



## ADVANCED APPELLATE ADVOCACY I

Fall 2021 | Wednesdays 9:00 A.M. – 10:45 A.M. | Remote Learning

LAW 700AS, 2 Skills Credits

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### Zoom Link

<https://miami.zoom.us/j/94079808059?pwd=dHMvY0F1VFpvV2h5aENMZC93NU9GZz09>

### 1. COURSE SUMMARY

Whether you are arguing to an appellate judge, a trial judge, or the senior partner in a law firm, you need to be able to make a strong legal argument. This class focuses on helping students develop the skills to write effectively and argue under fire. The ability to anticipate questions, deliver answers, and weave back into your argument is crucial for an aspiring attorney.

Advanced Appellate Advocacy I is an instructional program for students seeking to develop their oral and written advocacy skills. The course combines interactive writing and oral argument activities, in-class instruction, prominent alumni guest speakers, detailed feedback and video review to prepare students for the Gaubatz Competition and a future career in legal advocacy. Participation for the Gaubatz Competition is mandatory for all students; however, neither the class nor the competition will fulfill a writing requirement for graduation.

### 2. COURSE MATERIALS

Additional resources, assignments, videos, and other information will be posted on TWEN, available at <https://lawschool.westlaw.com/twen/>. One book is required reading for this course:

Name: *Making Your Case: The Art of Persuading Judges*  
Publisher: Thomson West  
Author Last Name: Scalia, Garner  
Edition: First Edition  
ISBN: 9780314184719

The following are recommended readings for this course:

Name: *Introduction to Advocacy: Research, Writing, and Argument*  
Publisher: Foundation Press  
Prepared by the Board of Student Advisers, Harvard Law School  
Edition: Eighth Edition  
ISBN: 978-1-60930-308-2

Name: *The Moot Court Book: A Student Guide to Appellate Advocacy*  
Publisher: LexisNexis  
Author Last Name: Gaubatz, Mattis  
Edition: Third Edition  
ISBN: 978-1558341951

### **3. COURSE REQUIREMENTS**

***Attendance Policy:*** Attendance at each class session is mandatory and will be taken at the beginning of each class. For the purposes of the attendance requirement, attendance at the Gaubatz Final Round on October 19 is mandatory. If, at the beginning of the semester, you know that you will not be able to attend a session, contact Jonathan Gutierrez immediately to alert him to the conflict. If a circumstance arises during the semester that will cause you to miss a class, please contact Jonathan Gutierrez to notify him of your absence. The Dean's Office must formally excuse your absence.

***Assignment Completion:*** All class assignments must be completed in accordance with the dates prescribed in this syllabus. Unless otherwise directed, they must be the product of each student's own research, legal analysis and writing. No outside assistance is permitted. Except for pre-arranged exceptions, late assignments will not be accepted.

***Oral Argument Practice Rounds:*** All students are required to participate in two non-Gaubatz competition oral argument sessions. These sessions are designed to provide you with individualized feedback on your oral argument style prior to beginning the Gaubatz competition. Students will be assigned positions to take based on the issue they briefed earlier in the semester. Issue and position assignments will be posted on TWEN. Depending on health and other concerns, these rounds will either be held at the law school or on-line. Venue and room assignments will be posted on TWEN. You are responsible for informing either Professor Sepler or Jonathan Gutierrez of scheduling conflicts.

### **4. GRADING**

This is a two-credit, pass/fail course. There are no honors grades, but a Dean's Certificate of Achievement will be awarded to the top-performing student in the class. The following criteria are considered in determining whether a student passes or fails the course: (1) attendance and timely completion of all course requirements; (2) quality of the submitted assignments; and (3) participation in the Gaubatz Competition.

### **5. CLASS INFORMATION**

This class is a guided, interactive process with an emphasis on strengthening your writing and oral

advocacy skills. This means that, in addition to substantive lectures by Professor Sepler and presentations on legal research and writing, the benefits you gain will come from how well you incorporate the feedback you receive into your future assignments. The ability to communicate is an essential complement to the ability to research legal issues.

