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GUIDE TO DISTRICT COURT

Edited by Ericka Familia, Eva Frazier, Joel Rakhamimov, Makenna Walko, and Juliet Bu

INTRODUCTION

Welcome to District Court, your opportunity to explore the heart of the American legal system—a speedy trial with a jury of one's peers and a staunch presumption of innocence yielding only when guilt is proven. Here you will alternate between counsel, witness, and juror, crafting arguments and carefully weighing the facts.

During your time in District Court, remember that you are not performing in a mock trial competition: there will be no scorekeeping or point tallying. Rather, your goal will be that of an attorney, to convince a jury that you, and not your adversary, can meet the burden of proof; that of a witness, presenting the facts that help your side of the case in a credible manner; or that of a juror, impartially weighing the facts presented before you. The presiding judge will solely be concerned with ruling on objections and providing you with personalized feedback on your performance.

When it is your turn to present a case, you and five other delegates, who will most likely be from your school, will take on the roles of attorneys and witnesses. As an attorney, you will have a chance to present your side of the case, poke holes in the stories of opposing witnesses, and deliver statements to aid the jury in their understanding of the case. Witnesses will flesh out the story, delivering their testimony in a realistic manner and protecting themselves during cross-examination. Your duty as a jury member will be to set aside preconceived notions, sift through the evidence, and reach a verdict.

GETTING STARTED

Before the Conference

Before the Conference:

- Complete pre-conference assignments
- Carefully read the court cases and any updates.
- Confer with your teammates and develop a case theory, or the reasoning that you and your teammates will argue to prove that the jury should rule in your favor. "Teammates" means everyone, not just the attorneys. A successful team is one in which both attorneys and witnesses are on the same page.

- Anticipate what your adversary will argue. These cases are not airtight. Rather, there is a great deal of room for creativity and diversity in argument. Attempt to think of every possible way your adversary will present the evidence and prepare accordingly.
- After, write a base set of questions for witnesses that you will create a story of the presented facts for your jury to believe. Attorneys and witnesses should prepare these questions together and run through them in preparation. However, also be prepared to improvise this base set of questions as your opponent may have a slightly different interpretation of the facts.
- Write opening and closing statements with several limitations in mind. First, you will not know the gender of the opposing witnesses until a few minutes before the trial begins. Make sure you practice discussing the witnesses as any gender. Second, keep in mind that there will be time constraints. Time management is key. Finally, be prepared to improvise. Perhaps an objection will be sustained that prevents one of your witnesses from discussing certain facts that you planned to include in your summation. A strong closing statement will accurately reflect what occurs in the courtroom.
- Witnesses should dissect their statements for facts that are both helpful and hurtful to their respective sides. The hurtful facts will most likely become points of contention on cross-examination. With that in mind, attorneys should aid witnesses in practicing their cross-examinations and devising strategies to defuse any possible damage.
- Practice objections and objection responses. Chances are you will want to ask some potentially objectionable questions that are nevertheless crucial to advancing your case theory, and chances are you will be able to predict some potentially objectionable questions the other side may want to ask. The only way to get those questions in is to be able to defend them.

General Rules

The following is a set of general rules by which you will be required to abide:

- Before the conference begins, you will be notified of the cases and which sides (prosecution/plaintiff or defense) your team will present on what is called a "docket." As a jury member, you will sit in on the remaining trials.
- Teams will be comprised of six members: three attorneys and three witnesses.
- Each attorney must deliver a direct examination and a cross examination, and no attorney may deliver both the opening and closing statement. Here are the combinations of the parts the three attorneys on each team will deliver:
    - Attorney #1: 1 direct examination and 1 cross examination
    - Attorney #2: 1 direct examination, 1 cross examination, and the opening statement
    - Attorney #3: 1 direct examination, 1 cross examination, and the closing statement
- Many of the witnesses' names are intended to be gender neutral, and jury members will be instructed to disregard pronoun discrepancies. Anyone can

portray any witness, regardless of gender. If there are any concerns in this regard, please reach out to staff.

- Each case consists of stipulations, documents, and six witness statements. The stipulations, including the statement of facts, will not be disputed at any time during the trial.
- All witnesses must be called by their appropriate sides. Witnesses will be sequestered prior to testifying, meaning they will not have heard the testimony of other witnesses in the case.
- While preparing for the trial, delegates may read outside materials to gain a general understanding of the law and are encouraged to do so, should the need arise. However, they may only cite the materials given and introduce into evidence those exhibits given in the case materials. Students may not use, even for demonstrative purposes, any materials, props, or enlargements that are not provided. However, when necessary, HMC will provide teams with appropriate props (i.e. maps, photos, etc.). Witnesses may use costumes, make-up, and accents should teams find such use advantageous, but the prohibition of props and demonstratives still applies to witnesses.

