TRIAL ADVOCACY
SYLLABUS
(Course No. 6203)

I. Table of Contents ......................................................... i-ii

II. Schedule of Class Events (includes Big Trial dates) .................. 1

III. Objectives and Grading of Course:

1. Objectives and Syllabus .................................................. 3
2. Counsel's Role in the Litigation System ............................... 4
3. Part "A" - Format of the Course ....................................... 5-6
4. Part "B" - The Big Trial ................................................... 7
5. Required Books and Materials .......................................... 8
6. FORM #1 ..................................................................... 9
7. FORM #2 ..................................................................... 10
8. Ground Rules for the Course ............................................. 11-13
9. Grade Format for Classroom/Trial ...................................... 14
10. Master for Trial Advocacy Keys ........................................ 15
11. Students with Disabilities ............................................... 16

IV. Assignments/Dates and Trial Preparations .............................. 17-25

V. Preliminary Matters:

STATE v. BURNS** ................................................................. CASE
(Buy from the bookstore)

*Dates of recent events in the State v. Burns materials are frequently stated in dates such as -1 Which means one year ago, -2 means two years ago, -3 means three years ago, and so on. Please correct all dates to the appropriate years.

** Inclement Weather Policy .................................................. 41

Copyright © 2016
(a) Opening Statement - **STATE v. BURNS** .................................................. IN CASE

(b) Direct/Cross Examination - **STATE v. BURNS** ........................................ IN CASE

 (1) **Key** witness for Prosecution in **STATE v. BURNS**
 (2) **Key** witness for the Defendant in **STATE v. BURNS**

(c) Closing Arguments - **STATE v. BURNS** .................................................. IN CASE

VI. Prosecutor Teams/Defense Teams *(Appendix A)* ........................................ 26 and 27

VII. Attorney Worksheet for the Pretrial Conference *(Appendix B)* ..................... 28

VIII. Representative Table of Contents for a
 Trial Notebook *(Appendix C)* ................................................................. 29

IX. Books/Videos *(Appendix D)* ................................................................. 30-32

X. **Key** to Each Exercise *(Appendix E)* ...................................................... 33

XI. Planning for the Big Trial - Evidentiary
 Issues to Consider *(Appendix F)* .......................................................... 34

XII. **Key** for Prep Sheets *(Appendix G)* .................................................... 35

XIII. Additional “Ground Rules” *(Appendix H)* ............................................. 36

XIV. Anatomy of a Trial *(Appendix I)* ......................................................... 37-38

XV. Short Form Motion *(Appendix J)* ............................................................ 39-40

XVI. Inclement Weather Policy ................................................................. 41
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Location/Instructions</th>
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<tbody>
<tr>
<td>January 18 (Mon.)</td>
<td><strong>Dr. Martin Luther King, Jr. Holiday</strong></td>
<td>No Class</td>
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<tr>
<td>January 19 (Tues.)</td>
<td>First day of class - <strong>First Written Assignment</strong></td>
<td>Courtroom See p. 17</td>
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<td><strong>See Suppression video on MyLaw</strong></td>
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<tr>
<td>January 25 (Mon.)</td>
<td><strong>Second day of class - Second Written Assignment</strong></td>
<td>Courtroom See p. 18</td>
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<td></td>
<td>* Submit completed <strong>Form #1</strong> (see p. 9 of Syllabus) to <strong>Ms. Briggs, WATR - Room 183B</strong></td>
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<tr>
<td>January 26 (Tues.)</td>
<td>Third Day of Class - Third Written Assignment. Submit 3rd assignment to <strong>Ms. Briggs, WATR - Room 183B</strong></td>
<td>See pp. 19-20</td>
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<td></td>
<td>Fourth Assignment-Meet with Judges (Pretrial Conferences)</td>
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<tr>
<td>February 1 &amp; 2 (Mon./Tues.)</td>
<td>Fifth Assignment</td>
<td>See p. 21</td>
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<td></td>
<td>Monday: Critiques of Pretrials</td>
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<td></td>
<td>Tuesday: Opening Statements</td>
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<tr>
<td>February 3 (Wed.)</td>
<td>LAST DAY TO SUBMIT NAME OF PARTNER TO <strong>AUDREY BRIGGS</strong></td>
<td>WATR 183B</td>
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<tr>
<td>February 4 (Thurs.)</td>
<td>PAIRINGS WILL BE E-MAILED TO STUDENTS</td>
<td>E-mailed to class</td>
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<tr>
<td>February 8 (Mon.)</td>
<td><strong>LOTTERY IN - COURTROOM (Ms. Briggs)</strong></td>
<td>See p. 22</td>
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<tr>
<td>February 8 &amp; 9 (Mon. &amp; Tues.)</td>
<td>Sixth Assignment</td>
<td>See p. 22</td>
</tr>
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<td></td>
<td>Monday: Critiques of Opening Statements;</td>
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<td></td>
<td>Tuesday: Prosecutors Direct-x; Defense Cross-x</td>
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<tr>
<td>February 15 &amp; 16 (Mon. &amp; Tues.)</td>
<td>Seventh Assignment</td>
<td>See p. 23</td>
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<td>Monday: Defendant’s Direct/Prosecutor Cross</td>
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<td></td>
<td>Tuesday: Closing Arguments and; Prosecutor’s Cross-x</td>
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<tr>
<td>February 17 (Wed.)</td>
<td>COLLECT INSTRUCTIONS - FOR “BIG TRIAL” - See Ms. Briggs</td>
<td>Room 183B</td>
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<tr>
<td>February 22 &amp; 23 (Mon. &amp; Tues.)</td>
<td>Eighth Assignment</td>
<td>See p. 24</td>
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<tr>
<td></td>
<td>Monday: Critiques of Direct/Cross/ &amp; Closing</td>
<td></td>
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<tr>
<td></td>
<td>Tuesday: Pretrial Conferences - Big Trials</td>
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February 29 - & March 1 (Mon. & Tues.) | Ninth Assignment | SEE BELOW
| Monday: **BIG TRIALS BEGIN** - First Trial | See p. 25
| Tuesday: Pretrials for the Big Trials - (Cont’d. if needed) |

