YMCA
Youth In Government
TRIAL COURT / DISTRICT COURT

2017
REFERENCE MATERIALS

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STUDENT ROLES AND RESPONSIBILITIES

Judge.

The role of the Judge is to preside at trial and to make decisions regarding the case. Judges make decisions regarding all legal arguments and objections. In a bench trial (where no jury is present), a Judge will serve as the decision maker regarding all factual matters, as well as all legal matters.

The judge is an elected or appointed youth officer.

Attorney.

The attorneys represent the parties in a trial. An attorney is an advocate for a client (the defendant or the state) at trial. In order to prepare for this role, an attorney will need to (1) read and understand the facts and rules, (2) develop a theory as to what "actually" happened (hopefully, one that is in line with the interests of the attorney's client), (3) develop arguments that will benefit the attorney's client, (4) prepare questions for witnesses (and actually question the witnesses), and (6) prepare and present opening statements and closing arguments at trial.

Attorneys (teams) are required to:

1. Prepare to argue both sides of their case
2. Present opening statements
3. Conduct direct examination of witnesses
4. Conduct cross-examination of witnesses
5. Make appropriate objections

Attorneys will argue both prosecution and defense (in separate trials) for their assigned case.

Prosecution. Prosecution presents the case for the state. The prosecution bears the burden of proving the guilt of the defendant beyond a reasonable doubt.

Defense. Defense attorneys present the case for the defense. Defense attorneys, through their own witnesses, present the defendant's version of the facts. Defense attorneys poke holes in the prosecution's story and version of the facts.

Every student (other than Judges) will serve as an attorney.

Clerk.

Clerks serve as the administrators for the trial. Clerks swear in witnesses. Clerks inform the judge when the parties are ready. Clerks confirm that parties are ready. Judges will select a clerk before each trial from attorneys that are not arguing the case. In order to be prepared for the clerk's rule, a student should read and understand the general trial script (with a focus on the Clerk's roles).

Jurors.

It is the job of a juror to listen to and follow the judge's instructions. Jurors hear evidence and testimony, deliberate (discuss a case) and determine the facts in a case.

Every student will serve as a juror during the program.

Witnesses.

Witnesses provide testimony in the cases, based on the witness statements attached in the Case Materials. Advisors, law students and college students serve as witnesses. Witnesses will act as though they are the person described in their witness statements.

GENERAL LEGAL CONCEPTS

The Presumption of Innocence

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, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof; the prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

The Concept of Reasonable Doubt

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 be found guilty “beyond a reasonable doubt” even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the triers of fact can say that they have a firm conviction of the truth of the charge.

Jurors must often reach verdicts despite 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 intentional lying. The trier of fact (the judge or a jury) must apply his or her own best judgment when evaluating inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant’s innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant’s guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendants guilt.

TRIAL PROCEDURES

Opening Statement

The opening statement outlines the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

Explain what you plan to prove and how you will prove it.

Present the events of the case in an orderly sequence that is easy to understand.

Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

"Your honor, my name is _____, the prosecutor representing the State of Minnesota in this action;" or

"Your honor, my name is ____ , counsel for ______________ (defendant) in this action."

Proper phrasing includes:

"The evidence will show that. . ."
"The facts will show. . . "

"Witness ____ will be called to tell you about. . ."

"The defendant will testify that. . ."

Direct Examination

Attorneys ask questions of (conduct an examination of) their own witnesses. The goal of the questions is bring out the facts of the case. Direct examination should:

Call for answers based on information provided in the case materials.

Reveal all of the facts favorable to your position (necessary to make your case).

Ask the witness to tell parts of a story.

Include open-ended questions ("Tell me about…" or "Describe for us" rather than using leading questions that call for "yes" or "no" answers.

(An opposing attorney may object to the use of leading questions on direct examination. See "Leading Questions" below)

Make the witness seem believable.

Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

"Your honor, I would like to call ____________ (name of witness) to the stand."

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to let the jury who this person is and how this witness is related to the case. Appropriate initial questions include:

The witness' name.

The witness' occupation.

The witness' relationship to the defendant (or the state).

Questions about professional qualifications, if you wish to qualify the witness as an expert.

Examples of good questions on direct examination:

"Where were you at ______ on the night of the murder?

"What happened after the defendant slapped you?"

"How long did you see . . .?"

"Did anyone do anything while you waited?"

"How long did you remain in that spot?"

Examples of not so good questions on direct examination:

"Tell us what you know about this case?"

"Tell us what happened" (good questions are about specific times and events, and do not invite a story-like response).

Conclude your direct examination with:

"I have no further questions for this witness, your honor."

"That will be all, your honor." (The witness remains on the stand for cross-examination.)

