TRIAL ADVOCACY
SYLLABUS
[Course No. 6203]

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To the Webpage: Go to U of A School of Law; Academics, Current Students, Courses & Exams,
Course Materials, Professor Bailey's Course Materials.

Copyright © 2014
1. Opening Statement - Criminal Case *State v. Edwards* .................. CASE
2. Direct/Cross Examination - Criminal Case *State v. Edwards* .......... CASE
   (a) Key witness for the Plaintiff in *State v. Edwards*
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<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 25 (Mon.)</td>
<td><strong>First Written Assignment</strong> - [Orientation] (meet student coordinators)</td>
<td>Courtroom 240</td>
</tr>
<tr>
<td>August 26 (Tues.)</td>
<td><strong>Second Written Assignment</strong>  “Short Form” motion due!</td>
<td>Courtroom 240</td>
</tr>
<tr>
<td>September 1 (Mon.)</td>
<td><strong>LABOR DAY HOLIDAY – NO CLASS!!!</strong></td>
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<tr>
<td>September 2 (Tues.)</td>
<td><strong>Third Written Assignment</strong>  Meeting with Professor Bailey.</td>
<td>Courtroom 240</td>
</tr>
<tr>
<td>September 4 (Thurs.)</td>
<td><strong>Special Written Assignment:</strong>  One Question due to Mrs. Briggs in room 183B by 3:00 p.m. See pp. 21-22</td>
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<tr>
<td>September 8 (Mon.)</td>
<td><strong>Schedule meetings with Prof Bailey</strong> (as requested)</td>
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<tr>
<td>September 9 (Tues.)</td>
<td><strong>Fourth Assignment</strong>  First meeting with Judges (Pretrial Conferences)</td>
<td>See p. 23</td>
</tr>
<tr>
<td>September 15 (Mon.)</td>
<td><strong>Fifth Assignment</strong>  (Critiques of Pretrials)</td>
<td>See p. 24</td>
</tr>
<tr>
<td>September 16 (Tues.)</td>
<td><strong>Fifth Assignment continued</strong>  (Opening Statement)</td>
<td>See p. 24</td>
</tr>
<tr>
<td>September 22 &amp; 23 (Mon &amp; Tues.)</td>
<td><strong>Sixth Assignment</strong>  - Discuss critiques of Opening Statements and then <strong>Direct by Prosecutor &amp; Cross by Defendant</strong></td>
<td>See p. 25</td>
</tr>
<tr>
<td>September 24 (Wed.)</td>
<td><strong>Last Day</strong>  to submit Name of Partner for the <strong>Big Trial</strong>  to Mrs. Briggs in room #183B or by e-mail (<a href="mailto:aabriggs@uark.edu">aabriggs@uark.edu</a>) – in writing</td>
<td>See p. 25</td>
</tr>
<tr>
<td>September 25 (Thurs.)</td>
<td><strong>Pairings e-mailed to Trial Ad Students</strong></td>
<td>See p. 25</td>
</tr>
<tr>
<td>September 29 (Mon.)</td>
<td><strong>Last minute questions to Professor Bailey, LOTTERY (one member from each team) and prepare for the Seventh Assignment on Tuesday, September 30 otherwise – No Class!!</strong></td>
<td>COURTROOM 240</td>
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<tr>
<td>Date</td>
<td>Assignment Description</td>
<td>Page</td>
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<tr>
<td>September 30 (Tues.)</td>
<td><strong>Seventh Assignment</strong> - Direct by Defense &amp; Cross-X by Prosecutor</td>
<td>See p. 26</td>
</tr>
<tr>
<td>October 6 &amp; 7 (Mon. &amp; Tues.)</td>
<td><strong>Eighth Assignment</strong> - Judges provide Critiques of Defendant's Direct-X, etc. Closing Arguments.</td>
<td>See p. 27</td>
</tr>
<tr>
<td>October 13 &amp; 14 (Mon. &amp; Tues.)</td>
<td><strong>Ninth Assignment</strong> - Critique Closing Arguments. Judges will arrange Pretrial Conferences for week of Oct. 27th.</td>
<td>See p. 28</td>
</tr>
<tr>
<td>October 13 (Mon.)</td>
<td>Collect <em>Instructions</em> for the <strong>Big Trial</strong> from Mrs. Briggs in office #183B. Last minute questions to Prof. Bailey before Pretrials begin - office #315.</td>
<td></td>
</tr>
<tr>
<td>October 21 &amp; 22 (Mon. &amp; Tues.)</td>
<td><strong>NO CLASSES - FALL BREAK</strong></td>
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<tr>
<td>October 27 &amp; 28 (Mon. &amp; Tues.)</td>
<td><strong>Pretrials begin!</strong> Judges will schedule the Pretrial Meetings – <strong>Ms. Briggs</strong> will email those dates and times.</td>
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<tr>
<td>November 3 (Mon.)</td>
<td><strong>TRIALS BEGIN - FIRST TRIAL</strong></td>
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<tr>
<td>November 6</td>
<td><strong>LAST TRIAL</strong></td>
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**PRETRIAL DATES:** October 27 or at other **mutually agreed upon times** - during the Monday/Tuesday class hours.

**TRIAL DATES:**
- November 3 Mon. (Trial #1)
- November 4 Tues. (Trial #2)
- November 5 Wed. (Trial #3)
- November 6 Thurs. (Trial #4)

**TRIAL TIME/PLACE:** 4:00 to 7:30 P.M. — COURTROOM, ROOM 240.
OBJECTIVES AND SYLLABUS

A. The Importance of the Litigation System

The Preamble to the United States Constitution lists, in part, the fundamental objectives of an ordered society. The list of objectives includes "establishing justice and insuring domestic tranquility--" To achieve those objectives, the drafters established a government, including a judicial system described in Article III of the Constitution. The functions of that system are corollaries of the drafters' objectives: to dispense justice to litigants and to insure domestic tranquility by serving as a public mechanism for peaceful dispute resolution. As Hobbes wrote in the 17th century, when people feel free to resort to private, violent methods of dispute resolution, "The life of man" is likely to be "poor, nasty, brutish, and short".* In essence, an effective litigation system is a sine qua non for a just, orderly society. In our republic, the right of access to the litigation system is considered so valuable that the Supreme Court has elevated the right to constitutional status.**

COUNSEL'S ROLE IN THE LITIGATION SYSTEM

Just as the litigation system serves a vital function with our society, so too does the attorney serve a critical role within that system. The primary conception of the trial attorney's role is that he functions as a representative of and an advocate for a client involved in litigation or anticipated litigation. The Arkansas Rules of Professional Conduct in its preamble list the first role of counsel as that of a "representative of clients." Such a representative, however, must be competent, because incompetent counsel can neither protect a client's interests nor help insure the effective operation of the system.

