



United States District Court

Committee Guide

By Rachel Endick

Introduction

Welcome to District Court, your opportunity to explore the heart of the American legal system! Here you will alternate among 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 score-keeping or point-tallying. Rather, your goal will be that of an attorney in the real world: to convince a jury that you, and not your adversary, can meet the burden of proof. 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 you arrive at the conference:

- 1) Carefully read the court cases and any updates.
- 2) Confer with your teammates and develop a case theory, or the reasoning that you and your teammates will argue proves that the jury should rule in your favor. Teammates means everyone, not just attorney. A successful team is one in which both attorneys and witnesses are on the same page.
- 3) 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.
- 4) Write opening and closing statements with several limitations in mind. First, you will not know the sex of the opposing witnesses until a few minutes before the trial begins. Make sure you practice discussing the witnesses as both genders. 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.

- 5) Witnesses should dissect their statements for facts that are both helpful and hurtful to their respective side. Most likely the hurtful facts will 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.
- 6) Practice objections. Chances are you will have some potentially objectionable questions that are nevertheless crucial to advancing your case theory. The only way to get those questions in is to be able to defend them.

Briefs

You and your teammates will submit a brief for each side of a case that you will be arguing during the conference. Briefs for District Court will contain five parts:

- 1) A Statement of Facts: This outlines the events that preceded the incident that is now before the District Court. This should be taken from the statement of facts included in the cases.
- 2) The legal issues at stake: What does this case revolve around? These are the issues your team believes are important.
- 3) Your argument: Why should the jury find in your favor? How does your case address the legal issues?
- 4) Anticipated arguments by opposing counsel: Which issues do you anticipate opposing counsel using to attack your case? How will you rebut these arguments?
- 5) Conclusion: With the previous four parts in mind, sum up your views.

Note: Neither present your entire case nor include your lines of questioning and statements in your briefs. Keep in mind that briefs will be made available to opposing counsel during the conference.

General Rules

- 1) Before the conference begins you will be notified of the cases and which sides (prosecution/plaintiff or defense) your team will present. As a jury member you will sit in on the remaining trials.
- 2) Teams will be comprised of six members: three attorneys and three witnesses.
- 3) Each attorney is to take a minimum of two parts (one direct examination and one cross examination, an opening statement and a direct examination, etc.) and a maximum of three parts (an opening statement and two cross examinations, etc.).

Note: No attorney may deliver both the opening and closing statement in the same trial.

- 4) Witnesses' names are intended to be gender neutral, and jury members will be instructed to disregard pronoun discrepancies.
- 5) 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.
- 6) All witnesses must be called by their appropriate sides. Witnesses will be sequestered prior to testifying.
- 7) While preparing for the trial, delegates may read outside materials 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, HMCE 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:

- 1) 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.
- 2) Witnesses may give minor embellishments as long as the embellishments can be reasonably inferred from the Statements of Fact (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.
- 3) On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to 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.
- 4) On cross-examination, no restrictions will be placed on the witness or the cross-examination, except that the answer must be responsive and that the witness can be impeached.
 - a. 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.

- b. If the answer by the witness is actually contrary to the stipulated affidavit, the cross-examination attorney may impeach the witness.
- 5) If a witness invents an answer that is substantially likely to affect the outcome of the trial (“I killed him”), the opposition should object immediately and ask for a bench conference; the presiding judge will decide whether to allow the testimony.
- 6) 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!
- 7) Before being called, witnesses will sit 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:

- 1) Attorneys are limited to calling their own witnesses, they must call all of their witnesses, and they may not re-call any witness.
- 2) Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying.
- 3) To permit the judge and the jury to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, and all objections.
- 4) 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

1. Bailiff enters room and 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:

a) Prosecution (in criminal case)/Plaintiff (in civil case) - The prosecution/plaintiff summarizes the evidence which will be presented to prove the case.

b) Defendant - The defendant’s attorney summarizes the evidence that will be presented to rebut the case the prosecution has made.

c) Direct Examination of each of the Plaintiff's witness by the Plaintiff - Testimony and other evidence to prove the prosecution's or plaintiff's case is presented. Attorneys may wish to call witnesses as such testimony fits chronologically into the overall story (and as outlined by the attorney in the opening statement).

