

Office 204 W Law School  
Hours: Friday: 4:00p.m.-6:00 p.m.  
and Sunday 11:30a.m.-1:30p.m.  
Or By Appointment

Jmorrow01@hamline.edu  
Cell - (763) 670-1236 Best Way to Reach Me  
Office: 651.523.2407

## **Trial Advocacy Spring 2009** **Syllabus - Hamline Law School Weekend Trial Advocacy**

**8:00 a.m.-11:15 a.m. SUNDAYS Moot Courtroom**

**We start at 8:00 a.m., we only have 10 full class periods (not 13), classes 11 & 12 are set aside for trials. 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 – *Trial* (Haydock & Sonsteng, 3rd Edition) READ CHAPTERS 1 & 2 FOR THE 1<sup>ST</sup> CLASS**

**REQUIRED NITA (National Institute of Trial Advocacy) Cases – These two cases must be purchased, probably at the bookstore (they are not available online) READ/SKIM BOTH CASES BEFORE THE 1<sup>ST</sup> CLASS. *State vs. Chambers* (Criminal Assault case) *Darngood v. Landers* (Civil Truck/Pedestrian Accident Case). We will use these cases (Chambers/Darngood) when we do ALL the graded exercises, including the trials!**

**REQUIRED - BRING YOUR OWN VHS Tape (at least 90 minutes)**

**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:** 50% of Grade- Exercises (7 of 8, I drop your lowest score, the 3<sup>rd</sup> class is Pass/Fail)  
50% of Grade -Final Trial (Includes Final Trial Notebook & 7-Page Trial Critique Paper-Both are Pass/Fail) Judge Morrow will preside/critique/grade all final trials.

**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. Since we only have 10 classes, you can miss 1 class and it will not affect your grade because you can drop your lowest score; if you miss 2 classes, it will lower your grade unless you see me before class and have a very good reason; if you miss 3 classes you must withdraw from the class. Missing class hurts you because of the trial skills work you miss and it hurts your classmates because of the problems we will have matching up other students because of your absence.

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I have been teaching trial skills to lawyers and law students for over 28 years. I'm also bringing in 10 other critiquers; all of them are experienced, well respected trial lawyers/judges and teachers. In addition, you will be given the opportunity to hear lectures on persuasion, jury selection, exhibits, objections, demonstrative evidence, openings, directs, crosses, and closings.

### **Critiquers:**

Caroline Durham, trial attorney  
Judge Tammi Fredrickson, Trial judge  
Bryan Leary, trial attorney  
Judge John McBride, trial judge  
Cindy McCollum, trial attorney  
Virginia Murphrey, trial attorney  
Wolanda Shelton, trial attorney  
Rex Tucker, trial attorney  
Bill Ward, trial attorney  
Carol Weissenborn, trial attorney  
J. Morrow

Coach Mike Bennett is a drama instructor who will work with a limited number of students who need extra help with their speaking skills.

### **CLASS SCHEDULE AND ASSIGNMENTS**

#### 1<sup>st</sup> class 1/18 speakers:

Michael Bennett. Drama Coach-Persuasion  
Aaron Thom, all state attorney – Demonstrating Cross/ Closing  
J. Morrow – Themes/Theories, Opening, Direct, Cross, Closing

2<sup>nd</sup> Class – Jan 25<sup>th</sup> **Read Chap. 11** before preparing Closing Exercise. **(Graded) Speaker - J. Morrow**

3<sup>rd</sup> Class – Feb 1<sup>st</sup> **Read before class** Chap 8 & Chap 4 Exhibits/Objections **(P/F)Speaker– C. McCollum**

4<sup>th</sup> Class – Feb 8<sup>th</sup> **Read before class** Chap 5. Jury Selection **(Graded) Speaker – B. Leary**

5<sup>th</sup> Class – Feb 15<sup>th</sup> **Read before class** Chap 9 Cross Exercise. **(Graded) Speaker – Judge Fredrickson**