Cross-Examination

Cross-examination follows the opposing attorney's direct examination of the witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

- Call for answers based on information given in Witness Statements or the Fact Situation.
- Use leading questions, which are designed to get "yes" and "no" answers.
- Limit the ability of a witness to disagree with the attorney's question/statement.

The scope of cross examination is not limited by the scope of direct examination. You can ask questions about anything that is relevant to the witness or the case.

Examples of good questions on cross-examinations:

"On the night of the murder, you were located at XXXXX, correct?

"When you spoke with your neighbor, were you wearing your glasses?"

Examples of not so good questions on cross-examinations:

“Do you think that…?”

“Could it be true that…?”

Cross-examination should conclude with:

“No further questions, your honor”

“That will be all, your honor.”

Impeaching a Witness’ Credibility

During cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the credibility of a witness (or impeaching a witness). It may be done by asking questions about prior conduct that makes the witness’ credibility (believability) doubtful .

A witness also may be impeached by introducing the witness’s statement and asking the witness whether he or she has contradicted something in the statement (i.e., identifying the specific contradiction between the witness’s statement and oral testimony).

Example:

“Is it true that you beat your nephew when he was 6-years-old and broke his arm?”

Example:

“Is it true that you’ve been convicted of fraud?”

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

Examples: (Using a letter signed by the witness to impeach)

“Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?”

“Would you read the third paragraph aloud to the court?”

“This contradicts what you said a minute ago, correct?”

IMPORTANT NOTE: Once you’ve asked the questions that call into doubt the witness’ credibility, you do not declare that the witness is “impeached” or ask the judge to “impeach the witness.” Instead, you have to argue to the jury (as part of your closing argument, for example), that the witness should not be believed.

Re-Direct Examination

Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only. They may not bring up any issue brought out during direct examination. Generally, avoid asking to “re-direct” a witness – unless it is really important . If you ask to re-direct, your opponent gets to re-cross. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

Judges may or may not let you redirect.

Closing Arguments

A good closing argument summarizes the case in the light most favorable to your client. The prosecution delivers the first closing argument. The defense goes last.

A good closing argument:

- Is spontaneous, drawing from what actually happened in court rather than having a pre-written, static argument.
- Is strongly appealing and (may be) emotionally charged.
- Emphasizes the facts that support the claims of your side, but not raise any new facts.
- Points out the favorable testimony.
- Attempts to reconcile inconsistencies that might hurt your side.
- Is well-organized. Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- The prosecution should emphasize that the state has proven guilt beyond a reasonable doubt.
- The defense should raise questions that suggest the continued existence of a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that…"

"Based on this testimony, there can be no doubt that…"

"The prosecution has failed to prove that…"

"The defense would have you believe that…"

Conclude the closing argument with an appeal to convict or acquit the defendant.

USE OF EXHIBITS

Attorneys may introduce physical exhibits, if any are listed under the heading "Evidence" or "Exhibit" in your case materials. (Any exhibits are diagrams or photos – no physical evidence is permitted). Below are the steps to follow when introducing physical evidence (maps, diagrams, etc.). All items are presented prior to trial.

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

2. When you first wish to introduce the item during trial, request permission from the judge: "Your honor, I ask that this item be marked for identification as Exhibit # _."

3. Show the item to the witness on the stand. Ask the witness if he or she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)

4. When you finish using the item, give it to the judge to examine and hold on to it until you use it.

Moving the Item Into Evidence

Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence at the end of the witness examination.

1. "Your honor, I ask that this item (describe) be moved into evidence as the State's (or Defendant's) Exhibit #__ and request that the court so admit it."

