and after that—

Q But you were certain then and are certain now that this certain circuit should have not gone into that car?

DEFENDANTENSE ATTORNEY: Objection.

Q Should this circuit have gone into the Meridian?

A Yes, if you want to kill people.

PLAINTIFF'S ATTORNEY: No further questions.

THE COURT: Your witness.

DEFENDANTENSE ATTORNEY: (In front of jury) Your Honor, does Plaintiff's counsel intend to introduce this alleged report?

THE COURT: Counsel?

PLAINTIFF'S ATTORNEY: No.

DEFENDANTENSE ATTORNEY: So the only evidence of its existence is testimony such as that of Dr. Pavel?

PLAINTIFF'S ATTORNEY: Yes. Just testimony.

## CROSS-EXAMINATION

BY DEFENDANTENSE ATTORNEY:

Q Dr. Pavel, in all of your years at Argo, you must have worked on hundreds of projects, correct?

A Yes. Hundreds.

Q Would you like to tell me about some of your favorites, please?

MR. WARD: Objection. Relevance, Your Honor.

A There were lots. The Atlas. That was a terrific car. Motorcycle. Python.

Q The Python, Doctor. Did it have circuit problems?

A No. But I worked on different motorcycles and maybe some of the others—

Q Perhaps like the A100. Do you remember a defective gasket on that one? A100?

A No.

Q What about CA3200? According to reports, an axel had to be replaced?

A Yes. Yes. That was a wonderful motorcycle. That was the first time we put that linkage in a two wheel vehicle.

Q The CA3200 was a pickup truck, Doctor.

PLAINTIFF'S ATTORNEY: Objection, Your Honor.

THE COURT:

Q Doctor, what is 2762396?

PLAINTIFF'S ATTORNEY: Objection. This is not a math test, Your Honor.

DEFENDANTENSE ATTORNEY:

THE COURT:

A I'm not so good with numbers anymore. Could you please repeat it?

Q Absolutely. 2762396. Isn't that your phone number, sir?

PLAINTIFF'S ATTORNEY: Objection.

THE COURT: Overruled.

Q How about 94536?

PLAINTIFF'S ATTORNEY: Objection.

THE COURT: Overruled. Sit down, Mr. Ward.

A (No response)

Q Your Zip Code, sir. 123019?

A (No response)

Q Isn't that your birthday, sir? And 0243?

PLAILNTIFF'S ATTORNEY: Objection, Your Honor.

THE COURT: All right, Counsel. That's enough.

PLAINTIFF'S ATTORNEY: Your Honor, I would like to move to have that last remark be struck from the record.

THE COURT: Strike the last answer. Counsel, I don't want to warn you again. When I say enough, that's enough. You may step down, Doctor.

THE CLERK: Be seated and state your name.

A Michael McKinley Grazer.

Q Mr. Grazer, as I understand it, you were in charge of legal affairs for Argo in the firm of Dwinkel, Pheil & Lund?

A I'm the chief legal liaison between Argo and my firm.

Q When somebody asks for a safety report on Argo, someone like me, for instance, you would get it, and you would turn it over to them, right?

A Right.

Q All of them? Every single one?

A Mr. Ward, you have all the safety research in existence.

Q You mean there might be a report that is no longer in existence?

A There might be eight legged mice on Venus. That's another question I can't answer.

Q Easy for you to make jokes, Mr. Grazer. You have both your arms and legs.

MR. WARD: Objection.
ATTORNEY: Your Honor, opposing counsel has not suggested anything at all that justifies keeping Mr. Grazer on the stand. Isn't it time to move on?

THE COURT: I'm leaning in that direction myself. Please get to the point.

