

# EVIDENCE LAW REFORM

Spring 2012

§ 511, Wed. 9:00-11:45 a.m., Room 208

§ 512, Wed. 6:15-9:00 p.m., Room 208

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Office Hours:

Tues. & Wed., 3:00 – 5:30 p.m. and by appointment

**Required Materials:** (1) Federal Rules of Evidence; (2) Uelman, The O.J. Files: Evidentiary Issues in a Tactical Context (1998); Gitchel & O'Brien, Trial Advocacy Basics (NITA 2006)

**On Reserve:** Edward J. Imwinkelreid, Evidentiary Foundations (LexisNexis) (2 copies)

## **Course Goals**

This course is intended first to provide you with experiences that will sharpen your trial lawyering and oral advocacy skills. Second, these experiences will act as a vehicle to improve your understanding of how evidence works at the trial level. This knowledge ought to help you to comprehend the ramifications of the evidence rules, and how proposed changes to the rules will affect practice.

Third, and most importantly, this course is intended to provide you with the opportunity to propose a change to the law of evidence which you believe will better serve public policy than does the current law. You must take a position and make a specific, concrete proposal. This is your chance to propose, from your vantage point as a neutral and objective scholar, a change in or a clarification of the law. As part of this process, you will conduct sophisticated legal research and analysis, hone your writing and editing skills, and gain experience in the art of persuasion.

## **Upper Level Scholarly Writing or Upper Level Advocacy**

You may use this course either to fulfill an upper-level advocacy requirement or an upper-level scholarly writing requirement (see UB Law Catalog), but not both.

If you are taking this course to fulfill your upper-level scholarly writing requirement (W1), you must have successfully completed 40 credit hours before the beginning of this semester. To fulfill W1, you must prepare a scholarly law review article with extensive footnotes. See pp. 4-6. If you so elect, this paper may count as ULWRI for the Litigation & Advocacy concentration or (if on a criminal topic) the Criminal Practice concentration.

If you elect instead to take the course to fulfill your upper-level advocacy requirement, your writing may take the form of an advocacy piece such as an appellate brief, written testimony, or a memorandum in support of the statute or rule you propose. See p. 5.

## **Requirements as to Your Proposal**

You must decide what would be the most appropriate and effective route for effecting the law reform you seek: legislative, rulemaking, or case law. Your proposal must be specific and concrete. If you are

proposing a judicial resolution of either (1) a division in the case law or (2) an issue as yet unaddressed by the case law, you must propose the specific test or rule you seek to have the courts adopt. If you are taking a legislative or rulemaking route, you may draft amendments to a statute or rule or draft an altogether new statute or rule. See pp. 6-9.

You must develop and include in your written product concrete examples of how your proposed approach would work under various factual circumstances. This will also help prepare you for your in-class presentation of your proposal, which will be made in a mock appellate argument, legislative hearing, or rules committee meeting. Your classmates will serve as judges, legislators, or rules committee members, who will question you about your proposal.

Think about which interest groups would support and who would oppose your proposal, and why. For each student's proposal, another classmate will be selected to represent the likely opponents to your plan. Other members of the class will serve as judges or committee members. Their questions will help you to see the strengths and weaknesses of your proposal.

### **Attendance**

Because we meet in double classes and only once a week, you are permitted only one excused absence and up to 1½ unexcused absences. (Religious holidays are not counted in this total, though you must give me advance notice.) But because we do role playing, please try to avoid absences and be sure to arrange for a substitute if you will be absent – ideally, “trade” with that person for another similar assignment.

### **Grading**

*Components of the final grade* (see pp. 3-4):

- Class Participation (including O.J. exercises and questions for others' simulations) (25%);
- “First Final Draft” (25%);
- Presentation (20%) (see p. 3);
- Revised Final Draft (30%).

The grading components for your papers are as follows: thoroughness, complexity of research, 30%; analysis and synthesis, 30%; soundness of proposal, 10%; and writing (organization, style, brevity, clarity, grammar, spelling, punctuation, and citation), 30%.

The times specified in this syllabus for submission of papers should be treated as court deadlines. (Any lateness up to 24 hours will cause a one-half letter grade deduction; lateness of more than 24 hours will result in further penalties for each day or part of a day.)

For extra credit, (1) do one or more interactive VeraLex-type exercises, see p. 18, in student groups of 1-4 at a time (take your rule books with you); or (2) attend a legislative bill hearing in Annapolis or Washington; or (3) attend at least two hours of a trial in state circuit court or federal district court; or (4) listen to one or more of Vince Bugliosi's videotapes critiquing the prosecution's job in the O.J. Simpson double murder trial; or (5) listen to an appellate argument in Annapolis, Washington, or on [www.md.courts.gov](http://www.md.courts.gov). Hand in a critique or comment on each exercise or experience.

## **Rules and Requirements for O.J. Simpson Trial Exercises** (1st part of the semester)

Here it is important that the witness and the proponent of the witness's testimony meet during the week before class to be sure that each knows what to expect from the other. Prepare your witness just as you would in practice. See pp. 10-11.

You are not “stuck with” the arguments made in the real trial. Use the Fed. R. Evid. and federal case law (including Crawford and its progeny), but California case law “gloss” from the book may be cited if it would pertain to a California rule similar to a federal rule.

## **Classroom Simulations on Your Reform Topics** (2nd part of the semester)

You will present your proposal in a simulation of the proceeding where you would advocate the proposal “in real life.”

- If you propose a Rule change, the setting will be a state or federal Rules Committee hearing in which your fellow students will be given roles as committee members, supporting witnesses, and opponents to your draft Rule.
- If you propose a statutory change, the setting will be a state or federal legislative committee hearing on the bill you have drafted.
- If you propose a case law resolution, the setting will be an appellate argument in either the United States Supreme Court, a federal circuit court of appeals, or the highest state court, such as the Maryland Court of Appeals.

Your fellow students will test your proposed standard with hypothetical questions. This approach maximizes class engagement and provides a helpful mooting of your proposal.

### *Opponents and Allies*

Another student will be assigned to be the principal opponent of the presenter's position. In legislative or rule settings, a third student will be assigned to be an ally witness of the presenter. The presenter must provide talking points and authority to his or her opponent and ally.