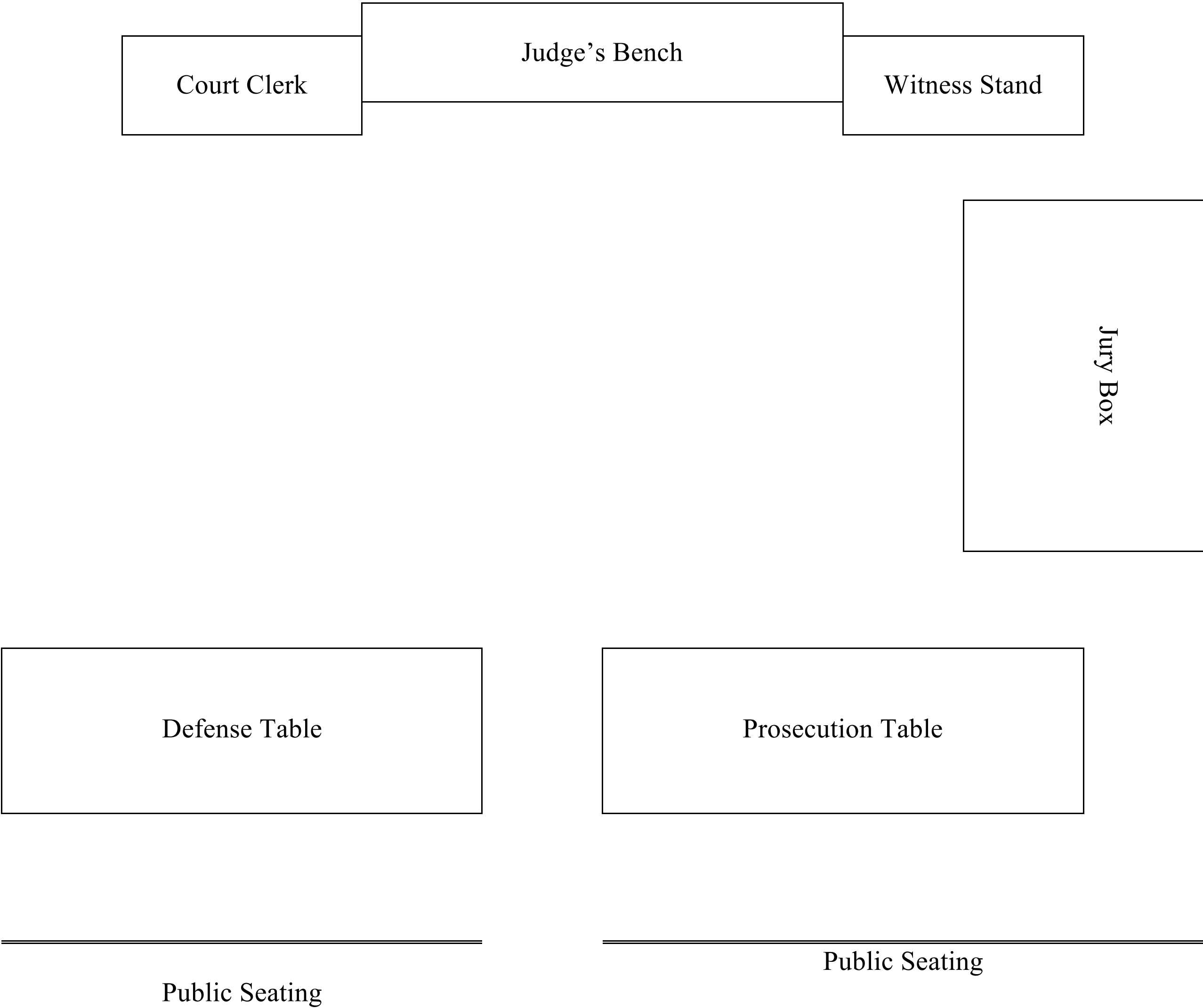
2. At this point, opposing counsel may make any proper objections.

3. The judge will then rule on whether the item may be admitted into evidence.

Now do something with it!

Ask questions about it to let the jury know why it is important.

DIAGRAM OF A TYPICAL COURTROOM



ORDER OF A TRIAL

1. Right before trial:
    a. Attorneys take their places and inform the clerk that they are ready
    b. Members of the jury take their places
2. Clerk informs judge when everyone is ready
3. Judge enters the court room (everyone rises)
4. Jury is sworn in by clerk
5. Judge provides preliminary instructions for all parties.
6. Opening Statement – Prosecution
7. Opening Statement – Defense
8. Prosecution calls its witnesses
    a. For each Prosecution witness:
        i. Clerk swears in witness
        ii. Direct examination (questions) by Prosecution
        iii. Cross-examination (questions) by Defense
        iv. Re-direct and Re-cross (if requested and permitted by the judge)
9. Prosecution rests
10. If Defense postponed its opening statement, Defense makes it opening statement here.
11. Defense calls its witnesses
    a. For each Defense witness:
        i. Clerk swears in witness / asks name
        ii. Direct examination (questions) by Defense
        iii. Cross-examination by Prosecution
        iv. Re-direct and Re-cross (if requested and permitted by the judge)
12. Defense rests
13. Closing Argument - Prosecution.
14. Closing Argument - Defense.
15. Judge's Instructions to the Jury
16. Jury Deliberates
17. Jury announces verdict.
18. End of the case.

PRE-TRIAL CHECKLIST

Immediately Prior to Trial Beginning

To be completed by Clerk

- ☐ Prosecution and Defense will inform the clerk of each team member's name and whether they represent the prosecution or defense.

  Prosecution: ________________ ___________________ ________________

  Defense: ____________________ ___________________ ________________

- ☐ Prosecution will provide the clerk with the name of the case / name of the defendant.

