

First-Year Trial Practicum

Spring Semester 2007

Professor Russell Lovell

Orientation. The first Trial Practicum Orientation meeting will be held at 3 PM on Wednesday, January 31 in Cartwright Hall, Room 213. Orientation is mandatory. We will stay until all your questions have been answered.

I. Innovative Education

We hope you are excited. The American Bar Association Section on Legal Education & Admission to the Bar publishes a quarterly magazine, THE SYLLABUS, which features "Innovative Education" in the nation's law schools. Drake's First-Year Trial Practicum (FYTP) was featured in the September 2004 issue. More recently, the magazine of the American Judicature Society featured Drake's Trial Practicum: Russell Lovell, *Trial practicum integral to first-year law school curriculum*, 90 JUDICATURE 114 (Nov.-Dec. 2006). Both articles will be posted on the course TWEN site.

II. Overview of Trial Practicum Cases, 1998-2006

2006: Gillotti v. MLC Inc.

This was a civil suit against the husband and wife owners of Loco Joe's pool hall arcade near South Ridge Mall. The plaintiffs Matt Gillotti and Kyle Tapps alleged they were beaten up at the entertainment hall and bar and that owners of the business are liable for permanent injuries sustained in the attack because, in part, the business should have had better security on the night of a Chicago Cubs baseball playoff game. The jury found Loco Joe's negligent in failing to provide a safe premises, but rejected the Dram Shop claim, finding the defendant did not sell or serve beer to the assailants knowing they were intoxicated. The jury awarded \$24,531 in past medical expenses, \$500 in pain and suffering, \$500 in past loss of function, and \$4,500 in lost earnings, for a total judgment of \$30,031.

2005: Morgan v. Hairy Mary's

The plaintiff's arm and wrist were badly broken during a heavy metal concert at a popular bar near the Drake campus. The bar contended the plaintiff was drunk, lost his balance, and broke his arm in a fall to the floor while slam dancing in the mosh pit. Plaintiff contended that he was caught by surprise in the mosh pit, and that his injuries were due to the negligence of the bar in failing to warn patrons of the start of the show and to keep the moshing safe and under control. The jury found comparative fault with both sides equally responsible and awarded damages of \$24,000, which were cut in half due to plaintiff's fault.

2004: *Reed v. Carter*

Defendant rear-ended defendant in an automobile accident on Army Post Road. There was so little visible damage done, and no apparent personal injuries, that the police were not called. Thereafter, the plaintiff claimed to experience whiplash and head pain that at times was excruciating. The plaintiff has gone to the University of Missouri hospitals once every three months for an elaborate and painful treatment for her pain. The Defendant's position was similar to the All State television "swoop and squat" commercials about fraudulent claims. Defendant challenged Plaintiff's claim of whiplash, contending it was fabricated. Judge Huppert admitted evidence that years earlier in a different auto accident case this Plaintiff, after obtaining a settlement, did not need to be treated again for medical injuries. The jury entered a verdict for the Defendant.

2003: *Ladjahasan v. Iowa State University*

Ladjahasan was employed as a field technician by Iowa State University. He started having health problems, missing so many days of work that other employees donated their sick time to cover for him. Ladjahasan wanted to return to work, but only with limitations on lifting and climbing ladders. He claimed that Iowa State pressured him into applying for permanent disability status and then fired him when his application for disability was denied. Ladjahasan sued Iowa State for violation of the federal Rehabilitation Act based on discrimination for a perceived disability. The jury gave a verdict in favor of Iowa State.

This case, the first federal case to appear in the trial practicum, was tried by Judge William Jay Riley of the U.S. Circuit Court of Appeals for the 8th Circuit. In a letter sent to Drake Law School following the trial, he offered this comment: "Your accomplishment in developing this trial curriculum for first year students is exceptional. I commend Drake Law School for this remarkable program."

2002: *State of Iowa v. Brandon Sayles*

Brandon Sayles was charged with felony child endangerment after his two-month-old baby was blinded from shaken-baby syndrome. There were no eyewitnesses, however, and the evidence against Sayles was all circumstantial. Defense attorneys attempted to show that other adults had access to the child, but jurors nevertheless convicted Sayles. Many students were surprised by the verdict. Discussion centered on the credibility of witnesses and why the jurors found the defense arguments unpersuasive.