### *Assignments and Classmates' Responsibilities*

We'll have up to 3 presentations a class session. In the class before his or her presentation, each presenter will hand out a short reading assignment to the rest of the class (The assignment must be “run by” the professor for feedback the week before that.) Based on that assignment, each student other than the presenter of the particular topic (or the assigned opponent or ally) must prepare at least two written questions for each fellow student's presentation. Everyone, please include your name next to each presenter's name, so that the presenter may follow up with you after class, if he or she desires. Bring 2 copies of your questions to class, one to be handed in to me before the beginning of each class in which a student presentation is scheduled. Keep the other one for your use during class.

## **Schedule of Paper and Presentation Requirements**

- (1) Class 1 (or earlier, as “first come, first served”!): Tentative choice of proposed topic (see pp. 13-17)
- (2) Class 2: Submission of Proposed Paper Topic, Scope Note (a short paragraph defining the subject of the paper), Tentative Thesis (your current thought as to how the issue should be resolved), and Results of Literature Search (how much is out there on this topic? is there still a debate on this issue? is there something new you can add to the scholarship?)
- (3) Finalization of topic with professor (week 2)
- (4) Individual Research Progress Conference with professor (weeks 2–4)
- (5) Class 5: If either a W1 paper or a memorandum on a legislative or rulemaking project, submission of draft of your Introduction section (1-1½ pages), followed by a skeletal Outline of topics and subtopics; if an appellate brief, a Statement of Facts, Summary of Argument, and outline of headings
- (6) Individual meetings with professor regarding Introduction and Outline (weeks 6 and 7)
- (7) Class 8: "Final Draft" of paper (25%)
- (8) Meeting with professor with a copy of the assignment you propose for the rest of the class
- (9) 45-minute presentation (involving a simulation) to class (20%) (weeks 8-13)
- (10) Meeting with professor on graded paper (weeks 10 and 12)
- (11) Class 14: "Revised Final Draft" of paper (30%)

## **“W1” Paper Requirements**

### *Length and Type of Paper*

In order to fulfill the scholarly upper-level research and writing requirement, your paper must earn a grade of "C" or higher and must follow the format of a paper that would be acceptable for Advanced Legal Research, which is designed to encourage independent research of high caliber as follows:

[I]t is suggested that the paper format be that of a law review comment with footnotes; that it have a length of 25 pages; and that the process of developing it include the scheduling of discussion and review of written scope notes, outlines, and drafts, as well as the final product.

I ask that you aim for 22-25 pages, including footnotes (12 pt. font text, 10 or 12 pt. font footnotes).

Please follow the format of the traditional law review article (*see, e.g.,* Lynn McLain, *Post-Crawford: Time to Liberalize the Substantive Admissibility of a Testifying Witness’s Prior Consistent Statements*, 74 UMKC L. REV. 1-41 (2005)), as follows:

### I. Introduction

1st ¶: Attention-grabbing statement or fact pattern, which sets up the conflict in the law or other problem for which you will propose a resolution.

2nd ¶: Brief explication of that conflict or problem and its importance.

3rd ¶: What the paper will cover, *e.g.*:

“This article will provide background information on [describe the relevant evidentiary principles] and policy considerations. It then will discuss [usually a synthesis of the approaches taken so far, by the courts]. Finally it will conclude that [your resolution of the conflict] and propose [the substance of an amendment of a Rule or statute or a test to be followed by the courts].”

II. [Your subheading re: necessary background, *e.g.*, explaining underlying concept]

Parts II, III, and IV may have subparts A, B, etc., but only if there will be at least 2 subparts. If so, provide an introductory ¶ after the Roman numeral heading, summarizing the main points you'll make in the following subparts. That way the reader knows where you are going.

For the same reason, a concluding paragraph for each of these sections should provide transition to the subject of the next section.

III. [Your subheading re: synthesis of what the courts [or legislatures] have done as to your specific topic]

This section should not be written like an office memorandum discussing one case after the other. Instead you should organize it under subheadings, issue by issue. As to each, summarize the majority position and the minority position, state which is followed by which courts or jurisdictions, and use the footnotes for citations. Only use case names in the text if those cases are of heightened individual importance.

IV. [Your subheading re: your analysis, criticism, and proposal]

Here is where you must propose specific language of any rule change, statute, etc., you advocate.

V. Conclusion (one ¶ summarizing what you've said).

A reader should be able to pick up your paper, read the Conclusion, and quickly understand what your paper addresses, your general reasoning, and your conclusion. There should be no new information in the Conclusion.

### **Upper Level Advocacy Pieces**

These can be shorter (ballpark for rulemaking or legislative proposals: 10-15 pages, plus 1-2 bulleted pages, and the proposed rule or bill) and can have internal citations, rather than footnotes. An appellate brief must follow the particular court's rule as to format and should be a ballpark of 15-20 pages altogether.

### **Instructions for All Written Assignments**

The reader cannot be persuaded if the reader has difficulty understanding what you are saying. Strive for simplicity and clarity of expression. After you have written your paper, edit it for clarity. Delete unnecessary words -- but add words if needed for clarity.

Your writing should be clear, logical, and well-organized. It is the opposite of a mystery novel: the reader should not have surprises or unanswered questions. Your paper should not raise questions in the reader's mind that are not immediately answered. If necessary, rearrange sentences, rearrange topics.

Make sure the reader knows where you are going at all times. Proceed logically, in the order in which the reader's thought process would also most logically proceed. Your goal is to provide a smooth canoe ride on a calm lake -- not a roller coaster experience.

Failure to adhere to rules of citation, spelling, punctuation, and grammar greatly detracts from the credibility and persuasiveness of your writing and each error will be counted. Use proper "Blue Book" citation form. (E.g., each time you use a signal, such as "See," you must include an explanatory parenthetical for each authority so cited.)

Be sure to proofread carefully and correct all errors. (See Class 3.) For example, be sure that pronouns agree, both in number and gender, with the antecedents to which they refer. “The jury may be unable to disregard what it [not they] has heard. . . .” The “court” is also “it,” not “he,” “she,” or “they.” A “judge” is “he or she,” unless you are referring to a particular person, in which case that judge’s gender is identifiable.