  Case: State of Minnesota versus _______________________

- ☐ Prosecution will provide a copy of all of the Exhibits to be used in the case.

- ☐ Judge will provide the clerk with the Judge's last name: Judge ________________.

** The clerk will collect ALL of this information and these materials before the Judge enters the court.

** The clerk will confirm that prosecution and defense are ready to begin before informing the judge that the parties are ready.

GENERAL SCRIPT FOR A TRIAL

Clerk: All rise. Court is now is now in session. Judge _________ presiding.

Judge: What is the case, please?

Clerk: State of Minnesota versus _____________.

Judge: Is the prosecution ready?

Prosecution: [Stands] Yes, your honor.

Judge: Is the defense ready?

Defense: [Stands]Yes, your honor.

Judge: The clerk will now swear in the Jury.

Clerk: Will the members of the Jury please stand and raise your right hand?

[Clerk waits for everyone to comply]

Do you swear to that you will fairly try the case before this court, and that you will return a true verdict according to the evidence and instructions of this court, so help you God? Please say "I do."

[Wait for response]

Please be seated.

Judge: Ladies and gentlemen of the Jury. You have now been sworn in and the trial is about to begin.

Here are some basic rules about your job as a juror:

Your job will be to find what the facts are in this case by considering the evidence.

As judge, I will apply these rules of evidence and tell you what you can and cannot consider as evidence.

What is evidence.

1. Evidence is what a witness says on the stand. This is called "testimony."
2. Evidence can be items like photographs and documents. These items are called exhibits.
3. Evidence can be facts that the parties agree on. These agreements are called stipulations.

What is not evidence:

1. Nothing that the attorneys say during the trial, including opening statements and closing arguments is evidence. However, listen to their statements – they are intended to help you understand the evidence.
2. The attorneys' questions are not evidence. The witnesses' answers are.
3. Objections are not evidence.
4. Anything you hear outside of this courtroom is not evidence.

Deciding the Facts.

It is your job to decide the facts. Your best guide is your own good judgment and experience.

You must decide whether a witness is to be believed and what weight to give a witness' testimony.

This is a criminal trial.

A defendant in a criminal case is presumed to be innocent. This presumption stays with the defendant throughout the trial, until the State has proven the defendant's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. In deciding whether the State has proved its case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, defendant is entitled to a finding of not guilty.

The defendant, ___________________, is charged with the following:

[READ CHARGES LIST FROM CASE MATERIALS]

I will instruct you later as to the specific findings that you must make in order to reach a decision regarding these counts.

Does the prosecution wish to make an opening statement?

Prosecution: *[Stands]* Yes, your honor.

Judge: Proceed

Prosecution: You honor, Ladies and Gentlemen of the Jury …

[Prosecution's opening statement follows]

Judge: Does the Defense wish to make an opening statement at this time?

Defense: Yes, your honor

[In the alternative, defense may reserve its right to make an opening statement later, after the prosecution rests – This is not recommended, but it is an option. If the defense would like to make an opening statement later, when asked if it will make an opening statement now, the defense should state: No, your honor. We will make our opening statement after conclusion of the prosecution's case.]

Judge: Proceed with your opening statement.

Defense: Ladies and Gentlemen of the Jury, your honor …

[Defense makes opening statement]

After opening statements, the prosecution may call its first witness.

Judge: Does the prosecution wish to call its first witness?

Prosecution: Yes, your honor.

[Prosecution Witness Procedure]

[This will be repeated for each Prosecution Witness]

[It mirrors the Defense Witness Procedure]

Prosecution: The Prosecution calls _______________.

Clerk: *[Directs witness to the stand – after witness is on the witness stand]*

Please stand and raise your right hand *[Clerk raises right hand as well]*.

Do you swear that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

[Alternative: Do you affirm under the pains and penalties of perjury that the testimony that you will give in the case will be the truth, the whole truth and nothing but the truth?]

Witness: I do.

Clerk: You may be seated. Please state your first and last name for the record.

Witness: *[States name]*

Prosecution: *[Begins direct examination]*

Witness: *[Answers direct examination questions]*

Prosecution: *[At the end of Prosecution's questions]*

I have no further questions of this witness, your honor.

Judge: Does the Defense wish to cross-examine this witness?

Defense Yes, your honor *[or "No your honor."]*

[Defense cross-examines witness]

Witness: *[Answers Defense questions]*

Defense: No further questions for this witness, your honor.

Judge: Prosecution, any redirect? [At Judge's option]

Prosecution: "Yes, your honor" or "No, your honor."

[Judge may or may not allow redirect.]

[If judge allows redirect – Judge must allow re-cross]

Judge: *[If no more redirect / re-cross]*

The witness may be excused.

