ILLINOIS STATE BAR ASSOCIATION

MOCK TRIAL PROGRAM

TEACHER TRAINING MATERIALS

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ISBA Committee on Law-Related Education for the Public
Illinois Law-related Education And Resource Network (LEARN)

NOTE:

If there is a discrepancy between these materials and the Rules and Procedures Handbook for the Mock Trial Program, rely on the Rules and Procedures Materials as the standard for the Illinois State Bar Association High School Mock Trial Program.

WELCOME

The Illinois State Bar Association represents the legal community of Illinois and shares with other involved groups of citizens a concern for quality law-related education. We believe that such education promotes the development of effective citizenship by putting students inside our constitution system to explore vital issues while helping reduce delinquent behavior, such as school violence and vandalism, and enriches many other content areas in the curriculum.

We commend you for your efforts to provide quality learning experiences for your students. It is our hope that a partnership of the educators and the legal community of this State will continue to work for the benefit of Illinois' greatest resource...our children.

ILLINOIS STATE BAR ASSOCIATION MOCK TRIALS

A mock trial is a simulation of a judicial proceeding, that is, the actual enactment of a trial of either a civil or criminal case.

Participation in and analysis of mock trials provides students with an insider's perspective from which to learn about courtroom procedures. Mock trials also:

Help students gain a basic understanding of the legal mechanism through which our society resolves many disputes;

Help students develop critical thinking skills, oral advocacy skills and understanding of a substantive area of law;

Help students better understand the roles of persons in the justice system--leading to a greater understanding and respect;

Provide a vehicle for the study of fundamental law-related concepts such as authority and fairness.

Participating with judges, lawyers and teachers in mock trials not only helps students bridge the gap between simulated activity and reality, but also gives them more empathy for those resource persons. It enables them to ask thoughtful and direct questions. It also provides students with invaluable practical experience with courts and trials, which enhances their knowledge and appreciation of our system of justice.

PROGRAM OBJECTIVES

For students:

- Increase proficiency in basic skills such as listening, public speaking, reading and critical thinking.
- Further student understanding of the philosophy and content of the law as applied by our courts and the legal system.
- Provide a forum for high school students who want to pursue law-related activities on an extra curricular basis.

For the schools:

- Promote cooperation among students of various abilities and interests.
- Demonstrate to the community the achievements of high school students.
- Provide a non-athletic competitive opportunity for young people.
- Recognize those students who have devoted significant time, energy, and enthusiasm to achieving and learning objectives of the mock trial program.

For the legal community:

- Enrich law-related high school classes by providing accurate and practical information about law and the legal system.
- Provide an opportunity for positive interactions between young people and role-players in the legal system.
- Demonstrate to the community a model for public/private partnerships in education.

BASIC TRIAL PROCEDURES

A. Pre-trial preparation
information gathering (discovery)
pretrial hearing
pretrial order
jury selection

B. Courtroom and participants

judge	attorneys
witnesses	jurors
bailiff	court reporter

C. Beginning the trial

Bailiff announces: "All rise. The Court of _____ is now in session, the Honorable Judge _____ presiding." Everyone remains standing until the judge enters and is seated. Next, the judge asks the bailiff to call the day's calendar (the "docket"), at which point the bailiff says, "Your Honor, today's case is _____ v. _____." The judge then asks the attorneys for each side of the case if they are ready to begin the trial.

D. The trial

Plaintiff/Prosecution rises and introduces him/herself: "May it please the court and ladies and gentlemen of the jury, my name is _____, counsel for _____ in this action." Attorney for Plaintiff/Prosecution always delivers his/her opening statement first. Defendant/Defense attorney generally gives his/her opening statement immediately after.

The actual trial is developed by testimony of witnesses.
Plaintiff/Prosecution witnesses are called first. Order of witness presentations is determined by strategy, i.e., chronologically into overall story. Direct examination of Plaintiff/Prosecution witnesses includes Cross-examination by Defense and Redirect examination by Plaintiff and Recross examination by Defense, which occurs in real trials, but in mock trials it is strongly suggested that teachers allow only a very limited redirect, if at all. Defendant/Defense cross-in-chief proceeds when Plaintiff/Prosecution rests its case. Direct examination of witnesses called by Defense and Cross-examination by Plaintiff, etc. After each side has called all of its witnesses, cross-examines its opponent's witnesses, they enter all relevant documents or objects into evidence.

The Judge then permits Plaintiff/Prosecution closing argument, then Defense closing arguments. Only the Plaintiff may rebut the Defendant's closing argument. After closing arguments, the judge gives the jury their instructions, a brief explanation of the applicable law and then the jury leaves courtroom to deliberate in private. Illinois requires unanimous jury in both civil and criminal cases or "hung jury" requires re-trial before new jury.

When the Jury returns with decision on paper given to judge who announces the decision on open court. If a criminal case, guilty defendant scheduled to return at later date for sentencing.

STRATEGIES FOR TEACHING ABOUT TRIAL PROCEDURE

Have students brainstorm the order of events in a trial and list them on one side of the blackboard. On the other side of the board, list the steps in a trial as they actually occur, noting any errors or omissions in the student list as you do so.

Another variation of this activity would be to break the class into groups of students, give them large sheets of paper and marking pens, and have them devise their own chart of trial procedure. The charts could be posted around the classroom and compared and discussed. You may wish to make this a contest with points given for each step that the groups list or draw correctly.

Teachers could also begin by describing the trial process and writing notes in outline form on the blackboard. Students could draw posters or charts of trial procedure as a homework assignment, to be posted on the walls or bulletin boards around the room. Attachment 1, another exercise aimed at reinforcing student understanding of basic trial procedures, could be used after a class review of the material or as a pre- and post-test.

Once the whole trial process has been introduced, have students make a list or brainstorm and write on the board the steps in a trial, first from the plaintiff/prosecution's point of view (e.g., opening statement, direct examination of plaintiff/prosecution's witnesses, cross examination of defense witnesses, and closing arguments). Do the same from the defense perspective.

Have students check newspapers and magazines for articles that mention a trial that is currently being conducted. Paste the articles to a large sheet of construction paper with the trial step, which is mentioned in the article written in large letters at the top of the sheet. Have students post these around the classroom in their proper order.

Attachment 2, to be completed and discussed in the classroom, is designed to familiarize students with the physical layout of a courtroom and the participants in a trial.

A courtroom visit is a good idea at this point (or after the class has begun working on the trial). Debriefing during the class period following the visit and/or have students write for homework: What part(s) of the trial did you observe? What happened before the part(s) you observed? What happened in the trial after you left? List these on the board in class with the step of the trial that your group observed in the middle, and the "before" and "after" lists on either side.

Students could be assigned to watch a television program or see a movie having to do with a trial, then write a composition and/or report to the class on what the case was about, what parts of the trial they observed and whether the depiction of the trial procedure was accurate and realistic.

Invite a trial attorney or judge to the class to review basic trial procedure and describe different types of litigation, such as arbitration hearings, workmen's compensation hearings, school board "hearings", and juvenile proceedings. How and why do they differ from the basic civil and criminal trial procedure?

After general trial procedure has been covered, distribute mock trial materials you plan to use and have the students read them. At this point the teacher could assign the roles of the various trial participants, though you may wish to wait until you have covered the rules of evidence. (This also helps insure that students will read all of the trial materials, instead of just reading those for their part or side of the case.)

RULES OF EVIDENCE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of mock trial programs, the rules of evidence have been modified and simplified below.

A. **WITNESS EXAMINATION**

1. **Direct Examination** (attorneys call and question their own witnesses)

a. **form of questions**: Generally, the attorney who calls them may not ask witnesses leading questions. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions are usually phrased to evoke a narrative answer. However, the witnesses should not be allowed to give long, uncontrolled responses to direct questions.

examples of direct questions:

* Mr. Bryant, when did you first meet Angela?
* Mr. Bryant, how long have you been employed by the factory?
* Directing your attention to Saturday, October 25, could you please tell the court what you observed?

examples of leading questions:

* Mr. Hayes, isn't it true that you dislike Daryl Bryant?
* You were not in the building that day, were you?
* Mr. Hayes, didn't you see Jack put the money into the briefcase?

b. **evidence about the character of a party to the case**: For mock trial purposes, evidence about the character of a party may not be introduced unless that person's character is an issue in the case.
example: In a civil divorce trial, whether one spouse has been unfaithful to another is a relevant issue, but it is not an issue in a criminal trial for theft. Similarly, a person's violent temperament may be relevant in a criminal trial for battery, but it is not an issue in a civil trial for breach of contract.

c. **refreshing a witness's recollection**: If, during direct examination, a witness cannot recall a statement that he/she made in an earlier affidavit or even pre-trial notes, the attorney may help the witness to remember. The lawyer must first mark and identify the statement as an "exhibit" and show the other side a copy. However, the statement need not actually be admitted into evidence in this situation.

example: A witness sees a purse snatching, offers to testify and gives a statement of events to the lawyer. At trial, the witness has trouble remembering the events he/she saw. The lawyer may help the witness remember by showing him/her the statement.