### ANTICIPATED WEEKLY SCHEDULE

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| <p><b>Wednesday, August 25</b></p> <p><b>9:00 A.M. – 10:45 A.M.</b></p> <p><b>Course Introduction</b></p> <p>Moot Court E-Board</p>                                                | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Introduction to appellate advocacy.</li> <li>• Discuss the mini-problem.</li> <li>• Discuss Gaubatz Competition.</li> </ul> <p><b><u>Assignment:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Draft Argument.</b></li> <li>• Mini-problems and assignment instructions will be posted on TWEN by August 10 with student/team designations. <b>Students must email their Argument sections to Jonathan by 11:59 P.M. on Friday, August 27, 2021. This is an individual assignment.</b></li> </ul> <p><b>NOTE: Gaubatz registration deadline is August 29 at 5:00 P.M. and the Gaubatz problem will be released on August 31, 2021.</b></p> |
| <p><b>Wednesday, September 1</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Practicalities of Appellate Advocacy</p> <p>Lecture on Legal Research Techniques by Robin Schard</p> | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Professor Sepler will lecture on appellate advocacy in practice.</li> </ul> <p><b><u>Assignment:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Incorporate the feedback on your initial Arguments Section and re-submit the Arguments Section via email to Jonathan. Students must email this completed assignment to Jonathan by 11:59 P.M. on Sunday, September 5, 2021.</b></li> <li>• Please save the assignment as your last name – Revised Argument Section.</li> <li>• Review materials for Guest Speaker, Margaret McGaughey posted on Twen.</li> </ul>                                                                            |
| <p><b>Friday, September 3</b></p> <p><b>TIME: 10:00 – 11:45AM</b></p> <p>Guest Speaker: Margaret McGaughey</p>                                                                     | <p style="text-align: center;"><b><u>MANDATORY SPECIAL CLASS</u></b></p> <p><b><u>Class:</u></b></p> <p>Margaret McGaughey, J.D., Appellate Chief for the United States’ Attorney’s Office for the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| <p><u>Brief Writing</u></p>                                                                                                                                             | <p>District of Maine, will speak about brief writing and oral arguments in appellate practice.</p> <p><b><u>Assignment:</u></b></p> <p>Review the materials on TWEN for Guest Speaker, Olivia Kelman (Wednesday, September 8).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Wednesday, September 8</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Guest Speaker: Olivia Kelman</p> <p>Table of Contents and Table of Authorities Primer</p> | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Guest Speaker will review the brief posted on TWEN with the class and give a presentation on brief writing strategy.</li> </ul> <p><b><u>Assignment:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Work together with your assigned partner to draft a Cover Page, Table of Authorities, Table of Contents, Statement of Facts, Summary of the Argument, Standard of Review and Conclusion. Students do not need to re-submit their Argument Sections.</b></li> <li>• <b>Students must email this completed assignment to Jonathan by 11:59 P.M. on Friday, September 10, 2021.</b></li> <li>• <b>Please save the assignment as your last names – Joint Sections.</b></li> </ul> |
| <p><b>Wednesday, September 15</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Brief Writing Examples and Overview</p>                                                  | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Professor Sepler will walk through the parts of an appellate brief and his reasoning for using his chosen language.</li> <li>• Jonathan will provide examples of well written Argument and Statement of Fact sections.</li> <li>• Professor Sepler and Jonathan will answer any student questions.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Wednesday, September 22</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Mock Oral Argument</p> <p>Watch Chief Justice John Roberts Videos on Brief Writing.</p>  | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Students will watch a live oral argument from two competitors in the 2020 Gaubatz Competition.</li> <li>• Students will watch videos from United States Chief Justice John Roberts discussing brief-writing tips and pitfalls.</li> <li>• Students will watch a sample oral argument video.</li> <li>• Professor Sepler and Jonathan will answer any student questions.</li> </ul>                                                                                                                                                                                                                                                                                                         |

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|                                                                                                                               | <p><b><u>Assignment:</u></b></p> <p>Watch guest speaker oral argument video posted on TWEN.</p> <p><b>NOTE: The Gaubatz brief is due by 11:59 P.M. on September 26, 2021.</b></p>                                                                                                                                                                                                                                                |
| <p><b>Wednesday, September 29</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Guest Speaker: Anna Gutierrez Nahra Nadler</p> | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Guest speaker will give a presentation on oral argument strategy.</li> </ul> <p><b><u>Assignment:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Record oral introduction for your mini-problem. Post to TWEN by 11:59 P.M. Friday, October 1, 2021.</b></li> <li>• <b>Please save the assignment as last name – oral introduction.</b></li> </ul> |
| <p><b>Wednesday, October 6</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Practice Oral Argument</p>                        | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Students will break up into groups to deliver oral arguments on the mini-problem and receive feedback.</li> </ul>                                                                                                                                                                                                                                           |
| <p><b>Friday, October 8</b></p> <p><b>2:00 P.M. to 3:30 P.M.</b></p>                                                          | <p><b><u>MANDATORY SPECIAL CLASS</u></b></p> <ul style="list-style-type: none"> <li>• Students will incorporate oral argument feedback from their first practice round and break up into groups to deliver oral arguments on the mini-problem and receive feedback for the second time.</li> </ul>                                                                                                                               |
| <p><b>Wednesday, October 13</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p>Oral Argument Review</p>                         | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Jonathan will review general feedback from judges throughout the practice oral argument rounds and answer any remaining oral argument questions in preparation for the Gaubatz Competition.</li> </ul>                                                                                                                                                      |
| <p><b>Saturday, October 16-17</b></p> <p><b>All day</b></p>                                                                   | <p><b><u>Gaubatz Oral Argument Competition:</u></b></p> <ul style="list-style-type: none"> <li>• All competitors will have two oral arguments on Saturday done via Zoom. The top 16 teams will advance for a knockout-style competition on Sunday.</li> </ul>                                                                                                                                                                    |

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| <p><b>Tuesday October 19</b></p> <p><b>Evening</b></p>                                                                                                                         | <p><b>Gaubatz Final Round:</b></p> <ul style="list-style-type: none"> <li>• Top two teams from the competition compete in the final round. Location and time T.B.A. <u>ALL participants in Gaubatz are required to attend the final round.</u> This will take the place of class on Weds. Oct. 21.</li> </ul> |
| <p><b>Wednesday October 20</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p><b>*** Tentatively planning on bringing in the 2021 Gaubatz Winners for a short Q&amp;A***</b></p> | <p><b><u>Class:</u></b></p> <p>Professor Sepler and Jonathan will question this year's Gaubatz winners on their success in the competition. The class will have an opportunity to ask questions.</p>                                                                                                          |
| <p><b>Wednesday October 27</b></p> <p><b>9:00 A.M. to 10:45 A.M.</b></p> <p><b>Panel: Opportunities in Appellate Advocacy</b></p>                                              | <p><b><u>Class:</u></b></p> <ul style="list-style-type: none"> <li>• Guest Speakers (from the appellate court, private practice, and government practice) will discuss strategies for choosing your discipline, landing a job, and developing an appellate emphasis.</li> </ul>                               |