| March 15 (Tues.) | **TRIALS END - LAST TRIAL** | SEE BELOW |

| Date to be announced | NOTICE REGARDING CONFERENCES TO DISCUSS GRADES* | Posted at various locations (e-mail list serv) |

**To complete the 1st & 2nd Written Assignments, you must view Judge Threet’s Voir Dire and Suppression videos posted on the Trial Advocacy MyLaw page prior to submitting assignments.**

**PRETRIAL DATES:** February 23, and/on other dates agreed upon by all involved.

**TRIAL DATES:**
- February 29  Mon.  (Trial #1)
- March 1  Tues.  (Trial #2)
- March 3  Thurs.  (Trial #3)
- March 7  Mon.  (Trial #4)
- March 8  Tues.  (Trial #5)
- March 10  Thurs.  (Trial #6)
- March 14  Mon.  (Trial #7)
- March 15  Tues.  (Trial #8)

**TRIAL TIME/PLACE:** 4:10 to 7:30 P.M.

*All* Trials will be held in the COURTROOM - ROOM 240

*Discussion of tentative grades will take place in Professor Bailey’s office (#315). (Sometime after “Spring break” but before “Finals”!)*  See FORM #2 on p. 10
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."\(^1\) In short, 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.\(^2\)

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\(^1\) A. Castell, An Introduction To Modern Philosophy, 360 (2d ed. 1963).

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/she functions as a representative of and an advocate for a client involved in litigation or anticipated litigation. The Arkansas Model Rules of Professional Conduct in its preamble lists 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 2015 Spring Trial Advocacy course will attempt to inculcate basic trial competencies by following a rigid schedule of assigned readings, brief lectures, video presentations, drafting, role play and critiques. The following table of contents outlines the Syllabus in Part A, the general requirements of the course; Part B, the specific daily graded activities and their due dates; and Part C, the case file (STATE v. BURNS) and additional trial problems.
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 MARCH 21, 2016.

GRADE SCHEME OF THE COURSE

Three graded activities:

1. Written preparatory assignments - 10%
2. Oral presentations (Five Classroom Exercises) - 40% and
3. Big Trial - 50%
           100%

I. Written Preparatory Assignments - 10% of Grade

Each Student Must:

(a) Read assignments from Mauet's "Fundamentals of Trial Techniques". Based on these reading assignments, each student is then required to prepare and submit three (3) written assignments to Professor Bailey, or Ms. Briggs.

(b) be evaluated via these written assignments on how well each student understands the (1) "First Case Assignment," (2) Federal Rules of Evidence, (3) Principles from Mauet, and (4) application of I.(b)(1)-(4) to STATE v. BURNS.