2. **Cross Examination** (questioning the other side's witnesses)

a. **form of questions**: Attorneys **should** ask leading questions when cross-examining the opponent's witnesses (i.e., questions should be phrased to evoke a "yes" or "no" answer, rather than a narrative one).

example of leading questions:
* Mrs. Bryant, you considered marrying George Hayes, didn't you?
* Isn't it true that you are hard of hearing, Mrs. Short?
* Mr. Jones, don't you generally prefer to avoid loud, crowded taverns?

b. **what questions may be asked**: Attorneys may only ask questions that relate to matters which were brought out by the other side on direct examination **or** to matters relating to the credibility (believability) of the witness, even if these matters were not gone into on direct. Note that many judges allow a broad interpretation of this rule.

examples:
*If the plaintiff in a car accident case never mentions damages to the car when being questioned by his/her own attorney, then the defense may not ask questions on cross examination about the repair costs.

* On direct examination, the witness testifies as to events that took place in a bar in Milwaukee on Friday evening. On cross-examination the attorney may only ask the witness about the events in that bar in Milwaukee on Friday evening. The attorney may not ask the witness what happened at the Toledo Zoo on Thursday afternoon.

However, in order to test the credibility of the witness, the attorney could ask about a situation in which the witness had lied in the past, even if the situation in question had nothing to do with the bar in Milwaukee on Friday evening.

c. **Impeachment**: On cross-examination, the attorney may want to show that the witness should not be believed. This is called impeaching the witness. It can be done by asking the witness questions about:

* **prior bad conduct** that makes his/her credibility (truth-telling ability) seem doubtful and shows that the witness should not be believed.
* **prior criminal convictions** of the witness.
* **prior statements made by the witness, which contradict** his/her testimony at trial and point out the inconsistencies in his/her story.
* **the bias or prejudice of the witness**, that is, showing that the witness has reason to favor or disfavor one side of the case.
* **the accuracy of his/her sensory perceptions**, which is the witness' ability to see, hear or smell.

Examples:
* Prior bad conduct: "Is it true that you have had your credit cards revoked for failure to pay your bills?", or "Isn't it true that you often exaggerate events?"
* Past conviction: "Is it true that you were recently convicted of armed robbery?"
* Prior inconsistent statement: Bill Jones testifies at trial that Joe's car was travelling 90 mph. The opposing attorney asks, "Isn't it a fact that before this trial you gave a statement to the police saying that Joe's car was only travelling 50 mph?"
* Bias or prejudice: Mrs. Young is the mother of the defendant. The prosecuting attorney points this out and asks, "Mrs. Young, you don't want to see your son go to jail, do you?"
* Inaccurate sensory perception: Mrs. Block testifies that she saw Sam, who was a block away, take a bag of marijuana from his briefcase and hand it to Joe Smoker. On cross-examination, the attorney asks Mrs. Block, "Isn't it a fact that you didn't have your glasses on when you claim to have seen Sam and Joe?"

3. **Redirect Examination**

If the witness' credibility or reputation for truthfulness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask a few more questions. These questions should be limited to the damage the attorney thinks was done by the opposing attorney on cross examination, and should be phrased so as to try to save or "rehabilitate" the witness' credibility in the eyes of the jury.

B. **HEARSAY EVIDENCE**

NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened. Any out of court statement that is offered to prove the truth of the contents of the statement is hearsay. These statements are generally inadmissible in a trial.

Examples:

* Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there, and she told me that Joe killed Henry." The underlined statement is hearsay and would not be permitted at the trial.
* In a civil trial arising from an automobile accident, a witness may not testify, "I heard a by-stander say that Joe ran the red light."
* Sandy says, "I've heard that Jack has a criminal record."

Exceptions to the Hearsay Rule:

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

1. The statement (called the ADMISSION) was made by a party in the case and it contains evidence, which goes against his/her side (e.g., in a murder case, the defendant told someone that he/she committed the murder).
2. The statement describes the then-existing state of mind of a person in the case, and that person's state of mind is an important part of the case.
3. The statement is an "excited utterance."
4. The statement is a "dying declaration."

Examples:

* Joe is being tried for murdering Henry. The witness may testify, "Joe told me that he killed Henry."
* In the case, the witness may testify, "I once heard Joe say, "I'm going to get even with Henry if it's the last thing I do."
* Kimberly is shot in the chest and falls into the arms of Mark. Kimberly says, "I never thought she'd really do it, Alison shot me." Kimberly then dies and Mary may testify that her dying words implicate Alison as the murderer.
* Mark sees Alison with a gun and it's pointed at his friend, Kimberly. Mark yells, "Run, Kim, Alison's got a gun and she's after you." Kimberly is subsequently shot. Jill, who's back was turned, may testify that she heard Mark warn Kimberly.

C. **OPINION TESTIMONY**: As a general rule, witnesses may not give opinions, but "experts" who have special knowledge or qualifications may.

An expert must first be "qualified" by the attorney who calls him/her. This means that before an expert may be asked and may give an opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may give opinions about what ***they*** saw or heard at a particular time, if such opinions are relevant to the facts at issue and are helpful in explaining their story. A witness may not, however, testify to any matter of which he or she has no personal knowledge.

Examples:
* The witness may say, "Roy was drunk. He had slurred speech; he staggered and smelled of alcohol."
* A psychiatrist could testify that, "Roy has severe eating problems", but only after the lawyer has qualified the psychiatrist as an expert through a series of questions about his/her background and experience in a particular field.
* The witness works with the defendant but has never been to the defendant's home or seen the defendant with her children. The witness may not testify that the defendant has a bad relationship with her children or that she is a bad mother, because the witness has no personal knowledge of this.

D. **RELEVANCE OF EVIDENCE**: Generally, only relevant evidence may be presented. Relevant evidence is any evidence, which helps to prove or disprove the facts in issue in the case. However, if the evidence is relevant but also unfairly prejudicial, potentially confusing to the jury, or a waste of time, it may be excluded by the court.

Examples:
* On cross-examination the defense asks Ms. Stone, "How old are you?" This question would be permitted only if Ms. Stone's age is relevant to the case.
* The defendant is charged with running a red light. Evidence that the defendant owns a dog is not relevant and may not be presented.

E. **INTRODUCTION OF PHYSICAL EVIDENCE**: There is a special procedure for introducing physical evidence during a trial. Below are the basic steps to use when introducing a physical object or document (such as a pre-trial statement) into evidence in a court:

"Your Honor, I ask that this letter be marked for identification as Plaintiff's Exhibit 1." Show the letter to the judge then hand it to the bailiff or clerk for marking. Show the letter to the opposing attorney, who may make an objection to the piece of evidence at this point. If the opposing attorney does not object, show the letter to the witness whom you are questioning. "Mr. King, do you recognize this document, which is marked Plaintiff's Exhibit 1 for identification?" The witness then explains what it is (e.g., "Yes, this is the letter I received from the defendant, Marilyn Smith.") Ask further questions to establish relevancy and authenticity. "Your Honor, I offer this letter, marked as Plaintiff's Exhibit 1 for identification into evidence." Give the letter to the judge for his/her inspection. The judge rules on whether or not the letter may be admitted into evidence. If the judge admits it, the attorney may give it to the jury to look at.

Example:
Suppose this is a personal injury case in which the tenant claims he was injured when he tripped on a loose step in the apartment building. A neighbor who lives in the same building is testifying:

Q. Mrs. Spak, are you familiar with the condition the stairs were in the day before the accident?

A. Yes.

Q. I ask the reporter (or bailiff) to mark this as Defendant's Exhibit 1 for identification.

Reporter or Bailiff: This will be Defendant's Exhibit 1 for identification.

Counsel now shows the exhibit to opposing counsel.

Q. Thank you. Counsel (showing exhibit to plaintiff's attorney) Now, Mrs. Spak, I show you what has been marked as Defendant's Exhibit 1 for identification. Please examine it and tell us what it is.

A. It's a picture of the back stairs of my apartment building.

Q. Mrs. Spak, turning your attention once again to those stairs as they were the day before the accident, can you tell us whether this picture is an accurate and complete picture of the stairs as they looked at that time?