Does the Prosecution wish to call another witness?

[Repeat Prosecution Witness Procedure until the Prosecution does not wish to call any more witnesses]

Prosecution: No, your honor.

Judge: Does the Prosecution rest?

Prosecution: Yes, your honor.

Judge: Does the Defense wish to call a witness

[Defense Witness Procedure]

[This will be repeated for each Defense Witness]

[It mirrors the Prosecution Witness Procedure]

Defense: The Defense calls _______________.

Clerk: *[Directs witness to the stand – after witness is on the witness stand]*

Please stand and raise your right hand [Clerk raises right hand as well].

Do you swear that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

[Alternative: Do you affirm under the pains and penalties of perjury that the testimony that you will give in the case will be the truth, the whole truth and nothing but the truth?]

Witness: I do.

Clerk: You may be seated. Please state your first and last name for the record.

Witness: *[States name]*

Defense: *[Begins direct examination]*

Witness: *[Answers direct examination questions]*

Defense: *[At the end of Defense's questions:]*

I have no further questions of this witness, your honor.

Judge: Does the Prosecution wish to cross-examine this witness?

Prosecution Yes, your honor *[or "No your honor."]*

[Prosecution cross-examines witness]

Witness: *[Answers Prosecution questions]*

Prosecution: [No further questions for this witness, your honor]

Judge: [Judge's option]

Defense, any redirect?

Defense: Yes, your honor [or "No, your honor."]

[Judge may or may not allow redirect.]

[If the Judge allows redirect, then the Judge must allow re-cross]

Judge: *[If no more redirect / re-cross]*

The witness may be excused.

Does the Defense wish to call another witness?

[Repeat Defense Witness Procedure until the Defense does not wish to call any more witnesses]

Defense: No, your honor.

Judge: Does the Defense rest?

Defense: Yes, your honor.

[All of the evidence has now been presented]

Judge: Does the Prosecution wish to make a closing argument?

Prosecution: Yes, your honor.

Judge: Proceed

Prosecution: Your honor, ladies and gentlemen of the Jury…

[Prosecution makes closing argument]

Judge: Does the Defense wish to make a closing argument?

Defense: Yes, your honor.

Judge: You may proceed.

Defense: Your honor, ladies and gentlemen of the Jury…

[Prosecution makes closing argument]

Judge: Ladies and Gentlemen, it is now your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict.

As I mentioned before, this is a criminal case. A defendant in a criminal case is presumed to be innocent. This presumption stays with the defendant throughout the trial, until the State has proven the defendant's guilt beyond a reasonable doubt. The defendant does not have to prove innocence.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. In deciding whether the State has proved its case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, defendant is entitled to a finding of not guilty.

After you arrive in the jury room to discuss the case, you must select a jury member to be foreperson. That person will lead your deliberation.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict.

When you agree on a verdict, notify the clerk.

I am about to give you the elements of each of the charges against the defendant.

If you find each of the elements of a count have been proven beyond a reasonable doubt, you must find the defendant guilty of that count. If, however, you find that the State has failed to prove all of the elements of a count beyond a reasonable doubt, then you must find the defendant not guilty on that count.

The defendant in this case has been charged with the following counts:

[READ CHARGES LIST FROM CASE MATERIALS]

****[Alternative A]*

In determining whether the Prosecution has proven these counts beyond a reasonable doubt, you will consider …

[READ SPECIFIC JURY INSTRUCTIONS FROM CASE MATERIALS]

***[Alternative B – Read the following

My clerk will provide you with a copy of the elements of each charge.

When you reach the jury room, read the instructions carefully and begin your deliberation on each count.

Judge: I will now ask the clerk to take you to the jury deliberation room.

Clerk: All rise.

[IF Option B – Clerk Provides copy of the specific jury instructions to the Jury after they are in the deliberating room.]

[Clerk says "All rise" whenever Judge or Jury is in motion]

[Jury Leaves]

[Jury Deliberates]

[Jury Informs Clerk of A Verdict]

Clerk: All rise [for return of the judge]

Judge: The clerk will go get the jury please.

Clerk: All rise [for return of jury]

Jury: [Sits]

Judge: Have you reached a verdict?

Foreperson: Yes, your honor.

Judge: To the charge of ____________, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: To the charge of ____________, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: To the charge of ____________, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: Defense, the Jury has found you [repeats findings].

Ladies and gentlemen of the Jury, you are dismissed.

This case is closed.

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SAMPLE OBJECTION SCRIPT

Below is an example script for the process of making an objection. Once a party has made an objection (and stated the nature or reason for the objection), the judge may rule on the objection or may ask either party for additional information or for explanations as to why the judge should sustain (agree with) or overrule (disagree with) the objection. The following is just one example.