3. Cross-Examination of each of the Plaintiff's witness by Defendant's Attorney - Clarify or cast doubt upon testimony of opposing witnesses. The Cross-Examination should take place directly after the Direct Examination.

4. Re-cross/Redirect (optional) - Limited to scope of Cross- Examination. Only two questions per team are permitted.

The defendant's case proceeds when the prosecution "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 defendant's motion to dismiss (in a civil case), or by entering a directed verdict (in criminal cases). In HMCE District Court, however, motions for a directed verdict or dismissal are not considered.

5. Direct Examination of each of the Defendant's witness by the Defendant's Attorney.

6. Cross-Examination of each of the Defendant's witness by Prosecution's or Plaintiff's Attorneys.

7. Re-cross/Redirect (limited to same restrictions as above).

8. Closing Arguments to the Jury - Review of Evidence, first prosecution, then defense.

9. Presiding judge will review the legal issues at stake, and jury will retire to deliberate.

While the jury is deliberating, the judge will conduct 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 an 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:

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

2) Rise when addressing the courtroom.

3) Direct all remarks to the judge, jury or witness, not to opposing counsel. This especially applies to objections.

4) 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:

- 1) Never let a run-on question smother your point.
- 2) Never ask too many questions.
- 3) Never badger a witness or argue with him or her.
- 4) 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.
- 5) 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.
- 6) 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.

For Attorneys:

1) 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. In preparing, include:

- a. A short summary of facts (this is most important for the prosecution).
- b. 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 sex of witnesses from the opposing side.
- c. Mention the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in this case.
- d. Reference the applicable law.

2) 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:

- a) Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
- b) Make sure all items you need to prove your case will be presented through your witnesses.
- c) Use clear and simple questions.
- d) Never ask a question to which you do not know the answer.
- e) Cease questioning when your facts are in evidence. Say “No further questions” or “Your witness” and sit back down.
- f) Keep the objections in mind when framing your questions and try to phrase potentially objectionable material in a non-objectionable way.
- g) Limit questions to the information presented in the witness’ own statements.
- h) 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.
- i) 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.

3) 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 (make the witness less believable). In preparing, consider asking the following types of questions:

- a) 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.
- b) 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).
- c) 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).
- d) 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).
- e) 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).

- f) Ask questions which 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.
- g) Questions are only limited by matters directly relating to the case.
- h) Never ask a question to which you do not know the answer.

Advice in Presentation:

- a) Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct examination.
- b) Always listen to the witness’s answer.
- c) Anticipate each witness’s testimony and write your questions accordingly, but be ready to adapt your questions at trial depending on the actual testimony.
- d) Avoid giving the witness an opportunity to reemphasize the points made against your case during direct examination.
- e) If the witness is in fact “hostile,” politely request a bench conference. This is not a step to be taken lightly as it does give 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.

4) Closing Arguments

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:

- a) 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.
- b) Isolate the issues and describe briefly how your presentation addressed these issues.
- c) Review the witnesses’ testimonies. Outline the strengths and weaknesses of all the witnesses.
- d) Review the physical evidence. Outline the strengths of your evidence and the weakness of the other side’s evidence.
- e) Argue your case by stating how the law applies to the facts of the case at hand.
- f) 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:

1) General Suggestions

- a. If you are going to testify about records or documents, familiarize yourself with them before coming to trial.
- b. 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.
- c. Do not let an opposing attorney intimidate you, but at the same time, remain respectful,

2) Direct Examination

- a. Learn the case thoroughly, especially your own statement. Do not, however, limit yourself to your own statement. You should always know how other witnesses' testimony affect your side of the case. Therefore, be sure to read through all of the statements and know them well.
- b. 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.

