Mock Trial Explanatory Guide

Introduction

This guide is designed to assist teachers, attorneys and students in their preparation for Mock Trial Tournaments. This guide complements the official rules of the Iowa Mock Trial Competition; it provides explanatory materials and should be used in conjunction with the rule book. These rules and procedures are similar in many ways to those guiding trials in Iowa's judicial system, however, there are notable differences and coaches and students should use this guide and the rule book when preparing for the Iowa Mock Trial Tournaments. However**, this guide may not be used in the courtroom during a competition trial. The rulebook alone governs the conduct of the Iowa Mock Trial Program.**

The Iowa Mock Trial Tournament is designed to teach students about basic trial processes and the judicial resolution of disputes. Mock Trials reflect the underlying concept behind advocacy through trial. Trials are arenas for settling disputes over the truth. Students will learn how the courts use rules and procedures like those in this guide to govern a vigorous presentation of different claims to the truth.

Objectives of the Iowa Mock Trial Program

The Iowa Mock Trial Program is one of several projects through which The Iowa State Bar Association's Center for Law and Civic Education assists schools in educating young people about law and citizenship. The Mock Trial Program is designed to achieve the following:

- increase proficiency in basic skills such as listening, speaking, reading, and reasoning
- enhance understanding of the law and constitutional issues
- promote cooperation and healthy competition among students of various abilities and interests
- demonstrate student achievements to the community
- provide hands-on experience from which students can learn about the legal system, society and themselves
- provide a challenging and rewarding experience for participating teachers and attorneys from the community

Mock Trials involve listening, questioning, thinking and learning. The emphasis in a trial is on advocacy. The program does not wish to emphasize dramatic performance! Analysis and sound reasoning combined with effective communication to a judge are critical to success in a mock trial.

Explanatory Notes:
Preparing and Presenting the Case

A. Opening Court

When the Judges enter, everyone in the courtroom should stand and remain standing until the Presiding Judge tells everyone to be seated. The Presiding Judge will call the Court to order, will announce the case by the names of the parties and will ask the attorneys to approach the bench for a pre-trial conference.

The **Pre-Trial Conference** is a meeting between the Judges and the attorneys to answer any questions and clarify any points of confusion in order to make the trial progress smoothly. During the pre-trial conference each party should have one attorney introduce all the members of the team. Witnesses can be introduced using both their real names and the names of the characters they will portray at trial. Attorneys also may have evidence marked for identification purposes during the pre-trial conference; the plaintiff/prosecution may also reserve time for closing argument's rebuttal during pre-trial. The judges may wish to discuss other pre-trial matters at this time. Any questions regarding the conduct of the trial should be addressed during Pre-Trial.

After the pre-trial conference, the attorneys should return to their respective counsel tables. The Presiding Judge will ask the two parties if they are ready to proceed. Each attorney who will give the opening statement should then stand and indicate that he or she is ready to proceed. The Judge will then ask the plaintiff/prosecution to give the opening statement.

B. Opening Statements

1. Plaintiff/Prosecution

Opening statements should inform the fact-finder (the jury or judges) of the nature of the facts of the case. The attorney presenting the plaintiff/prosecution's opening statement should first address the Court by asking **"May it please the Court?"** and acknowledge the attorneys for the defense, **"Opposing Counsel"**. The attorney should then introduce him/herself and the client, **"I am Perry Mason and I represent Wanda Smith, the plaintiff in this case."** or **"I am Perry Mason and I represent the people of the state of Iowa in this case."**

The attorney should then briefly outline the facts and circumstances that brought the case to court. The attorney should tell the court which witnesses he/she will be calling and the attorney should summarize the key facts to which each witness will testify. He/she should also identify the importance of any documents that will be introduced during testimony. The attorney should conclude with the remedy or request for relief they seek. **"The prosecution asks that the defendant, Bugsy Malone, be found guilty of murder in the first degree."**

The opening statement should not contain too much detail; excessive detail is likely to tire or confuse the Court. The opening statement should not exaggerate or overstate the plaintiff/prosecution's case or refer to specific evidence. Instead, it should state what the attorney anticipates will be presented at trial; to this end, student attorneys should use terms such as **"The evidence will show"** or **"Today we will hear"**.

The opening statement should provide the facts of the case from the client's point of view; but the opening statement should not be an argument. An argumentative opening

statement risks reprimand from the Court. The opening statement should anticipate what the defense attorney will say.

Objections by either side are not permitted during opening statements.

It is important not to pace back and forth during the opening statement. Maintaining eye contact with the judges will help you make a persuasive opening statement. Most attorneys find it helpful to memorize the opening statement, and to refer to an outline to help them keep their place. Students are strongly discouraged from reading the complete text of the statement, as this causes loss of eye contact with judges.

It may be helpful for students to remember that they know the case better than the judges. Attorneys should be able to outline the case for the Court, just as they easily could describe the facts to someone who is not familiar with the case.

2. Defendant

The purpose of the defendant's opening statement is to deny that the plaintiff/prosecution has a valid case and to provide a general outline of the facts from the standpoint of the defendant.

The defense attorney who delivers the opening statement should address the Court: **"May it please the Court?"** and acknowledge opposing counsel: **"Opposing counsel."** The attorney should also introduce her/himself and the defendant.

The defense attorney should then tell the Court the general theory of the client's defense and discuss the facts that weaken the plaintiff/prosecution case. The attorney should outline what each witness will testify and then conclude.