6<sup>th</sup> Class – Feb 22<sup>nd</sup> **Read before class** Chap 7. Direct Exercise **(Graded) Speaker – R. Tucker**

7<sup>th</sup> Class –Mar 1<sup>st</sup> **Read before** Class Chap 6 Opening Exercise. **(Graded) Speaker – The Murnane Firm-Civility**

8<sup>th</sup> Class–Mar 8<sup>th</sup> **Review** Chaps. 4, 7, & 9 Trial Direct/Cross**(Graded)Speaker–Bill Ward -Closing Argument lecture**

9<sup>th</sup> Class–Mar 15<sup>th</sup> **Review** Chps 4, 7 & 9 Trial Direct/ Cross **(Graded) Speaker –C. Durham– Demonstrative Evid**

10<sup>th</sup> Class – Mar 22<sup>rd</sup> **Review** Chaps. 6 & 11 Trial Opening /Closing Exercise.**(Graded) Speaker – J. Morrow, Trial Questions.**

**Spring Break Mar. 29<sup>th</sup> NO CLASS-** Trial Preparation

11<sup>th</sup> Class – Apr. 4<sup>th</sup> & 5<sup>th</sup> Half day court trials **(Graded)**

Apr. 11 & 12<sup>th</sup> (Easter Weekend-Optional) Half day court trials. **(Graded)**

12<sup>th</sup> Class – Apr 18<sup>th</sup> / 19<sup>th</sup> & Apr 25<sup>th</sup> / 26<sup>th</sup> Court if needed and Jury trials.**(Graded)**

May 2<sup>nd</sup> & 3<sup>rd</sup> – Half day jury trials if needed.**(Graded)**

## **GROUP RULES**

1. You will choose a trial partner. You and your partner may work on weekly 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 5 groups, each group will have 8 people. Before the 1<sup>st</sup> class, or at the 1<sup>st</sup> class, you will choose your group. Each group will consist of 4 sets of partners.

## **FINAL TRIAL RULES**

1. You and your partner will choose your 2 trial witnesses who will be the other members of your group of 4; each student lawyer must be a trial witness. You and your partner will be the witnesses for your 2 other group members.

Example: assuming you and your partner are group members #1 and #2, group members #3 and #4 will be your witnesses and you will be their witnesses for their trial.

2. You will choose a court trial or jury trial. (by March 1<sup>st</sup> ).
3. If you choose to do a jury trial, you must bring in 2 jurors for someone else's jury trial.
4. If you choose to do a court trial, trials will be the weekend of Apr 4<sup>th</sup>/5<sup>th</sup> or 11<sup>th</sup> /12<sup>th</sup> . (Easter weekend-optional)
5. If you choose to do a jury trial, jury trials will be the weekend of Apr.18<sup>th</sup>/19<sup>th</sup> or 25<sup>th</sup>/26<sup>th</sup> or possibly May 2<sup>nd</sup> or 3<sup>rd</sup> .
6. You will choose the civil (Darngood) or the criminal (Chambers) case. (on March 1<sup>st</sup> ).
7. If you choose civil, you will do your 7-page paper (not a research paper) evaluating/critiquing another team's criminal trial, including your evaluation of their theme/theory of the case, openings, directs, exhibits, crosses, objections and closings.
8. If you choose criminal, you will do your 7-page paper (not a research paper) evaluating/critiquing another team's civil trial, including your evaluation of their theme/theory of the case, openings, directs, crosses, exhibits, objections and closings.
9. Assuming we have 40 in class, you will try your case outside of your group of 8.