Defense:	[Stands] Objection, your honor.
Judge:	Grounds?
Defense:	Relevance, your honor.
Judge:	Prosecution, how is this relevant to the charge?
Prosecution:	[Stands] You honor, I am trying to show…
Judge:	I am going to sustain the objection. Prosecution, ask a different question and move on.
Prosecution:	[Follows judge's instructions and continues with questioning]

RULES OF EVIDENCE AND OBJECTIONS

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a trial, you need to know about the role that evidence plays in trial procedure. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Objections

It is the responsibility of the party opposing the evidence to prevent its admission by a timely and specific objection. Objections not raised in a timely manner are waived. An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. *A single objection* may be more effective than several objections. Attorneys can and should object to questions that call for improper answers before the answer is given.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 59 of this packet. Other objections may not be raised at trial. As with all objections, the judge will decide whether to allow the testimony, strike it, or simply note the objection for later consideration. Judges' rulings are final. You must continue the presentation even if you disagree. A proper objection includes the following elements:

(1) attorney addresses the judge,

(2) attorney indicates that he or she is raising an objection,

(3) attorney specifies what he or she is objecting to, e.g., the particular word, phrase or question, and

(4) attorney specifies the legal grounds that the opposing side is violating.

Example: "(1) Your honor, (2) I object (3) to that question (4) because it is a compound question." Allowable Evidentiary Objections

1. Relevance

Relevant evidence makes a fact that is important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue

in the trial. The court may exclude relevant evidence if it is unfairly prejudicial, confuses the issues, or is a waste of time.

Either direct or circumstantial evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial (indirect) evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e., if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Example: Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault. Testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun, is circumstantial evidence of the defendant's assault.

Objection: "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record." or "Objection, your honor. Counsel's question calls for irrelevant testimony."

2. Laying a Proper Foundation

To establish the relevance of circumstantial evidence, you may need to lay a foundation. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts.

Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof relates to the case.

Example: If attorney asks a witness if he saw X leave the scene of a murder, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Objection: "Objection, your honor. There is a lack of foundation."

3. Lack of Personal Knowledge

A witness may not testify about any matter of which the witness has no personal knowledge. Only if the witness has directly observed an event may the witness testify about it. Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

Objection: "Objection, your honor. The witness has no personal knowledge to answer that question." or "Your honor, I move that the witness's testimony about. . . be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)

4. Character Evidence

Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

Example:

A. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

B. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the evidence and the prejudicial nature of the testimony might outweigh its probative value making it inadmissible.

Objection: "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."

5. Opinion (other than an expert)

Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible. It is admissible where it is (a) rationally based upon the perception of the witness and (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Example: A witness could testify that, "I saw the defendant who was elderly, looked tired, and smelled of alcohol." All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Objection: "Objection, your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."

6. Expert Witness and Opinion Testimony

An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if he or she has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. Qualified experts may give an opinion based upon personal observations as well as facts made known to them outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may not state an opinion as to whether the defendant did or did not have the mental state in issue.

Example: A doctor bases her opinion upon (1) an examination of the patient and (2) medically relevant statements of patient's relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay but are proper basis for opinion testimony because they are reasonably relevant to a doctor's diagnosis.

Objection: "Objection, your honor. There is a lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

7. Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not present and under oath and therefore cannot be cross-examined. Because these statements are unreliable, they ordinarily are not admissible.

Testimony not offered to prove the truth of the matter asserted is, by definition, *not* hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the subsequent actions of a listener is admissible.

Example:

A. "Danny told Tim that he and Ellen were dating." Could not be admitted to prove that Danny and Ellen were dating.

B. "Danny told Tim that he and Ellen were dating…and then Tim hit Danny him." Could be admitted to show *why* Tim hit Danny. This is an out-of-court statement, but is not offered to prove the truth of its contents (that Danny and Ellen are dating). Instead, it is being introduced to show why Tim hit Danny.

Objection: "Objection, your honor. Counsel's question calls for hearsay."
"Objection, your honor. This testimony is hearsay."
"Objection, your honor. Hearsay."