The purpose of this course is to assist law students to become either competent trial counsel or competent assistants to competent trial counsel (or competent to determine when you're not competent). The Fall 2014 Trial Advocacy course will attempt to inculcate basic trial competencies by following a rigid schedule of assigned readings, brief lectures, video presentations, draftings, role plays, and critiques.
PART "A"

The class schedule is extremely tight. So there will be no opportunities to make up a missed assignment. A major objective of the course is to permit you to perform segments of and a full trial before NOVEMBER 7, 2014.

FORMAT OF THE COURSE

Three graded activities:
1. Written preparatory assignments + Oral arguments - 10%
2. Oral presentations - 40%
3. Big Trial - 50%

I. Written Preparatory Assignments, Practice Session and Critiques - 10% of Grade

Each Student Must:

(a) Attend All Classes (Any student who is over twenty (20) minutes late to class will be considered absent for that class!)

(b) Read All Assignments - All students are required to read assignments from Mauet’s “Fundamentals of Trial Techniques” or “Trial Techniques.”

(c) Prepare and Submit - Written assignments based on the reading assignments. Students are required to prepare and submit three (3) written assignments (including a “short form” motion!) to Professor Bailey. These written assignments will be used to evaluate a student’s understanding of the (1) State v. Edwards case (2) Federal Rules of Evidence; and (3) Principles from Mauet, and Rules of Professional Conduct.

II. Oral Classroom Assignment - 40% of Grade


(b) Before each graded exercise all students should prepare a one (1) page "prep" written outline or verbatim account of the questions, issues plans or strategies he/she intends to employ during that exercise. This written account should be based on the professor's (or your Judge’s) lecture and the appropriate chapter(s) in Mauet, See Appendix G at p. 38 of this syllabus.

(c) On the day of the exercise (usually on Tuesday), the Judge/Professor will require each student to present the day’s exercise. The professor will serve as “Judge.”

(d) At the next class day (usually the following Monday) the Judge/Professor will critique (assess the good and bad points) of each student’s performance. The Judge/Professor
shall offer some “general” lessons or principles from the completed exercise.

(e) This "exercise" performance at one class (Tuesday) then critique at the next class (Monday) format will be repeated until all FIVE EXERCISES have been completed.

III. **BIG TRIAL: 50% of Grade**

(a) Two - two-person teams will oppose each other in a Three (3) hour trial (*State v. Edwards*). As a part of the team presentation, one student will be required to do an Opening while the other does a Closing. Then, each student must perform a Direct-X, Cross-X, and part of a Pretrial Conference. [There will be no Voir Dire during the Big Trial!]

(b) At the end of the trial, the Judge will critique the student presentations.

(c) A twelve (12) person jury will be required to complete a two-page evaluation of each student’s presentations. [The jury evaluations will not constitute any part of the final grade.]
PART "B"

THE BIG TRIAL

(1) See p. 2 of the Syllabus for the Pretrial and Big Trial dates.

(2) Trials begin MONDAY, NOVEMBER 3, 2014.

(3) Each Big trial team will consist of two partners. Students should submit both team members' names to Mrs. Briggs in a special envelope in her office #183B, Leflar Law Center no later than 2:00 p.m. on WEDNESDAY, SEPTEMBER 24, 2014.

(4) Each trial will be preceded by a pretrial conference. Each team member will not only be graded on her/his performance during the 3-hour "Big Trial" but each will also be graded on the pretrial conference that precedes the Big Trial. Please dress professionally for the "Big Trial" and the Pretrial Conference.

EXTRA POINTS AFTER THE BIG TRIAL

• TRIAL NOTEBOOK - IN ORDER TO RECEIVE CREDIT FOR A NOTEBOOK, IT MUST BE SUBMITTED TO MRS. BRIGGS IN ROOM 183B BY 2:00 P.M. THE DAY AFTER THE TRIAL. [A TRIAL NOTEBOOK IS NOT A REQUIREMENT!!] ONLY ONE notebook per team!! A notebook submitted after the deadline and to anyone other than Mrs. Briggs WILL NOT receive credit!!

• See Form #2 - See p. 9 infra. - FINAL GRADE form from Classroom and the Big Trial.
REQUIRED BOOKS AND MATERIALS

A. Required Books:

— Mauet “Fundamentals of Trial Techniques" OR “Trial Techniques"

B. Required Course Materials:

— Syllabus & Case Materials (State v. Edwards) (Available at the Bookstore Textbook Department)
— Arkansas Rules of Professional Conduct
— Federal Rules of Evidence
— Arkansas Rules of Civil Procedure

PLEASE READ THE "GROUND RULES" FOR THE COURSE (pp. 11-13 of Syllabus) AND CERTAIN RULES IN THE ARKANSAS RULES OF PROFESSIONAL CONDUCT (e.g. RULES 3.1 - 3.9).

SUPPLEMENTARY BOOKS & TAPES

— Bibliography of tapes and study aids in Appendix D.

— Suggested Readings: Several copies in the library of Professor Bailey's materials located on the Reserve Shelf and on the Web.

a. What Lawyers Owe One Another
b. Arkansas case - Lessenberry
c. "They Don't Like What They Hear," an article taken from Legal Times (December 24, 1990) about the D.C. Circuit's increasing frustration with the lack of quality in oral advocacy before the courts.
d. How to Prepare a Motion
e. Pretrial Conference Order
f. Stipulations
g. Trial Notebook
h. The American Board of Trial Advocates Civility Code.

— Videotapes of student-conducted Pretrials
FORM NO. 1

TO WHOM IT MAY CONCERN:

I, ____________________________, consent to the use of audio or video recordings of my presentations in the Trial Advocacy course at the University of Arkansas Law School. I understand that the recorded presentations and transcripts thereof will be used for educational purposes at the Law School and that only those authorized will be allowed to utilize said video or audio records and transcripts.

