

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please let Profs Drake or Filbert and Associate Dean Trachtenberg and/or Denise Boessen know as soon as possible.

If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please let Dean Trachtenberg and/or Denise Boessen know and they will help me make sure you are accommodated. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

TRIAL PRACTICE

Spring 2021

Brent G. Filbert

Class: Tuesday/Thursday, 3:00-4:50, Rm 112

Meetings: (drop in and by appointment), Veterans Clinic Office

Email filbertb@missouri.edu

Cell phone: 913-375-4539

Course Overview

I. Course Description

This course concentrates on techniques for presenting evidence in trial, opening statements, direct and cross examination of witnesses, and closing arguments. Discovery, voir dire, pre-trial motions and conferences, and jury instructions will be only briefly discussed. Each student will participate in classroom problems selected from the course materials or provided by the instructor. Each student will participate in a jury trial as a capstone event.

Learning outcomes include the following skills students will develop in class:

- Familiarity with the lawyer's role as a courtroom advocate
- Application of the rules of evidence at trial;
- Advocacy in opening statements, direct and cross examinations, motions and closing arguments;
- Proper pretrial preparation;
- Familiarity with the rules of professional conduct impacting trial work

Assessment: Formative and summative

Standard 303 compliant (simulation/law clinic/field placement)? Yes

II. Course Materials

The casebooks for this class are:

- Bocchino & Beskind, *Problems in Trial Advocacy*, 2019 Edition [NITA]
- Thomas Mauet, *Trial Techniques and Trials*, 10th Edition [Wolters Kluwer]

III. Attendance and Assignments

Attendance is mandatory. You are required to attend class either in person or via Zoom. At this point, I believe all of our classes **after the first week** will be via Zoom to allow students to perform without using a mask. I will let you know if this plan changes as soon as practicable.

As a general rule, there are no excused absences. I will reconsider this general rule on a case-by-case basis. Every absence will reduce your grade by 5 points unless I make an exception. If you are unable to attend class in person or remotely, contact one of me by phone or email. I will not ask private details but do need to hear from you if you will be absent.

You must come to class fully prepared. Written assignments are due in hard copy form at the time you are “up.” This is the rule so that I can assess your preparation. Late assignments are not accepted.

Please note that you will have partners in this class. You owe it to your partners to be timely and prepared. In addition, this class involves a great deal of constructive criticism. We can only improve by hearing ideas for improvement.

Your assignment for the first class is to read this Syllabus and the Table of Contents in the Mauet book we will use in class.

IV. Grading

Grading will be based on daily problems and class participation (50 percent), and the jury trial (50 percent). Any written assignment (e.g., outlines, briefs,) associated with the course activity will be considered when grades are given for that activity.

V. Meetings

I am available to discuss your ideas about your coursework with you. I will be available to meet with you outside of class upon request. Feel free to email or call me to set up an appointment.

VI. E-mail Communication

During the semester information about the course will be sent to you by e-mail. If you have an e-mail account other than your law school account that you would prefer to use for receipt of course information, you must let me know. You are responsible for regularly checking your e-mail for Trial Practice information, updates and changes.

VII. Academic Integrity

Academic integrity is important. Follow the Honor Code. If you have any questions about your work as it relates to the Honor Code, consult me immediately.

VIII. Drop Policy

Because the course involves group exercises that must be planned well in advance, students wishing to withdraw from the class must do so by ***3 p.m. on January 22, 2020***. Absent extraordinary circumstances, students dropping the course after that date will receive failing grades.

IX. Additional Information about Assignments

Information will be provided via TWEN before class or in a group email. Please check TWEN regularly, as well as your email. Generally, be aware of the following:

A. Daily Problems:

1. **Outlines and Exhibits**: All students who are “up” on a given day will submit written materials (e.g., notes, outlines) the students expect to use in the problem. Students are also responsible for bringing any exhibits(s) they may need. For example, if your task is to introduce a baseball bat into evidence, then bring it with you to class. Coordinate acquisition efforts with others, as only one item per class is needed.
2. **Critiques**

- a. Self-Critique:** Daily problems may be video recorded. All students who have been videoed in a graded performance must view their recording and submit at least one written self-critique about a performance. Keep your critique short and focus on what you did well, and what you would do differently if you had another chance. If there is no video, submit a self-critique based on your own recollection of what occurred. The self-critique is due at the beginning of the next class.
 - b. Professor Critique:** I will usually provide input at each class. Please understand that your performance cannot improve without constructive criticism. I will also make it a point to tell you your strengths.
 - c. Peer Critique:** Your colleagues will also provide constructive criticism and compliments.
- 3. Trials/Format:** We will discuss the trial formats at great length, as that time gets closer. Jury trials will take place during the regular class period, extended as necessary, over a two-week period. Briefly, the trial will unfold approximately as follows: Openings 6 minutes each side; Plaintiff 40 minutes for all directs and crosses; Defendant 40 minutes for all directs and crosses; Closing 10 minutes each (plaintiff may reserve up to 3 minutes for rebuttal). Unless we have an odd number of students, there will be two student “partners” representing each side. Students will also turn in a witness and exhibit list.