A. Yes, I would say it is.

Q. Thank you, Mrs. Spak. Your Honor (handing exhibit to judge), we offer what has been marked as Defendant's Exhibit 1 into evidence, and we ask permission to show it to the jury so they can see it during Mrs. Spak's testimony.

F. **OBJECTIONS**: Objections can be made whenever an attorney or witness has violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation; that is, the objection should be made as soon as the improper question is asked by the other lawyer and before the witness answers, whenever possible.

When an objection is made, the judge will ask the objecting attorney the reason. Then the judge will turn to the attorney who asked the question and give him/her a chance to explain why the objection should not be accepted (sustained) by the judge. The judge will then rule on the objection, deciding whether an attorney's question or witness' answer must be discarded ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

The following are standard mock trial objections:

RELEVANCY -	"Objection, Your Honor. This testimony is not relevant to the facts of this case."
LEADING QUESTION ON DIRECT EXAMINATION -	"Objection, Your Honor. Counsel is leading the witness."
IMPROPER CHARACTER TESTIMONY -	"Objection, Your Honor. Character is not an issue here."
BEYOND THE SCOPE OF DIRECT EXAMINATION -	"Objection, Your Honor. Counsel is asking about matters that did not come up in the direct exam." (Or, matters that are "beyond the scope of the direct examination").
HEARSAY -	"Objection, Your Honor. Counsel's question, the witness' answer, is based on hearsay." If the witness has already given a hearsay answer, the

attorney should also say, "and I ask that the statement be stricken from the record."

OPINION TESTIMONY - "Objection, Your Honor. Counsel is asking the witness to give an opinion."

NO PERSONAL KNOWLEDGE - "Objection, Your Honor. The witness has no personal knowledge to answer the question."

~~CREATION OF MATERIAL FACT - "Objection, Your Honor. The witness is creating facts material to the case which are not in the record." (This objection is not a rule of evidence ordinarily but is used in the mock trial scenario to avoid the creation of evidence by students, which misleads and confuses the issues presented.)~~

(Eliminated from ISBA Mock Trial Rules 2004)

STRATEGIES FOR TEACHING THE RULES OF EVIDENCE

Distribute the student handout on the modified rules of evidence (see Attachment 3). Review the rules in class, answering any questions that arise, or have students complete the sheet for homework. In addition, students (using Attachment 3 as an outline) could create a pictorial rules of evidence and exhibit them around the classroom or school. A couple of pictures relating to each rule of evidence might also be run in the school newspaper, along with a student's explanation of the content and purpose of that rule and a description of the mock trial that your class is involved in.

Attachments 4, 5 and 6 are hypotheticals designed to test and reinforce student understanding of the rules of evidence. These handouts can be used in a variety of ways, such as pre-and post-test for evaluation purposes, in-class activities, or homework assignments. For example, if teachers use the Attachments in class, they should ask students to stand and formally present any objections that they have to the hypothetical. The teacher or a law student or attorney could act as judge and rule on the objections.

Students should practice admitting physical evidence. Attachment 7 gives fact patters students may use as starting points to develop questions to get physical evidence admitted. Do these in class with students acting as attorneys and witnesses and teacher acting as judge. (Teachers may supply props to make enactments as real as possible.)

Students should practice refreshing a witness' recollection. Break them into groups of two and have each group prepare a brief fact pattern and statement of one would-be witness to the case. Each team should then perform its scene in front of the class. Stark by quickly summarizing the case, then have the student attorney in each group direct some questions to the witness. After a few questions, the witness should "blank out" and be unable to recall the rest of the facts. The attorney should then use the statements that they wrote to refresh the witness' recollection.

Students should practice qualifying a witness as an expert. First, brainstorm with students what facts would be best to establish that a person is an expert (e.g., place and degree of education, years of experience and/or employment in some field, and anything the person has researched and written about). Next, list on the board the questions an attorney might ask to qualify the following people as experts in their fields: ballistics expert/scientist/doctor/bartender/ski instructor, etc.

Break students into groups of two and let them create a "character summary" of some expert witness, then develop appropriate questions to qualify that witness as an expert. Each team should qualify their expert in front of the class, followed by a short discussion of whether the attorney's questions and witness' answers made the witness appear to be an expert in the eyes of the other students.

OPENING STATEMENTS

The opening statement should introduce the attorney and his/her client and tell the jury what the case is all about. It is the attorney's first opportunity to present the jury with a clear and concise description of the case from his or her client's perspective. But the opening statement is not an argument. The attorney may not infer from or plead the facts of the case that he/she expects to prove during the trial. The purpose of the opening statement is to tell the jury what the case is about and what you expect your evidence will be.

A test of a good opening statement is this: If the jurors heard the opening statement and nothing else, would they understand what the case is all about and would they want to decide in your favor?

An opening statement on behalf of the prosecution should include:

* An introduction of yourself and your client: "May it please the court, ladies and gentlemen of the jury, my name is _____, counsel for _____, the plaintiff/prosecution in this action."

* A cohesive summary or outline of what your evidence will be, presented in chronological order or any other orderly sequence of events. Phrasing includes: "The evidence will indicate that...", "The facts will show...", "Witness X will be brought to testify that...", "Witness Y will be called to tell you that...."

* An acknowledgement that the burden of proof rests with you and the degree of that burden.

* A conclusion, which includes a respectful statement to the jury: "Ladies and gentlemen of the jury, it is your responsibility to listed attentively to the statements of the witnesses and to determine the facts in this action."

The plaintiff/prosecution's opening statement should not include any references to evidence whose admissibility is doubtful or to anticipated defenses or defense evidence.

The opening statement on behalf of the defendant should include:

* An introduction of yourself and your client.
* A reminder that opening statements are not evidence.
* A cohesive (but non-argumentative) reference to anticipated deficiencies in your opponent's evidence, plus a summary of what your evidence will be.
* A reminder that the burden of proof rests with your opponent, and a conclusion, which indicates that at the close, you will return and request the jury to find in favor of the defendant.

Again, the defendant's opening statement should not include references to evidence whose admissibility is doubtful.

STRATEGIES FOR TEACHING ABOUT OPENING STATEMENTS

Review the student handout on opening statements (Attachment 8). Ask students to articulate the purpose of the opening statement, then brainstorm with the students how they think it differs from closing arguments.

The best way to teach the purpose and format of opening statements is for each student to prepare one and

present it to the class. Preparation of an opening statement is an exercise in writing, critical thinking, and oral skills at the same time, and since this activity requires familiarity with the case (i.e., a full review of the facts and witness' statements and an understanding of the "theory" of the case), it is a very useful introductory assignment in a mock trial unit.

There are a variety of excellent mock trials of varying lengths in the Street Law text and teacher's manual, as well as materials available from the Loyola Street Law Project and the National Institute for Citizen Education in the Law. The Illinois State Bar Association also has a file of mock trials you may request for use in the classroom. Choose one of these to use as an exercise in writing opening statements. Have the students read the trial materials for homework, then divide the class in half: one side will be attorneys for the plaintiff/prosecution and the other side will represent the defendant in the case. Students should each write a brief opening statement for their side and practice them in class with their fellow students and at home with their family or friends. The following class period should be spent with students presenting their statements aloud. Alternate between plaintiff/prosecutors and defendants so that the rest of the class hears and compares the statements from the point of view of the jury.

After the presentations, ask students which presentations they thought were the best and why. What things, from the juror's perspective, stood out the most in their minds? What was the most interesting, informative, and/or persuasive? What are some of the problems with the opening statements? What are some advantages of strong opening statements?

DIRECT EXAMINATION

Direct examination is the heart of most trials. Except for those criminal cases where the defendant calls no witnesses and does not take the stand (where cross-examination, objections and argument are all the defense lawyer does) direct examination is more important than cross-examination, the opening statement or the closing argument. For, unless the outlook is so dismal that the only hope for one side in the trial to win is to create confusion, a coherent statement of the facts by the witnesses is essential to the jury's understanding and acceptance of your position (J. McElhayne, "An Introduction to Direct Examination", Litigation Magazine, 1974).

The rules governing direct examination are fairly simple. First, leading questions are not permitted. Uncontrolled narrative questions are also not permissible--the attorney may set his/her witness on "automatic pilot" with a narrative question and let the witness fly alone. Multiple and repetitious questions are objectionable too.

A well-conducted direct examination must be carefully prepared in advance by the attorney and practiced with the witness. The direct examination is most effective when questions are put to the witnesses in plain language, rather than legal jargon, which may seem unduly long, stilted or unnatural to the jury.