Q Mr. Grazer, do you know the existence now or in the past of a report calling into question the safety of the Meridian model?
A I can't testify on some hypothetical report.
Q It wasn't a hypothetical to Dr. Pavel. He wrote it.
A So he says.
Q So he says under oath. Do you understand, sir, that you are testifying here under oath?
A Yes, I do.
Q And committing perjury is grounds for disbarment?
A Mr. Ward, I find that objectionable. I do know the law.
Q So do I, and I think you are using semantics when all you have to do is answer a simple question. Did you see that report? Yes or no.
MR. WARD: Objection.
Q Answer yes or no. I think you are being evasive.
A I am not being evasive. I'm answering the questions you are asking.
Q The hell you are. The hell you are. You know that I know that, and the jury knows that. I think everybody in this courtroom knows it.
THE COURT: Mr. Ward, sit down.
MS. WARD: (He is only bluffing. He did the same thing in Wrangel vs. Kinkaid. I can handle this.)
ATTORNEY: Then do it.
THE COURT: Ms. Ward?

**CROSS-EXAMINATION**

BY MS. WARD:
Q Mr. Grazer, Mr. Ward has been thundering on for quite some time now, and it occurs to me that with all of his fire and brimstone he might have just confused the issue, so I would like to ask you a simple question straight out. Have you any knowledge of a report calling any version of the Meridian unsafe?
A No.
Q Have you ever seen one, read one, or heard of one?
A No.
MS. WARD: No further questions.

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## Part 4
## Fact Pattern Analysis

1. Jim Rockford, a local private detective and ex-felon, is being prosecuted for felon in possession of a firearm. In the Government's case-in-chief, the prosecutor calls as its witness Angel, who happens to be a close friend of Rockford.

a. The first question by the prosecutor is "Isn't it true that Jim Rockford is a felon, and he carries a gun, doesn't he?" Objection. Leading.
What's the prosecutor's response to this objection?
What other objection could and should be made?

b. Assume Angel answers "no" and that is the only direct testimony. On cross-examination the defense attorney asks Angel questions about Rockford's detective business.
The prosecutor objects beyond the scope. Rule and briefly explain.

c. Assume the objection was overruled. Defense attorney then asks, "Tell us what you know about Jim Rockford?" The State objects, "Improper question."
Explain why that's not a sufficient objection.
What's the correct objection?

d. On redirect the State asks the following question, "Would you tell a filthy lie to keep your scumbag friend out of jail?"

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# Jury Selection

1. You should voir dire the judge; in other words, find out the judge's ground rules:
   a. How does the judge conduct voir dire?
   b. What questions does the judge ask?
   c. Are there time limitations?
   d. How are peremptory challenges to be made?
   e. Will the judge let you "educate" the jury?

2. You should get information about the jury before you question them:
   a. Review jury questionnaires
   b. Watch the jury before voir dire; observe their non-verbal signs
   c. Observe if any jurors demonstrate a lack of interest: talking, arriving late, not listening
   d. Find out who appears to be a leader
   e. Consider the cohesiveness of the group: determine whether you want a harmonious group or jurors who are more individualistic

3. **Develop a rapport (credibility) with the jurors:**
   a. Always be honest and sincere
   b. Talk to each juror individually
   c. Learn their names and how to pronounce their names
   d. Woman jurors may want to be addressed as Mrs., Ms., or Miss
   e. Be sensitive; do not make the jurors uncomfortable
   f. Remember that the tone of your voice is important
   g. Humor is o.k., but don't try to be funny

4. **Ask open ended questions:**
   a. Ask short questions.
   b. Jurors should do 90% of the talking
   c. Maintain good eye contact
   d. Listen to their answers and ask follow-up questions

Bottom Line: The judge and the jury should see you as the attorney who is best prepared and the most credible.

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# JURY SELECTION EXERCISE

## Role Playing Jurors

For this exercise, students will alternate playing the role of a juror. There must be at least 4 jurors for each exercise. Students should play the role of a juror who has **not** attended law school.

### PROCEDURAL ISSUES

1. In this exercise, you don't have time to voir dire the judge. However, as a group you can ask the judge to briefly explain his/her ground rules before the exercise begins.
2. There are no jury questionnaires.

