



**WASHINGTON UNIVERSITY SCHOOL OF LAW**  
**CRIMINAL PRETRIAL PRACTICE AND PROCEDURE**  
*Spring 2015*

**CLASS #2   Tues., 1/20**

Topics: Factual & Legal Analysis, Drafting Complaints, Duty of Prosecutor

Reading Assignment: Berger, Mitchell, Clark, pp.91-132, 168, 217-228; *Berger v. United States*, 295 U.S. 78, (1935); Model RPC 1.2 (a), 1.4, 1.5(b), 3.1, 3.8

Review applicable Missouri statutes and/or Missouri Approved Instructions

Written Assignment: None

Attorney Preparation: Prosecution attorneys prepare to meet and interview victims and arresting officers based on what you know from police report, perform preliminary research (e.g., review potentially relevant statutes, decisions, jury instructions, etc.).

Role Playing Preparation: Student A3 will play Jimmy Collier  
Student A4 will play R.J. Briscoe  
Student B7 will play Casey Kennedy  
Student B8 will play Shane Douglas

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulations: You will break into your assigned law firms and each law firm will interview its “victim/client” in preparation for drafting a criminal complaint.

Attorneys will then meet in firms after the “victim/client” interview to discuss potential charges and considerations.

Effective case evaluation requires that you perform thorough legal research in order to understand your potential charges. You must do this on your own in order to draft your Complaint.

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be well suited to your particular case. Blindly following examples you have found from other cases or form books can result in serious substantive or strategic errors, so do not copy the language you find in the samples unless you understand why it is there and conclude its inclusion in your Complaint is appropriate. A simple, straightforward, plain English Complaint you write yourself based on the facts in your case and the law governing those facts will be best.

Attorney Preparation: Your defendant/client, the named defendant in the Complaint you were served, is coming to meet you. Review the police report related to the Complaint and be prepared to interview your defendant/client about the facts underlying the Complaint and to counsel him or her about what may happen next and what courses of action are possible. In order to counsel your client effectively, you will need to do some substantive research to familiarize yourself with the law governing the claims. The Complaint and the Defendant's file provided in class two are good starting points.

Role Playing Preparation: Student A2 will play George Fernandez  
Student B6 will play Jack Jarvis

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Simulations: You will break into your law firms and interview your defendant/clientf.

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**CLASS #4   Tues., 2/3**

Topics: Feedback on Pleadings; Objectives and Strategies in Witness Interviews; Informal Fact Investigation Preparing Litigation Plans

Reading Assignment: Berger, Mitchell, Clark, pp. 19-87, 135-162; Model RPC 3.4(b), 4.1(a)

Written Assignment: None

Attorney Preparation: You will have an opportunity to conduct some informal discovery through witness interviews. Based on discussions with and documents provided by your client (depending on whether you are conducting the interviews as prosecution or defense), be prepared to interview the witness you are assigned below:

Students A2 & A3 will interview Mickey Tyson  
(as prosecution)

Students A1 & A6 will interview Alex Harrison  
(as defense)

Students A4 & A5 will interview Jasmine Turner  
(as prosecution)

Students B8 & B11 will interview Tyler Roy  
(as prosecution)

Students B7 & B9 will interview Taylor Trendstar  
(as defense)

Students B10 & B12 will interview Toni/Tony Strand  
(as defense)

Role Playing Preparation: Student A1 will play Mickey Tyson  
Student A4 will play Alex Harrison  
Student A3 will play Jasmine Turner  
Student B5 will play Tyler Roy  
Student B8 will play Taylor Trendstar  
Student B6 will play Toni/Tony Strand

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulations: You will break into your law firms and begin informal discovery through witness interviews. **You may not have time to meet with all witnesses during this**

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**class. If that is the case, you can wrap up these witness interviews at the start of Class 5.**