Brainstorming about your topic, by discussing it with others, is encouraged. The writing must be yours, however; the Honor Code applies. Primary and secondary authorities on which you rely, or where you have obtained information, must be cited. Quotations must be shown as such.

### **Format for a Proposed Amendment**

In a proposed amendment to an existing rule or statute, underline new matter and line through matter to be omitted, as in the following example:

#### **PROPOSED AMENDMENTS TO RULE 804(b)(3)**

##### **RULE 804. Hearsay Exceptions; Declarant Unavailable**

\* \* \*

(b) Hearsay exceptions.—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

\* \* \*

(3) **Statement against interest.**—A statement ~~which that~~ was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. ~~But a~~ A statement tending to expose the declarant to criminal liability ~~and offered to exculpate the accused~~ is ~~not~~ admissible ~~unless~~ under this subdivision in the following circumstances only: (A) if offered in a civil case or to exculpate an accused in a criminal case, it is supported by corroborating circumstances that clearly indicate the its trustworthiness, or of the statement (B) if offered to inculcate an accused, it is supported by particularized guarantees of trustworthiness.

\* \* \*

For legislation, follow the same approach. If the language is entirely new, there will be no underlining or strike-throughs. The following example is of a bill that would have added an entirely new statute. Please ignore the handwritten parts: they reflect changes that were made within the committee after the bill had been introduced:

Bill No.: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Committee: \_\_\_\_\_

Drafted by: McNamce  
Typed by: rs  
Stored: 11/25/03  
Proofread by: \_\_\_\_\_  
Checked by: \_\_\_\_\_



By: Delegate Menes

A BILL ENTITLED

AN ACT concerning 1

Evidence - Prior Acts of Sexual Misconduct Involving a <sup>MINOR</sup> ~~Child~~ - Admissibility 2

FOR the purpose of authorizing a court to admit evidence of a defendant's commission 3  
of certain ~~sexual~~ <sup>OTHER</sup> acts of sexual misconduct involving a ~~child~~ <sup>MINOR</sup> in a prosecution for 4  
certain sexual offenses involving a ~~child~~ <sup>MINOR</sup> under certain circumstances; 5  
establishing that the evidence, if admitted, may be considered for its bearing on 6  
any matter to which it is relevant; requiring the State's Attorney to disclose to 7  
the defendant the State's intent to offer the evidence within a certain time 8  
period before the trial unless the court allows disclosure at a later time for good 9  
cause shown; specifying the content of the disclosure to the defendant; 10  
prohibiting evidence from being referred to in a statement to the jury or 11  
introduced at trial unless the court first holds a closed hearing and determines 12  
that the evidence is admissible; requiring the court to enter an order stating 13  
which evidence may be introduced under certain circumstances; authorizing the 14  
court to reconsider a ruling excluding evidence and hold an additional closed 15  
hearing if new information is discovered during the trial that may make the 16  
evidence admissible; defining certain terms; providing for the construction and 17  
application of this Act; and generally relating to the admissibility of evidence in 18  
criminal proceedings. 19

BY adding to 20

Article -- Courts and Judicial Proceedings 21

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Courts and Judicial Proceedings

10-916.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(3) "MINOR" HAS THE MEANING STATED IN § 1-101 OF THE CRIMINAL LAW ARTICLE. "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 14 YEARS. ARTICLE 91

(2) "ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR CHILD" MEANS:

(I) A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE INVOLVING A MINOR CHILD OR A VIOLATION OCCURRING BEFORE OCTOBER 1, 2002, OF FORMER ARTICLE 27, § 35C OF THE CODE THAT INVOLVED SEXUAL ABUSE OF A CHILD;

(II) A VIOLATION OF A PROVISION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A MINOR CHILD; OR

(III) A VIOLATION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY OF THE CRIMES SPECIFIED IN ITEM (I) OR (II) OF THIS PARAGRAPH.

(B) SUBJECT TO MARYLAND RULE 5-403, IN A PROSECUTION FOR A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION OF A PROVISION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A MINOR CHILD, EVIDENCE OF THE DEFENDANT'S COMMISSION OF AN OTHER ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR CHILD IS ADMISSIBLE AND MAY BE CONSIDERED FOR ITS BEARING ON ANY MATTER TO WHICH IT IS RELEVANT, IF THE COURT FINDS BY CLEAR AND



- A PREPONDERANCE OF THE

CONVINCING EVIDENCE THAT THE DEFENDANT COMMITTED THE ~~OTHER~~ ACT.

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(C) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS SECTION, THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE DEFENDANT AT LEAST 15 DAYS BEFORE THE SCHEDULED DATE OF TRIAL, UNLESS THE COURT ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE SHOWN.

(2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE STATE EXPECTS TO OFFER.

(D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A TRIAL UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES THAT THE EVIDENCE IS ADMISSIBLE.

(2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE EVIDENCE IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH EVIDENCE MAY BE INTRODUCED.

(3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE EVIDENCE ADMISSIBLE.

(E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF LAW.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any prosecution commenced before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2004.

; OR

(2) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY COULD BY A PREPONDERANCE OF THE DEFENDANT

## Preparing for Trial

1. What is your theory of the case?

- This is your story!

Think about what led you to that conclusion. Practice explaining it to your neighbor, parents, or friends in 2 or 3 sentences.

2. What do you expect your opponent's theory of the case to be? Are you satisfied that you have adequately taken their points into consideration in formulating your theory of the case?

3. It is your job to lead the jurors/judge down the same path you have cut through the woods, so that they will reach the same evaluation that you have.

4. What points does the law require that you prove?

5. What evidence will you need to introduce to prove those points?

6. How can you best do that?

a. Choice of witnesses, exhibits.

- What points will you make with each?
- What weaknesses have they?

b. Order of your proof.

7. Opening statement: What the evidence will show happened (tell your story, but do not make a legal argument).

8. Direct examination of your witnesses.

a. Be sure you have worked with your witness so that the witness knows what questions to expect and you know the substance of what the witness will say. See p. 3.

b. Explain that you need to ask some preliminary or background questions before you can get to the heart of the matter (this explains it to the jury, also).

c. Remember that you can lead the witness as to preliminary matters or foundation elements for, *e.g.*, a hearsay exception.

d. Otherwise, ask non-leading questions.

e. Try to follow a logical path, so that the jury will be with you as you go.