II. Oral Classroom Assignments - 40% of Grade


(b) Before each graded exercise, each student should prepare a written outline or a verbatim account of the questions or issues he/she plans to raise during that exercise. This outline should be based on the Professor's lecture(s), the comments of his/her judge, and the appropriate chapter(s) in Mauet. [For extra credit, a student may submit a one page "Prep Sheet (to Ms. Briggs - Room 183B) " ("Prep Sheet" - see description in Appendix G). The Prep Sheets are due the SAME DAY of that exercise to receive extra credit.

(c) On the day (Usually on Tuesday) of the exercise, the judge will require each student to present that day's exercise. (Please be present and on time!)

(d) On the next class day, (Monday's), the judge will critique (assess the good and bad points) each student's performance. [The judge shall inquire of the students what lessons should have been learned from the exercise.] The judge shall offer some "general" lessons or principles from the completed exercise and may offer some pointers for the next exercise.
(e) This performance of a trial "exercise" at one class and critique of that performance at the next class format will be repeated until all FIVE (5) exercises have been completed.

III. BIG TRIAL: 50% of Grade

(a) Two (2)-two-person teams will try STATE v. BURNS in its entirety before a twelve-person jury. As a part of the team’s presentation, each student (team member) will be required to do an opening or closing, a direct examination, cross-ex, and part of a pretrial conference.

(b) At the end of the trial, the judge will critique the students’ presentations and inquire of them whether they have learned anything in the lessons from trying a full case.

(c) The jury will be required to complete a two-page evaluation of the students’ presentations. The evaluations will not be used to determine a student’s grade.

(d) Students may earn extra points by submitting a TRIAL NOTEBOOK to Mrs. Audrey Briggs (Room 183B) NO LATER THAN 2:00 P.M., THE NEXT DAY AFTER HIS/HER TRIAL. LATE NOTEBOOKS WILL NOT BE ACCEPTED.

(e) The actual grade for the Big Trial will be provided some time after Spring Break. An e-mail message to all students enrolled in the class will announce where and when the “tentative” grade may be collected.
PART "B"

THE BIG TRIAL

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

(2) Trial dates begin MONDAY, FEBRUARY 29, 2016.

(3) Each trial team will consist of two partners. Students should submit both team members' names to Ms. Audrey Briggs in a special envelope located in her office (Room 183B, Leflar Law Center) no later than WEDNESDAY, FEBRUARY 3, 2016.

(4) Each trial will be preceded by a Pretrial conference. Each team member will not only be graded on his/her performance at the 3-hour "Big Trial", but the Pretrial conference as well.

EXTRA POINTS AFTER BIG TRIAL

- **TRIAL NOTEBOOK** - MUST BE SUBMITTED TO MS. AUDREY BRIGGS IN WATR 183B NO LATER THAN 2:00 P.M. THE NEXT DAY AFTER HIS/HER TRIAL [A TRIAL NOTEBOOK, (P. 30 OF SYLLABUS) IS NOT A REQUIREMENT. ONLY ONE NOTEBOOK PER TEAM!]
  LATE NOTEBOOKS WILL NOT BE ACCEPTED.

- See Form #2 - See p. 10 of Syllabus - **CLASSROOM** and **FINAL** grade form for the Big Trial.
REQUIRED BOOKS AND MATERIALS

A. Required Books

— Mauet “Fundamentals of Trial Techniques” (“Theory” and “Theme” of a Case!) - 5TH - 8TH Editions
(Any one of these)

B. Required Course Materials

— Syllabus & Case Materials (STATE v. BURNS)
(Available in Room 183B, Ms. Audrey Briggs office.)

— Model Rules of Professional Conduct
— Federal Rules of Evidence
— Arkansas Rules of Civil & Criminal Procedure

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

SUPPLEMENTARY BOOKS & TAPES (not required)

— Bibliography of tapes and study aids in Appendix D.

— Suggested Readings: Several copies in the library of Professor Bailey’s materials located on (1) the Web and (2) Bailey's Reserve Shelf.

  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
  i. Key Grading Issues
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

[Please complete and submit to Ms. Briggs (WATR 183B) by MONDAY, January 25, 2016]
TRIAL ADVOCACY
SPRING 2016

FORM #2
FINAL GRADE
(Class and Big Trial)

Student's Name: __________________________________________

<table>
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<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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<td>Critiques</td>
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<tr>
<td>Prep Sheets</td>
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</table>

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

Numerical Grade ____________________________ Letter Grade ____________________________

GRADE SCALE
93-100 = A
90-92 = A-
88-89 = B+
83-87 = B
GROUND RULES FOR THE COURSE

1. **Preparation and Background Materials for Classroom Participation**

   Each student is required to make at least **FIVE (5)** oral presentations in order to satisfy a portion of his/her classroom component grade. *(See Key Grading Issues on the Web)*. Before each student performance, your instructor will assign appropriate chapters from Mauet as background reading for the upcoming exercise.