## QUESTIONS BY THE JUDGE

Before any student begins their voir dire, the judge will ask the following questions:

1. Name
2. Job
3. Spouse's or significant other's job
4. Educational background
5. Age
6. Prior jury service
7. Do they know either of the attorneys, the parties, or any of the witnesses

## ORDER OF JURY SELECTION

For criminal cases, the order is as follows: Defense first then Prosecutor

## CHALLENGES

Each student at the end of his/her 5-6 minutes of questioning **will** use 1 peremptory strike on 1 of the 4 jurors (simply tell the judge which 1 juror you would strike with your peremptory challenge and **briefly** explain why)

During each student's 5-6-minute voir dire, the student **may** make any challenges for cause (For example, Bias, Inability to be Fair, Disability, etc…); students will **not** lose any points for failure to make challenges for cause

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**GRADING FORM - - JURY SELECTION**

INSTRUCTOR: _____ STUDENT: _____ DATE: _____

Grading Key:

10 (= A) An excellent accomplishment
9 (= A-)
8 (= B+)
7 (= B)
6 (= B-) An average accomplishment with some major and minor deficiencies
5 (=C) Insufficient preparation
4 A poor accomplishment with significant deficiencies
3
2
1

Critiquers are not required to give a grade for #1-5; they are only guidelines

**JURY SELECTION EXERCISE**

Outline: Yes / No

1. Know judge's voir dire ground rules Grade: ___N/A___

2. Credibility / rapport with the jurors Grade: _____

3. Open-ended questions / let jurors talk Grade: _____

4. Brought out themes, weaknesses, etc… Grade: _____

5. Demeanor and presence: Appropriate eye contact, voice projection, facial expressions, physical posture, and avoidance of distractions Grade: _____

6. **OVERALL** (not necessarily an average of 1-5 above) **Grade:** _____

**COMMENTS:**_____

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# FYI EXCERPTS of STUDENTS' VIDEO/SELF-EVALUATIONS
## [Jury Selection Exercise]

| | Weaknesses | What to Improve |
|---|---|---|
| Student 1: | Not anticipating what defense counsel would ask. | Ask simpler questions and use smaller words. |
| Student 2: | Stood too close to jury; spoke too quickly. | Slow down; watch hand movements. |
| Student 3: | Generally wasn't as prepared as I wanted to be – especially on transitions. | Feel more comfortable – Trust myself. |
| Student 4: | I looked down too much. as it could have. | Didn't flow as smooth Better eye contact. |
| Student 5: | Too much hand gesture. | Memorize more; Practice, practice, practice! |
| Student 6: | Still relied on notes more than I wanted. | No more notes = ideal; or, Big 1- word notes = realistic. |
| Student 7: | Delivery was not smooth; too tied to notes. | Get more comfortable not using my notes. |
| Student 8: | Doesn't sound smooth & flowing. | Put more time into memorization. |
| Student 9: | Too much notes; Mumble mouth. | Practice more, memorize more. |
| Student 10: | Tied to my notes. Demonstrations were out of control. | Practice – Prepare in advance. |
| Student 11: | Prep, transition words, flow of presentation. | No "ums" – Flow better. |
| Student 12: | Filler language. | No filler language. |
| Student 13: | Too attached to notes. Looked down a lot. | Less attached to notes, bring less notes. |
| Student 14: | Should have put in more arguments to Counter defense claims. | More comfortable with jury – get closer to them. |
| Student 15: | Lack of preparation for the assignment. | Be prepared and stay calm while speaking and remember to breathe. |

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# Closing Argument

1. Start Strong - First minute – state themes, tell why you should win; you must establish passion and credibility; throw away most of your notes, use a brief outline with BIG FONT.

2. Argue the theory of your case. The theory of your case should incorporate the law, the contested, as well as the undisputed facts.

3. "Argue" your themes starting with jury selection, then opening statement, direct examinations and cross-examinations (DOJ).

4. Argue the law as well as the facts. Argue and use the court's instructions; it gives you and your client credibility.

5. Use exhibits and visual aids. The average person can devote uninterrupted attention for only five or ten minutes. Exhibits provide psychological breaks and are persuasive.

6. Argue your strengths; for example, explain why your witnesses are more credible; don't dwell as much on the other side's weaknesses.