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**CLASS #5   Tues., 2/10**

- Topics: Finish Witness Interviews (if necessary); Scope of Discovery (duties of prosecutor v. defense attorney); Difference from civil discovery
- Reading Assignment: Berger, Mitchell, Clark, pp. 237-238; 282-285; 288-296; Federal Rules of Criminal Procedure 16; *Brady v. Maryland*, 373 U.S. 83 (1963); *Wyrick v. Fields*, 459 U.S. 42 (1982)
- Written Assignment: Litigation Plan/ Discovery Plan - Due in class  
Hand in one to your professor, give one copy to each member of your law firm

Using the Model Complaints provided in Class 4, draft litigation plans for both sides cases from your side. The litigation plans may take any form that makes sense to you, but each should, at a minimum, address the following: What are the elements of proof for each cause of action and each defense asserted in the model pleadings? What facts are needed to establish each element? What evidence exists as to each element? What additional information must be discovered? What are likely sources of additional evidence?

There is a blank chart on your section's MyLaw page under "Course Documents" that you may use in drafting your litigation plans. For each case, include every witness you would like to talk to and every document or category of documents you would like to see. Because this is a simulation you may not be able to talk to every witness you would like to or to see every imaginable document. Nevertheless, you should try to be as complete as possible in developing your litigation plans, as if they were real cases. Your litigation plans will guide your decisions in the weeks ahead and next week will provide the basis for drafting your written discovery requests in the case in which you represent the defendant.

- Attorney Preparation: Review model Complaints and client and witness notes and consider the information you would like to obtain from opposing counsel in both cases.

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Role Playing Preparation: Witnesses not interviewed in class 4 should review notes (if necessary).

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Simulations: Break into firms and complete witness interviews (if necessary).

After the witness interviews are done and you have had a lecture on the various discovery devices available to you, you will exchange and critique your litigation plans with the other members of your firm and work together to develop a detailed discovery plan for the case in which you represent the defendant.

In doing so, consider what defenses, objections and privileges your client or the opposing party can or might assert, what evidentiary foundations you will need in order to use certain evidence at trial, and which discovery devices are best suited to obtain the information you seek.

Once your law firm has created a comprehensive discovery plan for the case in which you represent the defendant, you will divide up responsibility within your firm for drafting deposition notices, requests for production, requests for exams, and requests for admissions. *Each firm member should be assigned at least one deposition notice and a few interrogatories and/or document requests to draft.*

Additional Instructions:



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Attorney Preparation: Before class you will receive discovery requests from the opposing law firm. During class, you will break into firms and have the opportunity to meet with your victim to review the requested discovery and to decide how you will respond. You should prepare for class by carefully reviewing the discovery served by your opposing counsel and familiarizing yourself with the rules governing discovery responses, including any applicable objections or privileges.

Role Playing Preparation: Student A2 will play Jimmy Collier  
Student B7 will play Casey Kennedy

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulations: You will break into law firms and meet with the victims to review discovery requests and determine proper responses.

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**CLASS #7   Tues., 2/24**

Topic: Responding to Discovery Objections; Deposition Techniques & Strategies; Preparing Deposition Outlines

Reading Assignment: Review Berger, Mitchell, Clark, pp. 299-354; Read 355-363; Fed. R. Evid. 612, 801(d)(1), 801(d)(2), 803(5)

Written Assignment: Responses to Written Discovery

**By 9:00 a.m. on the day before your scheduled Class 7, provide your law firm's single set of discovery responses to your professor and to each member of the opposing law firm.**

After meeting with the victim whose case you are prosecuting regarding discovery in the previous class, both firms will draft responses to the written discovery served on it. You may draft all responses as a firm effort, or divide responsibility and draft responses individually after you have discussed as a firm how to respond to each request. If you choose the latter course, indicate after each response who prepared it by putting the drafter's initials after the response.

After all responses have been drafted, each firm should combine its responses into a single set of documents and attach copies of any responsive documents that you are willing to turn over to your opposing counsel (i.e., all documents that are not privileged or otherwise not responsive/subject to disclosure).

