

# ZEALOUS ADVOCACY IN LAW SCHOOL

Professors Fallica, Hetu &amp; Rodriguez.

Tuesday/Thursday 7:30pm

## Purpose and Course Description

This 3-credit course is a program collaboration between the Committee for **Public Counsel (CPCS)** and the **Massachusetts School of Law**. This course will provide students with the education and training necessary to enter the practice of indigent criminal and delinquency defense. Enrolled students will learn how to defend a criminal and delinquency case from bail to trial. Our class will run as a simulation course that will provide students with experience in legal research, legal writing, oral advocacy, client interactions, motion practice, and trial skills. The culmination of this course will be a mock trial for all students to participate in. Upon completion of the course, students are eligible for application to become **3:03 certified** and the ability to apply for a waiver of the **CPCS Zealous Advocacy** training requirement. Students will be encouraged to apply to a local **Bar Advocate Program** when eligible; however, this course does not automatically guarantee acceptance to a **Bar Advocate Program**.

This program incorporates both in and out-of-class work, with a strong focus on on-your-feet trial skills. Our instructors are **Shane Rodriguez, Valerie Fallica, and Jim Hetu**. All of the professors have completed the **Zealous Advocacy training** and are **Essex County Bar Advocates**. Professors **Rodriguez, Fallica, and Hetu** will team up with several members of the local bar advocate programs to provide the students with an in-depth overview of the **District and Juvenile Courts** and the life cycle of a criminal and delinquency case. Guest lecturers will be heavily utilized to allow the students to interact with and make connections with local attorneys who practice indigent criminal and delinquency defense.

In this class, we invite attorneys who are in criminal defense practice as guest faculty to speak or lead small groups. We think it's important for students to see different styles/hear different advice and also get to network with practicing lawyers. We are always open to feedback on guest faculty.

Students will be provided with oral feedback after each substantial simulated exercise from faculty and guests. Feedback comes either orally or in writing. For the in-class small group exercises, you will receive written feedback on a graded rubric or oral feedback from the professors and/or guest faculty. For written work, there will not be specific feedback, because the assignment is there to help you think through a process, such as developing a theory of the case or a cross examination, instead of developing a specific writing or research skill.

## Contact Info

These are their personal cell phone number.

Please use this for class related or business purposes only.

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## Plagiarism Policy

You are part of a learning community and are encouraged to discuss your work and assignments with classmates. In this course, there are many opportunities to collaborate on certain projects. However, all written work except where indicated must be your own, contain proper attribution, and fully comply with the **Honor Code** contained in the Student Handbook and the **Plagiarism Policy**.

## Attendance Policy/Remote Learning

**Massachusetts School of Law** requires regular and punctual class attendance. Students are expected to attend every class and be fully prepared to discuss the assigned material. If you are unable to attend class or you are unprepared to participate, please notify us before class. This policy reflects the belief that dependability is an essential characteristic of a good lawyer. The objectives of the policy are to ensure academic success, of which attendance is a major component, and to develop good professional standards. Attendance is expected at every class session.

Students must come to class prepared to brief cases and for class discussion. You are **expected** to be in class to participate. Individuals who have more than **3** unexcused absences during the semester may have their semester grade lowered by as much as **one-third** of a grade.

## Grading

Grading will be based on accumulating points during the semester by turning in work on time and performing well on in class assignments.

The maximum number of points is 1300.

Here is a breakdown of which assignments and performances will be graded, and what their maximum point value is:

### Turn Ins:

Client Letter: **20** points  
 Pretrial Conference Report: **30** points  
 Theory of the Case Worksheet: **40** points  
 Trial Binder: **50** points  
 Green Sheet: **30** points  
 Midterm: **200** points  
 Opening Outline: **50** points  
 Closing Outline: **50** points  
 Direct Examination Questions: **50** points  
 Total possible: **500** points

### Performances:

Bail Argument: **30** points  
**58A**: **30** points  
 Section **35**: **30** points  
 Cross Examination: **70** points  
 Plea: **30** points  
 Direct: **40** points  
 Opening: **70** points  
 Closing: **70** points  
 Probation Violation: **30** points  
 Final: **400** points  
 Total possible: **800** points

**Maximum** total possible: **1300** points

## Late Work Policy

Late work will result in a point reduction of **5** points per late assignment.