Out of practical necessity, courts have recognized certain general categories of hearsay that may be admissible. Exceptions have been made for certain types of out-of-court statements based on circumstances that promote greater reliability. The exceptions listed below and any other proper responses to hearsay objections may be used in the trial. Work with your attorney coach on the exceptions that may arise in this case.

a. Admission against interest by a party—a statement made by a party to the legal action that helps the cause of the other side. (An admission is not limited to words, but may also include the demeanor, conduct, and acts of a person charged with a crime.)

b. Excited utterance—a statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.

c. State of mind—a statement that shows the declarant's mental, emotional, or physical condition.

d. Declaration against interest—a statement that puts declarant at risk of civil or criminal liability.

e. Records made in the regular course of business

f. Official records and writings by public employees (like police officers)

g. Past recollection recorded—something written by a witness when events were fresh in that witness's memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

h. Statements for the purpose of medical diagnosis or treatment

i. Reputation of a person's character in the community

j. Dying declaration—a statement made by a dying person regarding the cause of death. Made while the person reasonably believed that she or he was dying.

k. Co-conspirator's statements—(a) The statement was made by the declarant while participating in a conspiracy to commit a and in furtherance of the objective of that conspiracy; (b) the statement was made prior to or during the time that the party was participating in that conspiracy. Additional evidence may be required before statement is admissible.

8. Leading Questions

Attorneys may not ask witnesses leading questions during direct examination. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination. Be careful about objecting to every leading question – you may annoy the judge or jury.

Example: Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

Counsel could rephrase the question, "What, if anything, did the defendant say during this conversation about delivering the merchandise?"

Objection: "Objection, your honor. Counsel is leading the witness."

9. Compound Question

A compound question joins two alternatives with "and" or "or," preventing the interrogation of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example: "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Objection: "Objection, your honor, this is a compound question."

The best response if the objection is sustained on these grounds would be, "Your honor, I will rephrase the question," and then break down the question accordingly. Remember that there may be another way to make your point.

10. Question Calls for Narrative Answer

A narrative question is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable, and the objections should be sustained.

Objection: "Objection, your honor. Counsel's question calls for a narrative."

Other Objections

11. Argumentative Question

An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement.

Example: Questions such as "How can you expect the judge to believe that?" are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit facts.

Objection: "Objection, your honor. Counsel is being argumentative." or "Objection, your honor. Counsel is badgering the witness."

12. Asked and Answered

Any attorney should not ask (and get an answer for) a question that the same attorney has previously asked (and received an answer for).

Example: On Direct Examination—Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks B, "Let me get your testimony straight. Did X stop for the stop sign?"

Objection: "Objection, your honor. This question has been asked and answered."

13. Vague and Ambiguous Questions

Questions should be clear, understandable, and concise. The objection is based on the notion that witnesses cannot properly answer questions that the witness does cannot understand.

Example: "Did it all happen at once?"

Objection: "Objection, your honor. This question is vague. What does 'it' refer to?"

SUMMARY OF CERTAIN OBJECTIONS

Throughout your trial don't be afraid to stand and make an objection. If a question is asked and it seems strange, or out of place to you, it is probably objectionable. Remember, if you don't object, the answer is admissible testimony. Here are some objection situations that might arise during your trial:

Objection	Explanation of the Objection	Why is it an Objection?	Example
Argumentative	No question should ask a witness to agree to a conclusion. Nor should a question be asked solely to sway the jury, rather than elicit information from the witness.	We want the facts. We don't want emotionally charged theater.	Argumentative.
Asked and Answered (Repetition)	An attorney can't ask the same question (or similar questions) to get the same response from the same witness.	We've got limited time. Having a witness repeat the witness' own testimony doesn't make it more or less true	Objection your Honor. This question has already been asked and answered.
Badgering the Witness	Counsel may not harass the witness during testimony. "I want the Truth!" (pounds desk)	Verbally abusing a witness gets in the way of the witness providing thoughtful, honest testimony or answering the questions actually asked.	Objection your Honor. Badgering the witness.
Relevance	Questions should not be asked if they are not reasonably likely to help the jury reach a verdict in the matter.	We have limited time. We want a logical connection between the questions asked and the trial.	Objection your Honor. How is this relevant to the case?
Lack of Personal Knowledge/ Calls for an opinion	A witness may not testify to a fact of which the witness has no personal knowledge. Do you think that he had time to…? Is it possible that…?	We want witnesses to tell us what they actually know -- not what they think someone else knows. Not to draw conclusions as to what "might" or "could" have happened" Note: Objection doesn't apply to experts expressing opinions within their area of expertise.	Objection your Honor. Lack of personal knowledge.