SIGNED

DATE

(Return executed Form No. 1 to Ms. Briggs – Room 183B)
TRIAL ADVOCACY  
FALL 2014  

FORM #2  
FINAL GRADE  
(Class and Big Trial)

Student's Name: ________________________________

<table>
<thead>
<tr>
<th></th>
<th>Pretrial</th>
<th>Opening</th>
<th>Direct</th>
<th>Cross X</th>
<th>Closing</th>
<th>Total Points</th>
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<tbody>
<tr>
<td>Critiques</td>
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<td>Prep Sheets</td>
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TOTAL: _____ (± 5)

CLASSROOM GRADE:
(1) Classroom Exercises (5) (as shown above) _____ (40%) = 
(2) Classroom Written Assignments _____ (10%) = 
(3) Total _____ (50%)

BIG TRIAL GRADE:
(a) Trial Grade _____ (50%)
(b) Extra Points _____ Notebook
(c) Total 50% = + =

GRAND TOTAL

<table>
<thead>
<tr>
<th>GRADE SCALE</th>
<th>Numerical Grade</th>
<th>Letter Grade</th>
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<tbody>
<tr>
<td>93-100 = A</td>
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<tr>
<td>90-92 = A-</td>
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<tr>
<td>88-89 = B+</td>
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<tr>
<td>83-87 = B</td>
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<tr>
<td>80-82 = B-</td>
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GROUND RULES FOR THE COURSE

1. Preparation and Background Materials for Classroom Participation

Each student is required to make at least FIVE (5) videotaped oral presentations in order to satisfy a portion of his/her classroom component grade. See Grade Key at page 16. Before each student performance, your instructor will assign appropriate chapters from Mauet as background reading for the upcoming exercise. (For instance, see Reading Assignment for the first oral presentation at page 23 "Pretrial Conference.")

In addition to the assigned chapters from Mauet, your instructor will present a short lecture and invite classroom discussion on that scheduled exercise. The research assignments for classroom discussion and the discussions based on them will be considered as part of the 10% component to the classroom grade average.

Grade Form for Classroom Component

Student's Name

(1) (a) Oral exercise #1 _________  
(b) Oral exercise #2 _________  
(c) Oral exercise #3 _________  40%  
(d) Oral exercise #4 _________  
(e) Oral exercise #5 _________  

(2) (a) First written assignment _______  
(b) Second written assignment _______ 10%  
(c) Third written assignment _______

2. Student preferences will be observed in assigning partners for the Big Trial. Students desiring to work together at the Big Trial should advise Professor Bailey as soon as possible (or no later than WEDNESDAY, SEPTEMBER 24, 2014).

3. Unless otherwise indicated, each case (in the simulated class exercises) is pending or is to be filed or has been filed in the courts of Washington County.

4. The applicable rules of civil procedure are the same as the Arkansas Rules of Civil Procedure, (Arkansas Rules), with such modifications as are necessary to make them applicable in NITA. You should be thoroughly familiar with the rules affecting trial and pretrial procedures, and especially the rules dealing with depositions.
United States Supreme Court Opinions -Constitutional Criminal Procedure should be consulted as the need warrants!

5. All classroom participation assignments and the Big Trial follow the Federal Rules of Evidence.

6. Unless otherwise indicated, assume that the only available witnesses who can give admissible testimony are those disclosed in the file materials distributed with the assignment. If you wish to use other testimony, which you consider would surely be available in such a case as the one on trial, ask the instructor before the class meeting for permission to assume the availability of such testimony.

7. All students, whether called on to participate in an oral presentation as counsel or not, may be asked during a subsequent class how he/she would have handled some particular aspect of an exercise. The student questioned in this manner must answer orally or as otherwise instructed regarding the following issues: (1) the theory of the client's case (its strength and weakness); (2) the objectives in that phase of trial and how those objectives relate to the theory of the case (overall plan for trial); (3) any risks in the case, and (4) the applicable [Federal Rules of Evidence].

8. Assume that all parties have been given due notice of the taking of any deposition that appears in the course materials.

9. At times, for tactical reasons, a student may decide not to make a valid objection to evidence. In all such instances, the student should make a note immediately and be prepared to state during the instructor's evaluation of that performance why valid objections were not made. Moreover, after the class assignment, the student should give a copy of his/her "non-objections" to the instructor.

10. Conversely, at times a student may make a legally valid objection in carrying out his/her theory that he/she later regards as tactically unwise. The student should be prepared during a subsequent class or critique session to indicate such occasions with reasons for believing them tactically unwise.

11. In some assignments, counsel may decide that the tactically correct examination would be short or nonexistent. Even so, a student may wish to conduct a longer examination in order to gain experience. That student should indicate this desire by a note to the instructor. If time allows, the instructor may then permit the student to conduct the longer examination.

12. To conserve time for critique, the trial judge may interrupt proceedings during any student presentation and instruct counsel to summarize one or more elements of the planned examination. In that event, the instructor may also call on opposing counsel to indicate what objections, if any, she would have made.

13. The roles of court reporter and bailiff will be performed by students. The instructor will designate a court reporter and a court clerk (or a single individual to play the role of a clerk-reporter).

14. Most statements of witnesses, in this handout and in the special materials, are typewritten for legibility. The signature should be assumed to be the handwritten signature of the witness. All
photographs and letters should be considered originals.

15. **DATES OF RECENT EVENTS IN THESE MATERIALS ARE FREQUENTLY STATED IN A DATING CASE IN WHICH 19Y1 (OR -1) MEANS ONE YEAR AGO, 19Y2 MEANS TWO YEARS AGO, 19Y3 MEANS THREE YEARS AGO, AND SO ON. PLEASE CORRECT TO THE APPROPRIATE YEAR.**

16. In the event of a conflict between a ground rule and any special instruction in the assignment book, the special instruction governs; but, to be safe, discuss with the instructor.
GRADE FORMAT FOR CLASSROOM/TRIAL

GRADING KEY

90 - 100       A- to A
80 - 89         B- to B+
70 - 79         C- to C+
60 - 69*        D- to D+

* (ALTHOUGH I HAVE NEVER GRADED BELOW A D-, I RESERVE THE RIGHT TO "AWARD" A FAILING GRADE TO ANY STUDENT WHO DESERVES IT)

CLASSROOM PARTICIPATION - GRADE FORMAT

Comments: Generally your performance was (poor), (satisfactory-average), (good), or (excellent).