Trial Format

Witnesses

Witnesses are bound by the facts found in the witness statements and must adhere to them. All participants agree that the statements are signed and sworn affidavits. In addition:

- Witnesses may give minor embellishments as long as the embellishments can be reasonably inferred from the Statements of Fact and do not contradict with their own affidavits (the presiding judge determines what is and what is not reasonable). If a witness is asked a question on cross-examination and the answer is not in the affidavit, the witness may invent an answer consistent with other facts in the trial and with the affidavits of the witnesses. In general, the answer must be reasonable. Do not, however, rely on making things up as you go along. Witnesses can easily get confused and end up perjuring themselves or damaging their credibility.
- On direct examination, the witness is limited to the facts given. If a witness gives testimony that contradicts the facts given in the witness statement, that testimony may be impeached only on cross-examination by the opposition through the correct use of the affidavit (that is, point out the contradiction on cross-examination by introducing the witness' statement to the court). This is outlined in the Simplified Rules of Evidence.
- On cross-examination, no restrictions will be placed on the witness or the cross-examination subject to the Simplified Rules of Evidence, except that the answer must be responsive and that the witness can be impeached.
    - Note: If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit, then the witness may respond to that question with any answer as long as the answer is not contrary to the affidavit.

- If the answer by the witness is actually contrary to the stipulated affidavit, the cross-examination attorney may impeach the witness, described further below.
- If a witness invents an answer that is likely to substantially affect the outcome of the trial (for example, if a witness other than the defendant in a murder trial states, "I killed him"), the opposition should object immediately and ask for a bench conference; the presiding judge will decide whether to allow the testimony.
- If certain witnesses are stipulated as experts (doctors, law-enforcement officials, etc.), their expert qualifications may not be challenged or impeached by the opposing side. Their testimony concerning the facts of the case, however, may be challenged. Simply knowing your witness statement very well does not make you an expert witness.
- Before being called, witnesses will be considered to be outside the courtroom. Once called, witnesses must remain present for the duration of the trial.

Attorneys

Student attorneys must participate with a presentation in the trial as follows:

- Attorneys are limited to calling their own witnesses, they must call all of their witnesses, and they may not re-call any witness.
- Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying.
- To allow the judge and the jury to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and whenever speaking to the judge.
- Student attorneys should always feel free to request bench conferences to clear up any procedural or factual questions. One representative from each side must be present for all bench conferences.

Trial Procedures

The following is the set of procedures that will guide trial proceedings:

1. Bailiff enters room.

   He or she calls out, "All rise. The United States District Court for the District of _____ is now in session. The Honorable Judge _____ presiding." All participants remain standing until judge is seated.

2. Opening Statements

   Prosecution (in criminal case)/Plaintiff (in civil case): The prosecution/plaintiff summarizes the evidence that will be presented to prove the case, always framing what s/he says in what the trial will show, what the evidence and witness testimony will demonstrate, and so on.

   Defense (in criminal case)/Respondent (in civil case): The defendant's attorney summarizes the evidence that will be presented to rebut the case the prosecution

has made, always framing what s/he says in what the trial will show, what the evidence and witness testimony will demonstrate, and so on.

3. Direct Examination of Each of the Plaintiff's Witnesses by the Plaintiff

Testimony and other evidence to prove the prosecution or plaintiff's case is presented. Attorneys may wish to call witnesses so that their testimony fits chronologically into the overall story (and as outlined by the attorney in the opening statement), although all teams should feel free to call the witnesses in whatever order they feel would present their case-in-chief in the most cogent manner.

4. Cross-Examination of Each of the Plaintiff's Witnesses by Defendant's Attorney
Clarify or cast doubt upon testimony of opposing witnesses. The cross-examination of a given witness should take place directly after the direct examination of that witness.

5. Redirect/Re-cross (Optional)

Any redirect examination is limited to scope of cross-examination. Only *two questions per team* are permitted. If the prosecution or plaintiff chooses to redirect the witness, then the defense is entitled to a re-cross examination, although no attorney should feel obligated to use re-cross – it is optional. Re-cross is limited to two questions as well.