## Course Materials

All of the readings and videos will be posted on **TWEN** unless we advise you otherwise. We use a lot of **Committee for Public Counsel Training Department** materials as well as materials and case problems we have created ourselves. Therefore, we ask that you sign a **confidentiality agreement** not to **use, copy, discuss** or **disseminate** the materials outside of our class without permission.

## Classroom Decorum

All students are expected at all times to conduct themselves in a civil manner as follows:

**Timeliness.** Arrive on time. Late arrivals are disruptive. Frequent late arrivals will be excluded from the classroom.

**Cell Phones and Messaging.** There will be *no cell phone use in class*, with the exception of extraordinary circumstances. All cell phones must be turned off before the class begins.

If there is a family emergency requiring you to be reachable, approach me before class and inform me of the situation. In such an event you may keep your cell phone on if it has a “vibrate” only option.

In the event that your cell phone or other device disturbs the class you will be told to leave the classroom immediately and will be marked as absent for the class.

**Laptop Computers.** While many colleges and professional school are banning laptop computers form classroom, I believe that they can be a useful classroom tool. Arrive early enough to start your laptop prior to class such that start up noises will not be disruptive to other students.

If I determine that you are using the computer for other than legitimate classroom purposes you will be immediately told to leave and will be marked absent for the class.

**Talking in Class.** This is an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case, a principle or a hypothetical. You are expected to listen while others are talking and to respond when called upon. Civility is expected at all times by all students.

**Eating/Drinking in Class.** Eating in class is strongly disfavored. I understand that stressed-for-time students are often unable to take meals at normal hours, and therefore snacks and drinks will be tolerated as long as they are not disruptive. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise such as stubborn plastic wrappers. I will ban all foods and drinks in class if, in my opinion, they are becoming a distraction.

**Civility Above All Else.** Each of you will be treated at all times with courtesy and respect, and will treat others with equal civility at all times. In our class discussion, we will argue issues but never personalities.

## Notes on Tape Recorders In Class

I follow the syllabus and I test what I teach. Do all the assigned readings and attend class and you will be prepared for the exams. It is necessary that you develop an effective method of recording and retaining the materials as they are taught and discussed. Because classes are interactive it is not advisable to take copious notes. Research strongly indicates that students who attempt to use word processors to “transcribe” class discussions perform less well on exams than do those students who actively participate in class. Use of tape/digital recorders are allowed in this class and may be preferable for you.

The purpose of the class is to learn the law through discussion. By doing so, you will develop the analytical skills necessary for excellence as a competent attorney. This is unlikely to be achieved if your focus in class is merely being a scribe.



TEAMWORK

## Class Schedule

### Class 1 August 20, 2024

#### Prior to Class:

- Watch**
- Navigating the Courts (6 minutes)
  - Felonies, Misdemeanors, District Court, What Does it All Mean (18 minutes)
  - Sources of Massachusetts Law (7 minutes)

- Read**
- Storytelling in the Courtroom
  - Trial By Design

**Do** Sign and bring Confidentiality Agreement to class

#### Class:

**Lecture** Course Introduction, Duty Day Overview, and Arraignment

### Class 2 August 22, 2024

#### Prior to Class:

- Watch**
- Framing Race (14 minutes)
  - Peanut Butter and Jelly Racism (3 minutes)
  - The Life Changing Magic of Hanging Out (2:30 minutes)
  - Check Your Bias to Wreck Your Bias (3 minutes)

#### Class:

**Lecture** Race, Identity, and Culture (*John Lozada*)

### Class 3 August 27, 2024

#### Prior to Class:

- Watch**
- How to be an Active Listener (8 minutes)

- Read**
- How to be a Good Interviewer
  - M.G.L. c. 276 § 42
  - M.G.L. c. 276 § 42A
  - M.G.L. c. 276 § 58

- Do**
- Brief Brangan v. Commonwealth
  - Brief Commonwealth v. Norman

#### Class:

**Lecture** Bail Arguments and Criminal Records



**Class 4 August 29, 2024**

**Prior to Class:**

- Watch** • Bail Argument Demo (6 minutes)
- Read** • M.G.L. c. 276 § 58B  
• Bail Revocation Quick Reference Sheet
- Do** Prepare a Bail Argument