- f. Pay attention to the witness's answers. Have a checklist, and before you turn the witness over to your opponent, be sure that the witness has testified to everything you need the witness to prove.
  - g. Bring out any problems you know of, to defuse them.
  - h. If the witness's memory needs to be refreshed, you may lead as necessary. (Remember, if you show the witness privileged documents, you waive the privilege.)
  - i. Pre-mark your exhibits (for identification in the record). If you have laid the foundation for the introduction of an exhibit, offer it into evidence. If permissible, ask that the jury be permitted to look at it (have multiple copies, if permissible).
  - j. Often the exhibit will reinforce the witness's testimony, given first.
  - k. Use re-direct only to clarify, explain, or diminish what happened in cross, and then only if you feel it will be worth while.
9. Cross-examination of your opponent's witnesses.
- a. Prepare ahead of time.
    - What points can this witness make, if any, that are helpful to your case? Bring those out first.
    - If the witness is harmful to you, are there legitimate ways to discredit or throw into question his or her testimony?
  - b. Ask only leading questions, unless there is no way any answer to a non-leading question can hurt you.
  - c. Ask only questions to which you know the answer - unless there is no way any answer can hurt you.
  - d. Ask only short, clear, simple questions.
  - e. Don't ask for opinions.
  - f. Remember that the jury tends to identify with the witness, not the lawyer, so don't go on the attack too much.
  - g. Pay attention to the witness's answers and change your strategy as the opportunity permits/requires.
  - h. Don't ask the witness to explain.
  - i. Don't ask the witness to draw the conclusion you want the jury to reach!
  - j. Impeachment.

- If you have a prior inconsistent statement (make sure it's a meaningful inconsistency) by the witness, you may want to be sure s/he is adamant about his/her testimony today being the only possibility before you impeach with the prior statement.
- Be matter-of-fact and polite, not sarcastic.

10. Objections

Use objections selectively (is it worth objecting to? do you have a good argument?) and strategically.

11. Closing argument

- Now you can argue “reasonable inferences” from the facts!
- You can remind the jury of promises you made and kept, or your opponent made but didn't keep.
- The side that does not bear the burden of persuasion may point out unanswered questions.

12. Respect for the judge and jury: work with both!

- Be polite.
- Don't show your temper or be sarcastic and never assume that it's personal!
- Answer the judge's questions.
- Rise when you object, respond, or otherwise address the court.
- Do not address opposing counsel, but only the judge.

15. Be yourself! The jury will like you best that way.

**Preparing for Appellate Argument**

- As appellant, state in 1 or 2 sentences what the error of law below was, by weaving it in to the facts of your case.
- Do not restate all the facts simply as a “statement of facts.”
- Know the standard of review! Have a cite for it. The same goes for who had the burdens of proof (and what they were) below.
- Treat the judges as colleagues working together with you to reach the right result. Answer their questions!
- Anticipate their questions. Have answers ready. Create hypotheticals to illustrate the correctness of your proposed test, and how it would work to reach the right result under other facts, too.

6. Know your record, and all the key cases cited in your and your opponent's briefs. When referring to a decision of the same court as the one you are before, say "this court, in X v. Y . . ."
7. Be professional in dress, gesture, tone, and manner, whether at the podium, at counsel table, or in the gallery. No baseball caps, no chewing gum, no water bottles. . . .
8. In real life, know your judges. Watch them in action. Research their cases and use them to your advantage, if possible.

## SOME IDEAS FOR PROJECTS FOR 2012

**General Concept:** Revision of a federal, Maryland, or another state's rules of evidence; passage of a new, or amendment of an existing, federal or state statute; or resolution of a conflict or unanswered question in the case law.

Try to stake your claim to a topic as early as possible. If two of you are interested in taking opposite sides on the same issue, we may be able to accommodate that. **IF YOU HAVE YOUR OWN ORIGINAL TOPIC, GREAT! PLEASE SEE ME ASAP TO DISCUSS ITS VIABILITY.** Some ideas follow, for your consideration and investigation; *suggestions for simulations* are shown in brackets.

Students      Topic

### Confrontation Clause

- Who must testify after *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (U.S. 2011)? Is the **supervising toxicologist**, rather than the lab technician, sufficient? *See United States v. Darden* (D.Md. No. 09-602M) [U.S. S.Ct. argument]
- OR Proposed rule changes in light of *Bullcoming* (see nm-supreme court. nmcourts.gov/) [state or Federal Rules Committee]
- Is admissibility of hearsay as basis of expert's opinion under Rule 703 a legitimate way to circumvent *Crawford*? *See United States v. Ayala*, 601 F.3d 256 (4<sup>th</sup> Cir. 2010); *United States v. Williams*, 740 F.Supp.2d 4 (D.D.C. 2010). [U.S. S.Ct. argument].
- Is a **hospital lab report's** blood test data regarding a "regular" patient (not brought in by police) showing alcohol or drug content testimonial after *Melendez-Diaz*? [MD Court of Appeals OR U.S. S.Ct. argument]
- Is a victim's i.d. of a perpetrator to a treating physician testimonial? *Cf. Griner v. State*, 168 Md. App. 714, 899 A.2d 189 (2006) [MD Court of Appeals OR U.S. S.Ct. argument]
- **Forfeiture** doctrine after *Giles*, in a **child abuse** case where defendant has engaged in pattern of isolating victim [U.S. S.Ct. argument regarding civilian conduct on a military base or MD Court of Appeals argument].