 - a. Obtaining Witnesses and Jurors:** You will be responsible for obtaining witnesses and jurors for the trials. You may use law students for witnesses if you wish. I would prefer non-law students to serve as jurors. Getting witnesses and jurors will be a group effort and we will talk about it as the semester progresses. As a goal, each student (not each team, each individual student) is encouraged to find three persons eligible to serve as jurors in one of our trials. It is very possible we will have a bench trial if the we are on Zoom at the time the trials occur. You will know well in advance whether you will do a jury or bench trial.
 - b. Sit In:** Each student is required to attend trials in which she is not a participant. For each type of trial, each student will write a critique of the other lawyers’ performance.

- c. **Visiting Judges:** We will likely have real judges serve in our class as judges. Every effort will be made to provide time for general “tips from the bench” which will be invaluable to you as future lawyers.
- d. **Stay Flexible:** We will likely run over scheduled time during trials. Please let me know if you have time constraints.

X. Dress Code

For trials, dress like lawyers at trials. For Daily Problems, when you are “up,” business casual is acceptable.

XI. COVID-19 Policies and Plans

Safety Policies. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the [accountability process](#), as stated in the University’s [Collected Rules and Regulations](#), Chapter 200 Student Code of Conduct. The following guidelines apply to class sessions and working in the Clinic spaces and may be revised as information changes throughout the semester.

- If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.
- We will all wear face coverings while in the classroom, unless you have a documented exemption due to a disability or medical condition. Please bring your own mask to class. If you forget to bring one, a mask will be provided to you.
- We will maintain a 6-foot distance from each other at all times.
- Students will enter and exit through the same door and should fill in from the back of the room to the front, and exit from front to back. Please adhere to the attached seating chart when attending class in Room 4.
- All meetings, including weekly meetings with your Supervising Attorney, may be conducted via Zoom or by phone. Face-to-face meetings are also acceptable, as long as all safety measures as described above are followed.

Remote Attendance. You may join class via Zoom as noted above. When attending class remotely, be prepared to participate in the class as if you were present in the classroom. Class sessions are highly interactive and involve a great deal of discussion about performances.

XII. Class Schedule

Below is the general class schedule for the semester. Reading and team performance assignments will be provided at the second class. Students will need to be flexible as the schedule may change based on how long it takes to get through student performances.

- **1/19 - The Trial Process and Theory of the Case Presentation/Civility and Professionalism in the Courtroom – Prof Filbert**
- **1/21 – Witness Examinations Presentation – Prof Filbert**
- **1/26 – Student Performances - Directs and Crosses**
- **1/28 – Student Performances – Directs and Crosses**
- **2/2 – Student Performances – Directs and Crosses**
- **2/4 – Student Performances – Directs and Crosses**
- **2/9 - Exhibits Presentation – Prof Filbert. Student Performances - Exhibits**
- **2/11 – Student Performances - Exhibits**
- **2/16 – Student Performances - Exhibits**
- **2/18 – Student Performances - Exhibits**
- **2/23 – Student Performances - Exhibits**
- **2/25 – Advance Cross Presentation – Prof Filbert. Student Performances – Advanced Cross**
- **3/2 – Student Performances – Advanced Cross**
- **3/4 – Student Performances – Advanced Cross**
- **3/9 – Student Performances – Advanced Cross**
- **3/11 – Experts Presentation – Prof Filbert. Student Performances - Experts**
- **3/16 – Student Performances -Experts**
- **3/18 – Student Performances -Experts**
- **3/23 – Student Performances -Experts**
- **3/25 – Opening and Closing Presentation – Prof. Filbert. Student Performances – Openings.**
- **4/6 – Student Performances – Openings**
- **4/8 – Student Performances – Closings**
- **4/13 – Student Performances – Closings**
- **4/15 – Jury Trials**
- **4/20 – Jury Trials**
- **4/22 – Jury Trials**

- **4/27 – Jury Trials**
- **4/29 – Jury Trials**