## **Trial Advocacy 01/25-3/22/09** **Classes 2 - 10 Schedule**

### 1. Schedule

8:00 - 8:10	With Judge Morrow in Moot Courtroom
8:10 – 8:15	Go to Small Group Break-out Rooms, (Moot Courtroom, 301, 303, 04, 200-Faculty Study
8:15-10:15	Closing Arguments (minimum 6 minutes- maximum 7 minutes)
8:15	First closing argument begins
	Instructor's critique
About 9:15	*10-minute break*
9:25	Exercices résume
10:15-10:25	* Break*
10:25-11:05	Lecture and questions in Moot Courtroom
11:05-11:15	Wrap up with Judge Morrow

**\*\*Students** will be responsible for handling the video camera. \*\*

**\*\*Students** will be responsible for timing the exercise, the critiques and the breaks. \*\*

2. Students should bring a written copy of their closing argument **outline** to class. Students must show their outlines to the instructors. Instructors must check off the student's outline on the grading form before the student's exercise.

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

4. Critiquers must place the grading forms in the "Grading Forms" folder located in the file box after class. Instructors will give oral feedback in class as well as written feedback on the grading form.

5. Students must fill out a critiquer evaluation form and submit the forms to their "group nag". Each "group nag" must place all group members' critiques in the file folder labeled "instructor critiques" **before 10:25am.**

6. You will be videotaped in four of the five meeting rooms. You should review your videotape **during the week** and place the one-page video/self evaluation form in your individual folder next Sunday. If you are in room 303, you will not be videotaped. But, you will still fill out a self-evaluation form and place it in your file folder after each class.

**\*\*Students are responsible for insuring that their file folders are complete! Students should check their folders each week 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 won't get a grade.**

## Critiquer's Schedule

### **Jan. 25 – Closings**

- Group 1. B. Ward
- Group 2. C. Durham
- Group 3. B. Leary
- Group 4. C. McCollum
- Group 5. R. Tucker
- Lecture – J. Morrow-Exhibits/Objections

### **Feb 1<sup>st</sup> – Exhibits & Objections**

- 1. C. McCollum- lecture-Jury Selection
- 2. W. Shelton
- 3. J. Morrow
- 4. Judge Fredrickson
- 5. Judge McBride

### **Feb. 8<sup>th</sup> – Jury Selection**

- 1. B. Leary – lecture- Cross
- 2. C. McCollum
- 3. Judge McBride
- 4. J. Morrow
- 5. C. Weissenborn

### **Feb. 15<sup>th</sup> – Cross**

- 1. W. Shelton
- 2. B. Leary
- 3. Judge Fredrickson-lecture- Direct
- 4. C. Durham
- 5. J. Morrow

### **Feb 22<sup>nd</sup> – Direct**

- 1. Judge McBride
- 2. J. Morrow
- 3. B. Ward
- 4. R. Tucker- lecture -Openings
- 5. C. McCollum

### **Mar. 1<sup>st</sup> - Openings**

- 1. R. Tucker
- 2. C. Weissenborn
- 3. V. Murphrey
- 4. W. Shelton
- 5. J. Morrow
- Lecture – Murnane Lawyers - Civility

### **Mar. 8<sup>th</sup> – Trial Direct & Trial Cross**

- 1. C. Durham
- 2. V. Murphrey
- 3. R. Tucker
- 4. J. Morrow
- 5. B. Ward – lecture- Closings

### **Mar. 15<sup>th</sup> – Trial Direct & Trial Cross**

- 1. J. Morrow
- 2. B. Ward
- 3. C. Durham–lecture–Demonstrative Evid.
- 4. V. Murphrey
- 5. B. Leary

### **Mar 22<sup>nd</sup> – Trial Opening & Closing**

- 1. C. Weissenborn
- 2. R. Tucker
- 3. C. McCollum
- 4. B. Ward
- 5. C. Durham
- Lecture– J. Morrow - trial questions

## Group Room Assignments

### CLASS 2 – Jan. 25<sup>th</sup>.

Group I – Moot Court  
Group II- 200-Faculty Study  
Group III – 04 Law School  
Group IV – 301, law library  
Group V – 303, law library