6. Resting of Prosecution/Plaintiff's Case-in-Chief

The defendant's case proceeds when the prosecution "rests." At the end of the cross-examination of the final prosecution/plaintiff witness, an attorney from the prosecution/plaintiff will stand and say to the judge, "Your Honor, at this time, the Prosecution/Plaintiff has no more witnesses to call and therefore rests." In a real trial, however, if the prosecution's basic case has not yet been established, the judge can end the trial by granting the defense a motion to dismiss (in a civil case), or by entering a directed verdict (in criminal cases). In HMC District Court, however, motions for a directed verdict or dismissal are not considered.

7. Direct Examination of Each of the Defendant's Witnesses by the Defendant's Attorney

The procedure for direct examination of defense witnesses is the same as the direct examination of the prosecution/plaintiff's witnesses with the roles of the prosecution/plaintiff and defense witnesses and attorneys switched.

8. Cross-Examination of Each of the Defendant's Witnesses by Prosecution's or Plaintiff's Attorneys

The cross examination of defense witnesses is the same as the cross examination of the prosecution/plaintiff's witnesses with the roles of the prosecution/plaintiff and defense witnesses and attorneys switched.

9. Redirect and Re-Cross

The procedure for redirect and re-cross examination of defense witnesses is the same as the redirect and re-cross examination of the prosecution/plaintiff's witnesses with the roles of the prosecution/plaintiff and defense witnesses and attorneys switched.

10. Closing Arguments:

Prosecution/plaintiff: the prosecution/plaintiff will present closing arguments first. The attorney who presents the statement will use the evidence presented during trial (as opposed to what evidence the attorney expected to come out during trial) to argue in favor of his/her side of the case, making use of any and all helpful testimony or exhibits admitted during trial that s/he wishes.

Defense/Respondent: the defense will present closing arguments second. The attorney who presents the statement will use the evidence presented during trial (as opposed to what evidence the attorney expected to come out during trial) to argue in favor of his/her side of the case, making use of any and all helpful testimony or exhibits admitted during trial that s/he wishes.

11. The presiding judge will review the legal issues at stake, and jury will retire to deliberate.

While the jury is deliberating, the judge will lead a discussion with the attorneys and witnesses about the manner in which both sides presented the case. This is the time to have all questions answered and to clarify points that the team may not have understood in the case. Here you will receive personal feedback that you can keep in mind for any public speaking that you will do in the future, not only for further rounds.

GUIDELINES

These guidelines outline various techniques and tips to be followed by witnesses and attorneys. Included are suggestions for preparation and presentation:

In General

- Always be courteous to witnesses, other attorneys, and the judges. Remember that the courtroom is a place of respect where only the facts of the case are to be argued.

- Rise when addressing the courtroom/judge.
- Direct all remarks to the judge, jury or witness, not to opposing counsel. This especially applies to objections.
- Attorneys and witnesses should always remember to speak clearly and succinctly. Concise questions and answers are much more effective than loquacious ones. Similarly, witnesses want to highlight points, not lose them in long answers.

In addition, there are a few "nevers" you should consider:

- Never let a run-on question smother your point.
- Never ask too many questions.
- Never badger a witness or argue with him or her.
- Never get overly theatrical. Movement in the courtroom seems like a great tool for emphasis, but, if used in excess, it distracts the attention of the jury.
- Even if one of your points is kept out by an objection, do not let it rattle you. Remain poised. A confident attorney or witness exudes credibility.
- No matter how much you may dislike or disagree with the judge, never argue with him or her. The judge's ruling is final. As in a real trial, attorneys or witnesses who are out of order will find themselves thrown out of the courtroom (or even in jail).

For Attorneys

Opening Statements

Objective: To acquaint the jury with the case and outline what you are going to prove through witness testimony and the admission of evidence. This is the jury's first impression; your opening statement should be substantive and engaging. It may sound more like a speech than other parts of the trial. In your preparation, include:

- A short summary of facts (this is most important for the prosecution).
- A clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case. Know all names of witnesses and relevant places. Be sure to keep in mind the genders of witnesses from the opposing side.
- Mention the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in this case. Reference the applicable law.