**Class:**

- Lecture** • Post Bail and Bail Reviews  
• 58B
- Exercise** • Bail Argument Exercise

**Class 5 September 3, 2024**

**Prior to Class:**

- Read** • M.G.L. c. 276 § 58A  
• Assaults on Liberty: Bail Revocation & Dangerousness Hearings  
• 58A Force-Clause Predicates, Bogus and Valid  
• Practice Advisory: BOLO for Bogus 58A Predicates (Comm. v. Escobar)  
• Massachusetts Witness Representation Handbook

**Class:**

- Lecture** • 58A  
• 5<sup>th</sup> Amendment Issues

**Class 6 September 5, 2024**

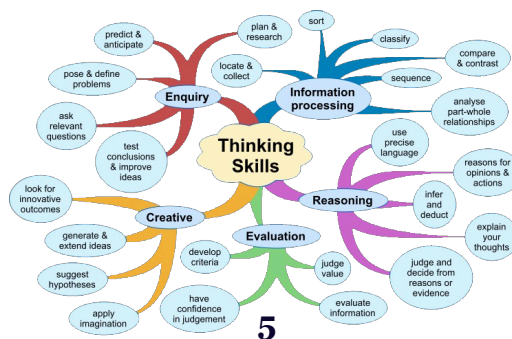
**Prior to Class:**

- Watch** • Section 35 Hearings Part 1: Introduction (13 minutes)  
• Section 35 Hearings Part 2: The Basics (13 minutes)  
• Section 35 Hearings Part 3: Strategy (20 minutes)  
• Emergency Civil Commitment c. 123 §12(e) (11 minutes)

- Do** Prepare a 58A Argument

**Class:**

- Lecture** • Section 12, Section 35, Competency
- Exercise** • 58A



**Class 7 September 10, 2024****Prior to Class:**

- Do**
- Brief Commonwealth v. DiBennadetto
  - Prepare for a Section 35 Argument

**Class:**

- Lecture**
- After a duty day, Researching Statutes and Model Jury Instructions, and Motions to Dismiss

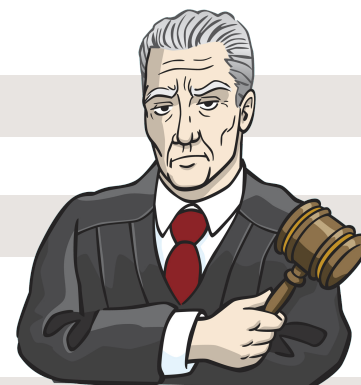
- Exercise**
- Section 35 Hearing

**Class 8 September 12, 2024****Prior to Class:**

- Read**
- Criminal Procedure Rule 14

**Class:**

- Lecture**
- Discovery and Rule 14

**Class 9 September 17, 2024****Prior to Class:**

- Watch**
- Rule 17 Argument Demo (8 minutes)
  - Workin

- Read**
- Theory of the Case Worksheet

- Do**
- Brief Commonwealth v. Lampron
  - Brief Commonwealth v. Dwyer
  - Complete and turn in a Pretrial Conference Report

**Class:**

- Lecture**
- Rule 17, Theory of a Case, Use of Experts

**Class 10 September 19, 2024****Prior to Class:**

- Read**
- Motion to Suppress Instructions

- Do**
- Complete and turn in the Theory of the Case Worksheet

**Class:**

- Lecture**
- Motions to Suppress
  - Midterm Assignment Discussion



**Class 11 September 24, 2024****Prior to Class:**

- Read**
- Pozner on Cross: Constructive Cross-Examination
  - Cross-Examination Principles

**Class:**

- Lecture**
- Cross Examination

**Class 12 September 26, 2024****Prior to Class:**

- Do**
- Draft 10 Cross Chapters and turn in

**Class:**

- Lecture**
- Cross Examination Workshop

**Class 13 October 1, 2024****Class:**

- Lecture**
- Trial vs. Plea, Mechanisms of a Plea

**Class 14 October 3, 2024****Class:**

- Lecture**
- Juvenile Delinquency (**Prof. Kaldis**)