### CLASS 3 – Feb 1<sup>st</sup>.

Group I – 200  
Group II- 04  
Group III – 301  
Group IV – 303  
Group V – MTCT

### CLASS 4 – Feb 8<sup>th</sup>.

Group I – 04  
Group II- 301  
Group III – 303  
Group IV – MTCT  
Group V – 200

### CLASS 5 – Feb 15<sup>th</sup>.

Group I – 301  
Group II- 303  
Group III – MTCT  
Group IV – 200  
Group V – 04

### CLASS 6 – Feb 22<sup>nd</sup>.

Group I – 303  
Group II- MTCT  
Group III – 200  
Group IV – 04  
Group V – 301

### Class 7 – Mar 1<sup>st</sup>

Group I - MTCT  
Group II -200  
Group III -04  
Group IV - 301  
Group V - 303

### CLASS 8 – Mar 8<sup>th</sup>.

Group I - 200  
Group II - 04  
Group III - 301  
Group V - 303  
Group V - MTCT

### CLASS 9 - Mar 15<sup>th</sup>

Group I - 04  
Group II - 301  
Group III- 303  
Group IV - MTCT  
Group V - 200

### CLASS 10 – Mar 22<sup>nd</sup>

Group I - 301  
Group II - 303  
Group III - MTCT  
Group IV - 200  
Group V - 04

### CLASS 11 – Apr. 5<sup>th</sup> Court Trials

Easter Break – Apr. 11<sup>th</sup> & 12<sup>th</sup>  
(optional court trials)

### CLASS 12–Apr. 18<sup>th</sup> or 19<sup>th</sup>

Court or Jury Trials

Apr 25<sup>th</sup>/26<sup>th</sup> more jury trials

May 2<sup>nd</sup>/3<sup>rd</sup> more jury trials if needed

**All Trials in The Moot Courtroom**

## **Sample Roster - Trial Advocacy Groups -**

\* Students with an “\*” behind their names are designated “group nag”

### **Group I**

1. Lori Athmann\*
2. John Carney
3. Brad Thiel
4. Michael Medved
5. Jill Baker
6. Reggie Bowerman
7. Greg Smith
8. Evy Schneider

### **Group II**

1. Jesse Flynn\*
2. Tom Bursch
3. Scott Zierden
4. Larry Rice
5. Jason Stark
6. Jodi Drawl
7. Guillermo Aviles-Mendoza
8. John Sadowski

### **Group III**

1. Shelley Ryan\*
2. Tessa Heeren
3. Carrie Doom
4. Brittany Dunlop
5. Johanna Kirk
6. Paul Voge
7. Michele Newell
8. Karen Koester

### **Group IV**

1. Makenzie Hannan\*
2. Sara Euteneuer
3. Colleen Daugherty (NOTE: reassigned)
4. Mari Magler (NOTE: reassigned)
- 5/6. Tim Engelbrecht
- 7/8. Terry Watkins

### **Group V**

1. Chris Bosquez\*
2. Cindy Hills
3. Autumn Gould
4. Rebekah McDonald
5. Dar Nubson
6. Amber Lawrence

## Assignment for Weekend Trial Advocacy Class 2 (1/25/09)

1. READ:
  - a. Haydock and Sonsteng: Read Ch. 11;

### 2. DO: **CLOSING EXERCISE ASSIGNMENT**

<b>Group Member</b>	<b>Role</b>
#1 & #2	Darngood plaintiff
#3 & #4	Darngood defendant
#5 & #6	<u>Chambers</u> prosecutor
#7 & #8	<u>Chambers</u> defendant

\*\*\*\*\*

#### **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 motion you argue. 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

## GRADING FORM - CLOSING EXERCISE

STUDENT: \_\_\_\_\_ INSTRUCTOR: \_\_\_\_\_ DATE: \_\_\_\_\_

<u>Grading Key:</u>	
10 (= A) An excellent accomplishment	Critiquers are not required to give a grade for #1-7; they are only guidelines
9 (= A-)	
8 (= B+)	
7 (= B)	
6 (= B-) An average accomplishment with some major and minor deficiencies	
5 (=C) Insufficient preparation	
4 (=D)	
3 (=F)	
2	
1	