Direct Examination

Objective: To obtain information from the witnesses you call in order to prove the facts of your case; to present enough evidence to warrant a favorable verdict; to present your witness to the greatest advantage; and to establish your witness' credibility. In preparing, endeavor to:

- Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
- Make sure that all of the items you need to prove your case will be presented through your witnesses.
- Use clear and simple questions.
- Never ask a question to which you do not know the answer.
- Cease questioning when your facts are in evidence. Say "No further questions, Your Honor" and return to your seat.
- Keep the objections in mind when framing your questions and try to phrase potentially objectionable material in a non-objectionable way.
- Limit questions to the information presented in the witness's own statements. Keep to the questions you have practiced with your witnesses and ask a limited number of questions. At the same time, listen to the answers. If nerves get a hold of your witness, be able to rephrase a question in a way that will jog his or her memory.
- If you need a moment to think, do not be afraid to ask for a moment to collect your thoughts, or, better yet, to discuss a point with your co-counsel.

Cross Examination

Objective: To obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to you, to discredit him or her (i.e. make the witness less believable). In preparing, consider asking the following types of questions (that are typically not open-ended):

- Questions that establish that the witness is not telling the truth on important points (e.g., the witness first testifies to not being at the scene of the accident and later admits to being there). This is called impeaching the witness, which will be explained later.
- Questions that show that the witness is prejudiced or biased or has a personal interest in the outcome (e.g. the witness testifies that he or she has hated the defendant for years).
- Questions that weaken the testimony of the witness by showing the information he or she has given is questionable (e.g. the witness with poor eyesight claims to have observed all the details of a fight that took place 100 feet away in a crowded bar).
- Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (e.g. a psychiatrist testifying to the defendant's need for dental work or a high school student testifying that in his opinion the defendant suffers from a mental disease).
- Questions that reflect on the witness' credibility by showing that he or she has given a contrary statement at another time (e.g., the witness testifies to the exact opposite of what he/she testified to during the pre-trial hearing).

- Ask questions that can be answered with a simple "yes" or "no." Don't ask questions which allow the witness to sidetrack your argument or defend their answers.
- Questions are only limited by matters directly relating to the case.
- Never ask a question to which you do not know the answer.

General Advice in Presentation

- Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct or cross examination.
- Always listen to the witness's answer.
- Anticipate each witness's testimony and write your questions accordingly
- Avoid giving the witness an opportunity to reemphasize the points made against your case during their direct examination.
- If the witness is in fact "hostile," politely request a bench conference. This is not a step to be taken lightly as it gives the impression that the attorney is incapable of handling the witness. Try to do everything in your power to handle the witness yourself first, and only after you have exhausted your abilities should you involve the judge.

Closing Statements

Objective: To provide a clear and persuasive summary of the evidence you presented, to show the weaknesses in the other side's case, and the merits of yours. Be sure to include the following:

- Thank the judge and jury for their time and attention. Do this quickly and then move on to your arguments. Jury members will know where courtesy ends and sweet-talking begins.
- Isolate the issues and describe briefly how your presentation addressed these issues.
- Review the witnesses' testimonies. Outline the strengths and weaknesses of all the witnesses.
- Review the physical evidence. Outline the strengths of your evidence and the weakness of the other side's evidence.
- Argue your case by stating how the law applies to the facts of the case at hand.
- Remind the jury of the required burden of proof. Either show that your side has met the burden of proof or that the opposing side has not. The closing statement should be updated before you present it to include anything that came out during the course of the trial that you had not anticipated. Likewise, evidence that was kept out during the proceedings should not be included. This is a compelling argument for planning a closing statement, taking notes during the trial, and then updating the original closing statement. In your closing statement, you can make references to times when the other side contradicted itself or left out important points. **The more you refer to events in this actual trial, the more you will impress the jury.** Also, remember that the ultimate purpose of the closing is to convince the jury to decide in your favor.

The above outline is merely a guideline. The best closings convince the jury in a creative but effective manner.

For Witnesses

General Suggestions

- If you are going to testify about records or documents, familiarize yourself with them before coming to trial.
- Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.
- Do not let an opposing attorney intimidate you, but at the same time, remain respectful.
- Decide what the general persona of your witness will be and make sure to remain consistent throughout the trial.

Direct Examination

- Learn the case thoroughly, especially your own statement. Do not, however, limit yourself to learning your own statement. You should always know how the testimony of other witnesses affects your side of the case. Therefore, be sure to read through all of the statements on both sides of the case and know them well.
- Repeatedly review your testimony with your attorney. Know the questions that your attorney will ask you and prepare clear and convincing answers that contain the information that the attorney is trying to present. An effective way to ensure this is for each witness to work with the attorney who will direct him or her and draft the examination together.