3) Cross-Examination

- a. 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.
- b. Practice with your attorney and have him or her act as opposing counsel.
- c. 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 goes wrong and you cannot 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 forcing impeachment upon themselves. Know your affidavit, but be ready to stretch your limits with some quick thinking in the heat of the trial.

- d. 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, this is one of the most important roles you will play.

The Trial:

Pay close attention to what is said; no note-taking will be permitted. 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 what issues are 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 will give good reasons for maintaining his or her position or will change their stance in the face of strong evidence. In addition, 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. A 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 fact. 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 Penal Code defines two parts for most crimes, the physical and the mental. Criminality requires some 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 any evidence whatsoever. The prosecution must prove each of its charges beyond a reasonable doubt.

Despite its use in every criminal trial, the term “reasonable doubt” is hard to define. The concept of reasonable doubt lays 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 is probably guilty, 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 intentional lying. Typically, jurors are instructed to apply their own best judgment in evaluating inconsistent testimony.

Elements of a Civil Trial:

A civil trial 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. The decision is made by a judge or jury when a settlement cannot be reached. In most civil suits, it is the plaintiff’s responsibility to demonstrate that a preponderance of the evidence substantiates his or her claim.

The Burden of Proof:

The burden of proof is different in civil trials from that in criminal trials. In most civil trials, the burden of proof lies on both the plaintiff and the defendant. Each side must prove its case by a preponderance of the evidence, rather than beyond a reasonable doubt. The jury will find in favor of whichever side it believes has the majority of the evidence in its favor.

HMCE 2009 Simplified Rules of Evidence

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

I. 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:

- Opening statements: 5 minutes per side
- Each Direct Examination: 6 minutes

- Each Cross-Examination: 7 minutes
- Closing statements: 7 minutes per side

- 1) None of the above may be waived, nor may the order be changed.
- 2) Teams can decide the order in which to call their witnesses. Each witness may only be called once.
- 3) Judges will use leeway in extending time because of interruptions.

II. Rules of Evidence

A. Witness Examination

1. Direct Examination (attorneys call and question witnesses):

a) Form of questions: 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 question. 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 question: “Mr. Jones, could you tell us where Mr. Wilson was at that time?”

b) 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?"

c) Character: A specific type of "more prejudicial than probative" objection is called a "character evidence" objection. 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 about 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:

1) 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 prove that they might be lying now.

2) You are allowed to use past behaviors or actions if they go to someone's motive or opportunity. For example, you cannot show people'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.

3) You are allowed to use prior convictions only if they are felonies and occurred within ten years.

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

d) 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.

e) Scope of witness' examination: Attorneys are limited to questions that can be answered from facts obtained directly from the witness' own affidavit.

2. Cross-Examination:

a) Form of questions: An attorney may and should ask leading questions when cross examining. However, questions tending to evoke a narrative answer should be avoided, just as in direct examination.

b) Scope of witness examination: Attorneys are allowed unlimited range on cross-examination of witnesses as long as questions are relevant to the case.

c) Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct or what was said under direct examination that calls the witness' credibility into question. Other times, it may be done by asking about evidence of certain types of criminal convictions. Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something under direct examination that was stated in the affidavit.

- Example (prior conduct): "Is it true you once cheated on a history exam?"
- Example (past conviction): "Is it true that you've been convicted of assault?"
- Example (direct testimony): "Is it true you stated under direct testimony that you did not drink alcohol at the party?"

The process of impeachment by contradiction is as follows:

If the witness provides an answer that directly contradicts their stipulated affidavit, the cross-examining attorney may impeach the witness with the following procedure: first, request permission to approach opposing counsel. 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." Request permission to approach the witness, and then give him or her a copy of the affidavit. Ask the witness to read to himself or herself those lines of the affidavit which directly relate to the disputed testimony. After he or she has finished reading, re-ask the witness the original question. If the witness still answers contrary to the affidavit, you may ask him or her to read the specified lines out loud to the court. 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.)