Poor     =    60-69
Average   =   70-79
Good      =   80-89
Excellent =  90-100

(1) Salient issues in the exercise.
(2) Issues student presented.
(3) Quality of execution.
(4) Significant issues missed.

TIP: If quality of execution is poor and significant issues are missed, students are likely to score in the low average range or the mid-poor range.
MASTER FOR TRIAL ADVOCACY KEYS

CLASSROOM PARTICIPATION
- Knowledge of class objectives - 25 points
- Quality of preparation - 25 points
- Extent and quality of participation - 25 points
- Creativity - 25 points

WRITTEN ASSIGNMENTS
- Recognition of assignment objectives - 25 points
- Quality of preparation - 25 points
- Clarity and organization of product - 25 points
- Creativity (unique interpretation, etc.) - 25 points

PRETRIAL
- Display knowledge regarding facts and law
- Effective motions and arguments
- Effective preservation of the record
- Establish general ground rules for the trial

OPENING STATEMENTS
- Introduction (i.e., parties, scene, instrumentalities, etc.) - 20 points
- Clear statement of relevant issues - 20 points
- Statement of the case - 20 points
- Conclusions/damages (civil case only) - 20 points
- Manner and style of delivery - 20 points

DIRECT-EXAMINATION
- Introduction - 20 points
- Tell a story (develop facts) - 20 points
- Let witness dominate - 20 points
- Exhibits (use of) - 20 points
- Style, demeanor, objections, responses - 20 points

CROSS-EXAMINATION
- Beginning/middle/conclusion - 20 points
- Control witness - 20 points
- Style and demeanor - 20 points
- Evidence and objections - 20 points
- Confirming points for your case - 20 points

CLOSING
- Introduction - 20 points
- Statement of key jury instructions - 20 points
- Resolve issues, style and demeanor - 20 points
- Conclusion - 20 points
- Rebuttal - 20 points
STUDENTS WITH DISABILITIES

Students with disabilities may request academic adjustments as provided under federal law. Requests should be made by first contacting:

Center for Educational Access  
ARKU 104  
Fayetteville, AR 72701  
(479) 575-3104 (voice)  
(479) 575-3646 (TTY)  
ada@uark.edu  
web: http://cea.uark.edu

You should also contact Professor Sharon Foster or Associate Dean Jim Miller personally in order to use academic or testing accommodations.
ASSIGNMENTS - Fall 2014

FIRST WRITTEN ASSIGNMENT - Monday, August 25 - ORIENTATION!

PLACE: Courtroom 240

ALL STUDENTS FIRST WRITTEN ASSIGNMENT!!

A. Read the State v. Edwards case - (Pick up at the Bookstore Textbook Dept.). Also see Mrs. Briggs to pick-up Syllabus - office #183B
B. Read Mauet - Chapters 1 and 2.
C. Read pp. 1-17 of the Syllabus! (particularly pp. 11 - 13!).
D. Read “Overhead Notes for Trial Advocacy”, Fall 2012-Professor Bailey’s Web page for Trial Advocacy (last item).

E. **PROSECUTOR TEAMS** - See APPENDIX A, pp. 28-29.
   1. Prepare a one (1) page (no more) memorandum identifying:
      (Submit the following to Professor Bailey upon entering class.)
      _ The necessary elements supporting the **PROSECUTOR’S case-in-chief** in State v. Edwards;
      _ The key witness for the **PROSECUTOR’S case-in-chief**;
      _ The weakest aspect of the **PROSECUTOR’S case-in-chief**;
      _ One concern you have about the case that you wish to discuss with the -Chief Prosecutor- Prof. Bailey.
      Why is this a concern for you?
      _ May the prosecutor present a witness who will testify that the defendant has used the same technique to assault 2 other women – 2 years ago? Support your answer in fifty (50) words or less.

F. **DEFENSE TEAMS** - See APPENDIX A, p. 30.
   1. Prepare a one (1) page (no more) memorandum identifying:
      (Submit the following to Professor Bailey upon entering class.)
      _ The necessary elements supporting **STATE v. EDWARDS defense**;
      _ The key witness for the **Defense**;
      _ The weakest aspect of the defense;
      _ One concern you have about the case that you wish to discuss with Senior Partner- Prof. Bailey. Why is this a concern for you?
      _ May the defense attorney present a witness who will testify that the alleged victim told the witness she wore tight pants to guarantee that she got some play! Please support your answer in fifty (50) words or less.

* See APPENDIX A, pp. 28-29 for Classroom Team Designations and name of judge.
ASSIGNMENTS - Fall 2014

SECOND WRITTEN ASSIGNMENT - Tuesday, August 26

PLACE: Courtroom 240

ALL STUDENTS – TEAMS

A. Read Mauet - Chapters 2 and 3.
B. Read the State v. Edwards case.
C. See Pretrial Conference Order on Professor Bailey’s Trial Advocacy webpage.

D. PROSECUTOR TEAMS* - See APPENDIX A, pp. 30.

Submit to Prof. Bailey at class time a two page (no more) memorandum (keep a copy for purposes of #3 below) which should cover the following:

1. Identify one fact that the PROSECUTOR may wish to persuade the defense to stipulate to that might simplify the issues in State v. Edwards this case. (See stipulation cases on the Web).

2. Identify three (3) issues that the PROSECUTOR should request the court to resolve before trial. Identify a (only one (1)) Rule of Evidence that supports each issue.

3. Submit a short form motion (example on the Web) and be prepared to orally argue to the court (Prof. Bailey) for the exclusion of any (only one!) item of evidence that supports your theory or that undermines your adversary’s theory.

E. DEFENSE TEAMS* - See APPENDIX A, pp. 30.

Submit to Prof. Bailey at class time a two-page (no more) memorandum (keep a copy for purposes of #3 below) which should cover the following:

1. Identify one fact that the Defense may persuade the State to stipulate to that could simplify the issues in the State v. Edwards case. (See stipulation cases on the Web).

2. Identify three (3) issues that the Defense should request the court to resolve before trial. Identify a (only one (1)) Rule of Evidence that supports each issue.

3. Submit a short form motion (an example is on the Web) and be prepared to orally argue to the court (Prof. Bailey) for the exclusion of any (only one!) item of evidence that supports the defense’s theory or that undermines the Prosecutor’s theory.