Cross Examination

- Anticipate what you will be asked on cross examination and prepare answers accordingly. In other words, find all the possible weaknesses, inconsistencies and problems in your testimony and be prepared to explain them.
- Practice with your attorney and have him or her act as opposing counsel.
- Do not panic if the attorney or judge asks you a question you have not rehearsed. Do not be afraid to buy time. Take a moment to think and reflect on your answer. If all else fails and you cannot not think of a legitimate response, you can always say, “I don’t recall.” The best witnesses are able to come up with creative answers to unexpected questions without allowing the opposing attorney to impeach them. Know your affidavit but be ready to stretch your limits with some quick thinking.
- Do not become frustrated, hostile, or flustered. Acting as if a cross examination went your way even if opposing counsel highlighted the most damaging points will make you appear more credible.

Jury Duty

Over the course of the conference, you will all have a chance to sit on a jury. While this may not seem to be as exciting as playing an attorney or witness, it is one of the most important roles you will play.

The Trial

Pay close attention to what is said; you may take notes on paper. Since you already understand trial procedure, you should be able to follow the progress of the trial. While serving as a juror, you must give the same respect to the lawyers and witnesses that they give you during your presentations. Think about the merits of each argument and try to approach the case with an open mind.

The Verdict

Your real work will begin when the trial is over. The judge will instruct the jury and give you a general overview of the issues at hand. Listen closely to what the judge is saying because his or her instructions should give you an idea of what testimony is relevant to a judgment. Once jury deliberation begins, keep an open mind. Everyone has an opinion, but the wise witness will give good reasons for maintaining his or her position or will change their stance in the face of strong evidence. You must not let instinctive or gut feelings guide your reasoning. In addition, remember that you must make your decision based on the strengths of the case, not just the strengths of the attorneys. Remember: your job is to serve justice, and that means deciding guilt or innocence based on the facts as presented in the trial before you. In federal court, human life could be in your hands.

ELEMENTS OF A TRIAL

Juries consist of six to twelve peers of the defendant who must agree in order to reach a verdict. A jury drawn from the community gives ordinary people a voice in deciding guilt and, in some cases, recommending an appropriate penalty. A jury acts as the arbiter of act. Remember that a conviction stays on a person's record even though the person continues to claim innocence. An acquittal clears the defendant of the charges forever.

Elements of a Criminal Trial

The law generally recognizes two elements of crimes: the physical and the mental. Crime requires a physical act, such as firing a gun in a crowded room, and a culpable mental state, such as purposeful intent to commit a crime or reckless disregard for the consequences of one's actions. Merely thinking about committing a crime is not enough for a conviction.

The Burden of Proof

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, the prosecution carries the entire burden of proof for its charges in a criminal case. The defense has no burden of providing anything whatsoever. The prosecution must prove each of its charges beyond a reasonable doubt and to a moral certainty.

Despite its use in every criminal trial, the term "reasonable doubt" is hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may in fact be found guilty "beyond a reasonable doubt" even though a possible seed of doubt remains in the mind of a member of the jury. Conversely, jurors might return a verdict of not guilty while still believing that the defendant probably committed the crime, because the evidence does not prove guilt.

Verdicts frequently hinge on contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than a specific intent to mislead. Typically, jurors are instructed to apply their own best judgment in evaluating inconsistent testimony and the credibility of its sources.

Elements of a Civil Case

A civil case involves two private parties. Unlike the prosecution in criminal cases, the plaintiff in civil cases asks for personal compensation, usually in the form of monetary remuneration. A judge or jury makes the decision when a settlement cannot be reached. In most civil suits, it is the plaintiff's responsibility to prove the allegations. A plaintiff will file a complaint against the defendant, and the defendant will generally respond denying the elements of the complaint.

The Burden of Proof

The burden of proof is different in civil trials than in criminal trials. The plaintiff must prove its case by a preponderance of evidence, rather than beyond a reasonable doubt. The jury will decide in favor of whichever side it believes has the majority of the evidence in its favor. A "tie" in the evidence would lead to a ruling in favor of the defense.

HMC 2024 PROCEDURAL RULES

The following rules and procedures simplify and govern the way you may try a case in court:

Time Limits

The trial sequence below gives the maximum time limits per segment. The time not used in one segment may not be applied to another segment. You should generally aim to use most of the allotted time for each part, unless you deem it would not be helpful for your case.

Opening Statements: 5 minutes per side
Each Direct Examination: 7 minutes
Each Cross-Examination: 7 minutes
Closing Statements: 7 minutes per side

Notes:
The order of the trial sequence may not be changed. Teams can decide the order in which to call their witnesses. Each witness must be called once and only once. Judges will extend time as they see fit if interruptions occur.