- Were **maps** drawn showing where bodies were buried **testimonial** when declarant did not know of government access to maps? *United States v. Honken*, 541 F.3d 1146 (8th Cir. 2008) [U.S. S.Ct. argument]

### Hearsay and Hearsay Exceptions

- Should Maryland adopt a domestic violence exception like Cal. Evid. Code § 1109? *See* 39 U. Balt. L. Rev. 467 (2010). [Legislative or Rules Committee hearing]
- Evaluation of the amendments to Fed. R. Evid. 801(d)(10)(B) currently under consideration: to broaden the rule to embrace any prior inconsistent statements that would otherwise be admissible for rehabilitation. *See* McLain, 74 U.M.K.C. Law. Rev. (2005); *Tome v. U.S.* [Federal Rules Committee hearing].
- **Amendment of 801(d)(1)(C)** (identification of a person) to resolve ambiguity [Federal Rules Committee hearing].
- **“Predecessors in interest” as to 804(b)(1) prior testimony**: how far does *Zenobia*, 325 Md. 420 (1992) [or a similar federal case] go when parties have similar interests but are not strictly predecessors of each other? [U.S. S.Ct. OR MD Court of Appeals argument]
- “Forfeiture by wrongdoing” hearsay exception in a civil **medical malpractice** case: what evidence suffices? [MD Court of Appeals argument]
- Should the hearsay rule be abolished in civil cases (as it has to a large degree in England)? [Rules Committee hearing]
- Should *Ohio v. Roberts* continue to govern the introduction of non-testimonial hearsay offered against the accused? [U.S. S.Ct. argument]
- Should 804(b)(3) be moved to 803, as in the Texas Rules of Evidence? [State or Federal Rules Committee]
- Should Md. or the FRE adopt the “statement against social interest” exception (as did Texas, and perhaps, other states)?
- Should Rule 801(d)(2) be amended to exclude physicians’ apologies? *See* Note, 72 Ohio St. L.J. 687 (2011); Md. Cts. & Jud. Proc. Code Ann. §10-920. [Federal Rules Committee hearing]
- Dying declarations: Should the “abandoned all hope” criterion be liberalized in this jurisdiction, as it was in *Johnson v. State*, 579 P.2d 20 (Alaska 1978)? [Rules Committee OR appellate argument]
- Cell phone evidence: hearsay or nonhearsay? *See* *Carpenter v. State*, 196 Md. App. 212, 9 A.3d 99 (2020) [appellate argument]

- *Bernadyn* issue with newly educated prosecutors: *See Fair v. State*, 198 Md. App. 1, 16 A.3d 211 (2011) (paycheck). [MD Court of Appeals argument]

#### Character evidence/propensity rule: Rules 404, 413-15

- **Comparative law** view of character evidence: Should American law be fundamentally changed? Rework 404(b) to be like 413-415, subject only to 403? [Congressional committee or federal Rules Committee]
- Propose repealing **FRE 413-415** [Congressional hearing] or propose state “other acts” rule/statute similar to **FRE 413** to overrule *Hurst v. State*, 400 Md. 397 (2007 (see 2003 MD bill and 37 Suffolk U. L.Rev. 1175 (2004))). [MD legislative hearing on your bill]

#### Conspiracy/preliminary facts: Rule 104

- **Which applies, 104(a) or (b), to the foundation fact of conspiracy or agency under FRE 801(d)(2)(E) or Md. Rule 5-803(a)(4) or (5)?** *See Qualley v. Clo-Tex Int’l, Inc.*, 212 F.3d 1123 (8th Cir. 2000) (applying 104(a) [Maryland Court of Appeals OR U.S. S.Ct. argument, assuming trial court applied 104(b)].

#### Impeachment

- Rule 609: when ought impeachment by foreign convictions be allowed? *See* <http://www.metro.co.uk/tech/814659-google-executives-convicted-in-italy-over-bullying-video> and *United States v. Manafzadeh*, 392 F.2d 81 (2<sup>nd</sup> Cir. 1979). [MD Court of Appeals OR U.S. S.Ct. argument]
- Re: **Plea bargains** and Rule 410: Is impeachment by proffer statements permissible? *See U.S. v. Bloate*, 534 F.3d 893, 902 (8th Cir. 2008), *cert. granted*, 129 S.Ct. 1984 (U.S. 2009) [U.S. S.Ct. argument]

#### Subsequent remedial measures: Rule 407

- Does Rule 407 apply in criminal cases? *See State v. Conley*, 2009 W.L. 3018121 ((Wis. App. 2009). [MD. Court of Appeals OR U.S. S.Ct. argument]
- Internal study and removal from market **before noticeable injury to particular plaintiff** (e.g., Vioxx; Toyota recall, Nov. 2009) [appellate argument under FRE or MD Rule] **or** recommend amendment to FRE [Federal Rules Committee].
- Does Rule 407 extend to **actions taken** by a party **pursuant to a governmental directive**? [MD Court of Appeals OR U.S. S.Ct. argument OR Federal Rules Committee hearing].

### Settlement negotiations: Rule 408

- **Implementation of Fed. R. Evid. 408 (a)(2)** re: government agency investigations (*e.g.*, would “hypothetical” admissions circumvent the Rule? Could the U.S. make an enforceable promise not to prosecute?) [U.S. S.Ct. argument]

### Plea negotiations: Rule 410

- Does *Mezzanatto* permit use by prosecution in its case-in-chief? *See United States v. Sylvester*, 583 F.3d 285 (5<sup>th</sup> Cir. 2009) [U.S. S.Ct. argument]

### Presumptions

- Presumption of joint child custody [legislative hearing on 2008 MD bill(s), with your revisions].
- Presumption that rapist has no child custody or visitation rights [legislative hearing on 2008 MD bill, with your revisions].

### Privileges

- Attorney-client privilege: does the crime-fraud exception apply to **intentional torts** other than fraud? [appellate argument, state or federal court]
- Extension of **marital** privileges to same-sex couples married in other states. *See* 40 *Suffolk U.L. Rev.* 88, *Cf.* New York State’s challenge to the federal Defense of Marriage Act. [MD Court of Appeals argument]
- **Attorney-client** privilege: **identity** of client who stole hospital records computer [MD Court of Appeals argument in fictional appeal from Sept. 2007 incident].
- Spousal immunity privilege: carve out federal common law exception for **child abuse** [U.S. S.Ct. argument]
- Draft a bill to disallow **spousal** immunity privilege as to crimes allegedly committed before the marriage [state legislative hearing on your bill].
- When should a **P.R. firm** be considered an agent of an attorney for purposes of **attorney-client** privilege? *Compare Calvin Klein Trademark Trust v. Wachner*, 198 F.R.D. 53 (S.D.N.Y. 2002) (no privilege) *with Federal Trade Comm’n v. Glaxosmithkline*, 294 F.3d 141 (D.C. Cir. 2002) (privilege). *See also, e.g., Cavallaro v. U.S.*, 284 F.3d 236 (1st Cir. 2002) (accountants were not lawyers’ agents) [U.S. Supreme Court argument in *Glaxosmithkline*].



