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Lesson: Criminal Trial Notebook

- 1 Explain the suggested tabs for the criminal trial notebook.**
- 2 Summarize the paralegal's role in preparation of the criminal trial notebook.**

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■ **Equipment, Tools, Supplies, and Facilities**

- ✓ Overhead or PowerPoint projector
- ✓ Visual(s) from accompanying master(s)
- ✓ Copies of sample test, lab sheet(s), and/or other items designed for duplication
- ✓ Materials listed on duplicated items
- ✓ Computers with printers and Internet access
- ✓ Classroom resource and reference materials

■ **Key Terms.** The following terms are presented in this lesson (shown in bold italics):

- ▶ Memorandum of Law
- ▶ multitasking
- ▶ Orders of the Court
- ▶ outsource
- ▶ statutes
- ▶ stipulations

- **Interest Approach.** Use an interest approach that will prepare the students for the lesson. Teachers often develop approaches for their unique class and student situations. A possible approach is included here.

Paralegals help lawyers prepare for court hearings and trials. They may handle client interviews, draft legal documents, research legal cases, and summarize and organize information. Paralegals working in criminal law may find and interview witnesses, obtain and read police reports, summarize information, write and file plea agreements, meet with probation officers, and prepare presentations that will be given by the attorney before a grand jury. One main role is to assist with the preparation of the trial notebook.

CONTENT SUMMARY AND TEACHING STRATEGIES

Objective 1: Explain the suggested tabs for the criminal trial notebook.

Anticipated Problem: What are the suggested tabs for the criminal trial notebook?

- I. Criminal trial notebook purpose and organization
 - A. The purpose of the trial notebook
 1. The trial notebook will ensure that the attorney effectively and seamlessly presents the case.
 2. It should ensure that all points are presented and that evidence is properly admitted.
 3. The trial notebook should make a positive (due to the attorney's preparation and organization) impression on the judge and jury.
 - B. Criminal trial notebook tabs and sub-tabs: There is no one way to create a trial notebook, but most criminal trial notebooks have the same basic tabs. Yet sub-tabs and the order of the tabs themselves may differ. Basically the notebook has to serve the needs of the litigating attorney. Therefore, one organizational style may work for one attorney while another style may work best for another attorney.
 1. In a criminal case, the government generally brings charges in one of two ways:
 - a. A suspect may be accused directly in a "bill of information" citation (ticket).
 - b. Evidence may be brought before a grand jury to allow that body to determine whether the case should proceed. In this case, a copy of the indictment is filed.
 2. Plea negotiation—Behind this tab will be any correspondence and communication with the prosecuting attorney regarding proposed dispositions of the case.

3. Preliminary hearing (if the crime is a felony)
 - a. Statute for the crime charged (and statutes for all lesser and included crimes)
 - b. The charging instrument
 - c. Police report
 - d. Witness statements, exhibits supporting the report, specified questions for witnesses, etc.
4. Jury information
 - a. Sub-tabs for each juror
 - b. The questions asked and answers given during the voir dire session
 - c. Juror instructions
5. Opening statements/closing statements—There should be a typed summary or outline of the comments the trial attorney plans to say regarding his or her theory of the case.
6. Exhibits
 - a. Investigative discoveries
 - b. Medical/psychiatric reports
 - c. Other reports
7. **Memorandums of Law** are documents prepared by attorneys to support legal arguments. They contain legal arguments based on the lawyer's understanding of the law applicable to the issues and often are supported by citations to legal authority.
8. Pleadings are the legal documents filed in a lawsuit, petition, motion, and/or hearing, including complaint, petition, answer, demurrer, motion, declaration, and memorandum of points and authorities.
9. Substantive motions are independent actions made that may be expected or unexpected.
 - a. Motion for summary judgment
 - b. Motion to strike
 - c. Motion for a new trial
 - d. Motion in limine
10. **Orders of the Court** (an official proclamation by a judge or panel of judges) are the legal relationships between the parties to a hearing, trial, or appeal or other court proceedings. Such a ruling requires or authorizes the carrying out of certain steps by one or more parties to a case. A court order must be signed by a judge. Some jurisdictions require it to be notarized.
11. **Stipulations** are agreements about certain facts and issues by the opposing attorneys.
12. Witnesses may have their own binders.
 - a. For the prosecution
 - b. For the defense
13. Transcripts are official reports of what has transpired.