7. Deal honestly with your own weaknesses – it makes you look credible, and it hurts the other side's argument.

8. Use rhetorical questions – jurors can't ask questions; you can.

9. If you use stories/metaphors/analogies, keep them short.

10. End strong. Repeat your strongest themes; tell the jury using the law and the facts why it's just and fair that your side wins. Remember to win, you must be credible.

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**GRADING FORM - CLOSING EXERCISE**

INSTRUCTOR_____ STUDENT: _____ DATE: _____

Grading Key:

10 (= A) An excellent accomplishment
9 (= A-)
8 (= B+)
7 (= B)
6 (= B-) An average accomplishment with some major and minor deficiencies
5 (=C) Insufficient preparation
4 A poor accomplishment with significant deficiencies
3
2
1

Critiquers are not required to give a grade for #1-7; they are only guidelines

**CLOSING EXERCISE**

Outline: Yes / No

1. Effective organization and structure of presentation
   Start strong and end strong Grade: _____

2. Persuasiveness - Effective presentation Grade: _____

3. Summary of Important facts, inferences and themes Grade: _____

4. Application of facts to support legal elements Grade: _____

5. Argued credibility of witnesses (strengths and weaknesses) Grade: _____

6. Use of Visual Aids Grade: _____

7. Demeanor and presence: Appropriate eye contact, voice projection, facial expressions, physical posture, and avoidance of distractions Grade: _____

8. **OVERALL** (not necessarily an average of 1-7 above) **GRADE:** _____

**COMMENTS:**_____
_____
_____

*** Place this form in your individual folder after class. ***

# Sample Defendant Closing ( 5 min. argument)

May it please the Court, counsel. No one was criminally negligent in this accident. The only thing the State has proven beyond a reasonable doubt is that there was an accident. On October 18, Terry Jackson wanted to make a right turn. A car was in front of her, and she began to drive around it. At that moment, Chris Nelson - - who was running late – decided to cross the street without looking for traffic. Chris Nelson suddenly appeared in front of Ms. Jackson's vehicle and froze there. What would a reasonable person do in this situation? Slam on the brakes. What did Ms. Jackson do? She slammed on the brakes. Unfortunately for Ms. Jackson, she was driving a Suzuki. When she hit the brakes, the Suzuki swerved and, going less than 40 miles an hour, it hit a curb and rolled over. There were 3 people riding in the Suzuki. Two were wearing seatbelts and lived. One was not wearing a seat belt and died. You heard Ms. Jackson credibly testify that she always tells everyone riding in her Suzuki to put on a seat belt. She put one on herself. She told Sam to put one on and she did. She told Renee to put one on but she didn't. She didn't like the way it fit with her skirt.

The State has failed to prove my client guilty of negligent homicide beyond a reasonable doubt – that is, that her driving behavior demonstrated criminal negligence - - a gross deviation from the reasonable standard of care. They may have proven she was negligent, but they have by no means proven she was criminally negligent. Let's look at the testimony:

Chris Nelson admitted that, as he was crossing Elm Street without a crosswalk, he wasn't looking where he was going, he wasn't looking for traffic, he wasn't being careful. He walked right in front of Ms. Jackson's vehicle and froze. If it wasn't for Ms. Jackson's quick reflexes in slamming on the brakes, he would have been hit. Chris Nelson was negligent. And he knew it. He didn't want to tell the police everything that had happened. Why? He didn't care about Ms. Jackson. He was angry with her. NO, he knew the accident was caused partly by his negligence.

The State tries to blame Ms. Jackson for not heeding the warning in her car. That warning couldn't have prevented Chris Nelson from walking in front of Ms. Jackson's car; it couldn't have buckled Renee Carter's seat belt for her; it couldn't have prevented a freak accident.

If Terry Jackson is guilty of criminal negligence, almost every driver is guilty of criminal negligence under these circumstances. Ms. Jackson drove over the speed limit on Elm Street. But you heard both experts agree that almost every driver goes 40 miles an hour on Elm. And Ms. Jackson took her eyes off the road for a second, but so does every other driver when they turn on the heat, when they turn on their headlights, or when they look in their rear view mirror.