HMC 2024 SIMPLIFIED RULES OF EVIDENCE

An attorney can object any time the opposing attorney has violated the rules of evidence. The judge will never object no matter how blatant the misconduct may be. It is the attorneys' job to be on their toes at all times. The attorney wishing to object should do so at the time of the violation. The objecting attorney should immediately stand and say "Objection, Your Honor," followed by only a few words describing the basis for the objection ("Witness is narrating" or "Leading Question," for example). The judge may then either rule on the objection immediately or ask the objecting attorney to explain further, and then allow the opposing attorney to defend themselves. The judge will then decide whether to sustain (accept) or overrule (reject) the objection and whether a question or answer must be discarded because it has violated a rule of evidence or whether the question or answer will remain on the trial record. The judge's decision is final and cannot be refuted. A few notes:

- Objections should come from the attorney working on the relevant part of the case: an objection to a cross examination question should come from the attorney who conducted the direct examination of that witness, and an objection to direct examination should be made by the crossing attorney.
- When defending an objection, opposing counsels must always **speak directly to the judge**, not to one another.

- If an objection to a question is sustained, the questioning attorney may ask the judge if they can rephrase the question in a way that is not objectionable. The answer is at the discretion of the presiding judge.

The following section outlines standard objections. Know them well. Just plain objecting because something sounds "wrong" or hurts your case will not be tolerated in court.

Direct Examination: Questioning Your Witnesses

Leading Question

Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Use the yes/no litmus test and reword any leading questions. Leading questions are generally phrased to evoke facts and are the most often ones challenged by opposing counsel.

Example of a leading question: "Mr. Jones, isn't it true that Mr. Wilson was at the scene of the murder?"

Corrected, as a direct examination question: "Mr. Jones, could you tell us where Mr. Wilson was at that time?"

Narration

Direct examination questions must ask for specific information. The questions must not be so broad that the witness is allowed to "narrate" a whole story. Narrative questions are objectionable. Narrative answers are also objectionable. The witness' answers must not go beyond the facts for which the question asked.

Example of a too-broad narrative question: "Mr. Jones, can you tell us everything that happened on the day of October 31, 2006?"

Additionally, lawyers may not narrate a story when asking questions. Lawyers may repeat information that has been previously asserted by a witness but may not recap an entire event and then finish by phrasing the narration in a question form.

Example of a lawyer narrating during a question: "Mr. Jones, you saw Mr. Wilson at the scene of the murder, covered in bloodstains, holding a knife and intermittently cursing and shouting intelligible remarks and you say you had previously overheard Mr. Wilson saying that he wanted to kill Ms. Jackson and that you had seen diary entries of Mr. Wilson to the same effect, correct?"

Form of objection:
"Objection. Counsel is giving a narrative."

Character Evidence

Character evidence is when a party uses evidence of past actions to make a current action seem more likely. It is by definition prejudicial because you are using it to bias the jury for or against a particular witness based upon their previous actions or attitudes. There are special rules regarding when this is and is not allowed.

• You are ***not*** allowed to use past behaviors or actions to make current behavior/actions more likely. For example, you are not allowed to use evidence of a violent temper to prove that someone actually did beat up his or her spouse. There are a couple of exceptions to this rule:

- You are allowed to use past behaviors or actions if they go to the *truthfulness or untruthfulness* of a witness. For example, you can use evidence that someone lied in the past to suggest that they might be lying now.
- You are allowed to use past behaviors or actions if they go to someone's *motive or opportunity*. For example, you cannot show someone's past drug use to show that they are a bad person, or that they actually used drugs in this case. You can use it to show that they owed money to drug lords, giving them motive in a ransom case. You can use it to show that they had possible access to drugs.
- You are allowed to use *prior convictions* only if they are *felonies* and occurred *within the past ten years*.

• If the defense or prosecution offers evidence of their own party's character, the other side is also allowed to offer evidence. Because in HMC District Court there are no rebuttal witnesses, the parties must give notice on this this prior to trial.

Form of objection:
"Objection, your honor. The witness' character is not an issue in this case."

Refreshing recollection

If a witness is unable to recall a statement made in the affidavit, or if the witness contradicts the affidavit, the attorney on direct may seek to help the witness to remember. The witness' affidavit should not be submitted into evidence, nor should the witness be asked to read from it. Instead, he or she should be asked to read the affidavit to him or herself after which the attorney should re-ask the question.

Scope of witness' examination

Attorneys are limited to questions that can be answered from facts obtained directly from the witness' own affidavit.