   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 in the **Big Trial** should advise Ms. Briggs in WATR 183B as soon as possible (or no later than **WEDNESDAY, FEBRUARY 3, 2016**).
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 a state court. You should be thoroughly familiar with the rules affecting trial and Pretrial procedures, and especially the rules dealing with depositions.

Arkansas Rules of Criminal Procedure or the United States Supreme Court opinions should be consulted as the need warrants.

5. All classroom participation assignments 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 type written 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 TERMS -1 WHICH MEANS ONE YEAR AGO, -2 WHICH MEANS TWO YEARS AGO, -3 WHICH MEANS THREE YEARS AGO, AND SO ON. PLEASE CORRECT TO THE APPROPRIATE YEARS.

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 PROFESSOR BAILEY.

17. A STUDENT MAY NOT CHANGE A TRIAL DATE, TIME, SUBJECT MATTER, WITNESSES, EXHIBITS WITHOUT THE CONSENT OF THE JUDGE AND PROFESSOR CARLTON BAILEY.
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 (criminal 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, whether physical, learning, or psychological, who believe that they may need accommodations in this class, are encouraged to contact the Center for Students with Disabilities
ARKU 104
Fayetteville, AR 72701
(479) 575-3104 (voice)
(479) 575-3646 (TTY)
oda@uark.edu
web: http://www.uark.edu/edu/us/csd/

as soon as possible to ensure that such accommodations are implemented in a timely fashion. Please meet with CSD staff to verify your eligibility for any classroom accommodations and for academic assistance related to your disability.
ASSIGNMENTS - SPRING 2016

January 18, 2016 - School closed - Dr Martin Luther King, Jr. Holiday

**FIRST WRITTEN ASSIGNMENT** - Tuesday, January 19

PLACE: Courtroom 240

ALL STUDENTS!

A. Read the **STATE v. BURNS** case - (Buy the case from the Bookstore). Also pick-up the Syllabus from Ms. Audrey Briggs, in WATR 183B.
B. Read Mauet - Chapters 1, 2 & 3
C. Read pp. 1-26 of the Syllabus! (Read Ground Rules on pp. 11-13).

D. **PROSECUTION TEAMS** - See APPENDIX A, pp.

   1. Prepare a three (3) page* (no more) memorandum identifying:

      (A) One (1) Motion to Exclude Evidence - (use “short form” motion format - See pp. 39-40);

      (B) A (only 1) Federal Rule of Evidence that supports your motion - 1(a) above;

      (C) A brief three (3) sentence statement (no more!) Explaining why the trial court should grant your request.

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

   1. Prepare a three (3) page* (no more!) memorandum identifying:

      (A) One (1) Motion to Exclude Evidence - (use “short form” motion format - See pp. 39-40);

      (B) A (only 1) Federal Rule of Evidence that supports your motion - 1(a) above;

      (C) A brief three (3) sentence statement (no more!) Explaining why the trial court should grant your request.

   *3 pages is the outer limit - of course it may consist of less than 3!

**To complete the 1st Written Assignment, you must view Judge Threet's Voir Dire and Suppression videos posted on the Trial Advocacy MyLaw page prior to submitted assignment.
ALL TEAMS

A. Read Mauet - Chapters 2 and 3.
B. Read STATE v. BURNS case.
C. See Pretrial Conference Order on Reserve Shelf in the Law Library.

D. PROSECUTION TEAMS
Submit to Prof. Bailey at class time a two page (no more, of course, it can be less than 2 pages) memorandum which should cover the following:

1. Identify one fact that the Prosecution may wish to persuade the Defense to stipulate to that could simplify the issues in this case. (See cases interpreting “stipulations” or on the Web).

2. Compose six (6) voir dire questions essential to choosing jurors that are more likely to convict the defendant.*

E. DEFENSE TEAMS
Submit to Prof. Bailey at class time a two page (no more, of course, it can be less than 2 pages) memorandum which should cover the following:

1. Identify one fact that the Defense may persuade the Prosecution to stipulate to that could simplify the issues in this case. (See cases interpreting “stipulations” on the Web.)