### CLOSING EXERCISE

Outline: Yes / No
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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. ***
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\*\*\* Give this form to your “group nag” before 10:25am. \*\*\*

### CRITIQUER/TEACHER EVALUATION FORM

**Exercise Date:** \_\_\_\_\_ **Critiquer/Teacher** \_\_\_\_\_

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

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:

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

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 - make it your closing with “I will prove,”language

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.

## Closing Argument

1. First minute – state themes, tell why you should win; you must establish passion and credibility.
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 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.

## Opening Statements

1. Start Strong
  - a. Have a “theme” and start immediately with your theme.
    - i. i.e. in a child sex case your first word might be, “Exploitation...”
    - ii. The theme should be in your first or second sentence
  - 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 too many, “this witness will testify...”
  - g. Refer to the burden of proof and/or the law - DOJ
3. Use your own style
  - a. Do not read your opening
  - b. Do not use a podium
  - c. Move around and engage the jury (within your comfort level).
4. Use exhibits that have been cleared with the judge and opposing counsel.
5. Point out your weaknesses.
  - a. Anticipate what the other side is going to argue (or has argued) and address it with whatever evidence you will present against it.
6. 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.
7. Close strong!
  - a. Reemphasize your theme as you close up.
  - b. Tell your jurors the conclusions they will draw from the evidence.
8. Be yourself!

## Direct Examination

1. **Preparation** – Meet with your witness; go over the facts and themes. Do at least one mock question and answer.
  - 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, and How.”
  - Ask short, simple, clear questions.
    - Eight to ten word maximum with few exceptions.
  - Don't ask “Do you recall?” “Do you remember?”
  - Prepare answers, not questions.
  - Try to get away from your notes – use big notes (BIG FONT).
3. **Chunking/Blocking**.  
Use headlines or themes. For example, see page 304 and 305 of Haydock and Sonsteng, 3<sup>rd</sup> Edition.
  - 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.
    - 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.**
  - 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
  - Throw away most of your notes - use a brief outline.
  - 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?

## TEN COMMANDMENTS OF CROSS-EXAMINATION BY JUDGE IRVING YOUNGER

1. Be brief
2. Short (questions) statements - plain words.
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. Don't 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. Control the witness in a professional manner (not by being rude etc.)
3. One fact, one statement
4. Strong, confident demeanor – tone is very important.
5. Don't show your feelings if you get a bad answer. (But see Younger's commandment #4.)
6. Be natural. Use your own style.

## **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 your 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. Only object if it's inadmissible, it hurts, and you will win the objection (or you are making a record for appeal – Remember, trial judges have a great deal of discretion in evidentiary rulings and the appellate court rarely reverses the trial judges 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. 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 a lot of 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  
(651)523-2407

**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**

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 defend 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**

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|--|----------|----------|
| 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.  | <b>T</b> | <b>F</b> |
| 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.  | <b>T</b> | <b>F</b> |
| 13. A lawyer shall not knowingly offer evidence that the lawyer knows to be false.   | <b>T</b> | <b>F</b> |
| 14. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.  | <b>T</b> | <b>F</b> |
| 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.   | <b>T</b> | <b>F</b> |
| 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   | <b>T</b> | <b>F</b> |
| 17. A lawyer shall knowingly make a false statement of material fact or law to a tribunal  | <b>T</b> | <b>F</b> |
| 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.   | <b>T</b> | <b>F</b> |
| 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.   | <b>T</b> | <b>F</b> |
| 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. | <b>T</b> | <b>F</b> |

**Please hand in the Ethics Quiz on February 1<sup>st</sup> - 3<sup>rd</sup> class**