Cross-Examination: Questioning the Other Side's Witnesses

Form of questions

An attorney may and should ask leading questions when cross-examining. However, questions that evoke a narrative answer should be avoided, just as in direct examination.

Scope of witness examination

Attorneys are allowed unlimited range on cross-examination of witnesses as long as questions are relevant to the case.

Impeachment

On cross-examination, the attorney may want to show the court that the witness should not be believed because they are not telling the truth or are contradicting themselves. This is called impeaching the witness. An attorney may impeach a witness by asking questions about what they said during direct examination or in their affidavit that calls the witness' credibility into question.

Example: "Is it true you stated under direct testimony that you did not drink alcohol at the party?"

Impeachment by contradiction: If the witness provides an answer that directly contradicts their stipulated affidavit, the cross-examining attorney may impeach the witness by introducing the witness' affidavit using the following procedure:

1. Request permission from the judge to approach opposing counsel, indicating that you wish to show them the witness's affidavit. Show opposing counsel the affidavit you are going to use while stating "let the record reflect that I am showing opposing counsel the witness's affidavit."
2. Request permission from the judge to approach the witness, and then give him or her a copy of the affidavit.
3. Ask the witness a) if the document the witness is holding a fair and accurate copy of his/her affidavit, b) if the signature at the bottom of the affidavit is his/hers, in which s/he swore to tell the truth.
4. Ask the witness to direct his/her attention to a particular portion of the affidavit and to read to himself/herself those lines of the affidavit that directly relate to the disputed testimony.
5. After he or she has finished reading, re-ask the witness the original question. If the witness' answers still contradict the affidavit, you may ask him or her to read the specified lines out loud to the court.
6. Remember to remove the affidavit from the witness stand after the impeachment process. (Please note: A witness may only be impeached when he/she contradicts his/her *own* affidavit. Witnesses are not responsible for affidavits that are not theirs.)

Additional Questioning: Redirect and Re-cross Examination

Re-direct Examination

Re-direct examination is limited only to issues raised by the opposing attorney during cross-examination. If the credibility of the witness has been attacked on cross-examination, the attorney whose witness has been attacked may wish to ask some questions to "save" the witness' truth-telling image in the eye of the court. Counsel, however, is limited to two questions, so make them count.

Re-cross Examination

Additional questions may be asked by the cross-examining attorney, but they are limited to matters raised by re-direct examination. Again, counsel is limited to two questions.

Hearsay

Any evidence of a statement made by someone who is not present in the court that is **offered to prove the truth of the fact asserted** in the statement is hearsay and is generally impermissible. If the testimony is offered for the sole purpose of proving that the statement was said, then it is not hearsay–in other words, if the question is not asked to prove the "truth of the matter asserted." For example, the defendant testifies, "Ms. Jackson said that Mr. Wilson told her at a party that he does not like her." If the statement is used to prove that Mr. Wilson does not like Ms. Jackson, the statement is hearsay and is objectionable. However, if the statement is used simply to prove that Ms. Jackson and Mr. Wilson had both been present at that party and had talked there, it is not hearsay and not objectionable. If the testimony is being offered to prove the truth of the matter asserted in the statement, it may be allowed in if it falls under one of the exceptions to the hearsay rule.

Form of objection:
"Objection, your honor. Counsel's question is calling for a hearsay response." OR
"Objection, your honor. The witness' testimony is based on hearsay. I ask that the statement be struck from the record."

In response, the attorney who has asked the question may either argue that the testimony is not hearsay (because it is not being used to prove the truth of the matter asserted, only that it was said), or that it is hearsay but is admissible under one of the following exceptions to the hearsay rules:

Exceptions to the Hearsay Rule

Admission by a party opponent: If a statement was said by a party in the case and contains evidence that goes against his interest–in other words, an "admission"–then the statement is admissible. An example is in a murder case in which the defendant tells

someone else he committed the murder. Parties in a civil case can be the plaintiff or defendant, while in criminal cases, usually only the defendant counts as a party opponent.

State of mind: A declarant's out-of-court statement indicating that particular person's state of mind (for example, emotional or physical state, motive, plan, intent, etc.) is generally admissible.

Past recollection recorded: If the statement is a memorandum, report, or other record made at or near the time the matters occurred or made by someone with personal knowledge of the matters recorded, the statement is generally admissible.

