

MOCK TRIAL CASE FILES AND PROBLEMS

Teacher's Manual

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TABLE OF CONTENTS

About the Author	vii
Introduction.....	ix
Chapter 1 Selecting a Jury.....	1
Chapter 2 Opening Statements	5
Chapter 3 Direct Examination.....	11
Chapter 4 Introducing Exhibits.....	21
Chapter 5 Cross-Examination and Impeachment	33
Chapter 6 Expert Witnesses	43
Chapter 7 Closing Arguments.....	51
Chapter 8 State v. Barkwood.....	55
Chapter 9 Barkwood v. Barkwood	59
Chapter 10 State v. Lockmore	63
Chapter 11 Lockmore v. Lockmore	67
Chapter 12 State v. Stonemock.....	71
Chapter 13 Worthy v. Stonemock	75
Chapter 14 State v. Moss	79
Chapter 15 Jones v. Moss.....	83
Chapter 16 State v. Winston	87
Chapter 17 Mason v. Winston.....	91
Chapter 18 State v. Moore	95
Chapter 19 Warren v. Moore.....	99
Chapter 20 State v. Winslet.....	103
Chapter 21 Norris v. Winslet	107
Appendix A Sample Syllabus for Trial Advocacy Course.....	111
Appendix B Sample Assignment Grid for Trial Advocacy Course.....	119
Appendix C Sample Memo for Final Mock Trials.....	121
Appendix D Sample Policies on Using Law School Courtroom.....	125
Appendix E Sample Rules for Mock Trial Competitions	127

ABOUT THE AUTHOR

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INTRODUCTION

A. Overview

This text is a collection of mock trial case files and trial advocacy problems, which I have used in my trial advocacy class. I originally prepared the criminal case files for the Lone Star Classic®, a national invitational mock trial competition conducted by St. Mary's University School of Law, in San Antonio, Texas. The litigation skills problems in Chapters 1 through 7, provide an opportunity for students to focus on one specific skill, and draw from those case files.

B. Using the Case Files — Mock Trial Competitions

Chapters 8 through 21 consist of mock trial case files, which may be used for mock trial competitions or for a trial advocacy course and similar classes. As drafted for the Lone Star Classic®, the problems involved homicide cases. Those case files in turn, were also converted into wrongful death cases. Thus, two case files essentially use the same witnesses, exhibits, and materials.

Each criminal case file requires only two witnesses per side. The civil cases add a plaintiff so that in the civil, wrongful death case files, the defense has two witnesses and the plaintiff has three witnesses. Each case file takes about 2 to 2 1/2 hours to try.

All of the case files involve the city of San Milano, in Bear County, in the State of Lone Star. Although each case is being tried in a state court, the Federal Rules of Evidence, the Federal Rules of Criminal Procedure and the Federal Rules of Civil Procedure apply.

The criminal case files include the pertinent homicide statutes, indictments, and jury instructions. The civil case files include the pertinent wrongful death statute, the plaintiff's petition, and the jury instructions.

The case files may be used as a free-standing mock trial problem for internal competitions or regional and national competitions. In addition, they may be used for trial advocacy or litigation skills courses.

One of my goals in drafting the case files is to first, present an interesting set of facts that will keep the participant's interest, second, include a variety of evidence issues that will not overburden the advocates, but require them to think about whether to even offer the evidence, and third, to keep the files simple enough so that the case can be effectively tried in 2 to 3 hours of time.

The final challenge in drafting case files is to be sure to provide sufficient evidence for both sides so that in the homicide cases, for example, the defense has something to work with rather than just challenging the prosecution's evidence.

Sample rules for conducting a mock trial competition are included at Appendix E.

C. Using the Case Files and Problems — Trial Advocacy Courses

1. In General

Chapters 1 through 7 provide a variety of advocacy problems, which draw from the case files as the basis of the problem. For example, a problem may require the student to make an 8 to 10 minute opening statement in a specified case. Not all of the case files are used, however, in the weekly advocacy problems.