* See APPENDIX A, pp. 28-29 for Classroom Team Designations and name of judge.
ASSIGNMENTS - Fall 2014

THIRD WRITTEN ASSIGNMENT - Monday, September 1 (No class) & Tuesday, September 2
PLACE: Courtroom 240

[ALL STUDENTS - TEAMS]

A. Read Mauet - Chapters 3, 4, 5, 6 & 8.
B. Read the State v. Edwards case.
C. PROSECUTOR TEAMS* - See APPENDIX A - pp. 30.
   Submit to Professor Bailey at class time a one-page (no more) memorandum identifying:
   1. Two (2) points that the Prosecutor must raise during its opening statement.
   2. Assume that the Defendant has asserted a SODDI defense. In twenty-five (25) words or less, what argument under the Federal Rules of Evidence is more likely to persuade the trial judge to disallow this defense?
   3. One key exhibit necessary to prove an element of the PROSECUTOR’s case-in-chief. What rule or rules of evidence will govern the admissibility of this exhibit?
   4. One key portion of the key witness’s testimony that you should be prepared to protect him/her on during the Defense’s cross examination.
D. DEFENDANT TEAMS* - See APPENDIX A - pp. 28-29.
   Submit to Professor Bailey at class time a one-page memorandum identifying:
   1. Two (2) points that the Defendant must raise during its opening statement.
   2. Assume that the Defendant asserted a SODDI defense. In twenty-five (25) words or less, what argument under the Federal Rules of Evidence is more likely to persuade the trial judge to allow this defense?
   3. One key exhibit that is supportive of the Defendant’s theory. What rule or rules of evidence will govern the admissibility of this exhibit?
   4. One key portion of the Defendant’s key witness’s testimony that you should be prepared to protect him/her on during the Prosecutor’s cross examination.
E. SPECIAL WRITTEN ASSIGNMENT: For both teams due to Mrs. Briggs in office #183B no later than Thursday, September 4, 2014 at 3:00 p.m. See next page (#20) Part C for full instructions.
   * See APPENDIX A, pp. 30 for Classroom Team Designations and name of judge.
ASSIGNMENTS - Fall 2014

Monday, September 6 -

Special Instructions for a Special Writing Assignment due on September 4, 2014, see below - Part C

PLACE: Courtroom 240

A. Consult Mauet - Do you have questions? Then see Professor Bailey.
B. Read the State v. Edwards case - Do you have questions? Then see Professor Bailey.
C. In preparation for your first meeting with the judges (Tuesday, September 9, 2014) each student (both teams) is required to pose one (1) (only one)! written question to Professor Bailey regarding any one of the following matters: the course, the syllabus, State v. Edwards, the previous written assignments, the upcoming pretrial or whatever. This question should be submitted to Mrs. Briggs in office #183B no later than 3:00 p.m. on Thursday, September 4, 2014.

D. PROSECUTOR’S TEAMS* - See APPENDIX A - pp. 30. Submit questions to Professor Bailey before or at class time regarding any aspect of the course. (Particularly, in the “I STILL DON’T GET....” file folder!)

1. Present questions to Professor Bailey about the course, etc.
2. Prepare for first meeting with Judge - Tuesday, September 9, 2014!

E. DEFENSE TEAMS* - See APPENDIX A, pp. 30. Submit questions to Professor Bailey before or at class time regarding any aspect of the course. (Particularly, in the “I STILL DON’T GET....” file folder!)

1. Present questions to Professor Bailey about the course, etc.
2. Prepare for first meeting with Judge - Tuesday, September 9, 2014!

F. Since the PROSECUTOR’s and Defense attorneys will be meeting at a Pretrial Conference before a Judge on Tuesday, September 9, 2014, each side should:

1. (Prior to this pretrial conference) meet outside of class and stipulate (agree not to contest at trial) to certain facts or issues that will facilitate an efficient and uninterrupted trial. Prosecutor and Defense attorneys should not, however, weaken their side’s case by stipulating;

2. Prosecutor and Defense attorneys should give his/her opponent [at least] 48 hours written notice of what issues he/she will argue at the Pretrial Conferences on Tuesday, September 9, 2014; and

3. All stipulated matters must be reduced to writing and signed by the Prosecutor’s and the Defense attorneys. A copy of those written stipulations should be presented to the Judge at the Pretrial Conferences on Tuesday, September 9, 2014.

**All other questions must be personally presented to Professor Bailey in his office #315.

* See APPENDIX A, pp. 30 for Classroom Team Designations and name of judge.
ASSIGNMENTS - Fall 2014

FOURTH ASSIGNMENT - Monday, September 8 – (NO CLASS) Schedule meetings with Prof. Bailey or drop in - Tuesday, September 9 - Pretrial Conferences - First meeting with Judges

PLACE: Durrett - Courtroom
      Hatcher - Room 339

PROSECUTOR AND DEFENSE TEAMS:

A. Read Mauet - Chapter 1.
B. Read Ark. R. Civ. p. 16 and Ark. R. Crim.
D. Read State v. Edwards case.

1. MONDAY, SEPTEMBER 8, 2014 - NO CLASS! – Schedule meetings with Prof Bailey or drop-in his office #315.

2. See previous page (20) for additional written assignment-to submit to Mrs. Briggs in office #183B.

3. TUESDAY, SEPTEMBER 9, 2014 - Pretrial Conferences: [First meeting!] During the pretrial conference in the State v. Edwards case, each student from the Prosecutor's side and each from the Defense's side will meet with the judge in “chambers” and discuss those matters usually covered at a pretrial conference (see Pretrial Conference Order on Reserve Shelf in the Law Library, Ark. R. Civ. p. 16 and Ark. R. Crim. p. 20.4). Each student will have approximately TEN MINUTES to present his/her issues at the conference.

3. The judge will select one of the two attorneys to prepare a pretrial order based on the judge's orders and the party's agreements at the pretrial conference of TUESDAY, SEPTEMBER 9, 2014.

The student attorney who was not selected to draft the pretrial order will be responsible for reviewing and editing the selected party's draft order. After the order has been reviewed and edited, both attorneys will sign their names to the completed order. The signed order shall be presented to the judge at the class hour on MONDAY, SEPTEMBER 15, 2014.