The following is a list of the sorts of questions that might be asked on direct examination:

* "What happened then?" or "What did you see?"
* "How long have you worked for Mrs. Smith?"
* "What happened after you saw the yellow car?"
* "How far away was the other car when you first saw it?"
* "How long did you stand there?"
* "Did Bill (the defendant) say anything about..."

STRATEGIES FOR TEACHING ABOUT DIRECT EXAMINATION

Review the student handout on direct examination with the class (Attachment 9). Ask students to articulate the purpose of direct examination, then brainstorm with the class how it differs from cross-examination and list their responses on the board.

To help them prepare direct (and later, cross) examination questions, students should set up a "question and answer checklist". Draw a line down the center of a sheet of paper and head the two columns "questions" and "desired answers". Then, after reading through the facts and witness statements in the mock trial being used, list the information that students want to get out of a particular witness in the direct examination on the "desired answers" side of the sheet. (Remember that the witness answers should be relatively brief and very clear for the jury to understand fully.) Once they have planned the testimony, sentence-by-sentence, that they want to elicit from the witness, the "questions" side of the sheet should be filled out. This exercise illustrates the need for a careful and understandable delivery of the relevant facts to the jury via the attorney's controlled questioning. In addition, it allows students to develop their analytical and writing skills.

Again, the best strategy for teaching students the purpose and format of direct examination is to let them try it themselves. Teachers could use the sample mock trials they selected for the opening statement exercise or choose another one for this activity. Divide the class in half and assign them sides of the case. You may wish to further divide each half of the class, asking groups of a few students each to prepare direct

examination of one of the witnesses for their side. Collect and comment on all of their papers and select one student from each group to conduct their direct examination in front of the class (with another student acting as witness). The rest of the class could act as opposing attorneys and make objections to any improper questions or answers.

CROSS-EXAMINATION

The law governing cross-examination is, for the most part, quite simple. First is the right to do it at all. This right is so firmly entrenched in our law that a denial by the court of this right is usually a reversible error, and a witness' refusal to submit to cross-examination usually results in the direct examination of that witness being excluded from evidence.

Second, in Illinois and a majority of other jurisdictions, the scope of cross-examination is limited to the scope of direct. However, as long as a line of questioning reasonably relates to what was testified to on direct examination, it is considered within the scope. Also, this limitation does not prevent an attorney from inquiring into the witness' bias or prejudice or using prior convictions or inconsistent statements to impeach him/her.

Third, the cross-examiner has the right to ask leading questions, which is an important advantage in dealing with adverse witnesses.

Just as important to an effective cross-examination as an understanding of the law and rules of evidence, is a firm idea of your objectives at this state of the trial. Generally, they fall into two broad categories: 1) reducing the effect of direct examination, and 2) developing independent evidence on behalf of your side. There are a number of ways to meet these objectives, which are listed in the impeachment part of the "Rules of Evidence" section of this unit.

STRATEGIES FOR TEACHING ABOUT CROSS-EXAMINATION

Review the student handout on cross-examination with the class (Attachment 10). Ask the students to articulate the purposes of cross-examination and how it differs from direct then list their responses on the board or on overhead projection. Repeat activities contained in the direct examination strategy section.

CLOSING ARGUMENTS

Lawsuits are usually won during the course of the trial, not at the conclusion. They are won by witnesses, exhibits, and the manner in which the lawyer paces, spaces and handles them. Sometimes, however, lawsuits have been lost by fumbling, stumbling and incoherent closing arguments. This is not intended to minimize the importance of closing arguments, but rather to emphasize its proper position as a summation of the evidence and a relation of that evidence to the issues in the case (Brown and Seckinger, Problems in Trial Advocacy, 1977).

Closing arguments should include:

* An address to the judge, jury and your opponent.
* An explanation to the jury of your purpose--to summarize the facts and relate them to the issues in the case.
* An "argument" telling the jury why it should consider all of the evidence and decide in your favor (i.e., tell them what the verdict should be and why).

The attorney should argue but not shout or attack personalities. The testimony of each witness should not necessarily be repeated in chronological order since the jury has already heard all of the witnesses. Instead, the attorney, by referring to the witnesses' testimony, should focus on putting the whole story together for the jury.

STRATEGIES FOR CLOSING ARGUMENTS

Review the student handout on closing arguments (Attachment 11). Ask students to articulate how they differ from opening statements in purpose and style, and list their responses on the board.

As described in the strategy section for opening statements, have each student prepare a closing argument and present it to the class.

ORGANIZING A MOCK TRIAL - A FOUR WEEK SCHEDULE

Day 1 Discuss trial procedure generally and the applicable burden and standard of proof in your case. Divide the class in half, assign each half the plaintiff's or defendant's case. Students should real all trial materials as homework.

Day 2 Using an overhead or the board, talk about the relevant facts in the case and possible theories for each side. Discuss purpose and format of opening statements. Assign roles on each side. Have all students prepare a draft of an opening statement for their side as homework.

Day 3 Review opening statements with students individually and let them practice presenting them.

Day 4 Each student presents an opening statement, while teacher keeps list on board of important facts/ideas raised on each side. Retain list for future use by transferring to ditto, etc.

Day 5 Rules of evidence work sheets and practice in class (e.g., getting writings and exhibits submitted).

Day 6 Rules of evidence continued.

Day 7 Rules of evidence continued.

Day 8 Direct and cross-examination, working on and reinforcing student understanding of rules of evidence at same time. Students should prepare direct questions of one of their side's witnesses. Practice when questions are complete.

Day 9 Direct and cross-examination continued.

Day 10 Direct and cross-examination continued.

Day 11 Direct and cross-examination continued.

Day 12 Direct and cross-examination continued.

Day 13 Study closing arguments, their purpose and how they differ from opening statements. Students should start work on a closing statement for their side in class and finish a rough draft as homework.

Day 14 Review student closing arguments with them individually, then have each student present his/hers in front of class (use of note cards only).

Day 15 Field trip - court visit

Day 16 Debrief the court visit. Review what was seen and discuss. Discuss juror requirements and the process of jury selection. Have students prepare overnight for jury selection.

Day 17 Jury selection role-play for case they will be trying.

Day 18 Students should review the case and rehearse their parts.

Day 19 Trial and debriefing.

Day 20 Trial and debriefing.

NOTE: This lesson plan assumes that students have already studied the substantive law involved in the mock trial being enacted.

AFTER THE TRIAL

In a mock trial, it would be a useful exercise for the student jurors to deliberate "fishbowl style" (in front of the entire class). This enables students to see first hand the process of decision making and to learn what evidence was persuasive to the jury and why. Since the student jury may be representative of the community, their deliberations should provide a good analogy to real jury deliberations.

After all mock trials, it is important to discuss the proceedings with the class. This is referred to as "debriefing"; it is designed to put the whole mock trial experience into perspective by relating the mock trial to the actors and process of the American court system. The discussion should focus on a review of the legal issues in the trial and courtroom procedure, as well as broader questions about our trial system. Questions (and topics for short compositions), which may be pertinent, include:

Were the procedures used fair to both parties?

Were some parts of the trial more important than others?

Did either side forget to introduce any importance evidence?

Could either side have been more effective or successful in their direct or cross-examination of the witnesses?

Was the verdict a fair one?

Is the jury system the best possible system for determining the outcome of the case?

What changes could be made to improve the jury system?

What changes could be made to improve the trial procedures?

MEDIATION

Mock trial programs are intentionally and necessarily not intended to expose students to pre- and post-trial practice, or to touch, except in passing, on the social issues and problems involved in dealing with issues that inevitably end up in our legal system.

Alternatives to traditional litigation are gaining acceptance in all areas of the law, from the familiar and long-standing use of arbitration in labor-management relations and commercial disputes to newer, ever more innovative and tailored processes designed for use in disputes varying from environmental rulemaking to criminal cases. Mini-trials, ombudsmen, summary jury trials, and mediation, as well as hybrid forms of these and other forms of ADR, are increasingly being applied where appropriate. Private litigants are choosing ADR voluntarily, and the judicial system is implementing an increasing number of mandatory, court-annexed programs in an attempt to conserve scarce judicial resources. In Illinois, at least two-thirds of the state's population now lives in counties in which non-binding arbitration of at least some civil cases is mandatory.

Mediation can be a logical alternative to litigation if the parties cannot negotiate a settlement on their own or with the help of their attorneys. A mediator is a neutral, impartial third party who will assist the disputants in reaching a voluntary, mutually satisfactory settlement of their dispute. With the help of the mediator the parties will work to reach a resolution to the issues in dispute that will account for and satisfy their **needs** rather than their **positions**. Studies show that parties who experience mediation express a high degree of satisfaction with the process, even when a settlement is not reached.