3. 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, are limited to two questions, so make them count!

4. 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.

5. Hearsay: Any evidence of a statement made by someone who is not present in the court which is offered to prove the truth of the fact asserted in the statement is hearsay and is not permitted. If the testimony is offered for the sole purpose of proving that the statement was said, then it is not hearsay. If the question is not asked to prove the “truth of the matter asserted.” For example, the defendant testifies that “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, that is hearsay and is objectionable. However, if it 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 following exceptions to the hearsay rule:

a) Admission by a party opponent. It was said by a party in the case and contains evidence which goes against his side. An example is in a murder case in which the defendant tells someone else he committed the murder.

b) State of mind. A person’s state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person’s state of mind.

c) Past recollection recorded. If it 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.

6. Opinions of witnesses: As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be stipulated as experts. An expert must be accredited by the attorney for the party for which the expert is testifying; 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.

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

7. Lack of personal knowledge: A 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."

8. Relevance of evidence: The only testimony or physical evidence allowed is that which tends to support the attorney's case. 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.

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

9. Introduction of physical evidence: There is a specific procedure for introducing physical evidence during a trial. Any evidence that is not officially introduced cannot be considered for discussion or consideration by the judge, jury, or witnesses. The physical evidence may be relevant to the case and the attorney must be prepared to explain and defend its introduction on that basis.

a) "Your Honor, I ask that (piece of evidence) be marked for identification as Plaintiff's/Defendant's Exhibit #1" (Have exhibit marked by judge).

b) Ask the witness to identify the exhibit. "I now hand you what is marked as Plaintiff's Exhibit #1. Do you recognize it?" (The witness should say yes and describe the identifying characteristics of the document.)

c) Show evidence to opposing counsel for any potential objections they might raise.

d) If the attorney chooses to place the document into evidence, he says, "Your Honor, I offer this (piece of evidence) marked as Plaintiff's Exhibit #1 into evidence and ask the court to so admit it."

e) Court: "Is there any objection?"

Opposing Counsel: "Yes, Your Honor." Then state objection.

Court: “Plaintiff ’s Exhibit #1 is (is not) admitted.”

B. Objections

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 stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. The judge will then turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

The following are standard objections. Please see the previous section for more details regarding these objections. Know them well. Just plain objecting because something sounds “wrong” or hurts your case will not be tolerated in court.

a) Irrelevant evidence: “Objection. This testimony is irrelevant to the facts of this case.”

b) Leading question: “Objection. Counsel is leading the witness.”

(Note: This objection is only allowed during direct examination.) If this objection is sustained, the questioning attorney should simply rephrase the question.

c) Narrative question or answer: “Objection. Counsel’s question calls for a narrative” OR “Objection. Witness is giving a narrative answer.”

d) Counsel is giving a narrative: “Objection. Counsel is giving a narrative.”

d) Improper character testimony: “Objection. The witness’ character or reputation is not an issue in this case.”

e) Hearsay: “Objection. Counsel’s question is calling for a hearsay response.” OR “Objection...the witness’ testimony is based on hearsay. I ask that the statement be stricken 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 exceptions to the hearsay rules. Please see the previous section for the exceptions to hearsay.

f) Improper opinion: “Objection. Counsel is asking the witness to give an opinion for which the witness is not qualified.”

g) Lack of personal knowledge: “Objection. The witness has no personal knowledge that would enable the witness to answer that question.”

h) Speculation: “Objection. Counsel is asking the witness to speculate.”

i) Badgering: “Objection. Opposing counsel is badgering the witness.”

j) Asked and Answered: “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

This may be a lengthy guide, but it is in no way an exhaustive one to 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 Europe staff. Read carefully, learn the rules, and be creative. We look forward to seeing you in the spring!