General Objections

Opinions of Witnesses: As a general rule, witnesses may not give opinions about what they believe the outcome of the case should be. Certain witnesses who have special knowledge or qualifications may give an expert opinion, often called an expert conclusion, within his/her area of expertise after the judge certifies that witness as an expert. The attorney for the party for which the expert is testifying *must accredit an expert*; this means that before an expert can be asked an expert opinion, the questioning attorney must bring to the attention of the court the expert's qualifications and experience and ask the court to accept the witness as an expert.

Example (after qualifications/experience/credentials are established)
"Your honor, I ask that [insert expert name] is entered as an expert witness in [insert field] based on their experience and qualifications."

After the attorney demonstrates the witness's expertise by asking relevant questions at the beginning of the examination, the attorney must then question the witness on the evidence s/he reviewed in order to make such an expert conclusion, including but not limited to all witness statements, documents, and exhibits. Next, the attorney must ask how the witness was able to come to his/her conclusion, such as the methodology s/he used, and if s/he was able to reach his/her conclusion to a reasonable degree of certainty. Afterwards, the attorney may ask the expert what that conclusion was.

Form of Objection:
"Objection, your honor. Counsel is asking the witness to give an opinion for which the witness is not qualified."

Lack of personal knowledge: A lay witness may not testify to any matter of which the witness has no personal knowledge.

Form of Objection:
"Objection, your honor. The witness has no personal knowledge that would enable the witness to answer that question."

Relevance of evidence: The only testimony or physical evidence allowed is relevant evidence, meaning the evidence must make some fact of consequence in the case more or

less probable. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded from the court. This decision is made by the judge. Note that the bar for relevance is generally low.

Form of Objection:
"Objection, your honor. This testimony is irrelevant to the facts of this case."

Introduction of physical evidence: There is a specific procedure for introducing physical evidence during a trial (refer to Appendix I). Any evidence that is not officially introduced cannot be considered for discussion or consideration by the judge, jury, or witnesses.

Speculation: Witnesses may not be asked to provide testimony based on speculation.

Form of objection:
"Objection. Counsel is asking the witness to speculate."

Badgering: Attorneys may not ask a barrage of questions without giving the witness ample time to respond. Although the judge may demonstrate his or her own discretion on this issue, attorneys typically may not repeatedly ask questions in a way that may be construed as aggressive.

Form of objection:
"Objection. Opposing counsel is badgering the witness."

Asked and Answered: If counsel asks a question and the witness answers the question the attorney may not continue to ask the exact same question multiple times.

Form of objection:
"Objection. Counsel is asking a question that the witness has already answered."

Pick your battles. Remember: a few strong, sustained objections pack a bigger punch than a barrage of silly or inconsequential objections.

CONCLUSION

Although this guide may be lengthy, it is in no way an exhaustive explanation of the American legal system. To ensure that you get the most out of your District Court experience, we strongly recommend that you do some outside research. Watch movies or read books with courtroom scenes with a discriminating eye, keeping in mind that accuracy is sometimes sacrificed for the sake of entertainment. If you have any questions or concerns about District Court procedures or the cases you may be working on, feel free to contact the Harvard Model Congress staff. Read carefully, learn the rules, and be creative. We look forward to seeing you in the spring!

APPENDIX I

Entering Evidence

Trials rely on both testimony from witnesses and evidence. There is a set procedure for entering in evidence, so that the court understands the information the attorneys are presenting. The procedure to enter evidence is as follows:

1. "Your Honor, I ask that (piece of evidence) be marked for identification as Plaintiff's/Defense's Exhibit #1" (Have exhibit marked by judge).
2. Show evidence to opposing counsel so s/he knows what you are referencing.
3. Ask the judge to approach the witness with the exhibit pre-marked for identification.
4. After the judge grants permission, approach the witness, hand the witness the pre-marked exhibit, and ask the witness to identify it. "I now hand you what is pre-marked for identification as Plaintiff's/Defense's Exhibit #1. Do you recognize it?" (The witness should say yes and describe the identifying characteristics of the document.)
5. If the attorney chooses to place the document into evidence, he says, "Your Honor, I offer this (piece of evidence) marked as Plaintiff 's/Defense's Exhibit #1 into evidence and ask the court to so admit it." Note that if the exhibit is not entered into evidence, the jury may not use the pre-marked exhibit at all for evidentiary purposes when deciding the outcome of the case.
6. The judge will ask, "Is there any objection?" Subsequently, the opposing attorney may either object, after which the judge will hear arguments from both sides on the admissibility of the pre-marked exhibit and determine if the s/he will admit it, or the attorney may not object, and the judge will admit the pre-marked exhibit into evidence.