

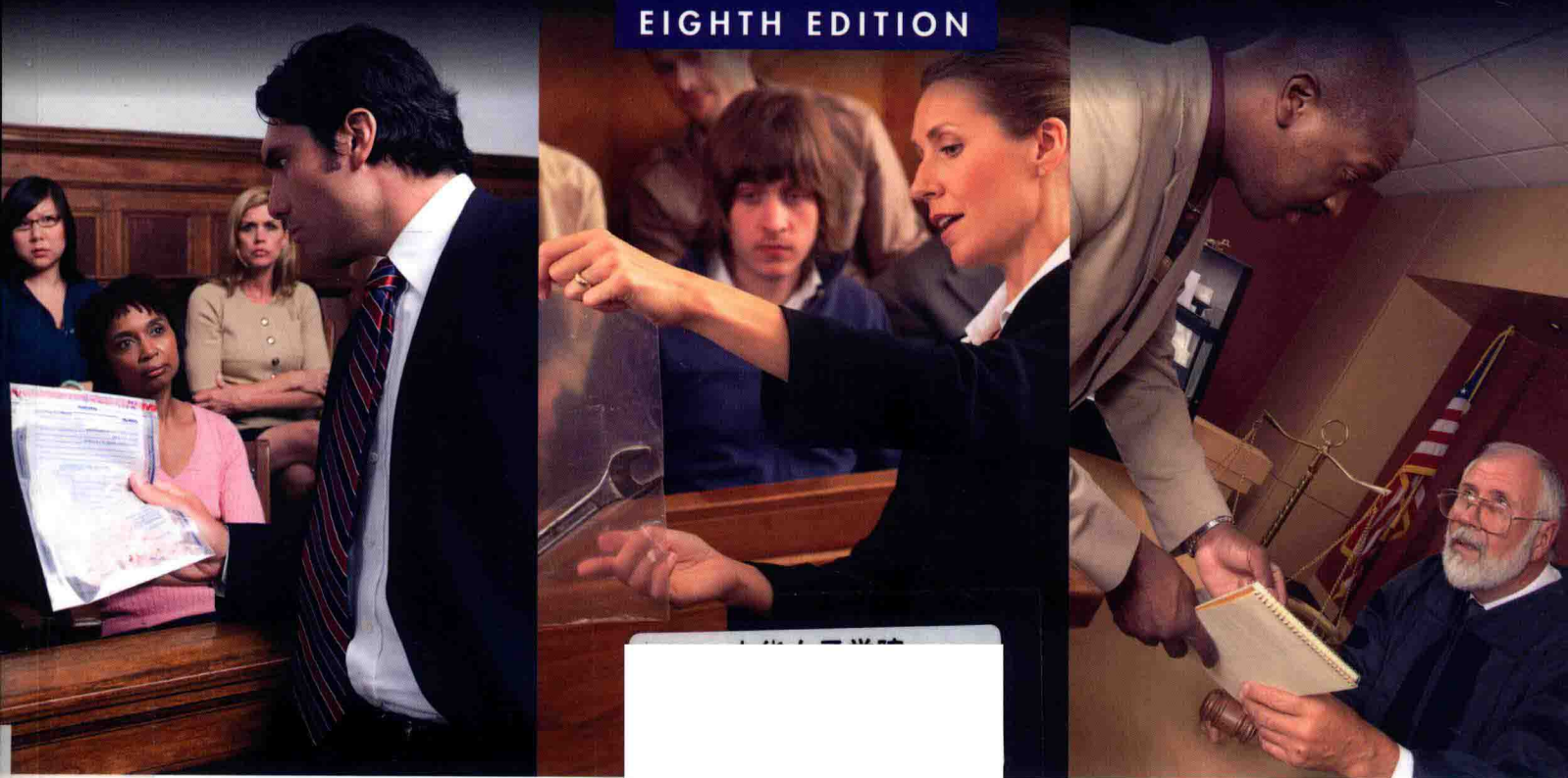
ASPEN COURSEBOOK SERIES

Thomas A. Mauet • Warren D. Wolfson • Stephen D. Easton

MATERIALS IN TRIAL ADVOCACY

PROBLEMS AND CASES

EIGHTH EDITION



Wolters Kluwer

ASPEN COURSEBOOK SERIES

MATERIALS IN TRIAL ADVOCACY

PROBLEMS AND CASES

Eighth Edition

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MATERIALS IN TRIAL ADVOCACY

PROBLEMS AND CASES

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PREFACE

This book presents a progressive series of problems, cases, and trial files. They can be utilized for semester courses in trial advocacy as well as in post-graduate programs for trial lawyers. The problems are organized to parallel the various stages of a jury trial. Each chapter contains a mix of civil and criminal problems of increasing difficulty, allowing for substantial assignment selection. The problems present situations that commonly occur during civil and criminal trials. They are designed to develop basic trial skills. Chapter 7 contains a dozen cases involving two opposing witnesses that can be used as advanced direct and cross-examination problems, as opening statement and closing argument exercises, and as short trials or hearings. The last chapter, Chapter 9, contains overviews of 14 trial files, each having two to four witnesses per side, that can be used during the semester or as a final trial at the end of the course. The trial files are in the Companion Website that accompanies the book. Each trial file can be effectively tried to a jury in approximately three to four hours.

