

**2023 SYLLABUS**  
**Civil Trial Advocacy (Course No. 245.2 section 1)**

This three-unit, fast-paced course is designed to turn you from law student to trial advocate in one semester. It is taught by Daralyn Durie, an award-winning trial lawyer, and California Court of Appeal Justice Tracie L. Brown, who has tried and presided over dozens of civil and criminal cases. We hope this course will be an exciting and unique experience in your law school education.

During the semester, students will prepare and present all aspects of a trial, from opening statement to closing argument. Although the majority of the class will focus on civil trial skills, there will be some opportunity to work on criminal trial advocacy as well. Students will be required to provide and prepare their own witnesses, and to critique their own and others' performances. The final exam will consist of a four-hour mock trial (conducted in front of state and federal judges) and related written submissions. The final exam will constitute 50% of each student's grade, with the remaining 50% comprised of in-class participation and performances, as well as written pre-trial submissions, with an emphasis on improvement throughout the semester. Students will do a live presentation each week that may be recorded for later review.

The course will meet on Tuesdays at 6:25 p.m. in room 140 and one other classroom (exact room number TBD). In order to give students the most realistic courtroom experience for their final trial/exam, the final trial/exam will occur at the federal courthouse in Oakland (1301 Clay Street; approximately a 2-minute walk from the 12<sup>th</sup> Street/Oakland City Center BART station).

Due to the use of simulation exercises throughout the semester and the fact that each class in the course builds on the skills mastered in the prior classes, the usual provisions of "Add/Drop" do not apply. All interested students, whether enrolled or on the wait list, must attend the first class at which time enrollment will be confirmed; students must commit to remain in the course by the end of the first class. Attendance at the first class is mandatory for all enrolled students; any enrolled students who are not present at the first day of class without prior permission of the instructor will risk being dropped from the class.

This course is limited to students who have previously taken Evidence or who will be taking Evidence concurrently during the semester. Priority will be given to 3L students who have not previously taken another trial advocacy class.

Students should expect to spend approximately 5-6 hours per week on preparation outside of class, the majority of which should be devoted to preparing in-class exercises for the following week's performance.

Before the first class, all interested students should read pages 69-85 of Herbert J. Stern's Trying Cases To Win, which is on bcourses. We will discuss this reading during the first class.

### Instructors:

Justice Tracie L. Brown: [tracie.brown@jud.ca.gov](mailto:tracie.brown@jud.ca.gov)

Daralyn Durie: [ddurie@mofo.com](mailto:ddurie@mofo.com) (after Jan. 1, 2023)

### Office Hours

By appointment with either instructor

### Texts:

- Steven Lubet, Modern Trial Advocacy (Law School Edition)
- National Institute of Trial Advocacy (NITA), Flinders Aluminum Fabrication Corp. v. Mismo Fire, Case File (Tenth Ed.)
- NITA, Rowe v. Pacific Quad, Inc., Case File (Fifth Ed.)
- Federal Rules of Evidence with Objections (handbook)
- Other readings and the case file for the final trial will be assigned and made available during the semester

### Course Schedule/Assignments

- **January 10, 2023 (Week 1): Course Introduction**
  - Read pages 69-85 of Herbert J. Stern's Trying Cases To Win, which will be available electronically on bCourses.
- **January 17, 2023 (Week 2): Direct Examination**
  - Read Chapters 1-3 and 8 in Lubet's Modern Trial Advocacy;
  - Prepare direct examinations of Gloria Warner and Susan Robinson from Rowe v. Pacific Quad *OR* prepare direct examinations of John Anderson and Sonia Peterson from Flinders v. Mismo Fire;
  - Prepare to play the two witnesses in the case for which you prepared a direct.
- **January 24, 2023 (Week 3): Introduction of Evidence**
  - Read Chapter 9 in Lubet's Modern Trial Advocacy;
  - Review the Federal Rules of Evidence with Objections handbook;
  - Review and prepare approximately 6 problems regarding admissibility of evidence and objections (problems will be distributed electronically on bCourses). Students will be told which problems to

prepare.

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**January 31, 2023 (Week 4): Cross Examination (Positive)**

- Read Chapter 4 in Lubet's Modern Trial Advocacy;
- Prepare a positive (non-impeachment) cross-examination of Gloria Warner and Susan Robinson from Rowe v. Pacific Quad OR John Anderson and Sonia Peterson from Flinders v. Mismo Fire;
- Prepare short re-directs for the above-named witnesses;
- Prepare a short closing argument based upon the examinations.