One of the strengths of mediation is that the direct communication between the parties, with the assistance of a trained mediator, often results in the development of alternative solutions which would never occur to judges or attorneys, or which would be beyond the limits of the court system to order. Alternative forms of dispute resolution are gaining wider acceptance because, as a general proposition, they achieve superior results in a substantial percentage of conflicts that otherwise would have to be resolved through traditional litigation.

Negotiated settlements occur each day between our peers, parents, employers and in business resolutions. Examples include conflicts with parents, teachers and friends and the resolution or lack of resolution over those issues. Parties using this model may achieve a result where both parties win or achieve some of that which they wanted.

Mediation employs a third party who aids in the resolution of a conflict and incorporates the skills of active listening, respect for need of resolution and acknowledgement of an ongoing relationship between the parties. In mediation, a third person becomes a sounding board for the other two individuals who have the conflict. The third party may or may not come up with a solution that the parties will adopt. Both parties using this model may achieve or win some of their goals.

Arbitration may be appropriately taught as the logical escalation of mediation. It may be binding arbitration in which the decision of the arbitrator carries the weight of law. In arbitration the parties go through a process to pick the arbitrator. Arbitration is becoming the commonly used process to resolve consumer disputes between buyer and seller. Both parties using this model may achieve some of their goals. The arbitration process is more akin to the judicial trial where generally one party wins.

Litigation is employed when a court of law is chosen to resolve a dispute. It is certainly the most formal process of those mentioned here. Litigation employs procedures including how and when parties may present their side of the issue. It is the most pervasive formal structure of our judicial system and is adversarial in

nature. Litigation often breaks down the ability to give and take on an issue and generally separates parties from having a positive future relationship. Court proceedings generally result in winners and losers.

ATTACHMENT 1
THE STEPS IN A TRIAL

Directions: Re-order the following sentences in the order that the events would occur in a real trial. (Fill in the blanks that follow the sentences below.)

FACTS OF THE CASE:

Mark is on trial for murder.
His attorney is Ms. Heath.
The prosecuting attorney is Mr. Stevens.
Judge Kelly is presiding.

THE TRIAL:

a. Mr. Stevens delivers his closing argument.
b. Ms. Heath cross-examines the prosecution's witness.
c. Judge Kelly gives the jury their instructions.
d. Mr. Stevens examines the prosecution's witness.
e. Ms. Heath gives her opening statement.
f. The jury deliberates, makes its decision, and returns to the courtroom.
g. Ms. Stevens cross-examines the defense witness.
h. The foreman hands the jury's verdict to Judge Kelly.
i. Mr. Stevens gives the prosecution's opening statement.
j. Mr. Stevens briefly rebuts Ms. Heath's closing argument.
k. Ms. Heath delivers her closing argument.
l. Ms. Heath conducts her direct examination of the defense witness.

1. _____ 7. _____

2. _____ 8. _____

3. _____ 9. _____

4. _____ 10. _____

5. _____ 11. _____

6. _____ 12. _____

ATTACHMENT 1 - ANSWER SHEET

1 = i
2 = e
3 = d
4 = b
5 = l
6 = g
7 = a
8 = k
9 = j
10 = c
11 = f
12 = h

ATTACHMENT 2

WHO ARE THE CHARACTERS IN THE COURTROOM DRAMA?

Directions: Match each of the characters that participate in a trial with the description of what they do.

BAILIFF	listens to the evidence and decides who wins the case.
PLAINTIFF/PROSECUTION ATTORNEY	takes notes on everything said and done at the trial.
PLAINTIFF/PROSECUTION	gives his/her account of what he/she believes to be the facts in the case. Is asked questions by attorneys from both sides.
JUDGE	the person in charge of the court. Rules on the admissibility of evidence, instruct the jury on the principles of law, which apply to the case, and announces the verdict.
JURY	gives his/her opening and closing statements last, cross-examines the plaintiff/prosecution witnesses and objects to improper questions asked by the opposing attorney. Tries to show that there is not enough evidence to justify a verdict against the defendant.
COURT REPORTER	announces that the court is in session and which judge is presiding. Swears in witnesses.
DEFENDANT	initiates legal action against the defendant.
DEFENDANT ATTORNEY	this person is being accused of some wrongdoing. May be found guilty of a crime and/or owe money (depending on the type of case) if he/she loses the case.
WITNESS	Gives his/her opening and closing statement first, cross-examines the defense witnesses, and objects to improper questions asked by the opposing attorney. Tries to show enough evidence to persuade the jury that their verdict should be in favor of the plaintiff/prosecution.

ATTACHMENT 3

RULES OF EVIDENCE - A STUDENT GUIDE

1. NO LEADING QUESTIONS ON DIRECT EXAMINATION. This means that on direct examination questions which can be answered with a "yes" or a "no", or which suggest the answer that the examiner wants to hear, may not be asked.

2. EVIDENCE ABOUT THE CHARACTER OF A PARTY MAY NOT BE GIVEN unless that person's character is an issue in the case.

Examples:

* The defendant is charged with armed robbery. A witness may not testify that the defendant is a bad person. The issue here is whether or not the defendant robbed someone, not whether the defendant is a good person.

* Mary sues Joe for divorce on the grounds of adultery. A witness may testify that she knows Joe was unfaithful.

3. ATTORNEYS MAY HELP THEIR WITNESSES REMEMBER. This is called REFRESHING THE RECOLLECTION of the witness.

Example:

A witness sees a purse snatching, offers to testify at the trial, and gives a statement of events to the lawyer. At trial, the witness has trouble remembering the events he saw. The lawyer can help the witness remember by showing the statement to the witness. (NOTE: The lawyer must first mark and identify the statement and show the other side a copy. However, it need not be actually introduced into evidence, i.e., become a part of the trial record.)

4. SCOPE OF CROSS EXAMINATION IS LIMITED TO MATTERS WHICH WERE ASKED ABOUT ON DIRECT EXAMINATION. This means on cross-examination, the witness may not be asked about things he/she was not asked on direct examination.

Example:

On direct exam, the witness testifies as to events that took place in Milwaukee on Friday night. On cross-examination, the attorney may only ask the witness about the events in the bar in Milwaukee on Friday night. The attorney may not ask the witness what happened at the Toledo Zoo on Thursday afternoon.

Exception to the Rule - On cross examination, the witness may be asked questions which are designed to test the believability (credibility) of the witness, even though these matters were not gone into on direct examination.

Example:

In the above example, the attorney could ask the witness about a situation in which the witness lied in the past, even if the situation had nothing to do with the bar in Milwaukee on Friday night.

5. THE ATTORNEY MAY MAKE THE OTHER SIDE'S WITNESSES LOOK LIKE THEY SHOULD NOT BE BELIEVED. This is called IMPEACHING the witness. Ways to impeach the other side's witness-

-the lawyer asks the witness about:

* prior bad acts of the witness that show he/she cannot be believed.
* past criminal convictions of the witness.
* a prior statement of the witness, which is different from (contradicts) his/her testimony at the trial.
* bias or prejudice of the witness (i.e., the witness has reason to favor or disfavor one side.)
* The witness' ability to see, hear, smell, or remember accurately (i.e., the witness'perceptions).

6. STATEMENTS WHICH ARE MADE OUT OF COURT AND WHICH ARE OFFERED TO PROVE THE TRUTH OF THE CONTENTS OF THE STATEMENT ARE HEARSAY STATEMENTS. They are generally inadmissible as evidence.

Example:
Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there. Ellen told me that Joe killed Henry." The underlined statement is hearsay and may not be used.

Exceptions to the rule: Hearsay statements may be used if:

* the statement is made by a party in the case and the statement goes against him, or
* the statement describes the state of mind of a person important to the case.

Example:
Joe is being tried for murdering Henry. The witness may testify, "Joe told Ruth that he had killed Henry." The witness may testify, "I heard Joe say he would get even with Henry if it was the last thing he did."

7. WITNESSES MAY NOT GIVE OPINIONS, except for "opinions" as to what they personally saw or heard.

Example:
The witness may not say, "Roy was drunk, he staggered, slurred his speech and smelled of alcohol."

Exception to the rule:
An expert may give an opinion if he/she first testifies that he/she is an expert.
For instance, a psychiatrist may say, "Roy has as severe eating problem" after the lawyer has qualified the witness as an expert in eating disorders.

8. WITNESSES MAY NOT TESTIFY ABOUT SOMETHING OF WHICH THEY HAVE NO PERSONAL KNOWLEDGE.

Example:
The witness works with the defendant but has never been to the defendant's home or seen the defendant with his children. The witness cannot testify that the defendant has a bad reputation with his children or is a bad parent.