* See APPENDIX A, pp. 30 for Classroom Team Designations and name of judge.
ASSIGNMENTS - Fall 2014

FIFTH ASSIGNMENT - Monday, September 15 and Tuesday, September 16

PLACE:  Durrett - Courtroom 240
         Hatcher - Room 339

PROSECUTOR AND DEFENSE TEAMS:

A. Read Mauet - Chapters 3.
B. Read the Pretrial Conference Order in State v. Edwards case.
C. Read the Ground Rules for the Course.
D. Read the State v. Edwards case.

1. MONDAY, SEPTEMBER 15, 2014 - All students (both Prosecutors and Defense* teams) must meet with the judges to discuss critiques of the pretrial conferences in the State v. Edwards case.

2. TUESDAY, SEPTEMBER 16, 2014 - Each student from the Prosecutor's side and each student from the Defense side will present opening statements in the State v. Edwards case. Each student will have approximately TEN MINUTES to complete his or her opening statement. (Please present pretrial order to the judge-if you did not submit to the Judge on September 15, 2014).

* See Appendix A, pp. 30 for Classroom Team Designations and name of appropriate judge.
ASSIGNMENTS - Fall 2014

SIXTH ASSIGNMENT - Monday, September 22 and Tuesday, September 23

PLACE:  Hatcher - Courtroom 240
         Durrett - Room 339

PROSECUTOR AND DEFENSE TEAMS:

A. Read Mauet - Chapters 4, 5, 6 & 8.
B. Read the Pretrial Conference Order in the State v. Edwards case.
C. Read the Ground Rules for the Course.

1. MONDAY, SEPTEMBER 22 and TUESDAY, SEPTEMBER 23 - All students must meet with Judges to discuss the critiques of Opening Statements in the State v. Edwards case.

2. TUESDAY, SEPTEMBER 23, 2014 - Each student from the Prosecutor's side will conduct a Direct Examination of his/her key witness. Although each student should prepare a full Direct Examination, he or she will be given only TEN MINUTES to conduct the Direct Examination.

3. Each student from the Defense side will conduct a Cross Examination of the Prosecutor's witness. Although each defense attorney should prepare a full Cross Examination; he/she will be given only FIVE MINUTES to conduct the Cross Examination.

4. WEDNESDAY, SEPTEMBER 24, 2014 - FINAL DAY (2:00 P.M.) TO SUBMIT NAME OF PARTNER TO MRS. BRIGGS. AN ENVELOPE WITH THE HEADING “PARTNERS FOR BIG TRIAL” WILL BE AVAILABLE IN MRS BRIGG’S OFFICE, ROOM 183B.

5. THURSDAY, SEPTEMBER 25, 2014 - The pairings for the Big Trial (e.g., who will be Prosecutor’s and their respective defense attorney-opponents) will be e-mailed to the students. There shall be two (2) attorneys on each team. All four (4) attorneys should meet on the weekend of FRIDAY, SEPTEMBER 26 AND SATURDAY, SEPTEMBER 27 to decide the date of the trial, and the name of the judge the group prefers. All selections will be by LOTTERY. One representative from the four-person weekend discussion group should come to the Courtroom at class time on MONDAY, SEPTEMBER 29, 2014 to select a Lottery Number (1-4). The lowest pick (#1) will select first. Selections will take place in the Courtroom on MONDAY, SEPTEMBER 29, 2014.

* See APPENDIX A, pp. 30 for Classroom Team Designations and name of appropriate judge.
ASSIGNMENTS - Fall 2014

SEVENTH ASSIGNMENT - Monday, September 29 – Lottery in Courtroom – otherwise NO CLASS
- Class Tuesday, September 30

PLACE: Hatcher - Courtroom 240
       Durrett - Room 339

PROSECUTOR AND DEFENSE TEAMS*

A. Read Mauet - Chapters 4, 5, 6 & 8.
B. Read the Pretrial Conference Order in the State v. Edwards case.
C. Read the Ground Rules for the Course.

1. **MONDAY, SEPTEMBER 29, 2014** - **LOTTERY IN THE COURTROOM TODAY!**
   All students (the Prosecutor* and Defense* teams) must meet with the judges to discuss the
   critiques of opening statements in the State v. Edwards case, otherwise – no class!! Prepare
   for Direct and Cross on Tuesday, September 30, 2014.

2. **TUESDAY, SEPTEMBER 30, 2014** - Each student from the Defense side will conduct a
   Direct Examination of its key witness. Although each DEFENSE attorney should prepare a
   full Direct Examination, he or she will only be given TEN MINUTES to conduct the Direct
   Examination.

3. Each student from the Prosecutor side will conduct a Cross Examination of the defense’s key
   witness. Although each PROSECUTOR should prepare a full Cross Examination, he/she will
   only be given FIVE MINUTES to conduct the Cross Examination.

* See APPENDIX A, pp. 30 for Classroom Team Designations and name of appropriate judge.
ASSIGNMENTS - Fall 2014

EIGHTH ASSIGNMENT - Monday, October 6 and Tuesday, October 7

PLACE: Durrett - Courtroom 240
Hatcher - Room 339

PROSECUTOR AND DEFENSE TEAMS*:

A. Read Mauet - Chapter 7.
B. Read the Pretrial Conference Order in the State v. Edwards case.
C. Read the Ground Rules for the Course.

1. **MONDAY, OCTOBER 6, 2014** - All students (theProsecutor* and Defense* teams) must meet with the judges to discuss the critiques of all the direct/cross examinations!!

2. **TUESDAY, OCTOBER 7, 2014** - Each student from theProsecutor side and each from the Defense side will present Closing Arguments in the State v. Edwards case. Each student will have approximately TEN MINUTES to complete his or her Closing Arguments.

3. **All students** should prepare to participate in Pretrial Conferences for the BIG TRIAL during the week of OCTOBER 27, 2014 at the usual class times on Monday, October 27 and Tuesday, October 28 or at other times (regular class times on Monday/Tuesday of each week) and places arranged by your judge.

* See APPENDIX A, pp. 30 for Classroom Team Designations and name of appropriate judge.
ASSIGNMENTS - Fall 2014

NINTH ASSIGNMENT - Monday, October 13, and Tuesday, October 14

PLACE:  Durrett  - Courtroom 240
        Hatcher  - Room 339

PROSECUTOR AND DEFENSE TEAMS*:

A. Read Mauet - Chapter 5.
B. Read the Ground Rules for the Course.
C. Read the Instructions for the Big Trial!! (See Ms. Briggs)

1. MONDAY, OCTOBER 13, 2014 - All students (both Prosecutor* and Defense* teams) must
   meet with the judges to discuss the critiques of Closing Arguments.