2. Compose six (6) voir dire questions essential choosing jurors that are more likely to acquit the defendant.*

* Please list each voir dire question separately!

**To complete the 2nd Written Assignment, you must view Judge Threet’s Voir Dire and Suppression videos posted on the Trial Advocacy MyLaw page prior to submitted assignment.
THIRD WRITTEN ASSIGNMENT - * Tuesday, January 26 (Submit written assignment to (Ms. Briggs in room 183B)

FOURTH ASSIGNMENT: First meeting with Judges: Pretrial Conferences

PLACE: Threet - Courtroom 240
       Hatcher - Room 339
       Prettyman - Room 342

ALL TEAMS:
A. Read Mauet - Chapters 4, 5, 6 & 8
B. Read STATE v. BURNS case

C. PROSECUTION TEAMS

Submit to Mrs. Briggs BEFORE class time a one page (no more) memorandum [Title: “Prosecutor’s One-Page Query”] identifying:

I have a concern about the following issue ________________________________

Because ________________________________

Can you help me resolve this issue?

D. DEFENSE TEAMS

Submit to Mrs. Briggs BEFORE class time a one page (no more) memorandum [Title: “Defendant’s One-Page Query”] identifying:

I have a concern about the following issue ________________________________

Because ________________________________

Can you help me resolve this issue?
ASSIGNMENTS - SPRING 2016

FOURTH ASSIGNMENT CONTINUED (classroom exercises) - Tuesday, January 26
PRETRIAL CONFERENCES

PLACE:                      Threet - Courtroom 240
                             Hatcher - Room 339
                             Prettyman - Room 342

PROSECUTION AND DEFENSE TEAMS*:
A. Read Mauet - Chapter 1, 2, and 3
B. Read Ark. R. Civ. P. 16 and Ark. R. Crim. P. 20.1-20.4
C. See Stipulation Cases on reserve
D. Read STATE v. BURNS case

1. TUESDAY, JANUARY 26, 2016 - Pretrial Conferences: Each student from the Prosecution side* and each student from the Defense* side must meet outside of class [JANUARY 22-24] and stipulate (agree not to contest at trial) to certain facts or other matters that will facilitate an efficient and uninterrupted trial. Attorneys should not, however, weaken their client’s case by stipulating!!

2. All matters stipulated to must be reduced to writing and signed by the attorneys. A copy of the written stipulations should be presented to your judge at class time on TUESDAY, JANUARY 26, 2016.

3. TUESDAY, JANUARY 26, 2016 - More about the Pretrial Conferences. During the Pretrial Conference in STATE v. BURNS, each student from the Prosecution’s side and each from the Defense side will meet with the judge in “chambers” and discuss those matters usually covered at a pretrial conference (see Pretrial Conference Order **on the Web or on Reserve in the Law Library, Ark. R. Civ. P. 16 & Ark. R. Crim. P. 20.4. Also, see on the Web how your judges identify Strong and Weak characteristics of Pretrial conference presentations). Each student will have approximately TEN MINUTES to present his/her issues at the conference.

4. The judge will select one of the two attorneys to prepare a Pretrial order based on the judge’s decisions and the party’s stipulations at the Pretrial conference on JANUARY 26, 2065.

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, FEBRUARY 1, 2016

* See Appendix A, for Classroom Team Designations and name of judge.
** Of course, your Orders will not include as much information as found in the Order on the web.
ASSIGNMENTS - SPRING 2016

FIFTH ASSIGNMENT - Monday, February 1 & Tuesday, February 2, 2016

PLACE:  
Prettyman - Courtroom 240  
Hatcher - Room 339  
Threet - Room 342

PROSECUTION AND DEFENSE TEAMS*:

A. Read Mauet - Chapter 3  
B. Read the Pretrial conference order in STATE v. BURNS  
C. Read the Ground Rules for the Course

1. MONDAY, FEBRUARY 1, 2016 - All students (both Prosecution* and Defense* teams) must meet with their judges to discuss critiques of the Pretrial exercises in STATE v. BURNS.

2. TUESDAY, FEBRUARY 2, 2016 - Each student from the Prosecution and Defense Teams will present opening statements in STATE v. BURNS. Each student will have approximately TEN MINUTES to complete his/her opening statement.