Under Independence Law, if you think there is a real possibility that Ms. Jackson is not guilty, you must give her the benefit of the doubt. If there is any reasonable doubt, she must be found not- guilty. There is plenty of reasonable doubt.

Renee Carter chose not to put her seat belt on even though Ms. Jackson told her to do so. Had she worn it, she would have lived like the other two passengers who were wearing seat belts. That's reasonable doubt.

Chris Nelson didn't pay attention and walked right in front of Ms. Jackson's car. Had he been more attentive, the accident wouldn't have happened. That's reasonable doubt.

Why is Sam Carter testifying for the person alleged to have killed her sister? Sam Carter, the passenger, the real eyewitness, knows the accident wasn't Ms. Jackson's fault. That's reasonable doubt.

The Suzuki Samurai has the highest roll over rate of any car. In 42% of accidents, the Suzuki rolls over. Had Ms. Jackson been driving any other vehicle, the car wouldn't have rolled. That's reasonable doubt.

Your Honor, it's not Ms. Jackson's fault Renee Carter wouldn't put on a seat belt, and it's not a crime to drive a Suzuki, but those are the real reasons we're here today. I respectfully ask that you find my client not guilty.

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# Sample Prosecution Closing ( 5 min. argument)

May it please the Court, counsel. Renee Carter is dead because the defendant was criminally negligent. The defendant's driving behavior demonstrated a gross deviation from actions a reasonable driver would take. A reasonable driver would not be barreling down Elm Street at 50 mph, greatly exceeding the 30 mile an hour speed limit, a reasonable driver would not drive without paying attention for several seconds, and a reasonable driver would have paid attention to her own car's warning. The warning on the defendant's Susuki said if you make sharp turns, you're going to lose control, roll over, crash, and seriously hurt someone. That's how Renee Carter was killed.

There's no question that the defendant failed to perceive a substantial and unjustifiable risk of harm to Renee Carter. We have proven beyond a reasonable doubt that the defendant is guilty of negligent homicide. Let's look at the testimony.

Was the defendant speeding? Absolutely. Did the defendant admit she was speeding? No. The defendant told the State expert she didn't know exactly how fast she was going, but she was sure she was going the normal flow of traffic, but then, she insisted she was not speeding. The defendant is not credible. Even her own expert says she was speeding - - that she was going 12-13 miles over the speed limit. However, the defendant says if she was speeding, it was because she was going the normal flow of traffic on Elm. But on October 18, there was no other traffic - - there was no flow. The defendant's Suzuki was the only moving vehicle on Elm. So there was no reason for the defendant to drive 50 mph in a residential area where there are lots of people, lots of pedestrians, and lots of students, especially around lunchtime – that's criminal negligence.

And as the defendant was speeding down Elm Street at 50 mph, she wasn't paying attention, she wasn't watching the road, she wasn't driving reasonably. The defendant says she was inattentive for only a second. How many seconds? She was talking and laughing with both Renee and Sam, she was teasing Renee about history, they were all listening to music, and she was leaning down, trying to eject a CD, and then trying to hand the CD back to Renee. Because the defendant was inattentive, she didn't slow down to make her right turn; she also didn't see the pedestrian crossing at the corner. She panicked and made a sharp turn because she wasn't watching the road for several seconds - - that's criminal negligence.

The defense attorney will try to blame the crash on the Suzuki's high roll over rate. All the defendant had to do was look up at her own warning visor - - the warning visor that was right in front of her, the warning that, in her own words, was "impossible to miss," and she would have known that if you make sudden sharp turns in that car, you lose control, roll over, crash, and seriously hurt someone. The defendant admitted she did not pay attention to the warning - - that's criminal negligence.

Which expert is credible? The State's expert - - Officer Demlong - - is a roll over accident specialist, has investigated hundreds of accidents, and teaches accident reconstruction. His credible opinion is that the defendant was going 50 miles per hour in a 30 mile an hour zone.