2001: *State of Iowa v. Clarence Willis*

The defendant was charged with armed robbery. The robbery occurred at the Greyhound Bus Station in downtown Des Moines. The case centered on the reliability of cross-racial eyewitness testimony and conflicting evidence. District Judge Robert Wilson presided. Judge Wilson sustained a Batson challenge which alleged the prosecution had impermissibly exercised a peremptory challenge to strike a prospective black juror from the jury panel. A 12-person jury acquitted Willis. The juror debriefing enabled the students to understand how the jurors reached consensus after an initial 9 - 3 vote for acquittal.

2000: *Ken Downing v. City of West Des Moines*

This was a Section 1983 civil case involving claims of constitutional tort and defamation. The case involved Fourth Amendment search and seizure issues, raising troubling issues as to the sweeping scope of the search of the plaintiff's home and business premises and the haphazard accounting done as to items seized. District Judge Robert Blink presided. An eight-person jury awarded Downing \$10,000 in damages. Prior to Judge Blink's post-judgment ruling on court-awarded attorneys' fees, the case was settled for \$40,000.

1999: *State of Iowa v. John Molloy*

This was a murder trial. The prosecution alleged that after a night of partying with drugs and alcohol, the defendant and two others killed the neighborhood drug dealer. Then-District (now Iowa Court of Appeals) Judge Larry Eisenhauer presided. A 12-person jury convicted Molloy of first degree murder. The Iowa Court of Appeals affirmed the conviction.

1998: *State of Iowa v. Stephen Blumberg*

This case involved a burglary charge. Blumberg was charged with breaking and entering an old apartment complex and stealing its antique ornamentation. Chief Judge Gamble presided. A 12-person jury convicted. The Iowa Court of Appeals subsequently affirmed the conviction.

III. Dates, Daily Scheduling, Lunch with the Judge Opportunity

This year's Trial Practicum is planned for the week of February 12-16 (Monday – Friday). The final schedule cannot be developed until the trial is selected and the time line set by the presiding judge. However, students should plan on the assumption their presence is required from approximately 8:30 AM to 5:30 PM, Monday – Friday, with a luncheon break.

The faculty has committed the entire week to the Trial Practicum; however, each year's case is different and the amount of time required for the experience does vary. Should the case and Practicum require less than the full week, classes will resume for the balance of the week. A copy of the actual time line for the 2003 Trial Practicum *Ladjahasan v. Iowa State University* is attached to give you a sense of both a likely time line and schedule of activities for this year. The last four years, 2003 through 2006, the Trial Practicums ran Monday through Thursday, with students returning to classes on Friday. At least one of the cases under consideration this year would take the entire five days to try.

Luncheon with the Presiding Judge. There of course is a lunch hour break each day, typically from 12 Noon to 1:15. Beginning on Tuesday, we have provided students, in groups of 25 or so, with the option of having lunch with the Judge over pizza or box lunches in the Library of the Legal Clinic. Interested students should sign up today with Clinic Assistant Jim Schneider or contact him by e-mail. If there is greater student interest

than there are available seats, we will hold a lottery. We will post the names of the students selected for each day's luncheon on the Web Site and at the Legal Clinic.

IV. TRIAL PRACTICUM MANUAL and Course TWEN Site

FYTP Manual. A Manual will be posted on the course TWEN site, with the case documents, biographical sketches of small group leaders, attorneys, and judge, selected readings on trial practice, and so forth. The Manual will be supplemented throughout the week of the Practicum.

A reading assignment will be made on Friday, February 9. Students should become familiar with all the case documents contained in the Trial Practicum Manual prior to the Monday morning session.

TWEN Site. A Trial Practicum web site will be created on TWEN. It should be operational by this weekend. This has proven to be an effective way to provide students with late-breaking information or developments, and an inexpensive way to enable student access to more information relevant to the case. Last year, for example, all the depositions were posted on the TWEN site.