9. ONLY RELEVANT EVIDENCE MAY BE PRESENTED. Relevant evidence is any evidence, which helps to prove or disprove the facts in issue in the case.

Example:
The defendant is charged with running a red light. Evidence that the defendant own a dog is not relevant and may not be presented.

EVIDENCE WHICH IS RELEVANT, BUT WHICH IS UNFAIRLY PREJUDICIAL, CONFUSING TO THE JURY, OR WASTES TIME, MAY SOMETIMES BE EXCLUDED.

Example:
In an auto accident case, both sides agree that the defendant was driving the red Ford that hit the plaintiff. Evidence about the color of the defendant's car is relevant, but will be excluded because it is a waste of time if the parties have already agreed that the defendant was driving the car in question.

10. PHYSICAL EVIDENCE MAY BE INTRODUCED. Steps that a lawyer must follow:

a. show it to the judge, ask that it be marked for identification, and have the bailiff or clerk mark it.
b. show it to the opposing counsel, who may object if it violates the rules of evidence.
c. show it to the witness and ask him/her to explain what it is.
d. offer it into evidence (ask the judge to admit it).
e. get a ruling from the judge on whether it may be admitted into evidence.

PRE-TRIAL MOTIONS

According to the Rules of Procedure for the Illinois State Bar Association High School Mock Trials, only certain, very limited, pre-trial motions are allowed. These motions, when allowed, will be specifically stated in the annual problem materials. If motions are not included in the training materials, then no pre-trial motions (including motions for directed verdict, exclusion of witnesses, etc.) should be introduced.

Again, all permissible pre-trial motions will be clearly indicated in each year's trial materials, with explicit instructions on how to execute the motions.

OBJECTIONS

Objections are made when the other side has violated one of the rules of evidence. The objection should be made as soon as the question is asked by the other lawyer and before the witness answers. If it is not possible to make your objection before the answer is given because it is the answer, which is objectionable, object to the answer anyway and ask to have it stricken from the trial record.

When you make an objection, the judge will ask the reason. The other side has a chance to say why you are wrong and why the evidence should be allowed. The judge will then rule on the objection. If the judge says "sustained", your objection and the reason for it were correct and the witness will not be allowed to answer. if the judge says "overruled", your objection or the reason for it was wrong and the witness will be allowed to answer.

Standard mock trial objections:

RELEVANCY - "Objection, Your Honor. This testimony is not relevant to the facts of this case."

LEADING QUESTION ON DIRECT EXAMINATION - "Objection, Your Honor. Counsel is leading the

witness."

IMPROPER CHARACTER TESTIMONY - "Objection, Your Honor. Character is not an issue here."

BEYOND THE SCOPE OF DIRECT EXAMINATION - "Objection, Your Honor. Counsel is asking about matters that did not come up in the direct exam." (Or, matters that are "beyond the scope of the direct examination").

HEARSAY - "Objection, Your Honor. Counsel's question, the witness' answer, is based on hearsay." If the witness has already given a hearsay answer, the attorney should also say, "and I ask that the statement be stricken from the record."

OPINION TESTIMONY - "Objection, Your Honor. Counsel is asking the witness to give an opinion."

NO PERSONAL KNOWLEDGE - "Objection, Your Honor. The witness has no personal knowledge to answer the question."

CREATION OF MATERIAL FACT - "Objection, Your Honor. The witness is creating facts material to the case which are not in the record." (This objection is not a rule of evidence ordinarily but is used in the mock trial scenario to avoid the creation of evidence by students, which misleads and confuses the issues presented.)

ATTACHMENT 4

RULES OF EVIDENCE HYPOTHETICALS

1. Doug told me he had killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?

2. On direct exam, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, "You were at school on November 30, isn't that correct?"

3. Same as in 2. Can the attorney ask David, "Where were you on November 30?"

4. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife?

5. Can Harry's unfaithfulness be introduced in a civil trial for divorce?

6. John made a sworn statement two days after the automobile accident he witnessed. When the case finally came to trial and he is called as a witness, John cannot remember what happened. Can the attorney show John the statement that will help him remember? Must the attorney introduce the statement into evidence?

7. Same situation as 6, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross-examination, can the other attorney bring up the inconsistencies?

8. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross-examination, ask about the repair costs of the car?

9. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that, in his expert opinion, the victim was suffering from a spiral fracture of the right tibia and fibula?

10. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a spiral fracture of the right tibia and fibula?

11. Sally has never seen Amy with the baby. Can sally testify that Amy is a terrible mother?

ATTACHMENT 4 - ANSWER SHEET

RULES OF EVIDENCE HYPOTHETICALS

1. yes — Although this is hearsay (an out-of-court statement being used to prove the contents of the statement), it is an admission by the defendant that goes against him--one of the exceptions to the hearsay rule.

2. no — Leading questions are not allowed on direct examination, so it will have to be rephrased (e.g., "Where were you on November 30?")

3. See #2 above.

4. no — It is irrelevant.

5. yes

6. yes — The attorney can show John the statement he made after the accident. Yes, he/she can use the statement to refresh John's recollection by showing it to him briefly.
The statement need not be admitted into evidence.

7. yes — This is called impeaching the witness by pointing out their prior inconsistent statement(s).

8. Technically, no
This is beyond the scope of direct examination. However, in practice this rule is broadly interpreted, so the judge might allow this question.

9. yes — Since Herb was properly qualified as an expert in this area.

10. no — He is not an expert in this area.

11. no — Sally has no personal knowledge of this.

ATTACHMENT 5

RULES OF EVIDENCE HYPOTHETICALS

In each of the situations below, the defendant is on trial for murder and is claiming self-defense. Would you object to any of the following testimony or evidence? If so, how would you phrase your objection?

1. On direct examination the defense attorney asks, "You could hear the voices from Mr. Eldon's apartment very clearly, couldn't you, Ms. Spencer?"

2. Mr. Wirtz, an English teacher who knew Joe and Steve since they were in high school, testifies that Joe did not do well in high school because he had deep psychological problems.

3. Miss Cook, who lives in the apartment below Ray (the defendant), testifies that she heard Matt (the victim) yell, "Put down that gun, Ray! Enough is enough!"

4. Police officer Jones testifies that when he entered Ray's apartment, the "saw Matt's body on the floor, bleeding all over."

5. The same police officer says that the defendant told him, "I killed him, the filthy swine had it coming to him."

6. The police officer says that he talked to the defendant in the police car and that the defendant was quite drunk.

7. Robert McClanahan, a bartender at the Wanderer Saloon, says that drinking seven "boilermakers" would make anyone drunk.

8. The defendant, on direct examination, stated that the police officer did not say a word to him from the time of his arrest until they reached the police station. On cross-examination, the prosecuting attorney hands the defendant a sworn statement that he made before the trial and says, "The story you told in this pre-trial statement isn't the same, is it Mr. Eldon?"

9. Terry Robinson, a waiter at the Wanderer Saloon, says that Pam Sullivan, a waitress at the same saloon, mentioned to him how sweet the defendant was to be "so protective" of her when his friend, Matt, was "hitting on her" and "acting like an animal".

10. Joanne testifies that she has known the defendant since high school and that he is an extremely nice and considerate guy.

ATTACHMENT 5 - ANSWER SHEET

RULES OF EVIDENCE HYPOTHETICALS

1. Objection, Your Honor. That's a leading question.

2. Objection, Your Honor. Counsel is asking the witness to give an opinion and the witness is not an expert.

3. This is hearsay, but it probably fits within the "state of mind" exception and is therefore admissible. (It can be argued that the victim's state of mind is important where the defendant is claiming self-defense.)

4. The officer can't say he say Matt's body unless he previously testified that he knew Matt; otherwise, he has no personal knowledge that it was Matt and could only state that there was a body on the floor.

5. This is hearsay but it is admissible because it is an admission by the defendant.

6. Although he is not an "alcohol expert", the police officer can testify as to his opinion about things that do not necessarily require an expert to describe--like drunkenness, size, speed of a moving object, etc. (He might have to say the defendant "SEEMED quite drunk").

7. This is not objectionable if McClanahan has been qualified as an expert in this area.

8. This is proper impeachment through the use of a prior inconsistent statement.

9. Objection, Your Honor. This is hearsay.

10. Joanne can testify about the defendant's good character since it is an issue in the case (because he is claiming self-defense).