The defense expert testified on cross that if the flow of traffic is X miles an hour on a street, and the speed limit is 30, all traffic should safely go X. That's not credible.

Each of the defendant's choices alone was not necessarily criminally negligent, but if you look at all the defendant's choices together, they add up to criminal negligence. The defendant chose to go 17-20 miles per hour over the speed limit in a residential school area. The defendant chose not to pay attention to her roll over warning. The defendant chose not to pay attention to the "Caution Pedestrians" sign. She chose to eject the CD herself instead of having Sam Carter eject the CD. She chose to drive without making sure everyone in her car had their seat belts on. She chose to take her eyes off the road for several seconds. (She could have prevented this death.) All these choices together that the defendant made equal an unjustifiable risk. The defendant failed to perceive this risk. Her criminally negligent actions caused Renee Carter's death.

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## FYI Excerpts of Students' Video/Self Evaluations-Closing

| | Weaknesses | What to improve |
|---|---|---|
| Student 1 | Simple, simple, simple. To be effective, particularly with a jury, you have to keep it simple. You have to know your audience. Of course, cases are complex involving lots of facts and law – and I have a natural tendency to make simple things complex. Always keep it simple. | I would like to improve upon the flow/structure of the closing. The ordering of the presentation is very important and I am quite certain this will improve as my overall knowledge and comfort with the details of the case increase with time. |
| Student 2 | Used notes too much, didn't memorize enough; too many uhms; shifted back and forth too much; don't' get distracted by people around me; not enough variation; have more passion – I'm boring myself; don't pause too long; stop sucking | Not to use my notes so much, practice practice, practice |
| Student 3 | I need more transitions in this closing. I also need to use language that helps "paint a picture" | Transitions and focus more on word choice |
| Student 4 | Need more vocal range, need to use hands to tell a story; moved around way too much. | Be more theatrical (in a lawyerly way); use body language effectively, hands for effect posture; use silence for effect |
| Student 5 | Um, Um; polish up demonstration; more specific question/fewer "what happened next?" | Polish up question and demonstration. Banish "ands". |
| Student 6 | Fluidity/stumbles in places; forgot reasons defense would lie; need to get most important points out sooner; closing line? Danger of losing credibility; short on time | Memorize intro; practice for time; learn case facts better |
| Student 7 | I didn't get to the meat early enough. I empathized with the plaintiff and laid out the legal standard before declaring my client was not at fault. Get on it earlier so I don't get cut off in my closing | Being better prepared; have a better prosecution and knowing what to start with and what to end with. |
| Student 8 | Not starting out strong. | Have 3 main points and stick with it |
| Student 9 | Too reliant on reading from paper | Less note reliance; memorize more. |

| | | |
|---|---|---|
| Student 10 | I was not even talk or make a sentence so I need to be able to figure out how to break when I'm in from of people. I also need to cut down on what I want to focus on ; mine would have been almost too long | Breathing and relaxing; just keep practicing and setting my mind set better |
| Student 11 | Should have developed Helen's character more/made her more sympathetic | Build as much sympathy as judge will allow. |
| Student 12 | I wandered a bit in the middle, losing momentum. If I am going to use my slow, measured delivery, I need to make sure that the text of my closing is as tight as possible and flows or I will risk boring or losing the jury. I shifted a little from foot to foot. | My delivery needs to be stronger in the middle. Everything that does not move me to my goal must be cut. |
| Student 13 | Didn't have everything memorized, had to refer to notes; Should focus on using transition phrases; Went a few secods over the time limit; get done on time going forward | Primacy and recency – get jury looking through my lens (don't just jump in – get their attention); Really set the scene! Thing through it. |
| Student 14 | My intent to be commanding is coming off as intimidating. Eventually, I'd like to know this case so well, that I don't even need notes | I would like to be more "likeable." As well, I would like to vary pitch and show more emotion. Therefore, I need to approach this like an acting exercise and practice to find a proper "voice." |
| Student 15 | The overall strength of my closing – not enough facts at all. I also stuttered some, appeared flustered at times. | Have more of my closing internalized. Practice, practice, practice. |
| Student 16 | Distracting stance (I need to stand still); holding notes – don't need them, they're just distracting; started talking a little too fast near end. | Working without notes and standing still. |
| Student 17 | Verbal bad habit – I've dropped the "or's" but now I said "and" and "ahh" at the outset of many of the questions. A little tight at the outset – was more natural with my hand gestures as it progressed. | Verbal habit – "ahh" and "and"; remind myself at outset; don't be afraid to show emotion. |