2. TUESDAY, OCTOBER 14, 2014 - Continue critiques if necessary. More importantly,
   schedule dates and times for Pretrial Conferences - Big Trial!! Read the Big Trial
   Instructions. (Pretrial Conferences - week of October 27, 2014)! Big Trial Instructions
   available on Wednesday, October 15, 2014 in Mrs. Briggs’s office, room #183B.

3. Prosecution and Defense Teams meet during the weekend of October 14, 15, 16 in order to
   (a) stipulate to certain matters;
   (b) exchange motions;
   (c) exchange witness lists; and
   (d) exchange exhibit lists, etc.
   (e) clarify other matters prior to their pretrial conference.

* See Appendix A, pp. 30 for classroom Team Designations and name of appropriate judge.
ASSIGNMENTS - Fall 2014

MONDAY, OCTOBER 27, 2014 and TUESDAY, OCTOBER 28, 2014 - BIG TRIAL QUESTIONS OR PRETRIAL CONFERENCES (other conference times should be arranged with your judge). Pretrial conferences may begin at class time (4:00 - 6:50 p.m.) or at other times and places arranged with your judge.

PLACE:  Hatcher - Courtroom 240
        Durrett - Room 339

PROSECUTOR AND DEFENSE TEAMS:* 

A. Read the Instruction Sheet for the BIG TRIAL.

B. Prepare to ask questions of Professor Bailey about the BIG TRIAL [any time during the weeks of OCTOBER 13 & OCTOBER 27, 2014]. Professor Bailey will meet (Room 315) with the various Teams concerning issues in the BIG TRIAL cases.


* See APPENDIX A, pp. 30 for Classroom Team Designations and name of appropriate judge.
### JUDGE HATCHER

<table>
<thead>
<tr>
<th>PROSECUTOR’S TEAM</th>
<th>vs</th>
<th>DEFENDANT’S TEAM</th>
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</thead>
<tbody>
<tr>
<td>1. Timothy Anderson</td>
<td></td>
<td>1. Ralph Montrone</td>
</tr>
<tr>
<td>2. Mary Hodges</td>
<td></td>
<td>2. Nicholas Stallings</td>
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<td>5.</td>
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<td>5.</td>
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### JUDGE DURRETT

<table>
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<th>PROSECUTOR’S TEAM</th>
<th>vs</th>
<th>DEFENDANT’S TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cory Bridges</td>
<td></td>
<td>1. Christian Lehmberg</td>
</tr>
<tr>
<td>2. Jadyn Cleveland</td>
<td></td>
<td>2. Miguel Mariscal</td>
</tr>
<tr>
<td>3. Ben Catterlin</td>
<td></td>
<td>3. Lilia Pacheco</td>
</tr>
</tbody>
</table>
APPENDIX B

ATTORNEY WORKSHEET FOR THE PRETRIAL CONFERENCE

1. Who is my judge?

   (a) What does he/she require at the Conference?
       • Proposed jury instructions
       • Written motions with briefs - Proof of service on opposing counsel
       • Other?

       Some evidence that the parties have attempted to resolve dispute (e.g. negotiation, mediation, arbitration).

   (b) Do I have a particular message for the judge? (About my case? My client? Opposing party? Opposing party's client? The law? The method of proof?)

2. Are there matters that could/should be easily decided prior to trial?
   • How should it be done - Stipulation?

3. Procedure at trial:
   (a) Pre-marking exhibits
   (b) Exchanging witness lists
   (c) The lectern
   (d) Moving about the courtroom
   (e) Side bar conferences

4. Questions for Voir Dire
   (a) Who asks?
   (b) Exercising challenges

5. Drafting the order
   • editing the draft
   • signing the draft
   • submitting the draft to the court
APPENDIX C

REPRESENTATIVE TABLE OF CONTENTS
FOR A TRIAL NOTEBOOK

1. Introduction - Nature of the case (Civil/Civil) - Main Issues - Burden of Proof
2. Personnel - Investigators, Clerks, Witnesses, Doctors, Police Officers, etc.
3. Jury Questionnaires
4. Motions in Limine
5. Voir Dire (Method of Challenges)
6. Opening Statement
7. Opponent's Opening Statement
8. Witness List
9. Order of Witnesses
10. Elements of Proof
11. Witness Proof
12. Document List/Litany for Authentication or Discovery Admitting Authentication (Index like pleadings)
13. Closing Argument
14. Pleadings
15. Exhibits
16. Jury Charges

**** Examples of trial notebooks on Prof. Bailey's Reserve Shelf in the Law Library. Your notebook need not contain all of these topics!!

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APPENDIX D

BOOKS:


2. Volumes on Litigation, produced by the American Bar Association, section on Litigation; (published four times a year).

   Comment: A must journal for any lawyer who intends to do trial work.

3. Making and Meeting Objections, by Robert A. Wenke, Judge of Superior Court.

   Comment: Easy to read, short booklet on the common objections raised and heard in trial.

4. The Trial Lawyers Guide, Roland P. Klinge, J.D.

   Comment: Can be secured through most law libraries through the Bar Association.


   Comment: Good-Excellent.


   Comment: Excellent.

7. Various Volumes published by The Practical Lawyer.

   Comment: Usually fair reading.

APPENDIX D - (CONT.)

9. Prisoner's Rights, 1979, Alvin J. Brunstein, Phillip J. Hirschkop, Co-Chairman, Vol. Two, Produced by the Staff of the National Prison Project of American Civil Liberties Union Foundation, C4-4137/C6-4133, Practicing Law Institute, New York City.


Comment: O.K.


Comment: Good.


17. Examples of Trial Notebooks: On reserve shelf in library and in the clinic office.
APPENDIX D - (CONT.)

FOLDERS - Closing Arguments - 2 copies.

COMMERCIAL VIDEOTAPES

A089  ART OF ADVOCACY SKILLS IN ACTION SERIES: OPENING STATEMENT.

A167  DEMO: JURY SELECTION IN A PERSONAL INJURY CASE.

A190  DEVELOPING TRIAL STRATEGY: PREPARING & TRYING A CUSTODY CASE.

A215  TRIAL DEMONSTRATION SERIES: FINAL ARGUMENT (CIVIL MURDER CASE).