3. WEDNESDAY, FEBRUARY 3, 2016 - FINAL DAY TO SUBMIT NAME OF PARTNER TO MRS. AUDREY BRIGGS. AN ENVELOPE WITH THE HEADING "PARTNERS FOR BIG TRIAL" WILL BE AVAILABLE IN MS. BRIGGS' OFFICE (Room 183B).

4. THURSDAY, FEBRUARY 4, 2016 - Ms. Briggs will e-mail the “Pairings” for the Big Trial (e.g., what persons will be Prosecutors and their respective opponents on defense). There shall be two (2) attorneys on each team. All four (4) attorneys should meet on the weekend of February 5th & 6th to decide (a) the date of the trial; and (b) the name of the trial judge. All selections will be by LOTTERY. ONE representative from this four-person discussion group should come to the COURTROOM at class time on MONDAY, FEBRUARY 8, 2016 to select a lottery number (1-12). The lowest pick (#1) will select first. The lottery (selection) will take place in the COURTROOM AT 4:10 P.M. on MONDAY, FEBRUARY 8, 2016.

* See Appendix A, for Classroom Team Designations and name of judge.
ASSIGNMENTS - SPRING 2016

SIXTH ASSIGNMENT - Monday, February 8 & Tuesday, February 9, 2016

PLACE: Prettyman - Courtroom 240 [LOTTERY IN COURTROOM!]
Hatcher - Room 339 MONDAY, FEBRUARY 8, 2016
Threet - Room 342

PROSECUTION AND DEFENSE TEAMS*:

A. Read Mauet - Chapter 4, 5, 6, & 8
B. Read the pretrial conference order in STATE v. BURNS
C. Read the Ground Rules for the Course

1. MONDAY, FEBRUARY 8, 2016 - All students (both Prosecution and Defense* teams) must meet with their judges to discuss critiques of opening statements in STATE v. BURNS.
[LOTTERY IN THE COURTROOM TODAY!]

2. TUESDAY, FEBRUARY 9, 2016 - Each student from the Prosecution'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 only be given TEN MINUTES to conduct the Direct Examination.

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

* See Appendix A, for Classroom Team Designations and name of judge.
ASSIGNMENTS - SPRING 2016

<table>
<thead>
<tr>
<th>SEVENTH ASSIGNMENT - Monday, February 15 &amp; Tuesday, February 16</th>
</tr>
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<tbody>
<tr>
<td>PLACE: Hatcher - Courtroom 240</td>
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<tr>
<td>Threet - Room 339</td>
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<tr>
<td>Prettyman - Room 342</td>
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</tbody>
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PROSECUTION AND DEFENSE TEAMS*

A. Read Mauet - Chapters 4, 5, 6, & 8
B. Read the pretrial conference order in **STATE v. BURNS**
C. Read the Ground Rules for the Course

1. **MONDAY, FEBRUARY 15, 2016** - 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.

2. **MONDAY, FEBRUARY 15, 2016** - Each student from the **Prosecution’s side** will conduct a Cross Examination of the defense’s key witness. Although each Prosecutor should prepare a full Cross Examination, he/she will be given only **FIVE MINUTES** to conduct the Cross Examination.

3. **TUESDAY, FEBRUARY 16, 2016** - Closing Arguments by the **Prosecution and Defense Teams**.

4. **WEDNESDAY, FEBRUARY 17, 2016 - ALL TEAMS** - Collect the **Big Trial Instructions** from Ms. Briggs in Room 183B.

* See Appendix A, for Classroom Team Designations and name of judge.
ASSIGNMENTS - SPRING 2016

EIGHTH ASSIGNMENT - Monday, February 22 & Tuesday, February 23, 2016

JUDGES: Please schedule the time and place of your Pretrial Conferences for the Big Trial with Ms. Briggs - aabriggs@uark.edu.

PLACE:  Prettyman* - Courtroom 240  
         Threet - Room 339  
         Hatcher - Room 342

PROSECUTION AND DEFENSE TEAMS*:

A. Read Mauet - Chapter 7  
B. Read the pretrial conference order in STATE v. BURNS  
C. Read the Ground Rules for the Course

1. MONDAY, FEBRUARY 22, 2016 - All students (both Prosecution* and Defense* teams) must meet with their judges to discuss critiques of the Direct Examinations, Cross Examinations and Closing Arguments.

2. TUESDAY, FEBRUARY 23, 2016 - Prepare to negotiate with opposing teams regarding issues in the BIG TRIAL (on or after FEBRUARY 22, 2016.) Pretrial conferences begin on Tuesday, February 23, 2016.