Some of the trial advocacy problems are free-standing, in the sense that they do not rely on any of the materials in any of the case files. This is sometimes necessary, the case files do not always include, for example, enough information present or challenge expert testimony.

2. Weekly Assignments

For our three-hour course on trial advocacy, I provide a one hour lecture for all of the students. In preparation for that session, the students must read selections from Perrin, et al, *THE ART & SCIENCE OF TRIAL ADVOCACY*. I use that one-hour class to address key principles, best practices, and some demonstrations of that week's particular advocacy skill. A copy of a typical syllabus for the course is included at Appendix A.

The students are divided into 8-person sections, which meet for the remaining two hours each week, under the guidance and instruction of experienced adjunct professors who have extensive experience as litigators and judges. During those two-hour sessions, each student conducts an assigned advocacy skill, such as an opening statement.

When I started teaching trial advocacy years ago, I relied on a variety of advocacy problems, which were all free standing. In other words, there was really no continuity from week to week. Students often complained that they would spend a great deal of time thinking about the context of the problem and then focusing on its execution.

As I started compiling each year's Classic case files into a self-published trial advocacy materials, I developed an assignment grid to help provide some continuity. A sample assignment grid is at Appendix B. Now, at the beginning the semester, each student is assigned by his or her adjunct professor to serve as the plaintiff, prosecutor, or defense counsel in one of two case files. I usually use the *State v. Moss* and *Jones v. Moss* case files because they include expert testimony on both sides of the case, an issue that does not appear in all of the mock trial case files.

Thus, during the first part of the semester, the students master those case files, using their assigned identities, to make opening statements, introduce exhibits, etc. That approach has worked well and provides more real-life experience in understanding the components of a case, and how those components interrelate. For example, following the lead of modern advocacy instruction, I emphasize that students should develop a theme for their case. We require that they start using that theme during

their opening statements—the first week's assignment—and that they continue to apply it as they go through each week's particular exercise.

3. Final Mock Trials

Halfway through the semester, I select two additional case files, one civil and one criminal for the students' "final" case file. The adjunct professors assign the students to work in teams of two. As part of our course, each student is required to use at least one form of courtroom technology in the school's high-tech courtroom. We also videotape those final mock trials and provide a DVD of the trial to the students.

As a part of the final mock trial, the students are required to draft pleadings and proposed instructions to the jury. For example, in the criminal cases the prosecution is required to draft an indictment and its proposed instructions to the jury. The defense team is required to draft a motion to quash or dismiss and its proposed instructions. Although we do not cover those issues in the trial advocacy course, I require the students to do so because it gives them another real element in trying cases. For example, drafting the suggested instructions helps them focus on presenting the evidence to the jury and tying in the instructions they will receive from the judge.

Appendix C includes a typical memorandum on conducting those final mock trials. I also distribute a memo setting out policies for using the school's courtroom.

Thus, during the semester, each student tries two cases—the first case on a week by week basis and the second trial as their so-called "final."

D. Using the Teacher's Manual

For the first seven chapters I have tried to provide helpful pointers on what I cover during the lecture portion of the course on trial advocacy and some comments about the problems for that chapter. It is not my intention to provide detailed guidance on all of the evidentiary or tactical issues that the students may encounter, for example, in introducing a newspaper article or in cross-examining an expert.

As I note several times in this Manual, the evidence course is a prerequisite for the trial advocacy course. We do not let students take the trial advocacy course and evidence at the same time. They need to have completed the course. So we spend very little time in the trial advocacy class actually reviewing the pertinent evidence rules. The students are expected, for example, to identify potential hearsay issues and recognizing what steps they need to take to preserve an objection for appeal. On the other hand, during my evidence class, I encourage my students to participate in the internal mock trial competitions our Board of Advocates conducts. They almost always find that that experience enhances their understanding and appreciation of the rules of evidence.

For the remaining chapters — which are the case files for the mock trials — I offer some thoughts on each case, some of the more challenging evidence issues that each file presents, and some suggested themes and labels that the students may use in presenting their cases.