ATTACHMENT 6

RULES OF EVIDENCE HYPOTHETICALS

1. Amos is a witness in a personal injury trial. Before trial he told you, the plaintiff's attorney, that the plaintiff's car was facing north after the crash. A photo was taken which shows the accident scene. At trial, you ask Amos which way plaintiff's car was facing after the crash. He answers "I can't remember". You want the jury to hear that the plaintiff's car was facing north. What do you do?

2. Willis is on trial for murder. He says that he stabbed Jane in self-defense. You are the State's Attorney. Willie's attorney has a witness, Tom, who testifies that he knew Jane, that she was a bum, and never paid her bills. What do you do?

3. Willis is indicted for murder. He claims he stabbed Jane in self-defense. You are the defense attorney. You have a witness, Sally, who testifies that she knew and that Jane was a brute who had once beaten and kicked her for no good reason. Will this be admitted into evidence?

4. This is a personal injury case arising from an auto crash with Bill and Ed. Ed is suing Bill for his medical expenses and car repair bills. Tom is Bill's best friend but he has never driven with or seen Bill drive. He has heard from other people that Bill is a great driver and has never speeded or broken any of the rules of the road. Can Bill's attorney ask Tom what kind of driver Bill is?

ATTACHMENT 6 - ANSWER SHEET

ANSWERS TO RULES OF EVIDENCE HYPOTHETICALS

1. Refresh Amos' recollection. First, ask if there is anything that would help him to remember (so he would answer something like, "Yes, there was a photo taken at the accident scene that I saw--it might help me remember."). Or, more directly, ask if a photo of the scene of the accident would help jar his memory. Remember that anything may be used to help a witness remember and it need not be introduced into evidence.

2. Object on the ground that this evidence is irrelevant. Since Willie is claiming self-defense, Jane's (the victim's) potentially violent character is an issue in the case. However, her bad credit has nothing to do with whether she had a mean or violent disposition that would have forced Willie to kill her in self-defense.

3. Yes. See the explanation in #2 above.

4. No. Tom has no personal knowledge of this. Also, what he has heard from others is hearsay.

ATTACHMENT 7

INTRODUCING PHYSICAL EVIDENCE

1. Sam is on trial for murder. The prosecution is trying to prove that he got the gun that was used to kill the victim from a friend's (Jeff's) gun cabinet. Jeff, who has an extensive collection of both revolvers and shotguns, is on the witness stand. You are the prosecuting attorney and you want to get the murder weapon admitted into evidence. What do you do?

2. Mr. Slumlord is being sued in a personal injury case. A tenant in his building tripped on the back stairs and hurt her back. She claims that the stairs had been in terrible condition for some time. Mr. Slumlord wants to prove that the stairs were actually in good condition the day before the tenant's accident, so he has brought a picture of the stairs that was taken just before the tenant fell. Another tenant from the building is now testifying and, as the attorney for Mr. Slumlord, you want to get the photograph of the stairs admitted into evidence. What do you do?

3. Silvester, a used-car-salesman, is on trial for fraud. The plaintiff claims that Silvester tricked him into buying a car that had terrible mechanical problems. The plaintiff has a note, signed by Silvester, that says, "So what if I exaggerated a little about the quality of the car?" No one else has ever complained." Silvester is on the stand and you, his attorney, want to get his note into evidence. What do you do?

4. Rose was walking one morning when she saw a car and a bus collide at an intersection. When the police arrived, Rose told them that Jim, the driver of the car, had been going about 20 mph. She later signed a statement to that effect at the police station. AT trial, in the case between Jim and the bus company, Rose testifies that Jim was travelling at 45 mph. On cross-examination she now denies that she ever said that Jim has been driving at 20 mph. You are Jim's attorney and you want to get Rose's sworn statement to the police into evidence in order to impeach her. What do you do?

ATTACHMENT 7 - ANSWER SHEET

ANSWERS TO INTRODUCING PHYSICAL EVIDENCE

1. Have the gun marked as an exhibit. Then, show Jeff the gun and ask him if he can identify it and, if so, how. (This is called "laying a foundation" and it must always be done before physical objects can be entered into evidence.) Once the witness has clearly identified the object (in this case, the gun) and has answered other questions the attorney may ask, then the attorney asks the judge to have it admitted into evidence. Remember, that it is marked, and given to opposing counsel before questions are asked. If opposing counsel doesn't object, it is admitted into evidence; if counsel does object, the court just rule whether or not to admit it into evidence.

2. Same as #1 above.

3. Same as #1 above. Note that a hearsay objection might be raised here (hearsay can be oral or written statements), but the note is an admission of the defendant in this case and thus falls within an exception to the hearsay rule.

4. The statement need not be introduced into evidence here but can still be used to impeach Rose. Once she denies having made the earlier statement, the attorney should hand her a copy of it and ask her if she recognizes her signature. When she identifies the signature, the attorney should then point out the part in which she says Jim was only going 20 mph and have her read it aloud.

ATTACHMENT 8

THE OPENING STATEMENT

1. The opening statement is first given by the plaintiff or prosecution, then the defendant. Opening statements should:

outline the case...provide a framework to analyze the case

state the facts of the case that you expect to prove

"understate" or "soft-sell" points

appeal to the good judgment of the court

(defendants in criminal cases) stress the state's burden of proof, i.e., to show guilt beyond a reasonable doubt.

not be argumentative

not make any conclusions

not refer to evidence if its admissibility is doubtful because it may violate one of the rules of evidence.

2. Begin with a formal address to the Judge: "May it please the court, your Honor, Counsel, my name is _____, counsel for _____ in this action."

3. The opening statement, which outlines the case, may be presented in chronological order or another orderly sequence of events.

4. Proper phrasing includes:

the evidence will indicate...

the facts will show...

witnesses will present evidence to show...

witness A will be brought to testify on the state's/plaintiff's behalf that...

witness B will be called to tell you...

ATTACHMENT 9

DIRECT EXAMINATION

1. Direct examination is conducted by the attorneys of their own witnesses. It should be designed to get facts from the witnesses which are understandable and, hopefully, to convince the judge to accept your position. Questions on direct examination should:

* make the witness seem like he/she ought to be believed

* keep the witness "in control" (prevent the witness from rambling since this might weaken the effect on his/her evidence)

* not be leading (where the attorney is telling the story for the witness)

2. The attorney calls the witness for direct examination:

"Your Honor, I'd like to call _____ to the stand."

After the witness is sworn in by the bailiff or court clerk, some introductory questions should be asked.

* please state your name, address and occupation.

* length of residence or present employment, if this information is relevant in establishing his/her credibility

* further questions about professional qualifications if you wish to qualify the witness as an expert.

3. Examples of proper questions on direct examination:

* directing your attention to (date), could you please tell the court what occurred?

* what happened then...? or, what did you see...?

* how long did you see...?

* did John (the defendant) say anything about...?

* how long have you worked with Mrs. Smith?

4. Conclude your direct examination:

"Thank you, Mr./Ms. _____. That will be all, your Honor." The witness remains on the stand for cross-examination by the opposing attorney.)

ATTACHMENT 10

CROSS EXAMINATION

1. Cross-examination follows the opposing attorney's direct examination of his/her own witness. The purposes of cross-examination are:

* to test the witness' truth-telling ability (and believability) in order to cast doubt on the validity of the witness' story, and/or
* to establish some of the facts of the cross-examiner's case wherever possible.

2. Cross examination should:

* use leading questions, which are aimed at getting "yes" or "no" responses
* be based on evidence, which was brought out on the direct examination of that witness
* never include questions to which the attorney does not know the answer.

3. Proper phrasing of questions includes:

* isn't it a fact...?
* on (date), when you made a statement in your attorney's office, you said that _____, didn't you?

4. Cross-examination should conclude with, "Thank you, Mr./Ms._____. That will be all, Your Honor.

ATTACHMENT 11

CLOSING ARGUMENTS

1. Closing statements should:

* begin with a proper address to the court
* persuasively and forcefully summarize the strong points from witness testimony
* note flaws in the testimony, which support the claims of your side
* be well organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument)
* prosecution in criminal cases--emphasize that guilt beyond doubt was shown by the state, or
* defendants in criminal cases--raise questions about the weight of the evidence
* be presented so that notes are barely necessary and eye contact can be established
* be emotional and strongly appealing (unlike the "neutral" opening statements).

2. Proper phrasing includes:

* the evidence has clearly shown that....
* based on this testimony, there can be no doubt that....
* the evidence overwhelmingly shows that....

3. Closing arguments should conclude with, "Your Honor, you have carefully listened and have heard the facts in this case. Now you must decide the verdict, considering...."