**Class 15 October 8, 2024****Prior to Class:**

- Watch**
- Evidence Part 1 (9 minutes)
  - Evidence Part 2 (11 minutes)
  - Evidence Part 3 Motions in Limine (23 minutes)

- Do**
- Prepare for a Disparate Plea Argument

**Class:**

- Lecture**
- Trial Overview, Motions in Limine

- Exercise**
- Disparate Plea

**Class 16 October 10, 2024****Class:**

- Lecture**
- Witnesses and Introducing Evidence

**Class 17 October 15, 2024**

**Prior to Class:**

- Watch** • Direct Exam Demo (11 minutes)

**Class:**

- Lecture** • Defendant Testifying and Direct Examination

Plea Bargain

Trial

**Class 18 October 17, 2024**

**Prior to Class:**

- Watch** • Common Mistakes to Avoid in Opening (3 minutes)  
• How to Construct a Powerful Opening (8 minutes)

- Do** • Common Mistakes to Avoid in Opening (3 minutes)  
• How to Construct a Powerful Opening (8 minutes)

**Class:**

- Lecture** • Opening Statements

- Exercise** • Direct of Defendant

**Class 19 October 22, 2024**

**Prior to Class:**

- Read** • Closing Cheat Sheet

- Do** • Prepare an outline of an Opening Statement to hand in

**Class:**

- Lecture** • Closing Arguments

- Exercise** • Opening Statements

**Class 20 October 24, 2024**

**Prior to Class:**

- Do** • Prepare an outline for a Closing Argument

**Class:**

- Lecture** • Jury Empanelment and Voir Dire

- Exercise** • Closing Arguments



**The Fifth Amendment** breaks down into five rights or protections: the right to a **jury trial** when you're charged with a crime, protection against **double jeopardy**, protection against **self-incrimination**, the right to a **fair trial**, and protection against the **taking of property** by the government without compensation. FindLaw.com



**Class 21 October 29, 2024****Prior to Class:**

- Watch**
- Impeachment Demo #1 (13 minutes)
  - Impeachment Demo #2 (7 minutes)
  - Impeachment Demo #3 (11 minutes)

- Read**
- RAC 'Em Up

**Class:**

- Lecture**
- Impeachment

- Exercise**
- Brainstorming Impeachment

**Class 22 October 31, 2024****Prior to Class:**

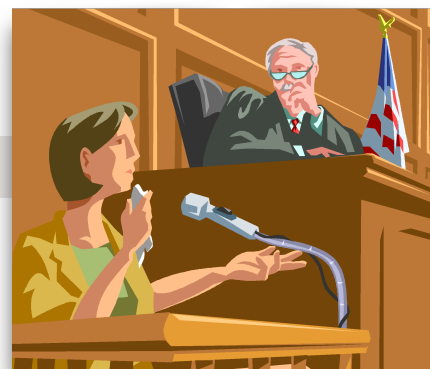
- Read**
- Criminal Procedure Rule 36

**Class:**

- Lecture**
- Rule 36
  - Ethics and Conflicts of Interest

**Class 23 November 5, 2024****Class:**

- Lecture**
- Required Finding Motions
  - Verdicts and Sentencing
  - Fugitive from Justice

**Class 24 November 7, 2024****Prior to Class:**

- Read**
- Probation Primer
  - Probation Sentencing Cheat Sheet
  - Probation Table of Cases

**Class:**

- Lecture**
- Probation Violations

- Exercise**
- Final Surrender Hearing

**Class 25 November 12, 2024****Class:**

- Lecture**
- Billing and Starting your Own Practice (**Joe Hennessey**)

**Class 26 November 14, 2024****Prior to Class:****Watch**

- Working with Clients with Serious Mental Illness (30 minutes)
- Working with Clients with Substance Use Disorder (47 minutes)

**Class:****Lecture**

- Specialty Courts and Treatment Options

**Class 27 November 19, 2024****TBA****Class 28 November 21, 2024****TBA****Class 29 November 26, 2024****TBA****DECEMBER 3rd- 8th****STUDY WEEK****TBA****FINAL EXAM**