

**Tactics and Trial Strategies in Criminal Litigation**  
**Fall 2010**  
**Professor Hillary Farber**  
**Syllabus\***

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**Objective:** To gain a comprehensive understanding of pre-trial, trial and post trial tactics and strategic decision-making in criminal litigation through in-depth analysis and highly critical review of adjudicated cases on both the state and federal level.

**Readings:** The reading material for the weekly assignments will be distributed either in class or on our blackboard site the week before. It is essential to fulfilling the objective of this course that each student prepare the written assignments prior to class and offer constructive feedback to classmates during the oral presentations.

**Participation:** This seminar depends on the active engagement of each student and one's willingness to critique others in an effort to improve everyone's work product. During the first half of the quarter we will be examining particular litigation strategies selected by the professor. We will use a variety of pedagogical methods to appreciate the importance and nuances of tactical decision making in litigation. From time to time we will perform in-class simulations, such as drafting and arguing motions and counseling clients. Within the first three weeks, students will view the documentary film, *The Staircase*, on reserve in the library. The film features the murder prosecution of journalist Michael Peterson from the police investigation through the trial. We will use the Peterson case, wonderfully captured in the film, as a means of identifying and analyzing tactical and strategic decisions made by the lawyers throughout the case.

The second half of the quarter will consist of student presentations on the case chosen for the research paper. Each student will have one hour to lead a discussion on the select issues in his/her case and seek input from the class. The presentations should be viewed as a work-in-progress; an opportunity to use the class as a work-space to flesh out your ideas and to gather alternative perspectives so to expand the breadth and depth of one's own research. Each student is expected to prepare and disseminate materials that will provide the class with an understanding of the case and the particular issues to be discussed. Those materials should be electronically distributed **a week** prior to the presentation so that students have an opportunity to thoroughly consider them (if any of the materials are hard copy than they need to be distributed in the class the week before the presentation). Students are encouraged to use creativity in selecting materials. At a minimum, materials should include, but are not limited to, a case synopsis, relevant case law & statutes, and related secondary materials such as articles from legal periodicals, newspapers, magazines. Powerpoint should be used sparingly. Powerpoint presentations that mirror the oral presentation do not allow for a free flow of ideas from the audience and are therefore discouraged. In the past students have used videos, media accounts,

including footage related to the case, photographs, internet related materials such as Court TV and CNN coverage, excerpts of transcripts from hearings/oral argument, interviews with counsel, pleadings, graphics such as timelines and flowcharts.

A discussant will be assigned to each presentation. The discussant role is to offer initial comments and facilitate discussion among all students. The discussant may also be useful in helping to plan the format for the presentation to maximize student input. Some students have noted that they receive excellent feedback and ideas during their presentation but are unable to retain the information due to the difficulty of talking and listening simultaneously. The discussant's role will allow the presenter to concentrate on the feedback from classmates.

The material you provide in advance of your presentation will serve as the reading/preparation for the next class, so do not be intimidated to distribute a respectable amount of reading. Accompanying the reading materials should be a list of the issues the presenter wants the audience to focus on. This list can take many forms -- most important it should be designed to assist you. For example, an approach I recommend is to hand out a worksheet and ask students to complete the worksheet prior to coming to class and turn it in after the presentation. The benefit of this approach is that everyone is guaranteed to have read your materials, thought about your issues and is prepared for the discussion.

If you would like copying assistance with the materials you plan to distribute for your presentation, all materials must be given to me no later than the Monday am prior to the week you present. If you have special requests please talk to me about them a week before your presentation.

**Grading/Evaluation:** You will be evaluated on short writing assignments; in class simulations; discussant role; the oral presentation & accompanying materials; contributions to class discussion; and the research paper.

**Attendance:** This course depends entirely on student participation and engagement in the materials and discussion. Students must come to every class having completed the reading and ready to make valuable contributions.

**Office Hours:** Fridays, 11am - 12pm & by appointment.

**Research Project:** Each student will write an in-depth research paper of approximately twenty five pages. The paper will identify and critically analyze two to three discrete tactical and strategic decisions which substantially affected the path of the litigation. The research skills used to complete this assignment will be both investigative and legal. Students will seek to obtain relevant portions of the court record, briefs, pleadings, transcripts, interview counsel, and possibly clients, as well as other source materials.

It is not an easy task to select a case that will meet all of the criteria. In fact, it is arguably the most challenging part of this course. Case selection involves a clear understanding of your objectives, the objectives of the course, ability to identify a case in

which you have sufficient access to the requisite materials. It bears repeating: this is NOT an easy task and it will undoubtedly take you longer than you anticipate. Therefore, it is necessary that you begin looking for a suitable case **immediately**. You should discuss this process with me early and often. At a minimum, I will meet with each student beginning the third week of the course.

**Library Assistance:** This is the type of research assignment where you will benefit immensely from the skill and expertise of our reference librarians. The type of materials and sources you may be looking for cannot always be located via conventional Internet, Westlaw and Lexis and JSTOR searches. At some point you may likely be searching for secondary materials, court documents, periodicals, and sources available via inter-library loan. Rather than research in isolation, I encourage you to utilize the services and knowledge of the librarians. This course is designed to encourage you to push the boundaries of your own knowledge of legal research and learn some new sources and techniques for collecting information.

The following is a breakdown of topics we will be discussing during the first half of the quarter:

**August 31 - The Martha Stewart Case**

**September 7 – The “All or Nothing Defense”**

**September 14 – Individual Meetings**

**September 21 - “The Staircase”**

**September 28 – Use of Media/Publicity As A Sword, Not a Shield**

**October 5 – Multiple Crimes/Multiple Jurisdictions**

The remainder of our classes will be occupied by student presentations. A schedule of presentations will be determined once it is determined how many students are enrolled in the course.

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\* This draft of our syllabus will likely be altered slightly once it is determined how many students are enrolled in the course.