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**CRITIQUER/TEACHER EVALUATION FORM**

**Exercise Date:_____ Critiquer/Teacher_____**

| | | Low | | | | High | |
|---|---|---|---|---|---|---|---|
| 1. The instructor critiqued the exercise in a professional, helpful and courteous manner. | **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 2. The instructor made specific comments and pointed out individual student areas that need improvement. | **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 3. The instructor properly paced the exercise, allowing time for each student performance and critique. | **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 4. Overall, I rate the instructor: | **1** | **2** | **3** | **4** | **5** | **6** | **7** |

I would want to be critiqued by this instructor again. _____ **Yes** _____ **No**

I liked the following about this instructor:

This instructor could improve by:

Suggestions for ways THIS EXERCISE could be improved:

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Student Attorney Name _____

# QUIZ--ETHICS

1. A lawyer shall abide by a client's decision concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. **T** **F**

2. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to the plea to be entered, whether to waive jury trial and whether the client will testify. **T** **F**

3. The decision on what, when, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and all the strategic and tactical decisions are the exclusive providence of the lawyer after consultation with the client. **T** **F**

4. The advocate must provide competent representation and act with reasonable promptness and diligence. Competent representation minimally consists of legal knowledge, thorough preparation, and effective presentation of the case. **T** **F**

5. What a client tells a lawyer and the advice a lawyer renders to a client is confidential and may not be revealed unless the client consents, or certain situations permit or require disclosure. **T** **F**

6. A lawyer may not represent a client if that representation will compromise or be compromised by the lawyer's responsibilities to another client or to a third person. **T** **F**

7. If the lawyer's own interests conflict, the case should be referred elsewhere. **T** **F**

8. A lawyer shall not bring or defendant a proceeding, or assert or controvert an issue therein unless there is a good faith argument for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. **T** **F**

9. A lawyer for a defendant in a criminal proceeding or the respondent in a proceeding that could result in incarceration should require that every element of the case be proved. **T** **F**

10. An attorney is prohibited from presenting any claim or defense unless to the best of that attorney's knowledge, information, and belief formed after reasonable investigation and research, it is well-grounded in fact and is warranted by existing law or a good faith argument for the development of new law. **T** **F**

11. An attorney must have an objective basis in law and fact to support a claim or defense. It is insufficient for an attorney to merely have a "pure heart" in asserting a claim or defense. **T** **F**

12. A lawyer must make reasonable efforts, consistent with the legitimate interests of a client, to expedite a trial or hearing and not delay proceedings for improper reasons. **T** **F**

13. A lawyer shall not knowingly offer evidence that the lawyer knows to be false. **T** **F**

14. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures. **T** **F**

15. Lawyers shall not allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. **T** **F**

16. A lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel **T** **F**

17. A lawyer shall knowingly make a false statement of material fact or law to a tribunal **T** **F**

18. An advocate should communicate with the decision-maker (if permitted) about a matter in a case only if the opposing lawyer is present or involved. **T** **F**

19. A lawyer shall not knowingly disobey an obligation under the rules of the tribunal except for an open refusal based on an assertion that no valid obligation exists. **T** **F**

20. The true sanctions for violation of the rules of ethics are personal and professional, such as the loss of self-esteem, reputation, respect, credibility, and ultimately, cases and clients. Conscientious lawyers realize that they are not judged by their official record with the bar so much as they are judged by their reputation in the community. **T** **F**

## Please hand in the Ethics Quiz on Saturday June 2nd