Should the jury deliberations be lengthy, even going into the next week (Feb. 19), the TWEN e-mail system would be one way we would reach you in time to bring you back for the jury verdict and juror debriefing. These are highlights you do not want to miss, and the possibility that the verdict will not come in until the week of February 19 is very real this year.

V. Perspectives

The faculty intends this to be an immersion experience. There is an extraordinary amount that can be learned this week, but it requires that you apply yourself. This is not a one week vacation. In contrast to your other classes, it is not principally a textual learning experience. It is much more visual. And it of course is dynamic. It is not scripted.

You will have no classes the week of February 12. Finals are months away; the appellate brief due date will still be 2 weeks away. Don't shortchange yourself. Don't do the minimum or cut corners. Make an effort to meet and get to know the exceptional Trial Practicum faculty. Take advantage of the luncheons to get to know the presiding judge.

You are expected to be attentive—each day of the trial. You will be surprised: this will require a great deal of mental energy! But not as much as our justice system and society expect of the jurors. Unlike trials on television, the defendant will not confess on the stand and the case will not conclude in one hour. Every trial has moments when the testimony seems boring or tedious. But don't let your attention wander. It is precisely at such times when a critical piece of evidence may be elicited.

VI. Academic Credit/Attendance Policy/Make Up Work

The course is graded credit-no credit. It is a course required for graduation. While there is no examination or paper in this course, attendance is mandatory. You are expected to be engaged.

Attendance will be taken three times daily: at the beginning of the morning and afternoon sessions, and in the daily small group session. We are currently checking on the feasibility of taking attendance by running student ID's through a Bar Code Reader. We are hopeful this technology can be used and that it will both expedite the taking of attendance and ensure a more accurate record. Should this technology not be ready this year, attendance sheets will be on a table outside the Court Room and in the seminar rooms and library. It is your responsibility to sign the attendance sheet.

The length of the Practicum can vary from two to five days, depending on the length of the case and jury deliberation. **Our policy on absences takes this into account:**

- (1) When the Practicum's length is three days or less, no absences are allowed.**
- (2) When the Practicum's length is four or five days, although discouraged, you will be allowed one absence (from one AM or PM or small group session).**

The policy assumes that any absences would be for good cause, such as illness. However, regardless of the reason, **should your attendance fall below this standard, you will be required to make up the work missed by watching the videotape of each session missed and submitting typewritten notes on the proceedings observed.** The entire Practicum will be videotaped.

VII. Court Room Etiquette

First and foremost, this is a judicial proceeding. If the case is a criminal trial, a man's liberty will be at stake. This is a most serious matter. We have pledged that Drake Law School will provide a forum that will be fair, impartial, and totally professional.

You must wear your Drake I.D. card to enter the Court Room. I recommend attire that is characterized as "business casual." Baseball caps are inappropriate. Cell phones are forbidden. (Some Fifth Judicial District judges have fined attorneys \$50 if their cell phone rings in court.)

No food or drink will be allowed in the Court Room. Food and drink are allowed in the seminar rooms.

You must stand when the judge AND when the jury enters the Court Room. There should be no conversation or whispering in the Court Room during court proceedings, even to the person next to you. Should you need to leave the Court Room while the court

is in session, you must do so through the back entrance. No one will be allowed to enter or re-enter the Court Room while court is in session.

VIII. Court Room and Building Security, Student ID's

Every effort will be made to reasonably replicate the security at the Polk County and Federal Court Houses. At any given time, there will be 170 students and faculty present at the Smith Law Center for the Trial Practicum, plus an additional 25-35 students, faculty, staff, and clients working in the Legal Clinic portion of the building. The number of people in the Smith Law Center can easily approach 270 at the outset of the trial, when as many as 60 jurors arrive for the voir dire. In short, everyone's cooperation is required in order to ensure security and to avoid delay of the trial proceedings.

If the defendant is in custody, security will be provided by three deputies from the Polk County Sheriff's Office. All who enter the Court Room will be screened by a portable metal detector.

Court Room Security. You will need to bring your Drake student ID card—daily! It will be placed in a plastic security badge, which you will wear on your shirt or sweater allowing you entry into the Court Room and other Trial Practicum programs. Students are required to wear their Drake student ID where it can at all times be seen by the deputies.