The organization and design of the problems are a result of our experiences as trial lawyers, judges, and trial advocacy teachers. In our view, some of the other available trial advocacy teaching materials are too lengthy and complex. Often these materials base problems on complete case files, requiring the reading of an entire case to prepare one problem. This results in assignments being an exercise in reading and memory, not in trial techniques. The problems in this book, on the other hand, have two principal characteristics. First, they are efficient and self-contained, often being only two or three pages long. Second, each problem emphasizes a specific trial skill that is essential to every competent trial lawyer.

Many of the problems, cases, and trial files are based on actual cases that we have tried during our years as trial lawyers or as judges or those that otherwise have come to our attention. In redrafting the materials for this book, we have converted the actual dates into a now commonly used system of stating dates based on their relationship to the present year. For example, “[-1]” means one year ago, “[-2]” means two years ago, and so on. For example, this year being 2015, the date of “6/15/[-1]” is June 15, 2014; “August 1, [-2]” is August 1, 2013. Through this device the dates can be kept realistic.

Finally, we must point out difficulties created by the mock trial setting. Obviously, testimony in that setting gets shaped and at times created by the students. There is perhaps a danger that students will confuse the mock world with the real world. In a mock trial, lawyers cannot know what the truth is because there is no truth: Everything is made up. In the real world, lawyers often know what the truth is and do the best they can to deal with it. Those attempts should lead to serious and important discussions about the nature of the adversary system and a lawyer's ethical obligations and sense of morality.

This book is designed to help teach trial techniques to people who want to learn them and who eventually might have to use them. We do not want to discourage discussion about the lawyer's role and duties in the real trial world; nor do we want our purpose diluted by a confusion of the mock with the real. We rely on the teachers to point out the differences.

What's New in the Eighth Edition

Materials in Trial Advocacy has been used for over 30 years. Since 1981 we have received numerous suggestions for additions, deletions, and modifications. We always welcome these suggestions and have incorporated many of them over the years, so that the present edition is substantially different from the first. The principal changes in this eighth edition are listed here:

First, we replaced essentially all of the photographs with new photographs, which were taken by skilled photographer Amanda Merullo. Frankly, some of the images were starting to get a bit dated, so it was time for a comprehensive update. Thanks to Amanda's efforts, you now have photographs of modern cars, buildings, and exhibits.

Next, we replaced most of the other graphics with new versions. University of Wyoming College of Law students Jeff Van Fleet and Skyler Bagley did the work of creating the new images. We are grateful for their many hours of effort and their talent.

Whenever possible, we changed the names of witnesses to gender-neutral names. This should make it easier for those of either gender to play most of the witness roles.

Finally, we added two new problems. One, Problem 7.12, involves a police officer's seizure of a cell phone during a search incident to arrest. The other, Problem 4.27, involves the admissibility of a social media post. The latter is actually several problems, because we have created over two dozen contexts for this problem.

The intent, in all instances, was to modernize the book while retaining and advancing the core concept of presenting real world problems that raise the kinds of issues that arise in actual trials. We hope you will be pleased with the additions and changes in this eighth edition.

Acknowledgments

We would like to thank John Mollenkamp, who developed the 9.14 files with one of the co-authors at the University of Missouri School of Law. We would also like to thank Ms. Shannon Snow for her assistance in researching and drafting the medical records for *Jennifer Smith v. Kelly Davis, M.D.* (9.12). We would also like to thank Professor Mary Rita Luecke of DePaul College of Law for contributing supplemental material, including the drawings in Problems 7.2, 7.6, and 7.9, as well as the defense file memo for Problem 7.7 that is included in the Teacher's Manual. We also would like to thank Professor Tawnya Plumb, Electronic Services Librarian at the University of Wyoming College of Law's George W. Hopper Law Library, who provided invaluable research assistance and University of Wyoming Professor Elaine Welle, who provided guidance about the law. Finally, we would like to thank Joe Bevington and Skyler Bagley, students at the University of Wyoming College of Law, for their amazing technical assistance in updating the graphics and Amanda Merullo for her diligence and skill in finding and photographing the assorted items in the problems and trials.

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January 2015

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JURY SELECTION

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