Objection	Explanation of the Objection	Why is it an Objection?	Example
Leading Question	During direct examination, questions cannot lead the witness towards a "yes" or "no" answer. Keep them open ended.	On direct, we want the witnesses to testify in the witness' own words -- not in the lawyer's words. BTW: Leading questions are strongly *encouraged* on cross-examination.	Objection your Honor. Leading the witness.
Hearsay	A questions should not elicit an answer that consists of (a) an out of court statement (b) by a declarant (a person) other than the witness (c) that is trying to prove that the statement, itself, is true.	Witnesses are testifying as to what they, themselves, did, said and observed. If someone else did it, said it or observed it, get the declarant to testify under oath. Note: If witness = declarant, then not hearsay!	Objection your Honor. Hearsay.
Exceptions to rule against hearsay and a few things that are not hearsay:			
(a) Present Sense Exception	A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.	The declarant makes the statement as the event is unfolding. Declarant did not have the time to make up the statements. *Example:* many 911 calls.	Not hearsay, your Honor. The question asks about the declarant's present sense impression (describing events).
(b) Excited Utterance	A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.	"Then he said 'Ouch!'" "Then she said 'That piano only missed me by an inch!'"	Not hearsay, your Honor. The answer involves an excited utterance.
(c) Dying Declaration	A statement (a) made by a declarant while under the belief that the declarant's death was immanent (b) relating to the cause or circumstances of the declarant's impending death.	*Nemo moriturus praesumitur mentire*[1]	Dying declaration, your honor.

[1] It's Latin. Look it up.

Objection	Explanation of the Objection	Why is it an Objection?	Example
(d) Statements by Police Concerning Investigation	Generally, a police officer may testify about statements made by others, such as victims or witnesses, when such testimony is not offered to prove the truth of the declarants' statements, but is instead used to show why or how the officer took certain investigative steps.	Police are explaining why they did or said something in the course of their duties – they are not trying to prove that what the person said was true. "I stopped him because I was told he had drugs." (answers the question: "why did you stop him?").	Exception to hearsay your honor. It is a statement by a police officer concerning the investigation.
(e) Statement by a party in Interests	Out of court statements by a declarant that is a party to the lawsuit (and is subject to testifying under oath and cross-examination at trial).	Two sides to every trial. If one side said something before trial that hurts its case, let that person confirm or deny it, under oath, in front of the court. The jury can figure it out.	Statement by a party in interest, your Honor. Exception to hearsay.

DISTRICT COURT
PRE-TRIAL MOTION

Note: This section does not apply to Trial Court participants – only to District Court participants.

District Court attorneys are required to prepare and argue a pre-trial motion that will have a direct bearing on their case (prepare both sides). Generally, the pre-trial motion will be an argument between the parties about whether certain charges or certain evidence may be included in your trial.

The judge's ruling on the pretrial motion will have a direct bearing on the charges or evidence in the trial and the possible outcome of this trial.

No written materials are required to be presented. However, it may be a good idea to prepare an outline of your arguments for your own use at the hearing. Arguments should be based on the legal authorities included in the Case Materials

ORDER OF THE PRE-TRIAL MOTION

1. Court is called to order
2. Defense (moving party) presents Pretrial Motion arguments
3. Prosecution (opposing party) presents Pretrial Motion arguments
4. Rebuttal arguments (both)
5. Judge rules on motion and thus determines which charges will be in contention during the trial

DISTRICT COURT
PRE-TRIAL MOTION SCRIPT

Note: This section does not apply to Trial Court participants – only to District Court participants.

Clerk: [Confirms Prosecution and Defense are ready – Informs Judge When Ready]

All rise. Court is in Session. The Honorable Judge __________ presiding.

Judge: [Enters room – no need to do this if a prior hearing has been conducted]

What case is this one?

Clerk: State of Minnesota versus _____________, your honor.

Judge: Very well. This is a hearing on a preliminary motion regarding this case. Both sides will have the opportunity to present their arguments for or against the motion. I may interrupt your presentation at any time to ask clarifying questions.

At the conclusion of the arguments, each side will be offered a brief opportunity to rebut the other side's argument.

At the end of your presentation, I will rule on the motion.

I understand that this is a defense motion. Is the defense ready to begin?

Defense: [Stands]

Yes, your honor.

Judge: Very well. Defense, go for it.

Defense: [Stands]

Thank you, your honor.

[Argues motion - Sits]

Judge: Does the prosecution wish to argue against the motion?

Prosecution: [Stands]

Yes, your honor.

Judge: Go for it.

Prosecution: [Stands]

Thank you, your honor.

[Argues motion - Sits]

Judge: Defense, any rebuttal?

Defense: [Stands]

Yes, your honor.

Judge: Proceed.

Defense: [Stands]

[Brief Rebuttal - Sits]

Judge: Prosecution, any rebuttal?

Prosecution: [Stands]

	Yes, your honor.
Judge:	Proceed.
Prosecution:	[Stands]
	[Brief Rebuttal - Sits]
Excellent:	At this time, I'm ready to give my ruling.
	I rule [for / against] the Defense's motion.
	The charge of _______ [will / will not] be included in the charges at trail
Clerk:	[Records the results of the pre-trial motion for trial]m

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