4. Begin Pretrial Conferences on FEBRUARY 23 or FEBRUARY 29, 2016 OR WHENEVER ALL PARTIES CAN AGREE ON A CONVENIENT TIME THEREAFTER. (PLEASE DRESS-UP FOR THE “PRETRIAL” AS YOU WOULD FOR THE BIG TRIAL) AND JUDGES - PLEASE ALERT MS. BRIGGS TO THE TIME, DATE, AND ROOM FOR YOUR PRETRIAL SO THAT SHE CAN INSURE THAT YOU WILL HAVE THAT ROOM ON THAT DATE AND AT THAT TIME!

* See Appendix A, for Classroom Team Designations and name of judge.
ASSIGNMENTS - SPRING 2016

NINTH ASSIGNMENT - Monday, February 29, 2016

PLACE:       Prettyman* - Courtroom 240
              Threet*      - Room 339
              Hatcher*     - Room 342

PROSECUTION AND DEFENSE TEAMS:*  

A. Read Mauet - Chapter 5
B. Read the Ground Rules for the Course

1. **MONDAY, FEBRUARY 29, 2016** - Big Trials begin! Pretrials continued - All students (both Prosecution* and Defense* teams)

   * TWO (2) Rooms should be available for Pretrials.
# OPPONENTS (TEAMS) AND JUDGES

## JUDGE THREET

<table>
<thead>
<tr>
<th>PROSECUTION'S TEAM</th>
<th>vs.</th>
<th>DEFENDANT'S TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Myranda Anderson</td>
<td>vs.</td>
<td>1. James (Bo) Renner</td>
</tr>
<tr>
<td>2. Catherine Cargile</td>
<td>vs.</td>
<td>2. Clay Sullivan</td>
</tr>
<tr>
<td>3. Caroline Kelly</td>
<td>vs.</td>
<td>3. Joshua Amos</td>
</tr>
<tr>
<td>4. Beth Carson</td>
<td>vs.</td>
<td>4. Nathan Roberts</td>
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<tr>
<td>5. James Head</td>
<td>vs.</td>
<td>5. Benjamin Fruehauf</td>
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<td>6.</td>
<td>vs.</td>
<td>6.</td>
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## JUDGE HATCHER

<table>
<thead>
<tr>
<th>PROSECUTION'S TEAM</th>
<th>vs.</th>
<th>DEFENDANT'S TEAM</th>
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<tbody>
<tr>
<td>1. Hayley Hanna</td>
<td>vs.</td>
<td>1. Adrian Frank</td>
</tr>
<tr>
<td>2. Daisy Karlson</td>
<td>vs.</td>
<td>2. Adam Thompson</td>
</tr>
<tr>
<td>3. Mariah Elkins</td>
<td>vs.</td>
<td>3. Doug Harlan</td>
</tr>
<tr>
<td>4. Chloe Roane</td>
<td>vs.</td>
<td>4. Daveante Jones</td>
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<tr>
<td>5.</td>
<td>vs.</td>
<td>5.</td>
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<tr>
<td>6.</td>
<td>vs.</td>
<td>6.</td>
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<tr>
<td>PROSECUTION'S TEAM</td>
<td>vs.</td>
<td>DEFENDANT'S TEAM</td>
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<tr>
<td>1. Audra Sargent</td>
<td>vs.</td>
<td>1. James (JR) Baxter</td>
</tr>
<tr>
<td>2. Shawn (Aundrea) Hanna</td>
<td>vs.</td>
<td>2. Mark Pearson</td>
</tr>
<tr>
<td>3. Matthew Kasper</td>
<td>vs.</td>
<td>3. Elijah Bentley</td>
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<tr>
<td>4. Eli Bland</td>
<td>vs.</td>
<td>4. Alex Gustafson</td>
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<td>5.</td>
<td>vs.</td>
<td>5.</td>
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<tr>
<td>6.</td>
<td>vs.</td>
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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/Criminal) - 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.
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. Hirsckop, 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.
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 (CRIMINAL MURDER CASE).