14. Legal research
 - a. Cases—This sub-tab will contain supporting cases not used in the memorandums or motions that support any issue the attorney anticipates will be an issue at the trial.
 - b. **Statutes** are written laws set down by a legislature originated with national, state legislatures, or local municipalities. Statutory laws are subordinate to the higher constitutional laws of the land. This tab will include any statutes that apply to the issues in the case or arguments the attorney intends to make at trial.
 - c. Court rules are an acknowledgement of the court; the case is filed in the rules specific to that court.
15. A closing statement is a summation by each attorney to reiterate the important points of the case.
16. There should be an attorney's master file of all of the above tabs with special color or system coding.

Teaching Strategy: Have the students research different legal supply vendors online. Have them research what a binder and actual tabs look like. Ask them how the actual products confirm their recent knowledge of notebook layout and organization. Ask how a paralegal would be involved with each of these tabs as a preparation for the next objective.

Objective 2: Summarize the paralegal's role in preparation of the criminal trial notebook.

Anticipated Problem: What is the paralegal's role in preparation of the criminal trial notebook?

- II. The paralegal's role in preparation of the trial notebook
 - A. It is the paralegal's foremost duty to insure that the attorney looks and is organized and efficient in front of the judge and jury.
 1. The paralegal organizes the content for the attorney's notebook.
 2. The paralegal prepares a paralegal binder.
 3. The paralegal has a copy of the master lists (e.g., witnesses, exhibits, and evidence) readily available.
 4. The paralegal adheres to a dated checklist to make sure there is enough time to prepare everything needed.
 5. The paralegal takes notes on a prepared group of forms (e.g., lists of exhibits introduced by the other attorney and other information as noted by the attorney).
 - B. The paralegal must be organized.
 1. The paralegal must get the notebook organized and help the attorney organize his or her materials.

2. The trial notebook is a tool for organization and preparation.
 3. As the paralegal begins to prepare the format and file pertinent pieces into the tabbed sections, he or she will be able to observe and list what is there and notice what is missing as well as what needs to be completed.
 4. While the paralegal is working on the tabbed section of exhibits, he or she may notice a reference on the master exhibit list to an unfinished or mislabeled exhibit. The organizing of the tabbed section helped to reveal that some additional work on the contents of the section was needed.
 5. The paralegal may work on multiple sections of the notebook in the same day. **Multitasking** (performing several tasks simultaneously) is the “norm.”
 6. The paralegal may notice many missing pieces and may be pulled in many directions by other cases or managing supervisors. A careful list of pending items must be kept.
- C. In addition to organizing, the paralegal may complete the following specific tasks in preparation of the trial notebook.
1. He or she may prepare summaries of deposition testimony.
 2. The paralegal may prepare an indexed list of witnesses and names involved with the trial.
 3. He or she may create a referenced list where information on a person or exhibit can be found in the notebook.
 4. The paralegal may provide summaries of documents (e.g., financial statements or arrest documents).
 5. He or she may **outsource** (hire out jobs to professionals or consultants) exhibit production to professional graphic consultants.
 6. The paralegal may prepare sample questions for juror selection, witnesses, etc.
 7. He or she may research, index, and summarize material on legal theories.
 8. The paralegal may run copies of the notebook, hole punch the papers for the notebook, etc.
 9. He or she may complete legal research.
- D. It is never too early to begin. The recommended time frame to begin organizing the trial notebook contents is 90 to 120 days out. The decision of when to begin and what to begin working on is best made with input from the attorney and firm.
1. Many firms have strict schedules regarding the preparation of trial notebook sections.
 2. The document prepared by Betsy Horn regarding notebook preparation and time frames is an excellent starting point. It can be found at <http://txpd.org/TPJ/08/horn.html>.
 3. Another helpful document with example sections and logs can be found at http://www.delmarlearning.com/companions/content/1428323449/downloads/Exhibits_11-1_thru_11-11.pdf.

Teaching Strategy: Have the students further research the Betsy Horn piece referenced above. Have them summarize their findings. Use VM–B. Assign LS–A.

- **Review/Summary.** Use the student learning objectives to summarize the lesson. Have students explain the content associated with each objective. Student responses can be used in determining which objectives need to be reviewed or taught from a different angle. If a textbook is being used, questions at the ends of chapters may be included in the Review/Summary.
- **Application.** Use the included visual master(s) and lab sheet(s) to apply the information presented in the lesson.
- **Evaluation.** Evaluation should focus on student achievement of the objectives for the lesson. Various techniques can be used, such as student performance on the application activities. A sample written test is provided.