High School Mock Trial Rubric - Team Participation
For use in teaching the mock trial process and for evaluating team presentations.

These forms are provided to help teachers and coaches evaluate student learning in the mock trial process. This rubric is specifically formulated for students who are working as a team to accomplish a goal.

1 - poor	2 - below average	3 - good/average	4 - strong/effective	5 - excellent

1. Each member of the team has a clear understanding of the mock trial rules of procedure.

2. Each member of the team has a clear understanding of the burden of proof.

3. Each member of the team is able to present information in logical and articulate manner.

4. All members of the team contribute, listen and respect each other.

5. All members of the team understand the steps in the trial.

6. All members of the team attend meetings, practices and trials regularly.

7. All members of the team understand that they are limited to the materials provided in the mock trial packet.

8. All members of the team understand good citizenship and fairness.

9. All members of the team are aware of alternative dispute resolution processes.

10. All members of the team understand the American judicial system.

High School Mock Trial Rubric - Attorney Opening/Closing
For use in teaching the mock trial process and for evaluating student presentations.

These forms are provided to help teachers and coaches evaluate student learning in the mock trial process. This rubric is specifically formulated for students who are assigned the task of crafting and presenting an opening statement or a closing argument.

1 - poor	2 - below average	3 - good/average	4 - strong/effective	5 - excellent

1. Student comprehends the various statements of fact and has a clear idea of the burden of proof.

2. Student provides an accurate synopsis of what needs to be discussed in an opening statement.

3. Student provides an accurate synopsis of what needs to be discussed in a closing argument, and understands that there are limits on what may be included based on what is discussed during the trial.

4. Delivery of opening and/or closing is clear and concise, with minimal reliance on notes.

5. Student speaks clearly and loudly enough to be heard throughout the room.

6. Student directs comments to the appropriate audience; including judge, jury or witness, with good eye contact.

7. Student exhibits appropriate courtroom decorum and respect for all parties in the trial, including opposing counsel and witnesses.

8. Statements are organized into thoughtful and methodical presentations.

9. Appropriate time limits are followed.

10. Students performing closing arguments use appropriate information only and indicate that they listened and understood opposing arguments.

High School Mock Trial Rubric - Attorney Direct/Cross
For use in teaching the mock trial process and for evaluating student presentations.

These forms are provided to help teachers and coaches evaluate student learning in the mock trial process. This rubric is specifically formulated for students who are assigned the task of crafting and presenting an opening statement or a closing argument.

1 - poor	2 - below average	3 - good/average	4 - strong/effective	5 - excellent

1. Student comprehends the various statements of fact and has a clear idea of the burden of proof and is able to establish a foundation for documents.

2. Student develops questions for direct that indicate a clear understanding of the case and how it should be proved.

3. Questions are appropriate for direct or cross, i.e. no leading questions on direct.

4. Delivery of questions on direct and/or cross is clear and concise, with minimal reliance on notes.

5. Student speaks clearly and loudly enough to be heard throughout the room.

6. Student directs comments to the appropriate audience; including judge, jury or witness, with good eye contact.

7. Student exhibits appropriate courtroom decorum and respect for all parties in the trial, including opposing counsel and witnesses.

8. Statements are organized into thoughtful and methodical presentations.

9. Appropriate time limits are followed.

10. Student knows when to object, and on what grounds and is able to explain articulately why objections are made or should be overruled.

High School Mock Trial Rubric - Witnesses
For use in teaching the mock trial process and for evaluating team presentations.

These forms are provided to help teachers and coaches evaluate student learning in the mock trial process. This rubric is specifically formulated for students who are serving as mock trial witnesses.

1 - poor	2 - below average	3 - good/average	4 - strong/effective	5 - excellent

1. Students are familiar with all mock trial rules.

2. Students understand the burden of proof.

3. Students are familiar with their witness statement and any additional information provided in the mock trial packet that is relevant to the case at hand.

4. Student understands that they must respond accurately, within the information in their witness statement, to questions asked by mock trial attorneys.

5. Appropriate time limits are followed.

6. Student speaks clearly and loudly enough to be heard throughout the room.

7. Student directs comments to the appropriate audience; including judge, jury or witness, with good eye contact.

8. Student exhibits appropriate courtroom decorum and respect for all parties in the trial, including opposing counsel and witnesses.

9. Student portrays the witness in a convincing manner, within the rules (i.e., no costumes, props, dialects or accents).

10. Student can perform the role of witness without use of notes.

Additional Information

Past ISBA mock trial problems are available for classroom use via the Internet at *http://www.isba.org/Sections/lawrelateded.asp*

While official mock trial teams registered and participating in the state mock trial event each spring are limited to the materials provided by the ISBA for this event, as an additional classroom exercise, teachers and students are encouraged to expand on the materials provided.

- Independent research may be conducted, and additional witness statements may be crafted to include, for instance, arresting officers, character witnesses, expert witnesses, etc.
- Internet searches may provide updated information on the topics discussed in years past
- You may ask students to debate the issues brought forth in a particular case
- You may ask students to mediate the issues brought forth in a particular case
- Assign students the task of drafting a bench memorandum, which explains the basics of the case and synopsizes what each side must prove

Other Participants in the Trial

Not all students will be able to participate as a mock trial witness or lawyer. Other roles are open to students:

Judge
Jury
Bailiff
Timer
Court Reporter
Journalist/Reporter
Courtroom artist

Students may also be asked to read law-related books and develop mock trial witness affidavits based on the characters in the books. The ISBA Website contains a law-related reading list that can be used for this assignment. *http://www.isba.org/Sections/lawrelateded.asp*

Or, ask students to watch one of the movies listed below and create a witness statement or affidavit based on one of the characters depicted:

A Civil Action (1999)
A Few Good Men (1992)
A Man for All Seasons (1966)
Absence of Malice (1981)
Adams Rib (1949)
Amistad (1997)
Anatomy of a Murder (1959)
And Justice For All (1979)
Billy Budd (1962)
Birdman of Alcatraz (1962)
Breaker Morant (1980)
Catch Me if You Can (2003)
Class Action (1991)
Cool Hand Luke (1967)
Dead Man Walking (1995)
Erin Brockovich (2000)

Gideon's Trumpet (1980)
Holes (2003)
In the Name of the Father (1994)
Judgment at Nuremberg (1966)
Kramer v. Kramer (1979)
Liar, Liar (1997)
Losing Isaiah (1995)
Miracle on 34th Street (1947) (1994)
Mrs. Doubtfire (1993)
My Cousin Vinny (1992)
O Brother, Where Art Thou? (2000)
Paths of Glory (1957)
Presumed Innocent (1990)
Robin Hood: Prince of Thieves (1991)
Schindler's List (1993)
Sommersby (1993)
The Accused (1988)
The Castle (1999)
The Crucible (1996
The Devil's Advocate (1997)
The Fugitive (1993)
The Insider (1999)
The Onion Field (1979)
The Paradine Case (1947)
The Rainmaker (1997)
The Star Chamber (1983)
The Thin Blue Line (1988)
The Winslow Boy (1999) (1948)
Time to Kill (1996)
Twelve Angry Men (1957)
Whose Life is it Anyway? (1981)
Young Mr. Lincoln (1939)
Gosford Park (2001)
I Am Sam (2001)
Inherit the Wind (1960)
Knock on Any Door (1949)
Legal Eagles (1996)
Lord of the Flies (1990)
Midnight in the Garden of Good & Evil (1997)
Mr. Deeds Goes to Town (1936)
Murder in the First (1995)
Nuts (1987)
Paris Trout (1991)
Philadelphia (1994)
Reversal of Fortune (1990)
Rules of Engagement (2000)
Snow Falling on Cedars (2000)
Suspect (1987)
The Caine Mutiny (1954)
The Client (1994)
The Devil and Daniel Webster (1941)
The Firm (1993)
The Incident (1989)
The Life of Emile Zola (1937)
The Ox-bow Incident (1943)
The Pelican Brief (1993)
The Shawshank Redemption (1994)
The Sweet Hereafter (1997)
The Verdict (1982)
The Wrong Man (1956)
To Kill a Mockingbird (1962)
Wag the Dog (1998)
Witness for the Prosecution (1957)

INFORMATION

If you would like more information on the mock trial program sponsored by the Illinois State Bar Association, please feel free to contact:

Illinois State Bar Association Mock Trial Office
Donna Schechter, State Coordinator
424 South Second Street, Springfield, Illinois 62701
217/525-1760 or 800/252-8908
Fax - 217/525-9063
dschecht@isba.org

Visit the ISBA LRE Website at
http://www.isba.org/Sections/lawrelateded.asp

THANK YOU

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