- Should there be exceptions to the **marital confidential communications** privilege, *e.g.*, as to threats by one spouse against the other? (*Cf. Brown v. State*, 359 Md. 180 (2000)) [MD legislative hearing].
- Maryland should recognize a fraud exception to the **accountant-client** privilege to overrule *BAA v. Acacia Mut. Life Ins. Co.*, 400 Md. 136 (2007). *See Sears, Roebuck & Co. v. Gussin*, 350 Md. 552 (1998) [MD legislative hearing or MD Court of Appeals argument].
- Proposal generated by Deborah Paruch, *The Psychotherapist-Patient Privilege in the Family Court: An Exemplar of Disharmony Between Social Policy Goals, Professional Ethics, and Current State of the Law*, 29 N. Ill. U. L. Rev. 499 (2009).
- Recognition of the privilege of **your choice, e.g., medical peer review** (*see Agster v. Maricopa County*, 422 F.3d 836 (9th Cir. 2005) [U.S. S.Ct. argument], or **pre-publication research** (*see In re Cusamano*, 162 F.3d 708 (1st Cir. 1998)) [Federal or MD legislative hearing].
- **Appellate review** of orders compelling disclosure of privileged communications: **finality and standing** issues, the collateral order doctrine, etc. (*Compare, e.g., U.S. v. Philip Morris, Inc.*, 314 F.3d 612 (D.C. Cir. 2003) *with Simmons v. City of Racine*, 37 F.3d 325 (7th Cir. 1994)) [U.S. Supreme Court argument] or, under Maryland law, does *Perlman* survive *Harris v. State*, 420 Md. 300, 22 A.3d 886 (2011)? [MD Court of Appeals argument]

### Privacy

- **Victims' Rights:** Should Maryland adopt a rule like Fed. R. Crim. P. 17 regarding personal or confidential information – such as health records – regarding a victim? [Maryland Rules Committee]  
5th Amendment/Rule 403
- Admissibility of **defendant's failure to inquire** about investigation into wife's death, facts of *Snyder*, 361 Md. 580 (2000) [U.S. S.Ct. argument]. *See also Weitzel v. State*, 384 Md. 451 (2004) (pre-arrest silence in presence of police officer too ambiguous to be admissible).

### Eyewitness testimony

- Due process argument in *Perry v. New Hampshire*, cert. granted, 131 S.Ct. 2932 (U.S. May 31, 2001) [U.S. S.Ct. argument]

### Dead Man's Statute

- Does the statute preclude a personal representative who wants to testify to the dead person's statement? [MD Court of Appeals argument]

### Gun control

- **Amendment of Md. Statute after *Ali v. State***, 199 Md. App. 204, 21 A.3d 140 (2011)? [legislative committee hearing].

### Trial practices

- How should we attack the problem of jurors' likely use of the Internet, Facebook, etc? *See, e.g.*, 37 Litigation No. 2 at 23 (Winter 2011). [Rules Committee hearing]

### Issues Relating to Terrorism

- Dismissal of prosecutions when U.S. state or military secrets are privileged: can/should the rules be changed? *See, e.g.*, 614 F.3d 1070 (9<sup>th</sup> Cir. 2010) [U.S. S.Ct. argument]

### Authentication

- How much does it take to authenticate Facebook, My Space pages, etc? *See Griffin v. State*, 419 Md. 343, 19 A.3d 415 (2011), rev'g 192 Md. App. 518, 995 A.3d 791 (2010). Do we take a purported business's or government agency's website at face value and treat it as prima facie evidence of authenticity, or should we require more? How about digital photos? Should we assume they have been "Photoshopped" or take them at face value absent any evidence of their being tampered with? [Rules Committee OR U.S. S.Ct. argument]

### Experts

- Admissibility of expert testimony on gangs and gang behavior. *See United States v. Roach* (10<sup>th</sup> Cir. 2009); *United States v. Hankey*, 203 F.3d 1160 (9<sup>th</sup> Cir. 2000); *United States v. Mejia*, 545 F.3d 179 (2d Cir. 2008); *People v. Williams* (Cal. 1997); *State v. McDaniel*, -- P.3d --, 2010 WL 1694522 (Wash. App. 2010); Gang Behavior as Evidence of an Individual's Behavior (April 29, 2010) (blog post); The Limits of Gang Expert Testimony (April 30, 2010) (blog post); A Mini-History of Police Officer Gang Experts – Courtesy of the Second Circuit (April 30, 2010) (blog post). [MD Court of Appeals OR U.S. S.Ct. argument]

- With handwriting or fingerprint testimony, what is the best approach: exclude it entirely; allow it entirely, including the ultimate “match”; or allow the expert only to note the similarities and dissimilarities? [MD Court of Appeals argument]
- Explain in plain, understandable English the “prosecutor’s fallacy” and the “defendant’s fallacy” with regard to statistical evidence, especially with DNA evidence. [for the mathematically inclined] [legislative or Rules Committee hearing on DNA evidence]

## **PARTIAL BIBLIOGRAPHY FOR EVIDENCE AND TRIAL PRACTICE**

### **A. Maryland**

\*\* McLain, *Maryland Evidence: State and Federal* (vols. 5, 6, and 6A of Maryland Practice series) (West 2d ed. 2001 & Supps.) and vol. 7, *Maryland Rules of Evidence*

\*\* Murphy, *Maryland Evidence Handbook* (Michie) (reserve)

Sandler & Freishtat, *Pattern Examination of Witnesses for the Maryland Lawyer* (MICPEL 2d ed.)

Pattern Jury Instructions

### **B. Federal**

Bailey & Trelles, *Federal Rules of Evidence: Legislative Histories and Related Documents* (5 vol. 1980) (Wm. S. Hein & Co.)