A235  TRIAL TECHNIQUE SERIES: FINAL ARGUMENT IN A CRIMINAL 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)
5. Criminal case - Miranda - 4th & 6th Amendment (Confrontation Issues)
6. Probative Nature Versus Prejudicial Impact
7. Hearsay/ Exceptions/ Constitutional Issues
8. Offers of Proof/ Making a Record
APPENDIX G

KEY FOR PREP SHEETS
(EXTRA POINTS)

1. One page for Prep!

2. Name of student

3. Identify as Prosecution (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.

(To receive the full points, your Prep Sheets must contain all of the above information)

ALL Prep Sheets are given to Ms. Briggs on the same day the activity occurred. (You may not email your Prep Sheets)
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 35) 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. PROSECUTION’S CASE-IN-CHIEF
   (a) PROSECUTION’S DIRECT EXAMINATION
   (b) DEFENDANT’S CROSS EXAMINATION
   (c) PROSECUTION’S RE-DIRECT
   (d) DEFENDANT’S RE-CROSS
   [REPEAT PROCESS WITH OTHER WITNESSES]
7. PROSECUTION RESTS — [ASK FOR RECESS BEFORE!]
8. DEFENDANT’S MOTION FOR DIRECTED VERDICT
   [ARK. R. CIV. P. 50(a)]
   [ARK. R. CRIM. P. 33.1]
9. DEFENDANT’S CASE-IN-DEFENSE
   (a) DEFENDANT’S DIRECT EXAMINATION
   (b) PROSECUTION’S CROSS EXAMINATION
   (c) DEFENDANT’S RE-DIRECT
   (d) PROSECUTION’S RE-CROSS
   [REPEAT PROCESS WITH OTHER WITNESSES]
10. DEFENDANT RESTS — ARK. R. CIV. P. 50(b) [ARK. R. CRIM. P. 33.1] [ASK FOR RECESS BEFORE!]
11. PROSECUTION’S MOTION
12. PROSECUTION’S REBUTTAL
13. DEFENDANT’S SURREBUTTAL
APPENDIX I (CONT.)

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

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) PROSECUTION/PROSECUTION (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 INFERENCES;
       (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
APPENDIX J

EXAMPLE OF A SHORT FORM MOTION

TRIAL ADVOCACY

SHORT FORM MOTION

STATE OF NITA
COUNTY OF DARROW

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Fran Meryll, Plaintiff

v.

Carrie Porter and
Grass Golf course, Inc., Defendant

File No. 4762

MOTION TO POSTPONE A TRIAL
ON ACCOUNT OF THE ABSENCE OF A WITNESS

Defendant, Carrie Porter, moves this court to continue this case to January 30, 2006 for reasons that follow and those more particularly described in the attached affidavit:

1. that Thomas (Tom) Tucker, a former mechanic of defendant, Grass Golf Course, cannot be found;

2. that Tom Tucker’s testimony about the maintenance of the golf cart in question vital to the defense as shown more particularly in the attached affidavit;

3. that Tom Tucker’s absence has not been caused by the consent, connivance or procurement of the defendant, Carrie Porter; and

4. that the contents of this motion and the attached affidavit are consistent with Ark. Stat. Ann. 16-63-402.

Therefore, the defendant Carrie Porter moves this court to continue this case to January 4, 2006.

Shannon Poore
Bar No. 00001
1512 Leflar Law Center
University of Arkansas
Fayetteville, AR 72701
(479) 575-0001

39
CERTIFICATE OF SERVICE

I, Shannon Poore, attorney for the defendant Carrie Porter, do hereby swear that this motion a continuance and attached affidavit has been hand delivered to attorney Ann Elliot, attorney Plaintiff, on the 19th of May, 1993 at 12:05 p.m.

Shannon Poore
Attorney for
Date

STATE OF OHIO DISTRICT COURT
COUNTY OF DARROW FOURTH JUDICIAL DISTRICT

Fran Meryll, Plaintiff

V. File No. 4762

Carrie Porter and
Grass Golf Course, Inc., Defendants

ORDER

Judge Bailey
IVI. Inclement Weather Policy

In the event that the University of Arkansas cancels all classes because of inclement weather, we will adopt the following schedule:

A. Cancelling a Monday* class:

If classes are cancelled on any Monday, beginning February 1, 2016, the Critique session scheduled for that Monday will be conducted either:

1. At the next available Critique session, or

2. By a Judge’s written report - submitted to the class via email.

B. Cancelling a Tuesday** class:

If classes are cancelled on any Tuesday beginning January 26, 2016, the trial exercise set for that day, will be rescheduled for the next class - Monday’s class.

* If classes are cancelled on Monday, January 25, 2016, Professor Bailey will provide a report by email to the class.

** If classes are cancelled on Tuesday, January 19, 2016 - See Review outline for the Spring 2016 Trial Advocacy class found on Professor Bailey’s webpage (Law School’s main webpage).