Attorney Preparation: None

Role Playing Preparation: Student B8 will play Quinn McPherson (Victim C from Class One)

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulation: Mock deposition with Quinn McPherson

Additional Instructions:

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**CLASS #8   Tues., 3/3**

Topic:	Depositions
Reading Assignment:	None
Written Assignment:	<u>Assigned Witness Deposition Outline (A3, A4, A5, B8, B9, B10, B12)</u> <b>Due to professor only at the start of class</b>  Think through your goals for the deposition of the witness assigned to you and the areas of questioning you want to focus on, and prepare an outline of your questions. You will be unable to conduct an effective deposition if you have not thought through your goals and questions in advance. Each person should use one document relevant to the case during his or her questioning (multiple attorneys may use the same document during the deposition). Prior to class and after you have completed your deposition outline, coordinate with the other attorney interviewing your witness and divide responsibility for the actual questioning.
Attorney Preparation:	Attorneys B10 & B12: prepare to take Mickey Tyson's deposition; Attorneys A3, A4, & A6: prepare to defend  Attorneys A3, A4, & A5: prepare to take Tyler Roy's deposition; B11 & B12 prepare to defend  Attorneys B8 & B9: prepare to take Jasmine Turner's deposition; Attorneys A1, A2, & A5: prepare to defend
Role Playing Preparation:	Student A1 will play Mickey Tyson Student A4 will play Jasmine Turner Student B5 will play Tyler Roy
Simulations:	Depositions – see deponent assignments above
Additional Instructions:	



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**CLASS #10 Tues., 3/24**

Topic: Victim Depositions

Reading Assignment: None

Written Assignment: None

Attorney Preparation: Victim Depositions: Attorneys in Firm A should be prepared to take the deposition of Casey Kennedy. Attorneys in Firm B should be prepared to take the deposition of Jimmy Collier. Prior to class, you should meet in your firms or assigned teams of 3 (your professor will provide further instruction on this), to discuss what areas should be covered in the deposition and divide responsibility for the questioning into roughly equal parts. Then each individual attorney should develop a detailed outline of his/her part of the deposition questioning. You are not required to turn in these deposition outlines; however, you will be unable to conduct an effective deposition without one.

Attorneys for the state should be prepared to defend their victim's deposition.

*The deposition will be recorded.*

Role Playing Preparation: Student A3 will play Jimmy Collier  
Student B7 will play Casey Kennedy

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulations: Law firm A will take deposition of Casey Kennedy; Law Firm B will take deposition of Jimmy Collier; State's attorneys will defend.

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**CLASS #11 Tues., 3/31**

Topics: Deposition Recap; Expert Depositions; Motions Practice

Reading Assignment: Berger, Mitchell, Clark, pp. 391-437; 285-287

Written Assignment: Deposition Self Evaluation  
**Due in class**

Review the portions of the depositions you took during the previous classes and write a brief (2-3 double-spaced pages) self-evaluation of your deposition techniques, which addresses the following:

- (1) Identify how effective you were in achieving the goals you had for each deponent.
- (2) Identify three questions you asked that could have been improved or required a follow-up question you failed to ask. For each question, write out the question and answer in full, then describe the problem with the question (e.g., seeks privileged information; compound; confusing) and explain how the question should have been rephrased or followed up.
- (3) Identify the best and worst moments of your depositions. Explain why the strong parts went well and what you would do differently for the weak parts.