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**February 7, 2023 (Week 5): Cross Examination (Impeachment)**

- Read Chapters 5 and 6 in Lubet's Modern Trial Advocacy;
- Prepare 6 problems regarding impeachment, including use of necessary exhibits: Problems 1, 3, and 7 in Flinders v. Mismo Fire (pp. 111-12 of Case File) AND 3 problems that will be distributed electronically on bCourses (Burke v. TITE; Plaintiff v. GM; and Gentry v. Smith).

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**February 14, 2023 (Week 6): Advanced Direct/Cross, Part I**

- Read case summaries for final trial (People v. Bussoni, and Rogers v. Pacific Railroad, which will be distributed electronically on bCourses) AND be prepared to select which case you want to do for your final trial;
- Read supplemental material on witness preparation ("Witness Preparation: Hit or Myth" and "Witness Preparation Conflicts," which will be distributed electronically on bCourses);
- Prepare a direct and redirect exam OR cross and recross of one of the following witnesses, including use of exhibits:
  - Janice Jackson
  - Anna Mills
  - John Walsh

- Note that students doing direct and redirect will need to prepare and bring their own witness (who should not be a member of the class).

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**February 21, 2023 (Week 7): Advanced Direct/Cross, Part II**

- Prepare a written critique of your performance and one of your classmate's performances last week;
- Read Chapter 8 in Lubet's Modern Trial Advocacy;
- Prepare a direct and redirect exam *OR* cross and recross of one of the following witnesses, including use of exhibits:
  - Alice Rowe
  - Arthur Jackson
  - Marie Williams
  - Stanley Schmit
- Note that students doing direct and redirect will need to prepare and bring their own witness (who should not be a member of the class);
- Prepare a brief closing argument regarding the witness whom you examined.

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**February 28, 2023 (Week 8): Opening Statement**

- Read Chapter 11 in Lubet's Modern Trial Advocacy;
- Watch Stanford videos on opening statement posted electronically on bCourses; and
- Prepare an opening statement for either Flinders or Rowe (students may choose which case and which side)

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**March 7, 2023 (Week 9): Direct/Cross of Experts, Part I**

- Read Chapter 7 in Lubet's Modern Trial Advocacy;
- Prepare direct and redirect *OR* cross and recross of the Flinders experts, including use of exhibits;

- Prepare a brief closing argument regarding the expert whom you examined.

- **March 14, 2023 (Week 10): Direct/Cross of Experts, Part II**

- Review transcripts of direct and cross exams of an expert (which will be distributed electronically); and
- Prepare direct and redirect *OR* cross and recross of the Flinders experts, including use of exhibits; and
- Prepare a brief closing argument regarding the expert whom you examined.

- **March 21, 2023 (Week 11): Closing Argument**

- Read Chapter 12 in Lubet's Modern Trial Advocacy;
- Watch Stanford videos on closing argument, which have been posted electronically; and
- Prepare a closing argument and rebuttal for the case you will be doing for the final exam/trial (i.e., Bussoni or Rogers). Your closing must include: one analogy or story; one demonstrative exhibit; one exhibit (from the case file); and two jury instructions.

- **March 28, 2023 (Spring Break): NO CLASS**

- **April 4, 2023 (Week 12): Preparation for Pretrial Conference**

- Read Chapter 10 in Lubet's Modern Trial Advocacy, as well as other items posted on bCourses (such as standing orders, model trial briefs and motions in limine, etc.);
- Begin preparing the pretrial papers that will be due during Week 13; and
- Bring to class any questions you have about the Pretrial Conference or Final Exam/Trial.

- **April 11, 2023 (Week 13): Pretrial Conference**
  - Exchange no more than 3 motions in limine of no more than five pages each, by no later than 6 pm on Wednesday, April 5;<sup>1</sup>
  - Exchange replies to motions in limine and Trial Brief (described below) no later than 6 pm on Friday, April 7;
  - Email to Ms. Durie and Justice Brown the following documents, by no later than 9 am on Monday, April 10:
    - Motions in limine and replies;
    - Trial Brief (statement of the case; evidentiary issues you expect to arise that are not addressed in motions in limine; list of witnesses you intend to call; list of exhibits you intend to use in your case in chief; any argument regarding jury instructions); and
  - Prepare to argue motions in limine and any issues raised by the Trial Briefs.<sup>2</sup>
- Date TBD (Week 14): Final Exam/Trial
- Date TBD (Week 15): Course wrap-up

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<sup>1</sup> For purposes of your research, assume you are in federal court in the Northern District of California, within the Ninth Circuit. In addition, please note that the dates set forth for exchange of briefs may be extended by stipulation, *except* for the April 10 deadline by which all briefs must be emailed to the instructors.

<sup>2</sup> Courtroom attire is required for the Pretrial Conference and Trial.