\*\* Federal Rules of Evidence Service (Pike & Fischer looseleaf) (shelved near Federal Rules Decisions) (for *detailed research*)

Graham, *Handbook of Federal Evidence*

Larkin, *Federal Testimonial Privileges*

Louisell & Mueller, *Federal Evidence*

McLain, *supra*

Rothstein, *Rules of Evidence for U.S. Courts & Magistrates: Practice Comments*

Saltzburg & Redden, *Federal Rules of Evidence Manual* (reserve)

\*\* Weinstein & Berger, *Federal Evidence* (multi-volume, reserve)

*Weinstein's Evidence Manual: A Guide to the United States Rules Based on Weinstein's Evidence*

Wright and Graham, *Federal Practice and Procedure* (vols. 21 *et seq.*)

**C. General**

Baldwin, *Art of Advocacy: Direct Examination*

Donigan, *The Evidence Handbook* (criminal cases)

Greenleaf, *Treatise on the Law of Evidence*

Joseph and Saltzburg, *Evidence in America: The Federal Rules in the States*

Keeton, *Trial Tactics & Methods*

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie 1990)

Louisell, *Principles of Evidence & Proof*

\*\* McCormick on Evidence

Morgan, *Basic Problems of State & Federal Evidence*

Sellers, *Classics of the Bar; Stories of the World's Great Legal Trials*

Wharton's Criminal Evidence

\*\* Wigmore on Evidence (10 vols.) (reserve)

Younger, *An Irreverent Introduction to Hearsay*

**D. Videotape**

*State v. Gordon* (reserve) (use as an overall review of Maryland evidence law: report on whether rulings would be different post-Title 5)

VERALEX Lessons (you interrupt tape to make objections)

3. *Easerly v. Letwin* (character evidence and impeachment)
4. *Francis v. Spindler* (hearsay and exceptions; introduction of documents)
- 5,6. *Brew v. Harris I & II* (trial tactics and form of questions)
- 8,9. *State v. Williams I & II* (opinions, hearsay, photographic evidence (I), and relevance)
10. *State v. Rogers* (hearsay, opinions, and introduction of documents)
16. *Olcott v. Olcott* (expert witnesses: family law case)  
*Murphy v. State* (hearsay, privilege; two sides to every story)

## CLASS/DATE ASSIGNMENT

1. Jan. 11 Read THE O.J. FILES, pp. 106-132 and NITA, pp. 4-8, 15-25, 33 (#1), 34 (#4), 41, 83-84.
- As prosecutor, which portions, if any, of Mr. Simpson's statement to the police would you want to admit into evidence? Could you do that safely?
  - How would you lay the foundation for and offer the evidence? Consult a library book such as Imwinkelreid, Evidentiary Foundations §§ 1.02-1.04, 2.03-2.04, 2.06, 4.02, 10.03[2], and the parts of Chapter 4 you find relevant or Sandler, Pattern Examinations for the Maryland Lawyer.
  - Assuming that the entire statement was admitted, what points would you make in closing argument for the prosecution? The defense? Choose a side and be prepared to volunteer to make that partial closing argument (3 min. max.). See pp. 10-12 of Syllabus.

## IN-CLASS AGENDA

- Course overview and discussion of possible paper topics.
- Complete schedules and sign-in sheets.
- Discuss evidentiary, tactical, and ethical issues raised by assigned reading.
- Explain how to prove the defendant's statement.
- Make closing arguments.

- 
2. Jan. 18 **Paper topic scope note, tentative thesis, and results of literature search (see p. 4 of Syllabus) due.**

Brief discussion of paper topics; sign-up for research progress meetings. Perform O.J. exercises. *Giles* argument.

- All students read Syllabus, pp. 10-12, and the following NITA pp.:
  - Courtroom demeanor, pp. 35-48 (all students);
  - Motions in limine, pp. 31-32, 218-19 (all students);

**GENERAL INSTRUCTIONS FOR O.J. EXERCISES** (see also p. 3 of Syllabus)

\* Whenever (in this or a subsequent class) you are to do direct or cross or be a judge, read NITA:

- Preparing your witness, pp. 24 (§ 2.33), 26-30; direct exam, 93-115, 41-42, 201;
- Exhibits, 191-212, 27, 30-31;
- Objections and responses, 213-37, 39-40;
- Preparing cross-exam, pp. 117-36; impeachment, 137-63.\*

Instructions:

- Pre-mark your exhibits (you must prepare them!). I will act as court clerk/reporter to keep exhibits that have been introduced.
- Party with burden of persuasion is seated closer to the jury box.
- Counsel will remain seated at the trial table while examining a witness, unless the court grants permission to approach the witness (to hand over an exhibit) or the bench. Counsel must stand when addressing the judge (including when objecting or when one's opponent objects -- remain standing until the judge has ruled). Object only when tactically appropriate (per NITA, pp. 215-17, 221).

**CLASS/DATE ASSIGNMENT**

**IN-CLASS AGENDA**

b. Dream testimony, O.J. FILES, pp. 12-26.

**Prosecution   Defense   Judge   Witness   Jury**

N.B.: SPECIFIC STUDENTS' ROLES ARE IDENTIFIED BY A NUMBER REPRESENTING THAT STUDENT  
(numbers are subject to change depending upon enrollment)

- |      |  |                 |                |   |    |               |
|------|--|-----------------|----------------|---|----|---------------|
| i.   | Motion in limine argument and ruling (10 min. max. each side). This would be a motion by the defense, so the defense goes first. | 1 & 2           | 3 & 4          | 5 |    |               |
| ii.  | Direct and cross-examinations of Shipp (with instructions to witness) (10 min. max. each side)                                   | 6 & 7<br>Direct | 8 & 9<br>Cross | 5 | 10 | 1, 2,<br>3, 4 |
|      | [Break]  |                 |                |   |    |               |
| iii. | Closing arguments re: this evidence (as it came out in class) (5 min. max. each)   | 6               | 8              | 5 |    | same          |
| c.   | Reenact S. Ct. argument in <i>Giles v. California</i> (no specific prep. needed, but read Syllabus, pp. 12-13)                   |                 |                |   |    |               |