There is a coat room on the first floor. For security reasons, you will not be allowed to bring your coat into the Court Room.

Book bags, briefcases, and laptop computers will not be allowed in the Smith Law Center. They will not be allowed either in the Court Room or the seminar rooms. They must be left in your car, your locker at Cartwright, or at home.

If the case is a criminal case and the defendant is in custody, the defendant will be detained in a first floor room in the south wing before the morning and afternoon sessions, and during breaks. Thus, you must avoid this area of the building during these times. Likewise, you should give the deputies plenty of room when the defendant is brought into and is exiting from the building.

IX. Casebooks, Newspapers, and Lap tops: No

The Trial Practicum seeks to put you, at various times, in the role of both juror and trial attorney. The general trial rule with juries precludes juries from taking notes.

You will NOT be allowed to bring newspapers, magazines, book bags, casebooks, or lap top computers to the Practicum for reasons that are obvious. This ban applies whether you choose to observe the trial in the Court Room or in the seminar rooms on closed circuit television.

X. Contingency Plan Should There Be No Case

Securing a case for the Trial Practicum is not something we can order from West Publishing Company or Aspen Press. Ninety-eight percent of all civil and criminal cases settle. **Let me repeat: 98% of all cases settle.** Many settlements occur on the Court House steps, immediately prior to the beginning of a trial. There are additional obstacles to inclusion in the FYTP of those cases that do go to trial. Some are unavailable for the FYTP because the parties won't consent to participation. Some are unavailable because they are continued to a later date.

Despite coordinating with the Fifth Judicial District of Iowa and the U.S. District Court on scheduling of cases, and despite constant monitoring and screening of approximately 200 cases since November 1, there is always a distinct possibility that Monday, February 12, will arrive and there will be no case.

There will be a year in which all cases settle or are continued. When this happens, we have no plans of giving up. The faculty will meet to consider available options. It is anticipated the Trial Practicum Week would be postponed, probably until the first jury trial week in April, the week of April 2-6.

XI. Small Groups & Group Rotation Between Court Room and Seminar Rooms

The entire class will be broken down into approximately a dozen small groups, generally ranging in size from 10 to 15. Each group will have one or more group leaders drawn from faculty, clinical faculty, attorneys, and judges who are volunteering their time and who are observing the same case with you. Your group assignment will be posted on the TWEN site on Friday, February 10.

We will add folding chairs to the Court Room to supplement its seating capacity. There will be 110 or so seats available to students in the Court Room at any one time. We have not found it necessary to institute a formal rotation policy to ensure that every student gets to observe significant portions of the trial in the Court Room.

XII. Enjoy the Buzz, But Avoid Contact with Jurors and the Defendant

Nine years' experience promises there will be an incredible BUZZ of discussion during each break and following each court session. We very much want students to discuss the case in all of its dimensions, during breaks, over the lunch hour, after hours, and for weeks thereafter.

Still, students must be aware they should not discuss the case in the presence of jurors. Students have access to materials and case law that have not been placed into evidence and will not be known to jurors. Jurors will have a room of their own on the second floor, south wing, which they will use before both the morning and afternoon sessions and during breaks. Jurors will use the restrooms on that floor as well. Students

must avoid the second floor, south wing; likewise, students must avoid the southside entrance during breaks as jurors will be allowed to smoke there.

Once the case has been submitted to the jury, jurors will move to the Holiday Inn Express conference room. Students will have access to the entire Smith Law Center building and can discuss the case freely, without worry of a mistrial.

XIII. Enjoy the Experience

Much of the above memorandum discusses the responsibility we have as the host institution to ensure the integrity of the trial we will witness. It is intended to impress upon you this is serious business. At the same time, you are not the litigants, the attorneys, the judge, or jurors. And you do not have their pressures! You are observers of the penultimate experience of our profession: the adversarial jury trial.

You will learn the trial is a story, and I believe you will find the search for the truth fascinating. I predict your confidence in the justice system will be bolstered by what you observe. I hope you enjoy the trial and the educational program built around the Court Room proceedings.

Make the most of this experience!