■ **Answers to Sample Test:**

Part One: Matching

1. e
2. a
3. c
4. d
5. f
6. b

Part Two: True/False

1. F
2. F
3. F
4. T
5. T
6. T

Part Three: Short Answer

1. Answers may vary slightly, but they should include the following:

Legal Research

Cases—this sub-tab will contain supporting cases not used in the memorandums or motions that support any issue the attorney anticipates will be an issue at the trial. Statutes are written laws set down by a legislature originating with national, state legislatures or local municipalities. Statutory laws are subordinate to the higher

constitutional laws of the land) any statutes that apply to the issues in this case or arguments the attorney intends to make at trial

Court Rules—acknowledgement of the Court the case is filed in the rules specific to that Court

2.
 - Choosing a jury
 - Opening statements
 - Witness testimony and cross-examination
 - Closing arguments
 - Jury instruction
 - Jury deliberation and verdict

Criminal Trial Notebook

► Part One: Matching

Instructions: Match the term with the correct definition.

- | | |
|------------------------|-----------------|
| a. Memorandums of Law | d. outsource |
| b. multitasking | e. statutes |
| c. Orders of the Court | f. stipulations |

- _____ 1. Written law set down by a legislature originate with national, state legislatures or local municipalities
- _____ 2. “May be prepared by an attorney to support a legal argument, which is similar to a brief but with less attention to legal writing formalities. It contains legal arguments based upon the lawyer’s understanding of the law applicable to the issues and is often supported by citations to legal authority”
- _____ 3. An official proclamation by a judge (or panel of judges) that defines the legal relationships between the parties to a hearing, trial, or appeal or other court proceedings
- _____ 4. Hire out jobs to professionals or consultants) exhibit production to professional graphic consultants
- _____ 5. An agreement about certain facts and issues by the opposing attorneys
- _____ 6. Performing several tasks simultaneously

► Part Two: True/False

Instructions: Write **T** for true or **F** for false.

- _____ 1. Indexed list means the same as a contents page.
- _____ 2. The time to start organizing the trial notebook is 30 days out.



- _____ 3. It is the exclusive job of the attorney to organize the trial notebook.
- _____ 4. A medical/psychiatric report is an example of an exhibit.
- _____ 5. Typically a binder is made for the information associated with each witness.
- _____ 6. The Plea Negotiation tab contains any correspondence and communication between the Prosecuting Attorney regarding proposed dispositions of the case.

► Part Three: Short Answer

Instructions: Answer the following.

1. Explain the information found in the Legal Research tab.
2. List the six procedural steps of a criminal trial as presented in class.

CRIMINAL TRIAL PROCEDURES

Criminal trials follow a firm process of events designed to bring resolution to a case that was not able to resolve issues outside of the courtroom. These steps include:

- ◆ Choosing a jury
- ◆ Opening statements
- ◆ Witness testimony and cross-examination
- ◆ Closing arguments
- ◆ Jury instruction
- ◆ Jury deliberation and verdict

The criminal trial notebook, to some degree, follows the above steps.



TRIAL AND NOTEBOOK CHECKLIST

Even though this document refers to a military court and system, take time to note the similar layout of the notebook and, more importantly, the reverse chronological order of preparation:

http://www.loc.gov/rr/frd/Military_Law/pdf/Crim-Law-Deskbook-8-3-12_Vol-3.pdf

The list in Tab B above, serves as a to-do list for the attorney and paralegal.

See Tab B for a chronological checklist.



Criminal Trial

Purpose

The purpose of this activity is to deepen your understanding of the role of the criminal law paralegal.

Objective

Research paralegal-related career information that can be added to the Senior Portfolio or ICP.

Materials

- ◆ computer with Internet capability
- ◆ paper
- ◆ writing utensil

Procedure

1. There are many areas that require paralegals that specialize in criminal law, including prosecutor's offices, criminal defense attorney's offices, public defender's offices, prisons, district attorney's offices and courts.
2. Using the school-based as well as community based resources, research each of the above fields and the use of paralegals in each area.
3. Search for statistics and income information.
4. Also use Internet based search engines and sites such as Department of Employment Security, Department of Labor, ONet, and other career sites to round out your research as well as to look for job openings and projected job growth.
5. Gather and summarize your findings.
6. Outline and organize your information.
7. Create a presentation of your findings (formal paper, poster, PowerPoint or other.)
8. Include in your presentation your opinions of these areas and why or why not you may consider working in these areas.