**Research Progress Conferences will be scheduled.**

- |            |     |   |   |                |    |                |
|------------|-----|---|---|----------------|----|----------------|
| 3. Jan. 25 | a.  | Read "Proper Legal Writing" handout and prepare exercises there.  | Go over writing and citation exercises. |                |    |                |
|            | b.  | Prior abuse, O.J. FILES, pp. 40-62.<br>[See NITA pp., Class 2]  | Perform O.J. exercises:                 |                |    |                |
|            | i.  | Motion in limine hearing re: prior abuse and ruling under FED. R. EVID. 404(b) (not Cal. Rules) (max. 15 min. each side). This is a defense motion, so the defense goes first.  | 7 & 8                                   | 5 & 6          | 10 |                |
|            |     | [Break]   |   |                |    |                |
|            | ii. | Prosecution offers into evidence (and defense objects and cross-examines):  | (work as a team to prepare)             |                |    |                |
|            | (1) | Police officer's testimony to incident on 1/1/89, p. 41 (See Imwinkelreid, <u>Evidentiary Foundations</u> § 3.03) (max. 10 min. each) and judgment of conviction stemming from that incident, p. 41 (See <u>Evidentiary</u> | 2 & 3<br>Direct                         | 1 & 4<br>Cross | 10 | 9      5, 6, 8 |

**CLASS/DATE ASSIGNMENT**

**IN-CLASS AGENDA**

**Prosecution   Defense   Judge   Witness   Jury**

(2) Sgt. Lerner’s testimony re: 10/25/93 incident, pp. 41-43 (See Evidentiary Foundations § 3.03)      2 & 3      1 & 4      10      7      5, 6, 8

If you intend to elicit opinions, see Chapter 9 of Evidentiary Foundations (see p. 1 of Syllabus).

iii. Closing arguments re: this evidence as it came out in class (max. 5 min. each)      2      4      10

iv. Discussion: tactics and ethics, law and policy: (1) Fuhrman, pp. 40-41; (2) incident leading to no contest plea, p. 41 (murder was June ‘94); (3) 911 call and incident report, pp. 41-42

**Presentation schedule will be announced, based on subjects chosen. Principal opponents (and allies, if appropriate) will also be assigned.**

4. Feb. 1      a. Victim’s statements of fear and past abuse, O.J. FILES, pp. 82-106: (1) 911 tapes (get from Web site); (2) “diary,” p. 105; (3) OCS to Sgt. Lally [See NITA pp., Class 2]

i. Hearing on defense motion in limine and ruling under FED. R. EVID. (and Cal. § 1370) and confrontation clause (max. 20 min. each side) (see Evidentiary Foundations §§ 5.01-.02, 6.04, 10.08-.10). Argue as if case arose today (post-*Crawford*, *Davis*, and *Giles*, as well as post-Cal. Evid. Code § 1370, pp. 104-105). Because it is the defense’s motion, the defense goes first.      9 & 4      8 & 10      3

[Break]

ii. [Assume prosecution has authenticated, laid foundation, and offered into evidence admissible portion(s) of 911 tapes and transcript from pp. 82-88]      1 & 5      10 & 7      3      2      4, 6, 8, 9  
 Direct      Cross  
 Now: Sgt. Lally’s testimony to Nicole’s statements, pp. 98-99. Cross-examine Sgt. Lally (see Evidentiary Foundations §§ 10.08-.10)

[Break]

iii. Closing argument re: this evidence as it came out in class (max. 5 min. each)      5      7      3      same

b. Discussion, including of polygraph evidence, pp. 234-54 (*not assigned reading!*)

**CLASS/DATE ASSIGNMENT**

**IN-CLASS AGENDA**

Prosecution   Defense   Judge   Witness   Jury

**Presenters 1-2 (for Class 8) bring proposed assignments and meet with Prof. McLain about assignments and presentations at end of class.**

5. Feb. 8	<p>a. <b>Introductions and outlines due for papers.</b> Schedule for individual conferences on them will be distributed.</p> <p>b. Thano Peratis, O.J. FILES, pp. 132-39; Mark Fuhrman, O.J. FILES, pp. 62-81, 140-72 [See NITA pp., Class 2]</p> <p>(1) Discuss defense objection re: Peratis videotape post-<i>Crawford</i></p> <p>(2) Defense proffer and prosecution objection re: evidence of Fuhrman’s prior misconduct and racial bias (15 min. max., each side) (defense goes first)</p> <p>[Break]</p> <p>c. Closing arguments in criminal case (assuming same evidence was admitted as at real pre-<i>Crawford</i> trial)</p> <p>(1) Re: Peratis (5 min. max. each)</p> <p>(2) Re: Fuhrman (5 min. max. each)</p> <p>d. Direct and cross of Peratis (now available) in civil case (15 min. max., each side) [See NITA pp., Class 2]</p> <p>e. Discussion: <i>e.g.</i>, how could prosecutors have prevented problems they encountered?</p> <p>f. <b>Presenters 1-2 hand out assignments for Class 8. Presenters 3-4 (for Class 9) bring proposed assignments and consult with Prof. McLain about assignments and presentations at end of class.</b></p>	<p>3 &amp; 6</p> <p>5</p> <p>3</p> <p>4 &amp; 10 Direct for <u>plaintiff</u></p>	<p>2 &amp; 7</p> <p>10</p> <p>9</p> <p>3 &amp; 6 Cross</p>	<p>8</p> <p>8</p> <p>8</p> <p>8</p>	<p>1, 2, 4, 6, 7</p> <p>same</p> <p>2, 5, 7, 9</p>
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6. Feb. 15 & 7. Feb 22	<p><i>No formal class:</i> Continue research and writing! Pick up your commented-upon Intro and Outline from Ms. O’Brien in Room 300 sufficiently before your conference so that you have read the comments and are prepared with questions.</p> <p><b>Individual conferences</b> these two weeks on Introductions and Outlines. (Possible trip(s) to Annapolis or Washington?!)</p>
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**CLASS/DATE ASSIGNMENT**

**IN-CLASS AGENDA**

**Prosecution   Defense   Judge   Witness   Jury**

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11. Mar. 28	Student presentations:  <b>Presenters for Apr. 4 hand out assignments. Presenters for Apr. 11 bring proposed assignments and consult with Prof. McLain about assignments and presentations at end of class.</b>	All students: Prepare assignments and written questions for presentations.
12. Apr. 4	Student presentations:  <b>Presenters for Apr. 11 hand out assignments.</b>	All students: Prepare assignments and written questions for presentations.
13. Apr. 11	Student presentations:	All students: Prepare assignments and written questions for presentations.
14. Apr. 18	<b>Revised, polished Final Drafts due at <u>10:00 a.m.</u></b>  FINAL DISCUSSION, CRITIQUES, and CELEBRATION	