A235  TRIAL TECHNIQUE SERIES: FINAL ARGUMENT IN A CIVIL CASE: CONSPIRACY - UNITED STATES v. PETERS.

A32   INTRODUCTION & USE OF EXHIBITS.

LOCALLY-MADE VIDEOTAPES

ABOTA TRIAL COMPETITION 1983  (1 Tape)  
ABOTA TRIAL COMPETITION 1984  Tape 1, Tape 2, Tape 3
APPENDIX E

KEY TO EACH EXERCISE

(1) What we will do.
(2) Why we will do it.
(3) How we will do it.
(4) When we will do it.
(5) Whether "we" did it correctly.
(6) Why I did it my way (submit written outline to judge after the exercise).
APPENDIX F

PLANNING FOR THE BIG TRIAL
EVIDENTIARY ISSUES TO CONSIDER

1. Credibility of witnesses (Impeachment)

2. Burden of Proof - Elements in the Case

3. Court Procedures - Lectern, etc.

4. Authentication of Documents and Things (Laying a Foundation Pre-marking Exhibits)

5. Civil case - Miranda - 4th & 6th Amendment (Confrontation Issues)

6. Civil Case - Due Process Issues

7. Probative Nature versus Prejudicial Impact

8. Hearsay/Exceptions

9. Offers of Proof/ Making a Record

10. Character Evidence?
    (A) Rule 404(a)
    (B) Rule 404 (b)
    (C) Rule 406
    (D) Rule 407
    (F) Rule 408
    (G) Rule 410
    (H) Rule 412
    (I) Rule 413
    (J) Rule 415
    (K) Rule 609
    (L) Rule 618
    (M) Rule 611 (?)
    (N) Rule 613
APPENDIX G

KEY FOR PREP SHEETS  
(EXTRA POINTS)

1. One page for Prep!

2. Name of student

3. Identify as PROSECUTOR or Defendant.

4. Identify the applicable stage of the proceeding (e.g., Opening Statement, Cross-Examination, etc.).

5. Explain in four (4) sentences or less your strategy for this particular proceeding.

6. Explain how this strategy helps your case.
APPENDIX H

ADDITIONAL* GROUND RULES FOR EACH OF THE FIVE (5) CLASSROOM EXERCISES AND THE BIG TRIAL.

1. Be present.
2. Be on time.
3. Stay in character throughout the exercise.
4. Show the judge you have a “theory” (“strategy”) for your side of the case.
5. Protect your client at all times.
6. Consult with a professor (or a local attorney) before each exercise.
7. Submit your “Prep Sheet” (page 36) to the judge immediately after your exercise.
8. Ask questions about your performance.

* See Trial Advocacy pp. 11-13 Syllabus for the basic “ground rules.”*
APPENDIX I

ANATOMY OF A TRIAL

1. Pretrial CONFERENCE

2. JUDGE DESCRIBES THE CASE (KEY WORDS)

3. INVOKING THE RULE — FRE 615
(WITNESSES SWORN IN)

4. VOIR DIRE — [JURY SELECTION]

5. OPENING STATEMENTS
[CAVEAT! — MOTION TO DISMISS! — ADMISSIONS]

6. PROSECUTOR’S CASE-IN-CHIEF
   (a) PROSECUTOR’S DIRECT EXAMINATION
   (b) DEFENDANT’S CROSS EXAMINATION
   (c) PROSECUTOR’S RE-DIRECT
   (d) DEFENDANT’S RE-CROSS
[REPEAT PROCESS WITH OTHER WITNESSES]

7. PROSECUTOR RESTS — [ASK FOR RECESS BEFORE!]

8. DEFENDANT’S MOTION FOR DIRECTED VERDICT
[ARK. R. CIV. P. 50(a)]

9. DEFENDANT’S CASE-IN-DEFENSE
   (a) DEFENDANT’S DIRECT EXAMINATION
   (b) PROSECUTOR’S CROSS EXAMINATION
   (c) DEFENDANT’S RE-DIRECT
   (d) PROSECUTOR’S RE-CROSS
[REPEAT PROCESS WITH OTHER WITNESSES]

10. DEFENDANT RESTS — ARK. R. CIV. P. 50(a) [ASK FOR RECESS BEFORE!]

11. PROSECUTOR’S MOTION

12. PROSECUTOR’S REBUTTAL
APPENDIX I - (CONT.)

13. DEFENDANT'S SURREBUTTAL

14. MOTIONS AT THE CLOSE OF ALL THE EVIDENCE.
   (a) Civil CASE — ARK. R. CIV. P. 50(b)
   (b) Civil CASE — ARK. R. CRIM. P. 33.1

HUGE!! FAILING TO MAKE THIS MOTION WAIVES A PARTY'S RIGHT TO
CHALLENGE THE SUFFICIENCY OF THE EVIDENCE ON APPEAL.

SEE WILLIS v. STATE, 334 ARK. 412, 417-18 (1998)
SEE WILSON SAFETY PRODS. v. ESCHENBRENNER, 302 ARK. 228 (1990)

[CAVEAT! THE 50(b) (OR 33.1) MOTION MUST BE MADE BEFORE THE JURY
IS INSTRUCTED AND BEFORE CLOSING ARGUMENTS!]

15. CONFERENCES WITH THE JUDGE REGARDING JURY INSTRUCTIONS.

16. JUDGE INSTRUCTS THE JURY.

17. CLOSING ARGUMENTS — (ARGUE!!)
   (a) PROSECUTOR/PROSECUTOR (OR PARTY WITH THE BURDEN OF
       PROOF) SHOULD REQUEST REBUTTAL TIME.
   (b) PREPARE KEY JURY INSTRUCTIONS, EXHIBIT
       [BLOWUP! POWERPOINT! TRANSPARENCY, VIDEO CLIP!]
       TO USE DURING CLOSING.
   (c) CONTENTS OF CLOSING:
       (i) PROMISES FROM THE OPENING;
       (ii) EVIDENCE SUBMITTED AND RECEIVED DURING TRIAL;
       (iii) CREDIBILITY OF WITNESSES;
       (iv) REASONABLE INFERENCE;
       (v) TELL THE JURY WHY CLIENT IS ENTITLED TO THEIR
           VERDICT. — ASK FOR VERDICT!

18. JURY RETIRES TO DELIBERATE

19. JURY'S VERDICT

20. POST VERDICT MOTIONS