Role Playing Preparation: None

Simulations: None

Additional Instructions:

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**CLASS #12 Tues., 4/7**

Topics: Motions Practice; Negotiation and Plea Bargains

Reading Assignment: Berger, Mitchell, Clark, pp. 445-453, 484-493; 543-544; 533-536; 553-557; Model RPC 1.2(a), 1.4, 3.2

Written Assignment: Motion Outlines  
**One copy to professor and serve other on opposing counsel by 9:00 a.m. the day before class.**

Prepare a motion on behalf of the client you are defending (Jarvis or Fernandez). Each motion should identify: the nature of the motion, its factual basis, supporting legal authority (citing specific supporting law), your arguments in support of a motion, and the relief you are requesting. You may bring any motion that you think is warranted by the facts, including motions to compel discovery, motions to suppress evidence, and motions to suppress statements. Identify in a brief cover memo to your professor the time at which you would have brought the motion if this were a real case (e.g., at the close of discovery, prior to your client's deposition, etc.) and any supporting documents that you would submit with the memorandum (e.g., affidavits saying..., discovery documents such as...). Bring copies of any supporting statutory or case law with you to your motions argument.

Review the motion you submitted and the motion served on you by your opposing counsel. Prepare to argue your client's position on these motions to the judge (your professor) during class.

You will break into law firms and discuss the possibility of agreeing to a plea bargain in both of your cases. You should begin to evaluate the plea options in both cases before class and prepare to counsel the victim in the case you are prosecuting and the defendant in the case you are defending about the possibility of reaching a plea bargain and in the case in which you are representing the defendant, obtain the defendant's authority to agree to a plea bargain.

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Role Playing Preparation: -Student A3 will play Jimmy Collier and meet with attorneys regarding plea bargain  
-Student A1 will play George Fernandez and meet with attorneys regarding plea bargain

-Student B6 will play Jack Jarvis and meet with attorneys regarding plea bargain  
-Student B7 will play Casey Kennedy and meet with attorneys regarding plea bargain

**Client and Witness scripts should be kept strictly confidential and should be given to your professor at the end of class.**

Simulation: Motions arguments with opposing counsel.

Consult with client regarding upcoming plea discussions.

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**CLASS #13 No regularly scheduled class this week; instead, you and your opposing counsel will meet with your professor for an hour to engage in plea bargains in both the *Jarvis* and *Fernandez* cases**

**FINAL NEGOTIATIONS**

Your professor will work with you to arrange a one-hour block of time during which you will attempt to negotiate a plea bargain both the *Jarvis* and *Fernandez* case with your opposing counsel and with your professor present. This final negotiation is the equivalent of your final for this class. The Plea Bargain Evaluation/Negotiation Strategy Memo is due at the beginning of your negotiation session.

After speaking to your client and victim, don't forget to look at the elements of the charges as they stand now and the elements of other possible offenses if you're going to consider an amendment. You'll also want to make sure that you know the range of punishment for the applicable felonies, misdemeanors, as well as the infraction of trespass second degree. The maximum period of probation on a felony is 5 years and on a misdemeanor is 2 years.

Remember to bring the plea and judgment/sentence forms with you to the final negotiations.

Written Assignment: Plea Bargain Evaluation/Negotiation Strategy - - Due at the beginning of your negotiation session. Write a brief memo that (1) evaluates each case for purposes of plea bargaining and (2) outlines your strategy for negotiating a plea in each case. Consider the following:

Plea Evaluation - - Consider for each case: what are the possible outcomes if the case fails to be resolved through a plea bargain? What is the likelihood each outcome will occur?

Negotiation Strategy - - Consider for each case: what are your client's main interests? What do you believe are the opposing party's main interests? Are there solutions that would be mutually advantageous to both sides in light of the interests listed above? What are the strengths and weaknesses of your client's case and the opposing party's case as you go into the negotiation? Are there any strengths or weaknesses in your case that the opposing party does not know of? What will you reveal? What concessions is your client willing to make? What is your client's "bottom line?"

This is an individual assignment and should be turned in at the beginning of your negotiation.

Additional Written  
Assignment:

Plea Bargain Agreement

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Due within 24 hours of the conclusion of your negotiation or as otherwise indicated by your instructor. Assuming you were successful in reaching a plea bargain on both cases, draft a plea bargain agreement with your opposing counsel reflecting the terms of each plea. If you were not successful in reaching a plea agreement for either or both of your cases, draft a plea bargain agreement on your own that you, and your client if you represent the defendant, would have been willing to sign.