The defense attorney should avoid repeating facts which are not in dispute. Like the plaintiff/prosecution, the defense should not make an opening statement that is argumentative or exaggerated.

Suggestions regarding eye contact, memorization, and the use of an outline discussed in the plaintiff/prosecution section also apply to the defense attorney.

C. Calling Witnesses and Direct Examination of Witnesses

After opening statements the attorney who examines the first witness should stand and ask the Court **"May I proceed?"** When the presiding judge indicates you may continue, the attorney calls his/her first witness: **"The plaintiff/prosecution calls Bugsy Malone to the stand."**

Direct examination is when the attorney asks his/her own witness questions on behalf of the party the attorney represents. The purpose of direct examination is for the attorney to present the evidence necessary to warrant a decision by the Court which is favorable to the client. All of the elements of a law or criminal charge must be brought into evidence through the testimony of witnesses or through documents.

The attorney attempts to ask questions of the witnesses which will result in the client's side of the case being presented in the most favorable light. Through the witness' testimony, the key facts of the case should be presented clearly and explicitly to the Court. The attorneys should attempt to convince the judge of the soundness of their client's case.

The attorneys for the plaintiff/prosecution first conduct the direct examination of each of it's own witnesses. After the plaintiff/prosecution has examined all of its witnesses, and the

defense has cross-examined the plaintiff/prosecution witnesses, an attorney for the plaintiff/prosecution should stand and tell the court, **"Your honor, the plaintiff/prosecution rests."** The attorney for the defense will conduct direct examination of the defense's witnesses after the plaintiff/prosecution has rested its case.

During direct examination it is best to ask clear and open-ended questions. Attorneys should try to phrase their questions to begin with "who", "what", "when", "where" and "how", or ask witnesses to "describe" or "explain". Asking long or confusing questions, or asking questions that call for a narrative response are likely to result in objections from the opposing counsel. Attorneys should be a friendly guide for the witnesses to tell their stories.

Often attorneys are hesitant to bring out facts which are negative to the case they are trying to present. Keep in mind that opposing counsel will be certain to bring out those facts while presenting their side of the case. It is helpful for an attorney to bring out the negative side of the case in order to present the information in the light most favorable to the client. The Court is likely to feel that counsel is presenting a case that is open and honest if the attorney brings up the negative aspects of her/his client's case during direct examination.

D. Cross-Examination of Witnesses

Each direct examination is followed by a cross examination. During cross examination the attorney for the opposing party asks questions of the witness. Cross examination allows the opposing attorney an opportunity to secure admissions from the opposing witness that will tend to prove his/her client's side of the case. The attorney asks questions of the opponent's witnesses in an attempt to discredit those witnesses and negate the opponent's case.

Witnesses may be cross-examined regarding both those things to which they testified during direct examination and the other information contained within their witness statement included with the case materials. Their in court statements and their affidavit together comprise the "scope" of their testimony. During cross-examination, the attorney should ask questions which will explain, modify or discredit what a witness said during direct exam. The attorney should examine the witness's statement prior to trial to decide what evidence is favorable to his/her case and attempt to address that evidence during cross examination.

During cross-examination, attorneys should ask narrow questions that lead the witness to the answer. "Yes" or "no" questions are very effective during cross examination. Attorneys should not ask questions that give the witnesses the opportunity to explain their sides of the story, as it may be damaging to the client's case. Leading questions (those which suggest the answer) are appropriate during cross-examination, but not during direct examination.

It is especially important to maintain courtroom etiquette when conducting cross-examination. Be fair and courteous, and do not harass the witness by speaking harshly or deliberately asking a question over and over. Keep in mind that it may be helpful to your client's case when a witness does not provide an answer to a question.

The attorneys for the defense will conduct cross-examination of each of the plaintiff/prosecution witnesses immediately after each direct examination has been finished. The attorney's for the plaintiff/prosecution will conduct cross-examination of each of the defense witnesses after each of the defense attorneys has completed his/her direct examination.

E. Re-Direct and Re-Cross-Examination

Re-direct examination can be conducted after cross examination. Attorneys are allowed to conduct re-direct examination of their own witnesses in order to provide further explanation of any answer given by the witnesses during cross-examination. It is extremely important that the attorney who conducts the direct examination of the witness pay close attention during cross-examination of that witness in order to decide if re-direct examination is necessary.

Re-direct examination is necessary if the cross-examination hurt the witness's testimony by forcing the witness to acknowledge facts which appear more favorable to the opposing team. It may be necessary if the opposing attorney prevented the witness from fully explaining the response to a cross-examination question. Re-direct examination should not be used simply to repeat the original direct examination. Re-direct examination must be in response to something that occurred during cross-examination: it must be within the scope of the cross-examination. As with direct examination, the attorney should not ask leading questions of the witness. Direct and simple open-ended questions are the best.

Re-cross-examination can be used by opposing counsel only after an attorney has conducted a re-direct examination of his/her own witness. Like re-direct, it provides an opportunity to further explain the witness's response to a question asked by the other side. It must be in response to something that occurred during re-direct examination: it must be within the scope of the re-direct examination.

Re-direct and re-cross-examinations should be kept as brief and to the point as possible. Usually only one or two questions will be sufficient. The time used for re-direct and re-cross examinations is taken from the team's overall time for examinations. If the attorney does not need to conduct re-direct or re-cross examination of a witness, then she/he should not do so. Re-direct and re-cross are not required aspects of the mock trial tournament and student attorney scores will not be lowered for failure to conduct re-direct or re-cross. However, a team that has learned how to conduct a re-direct or re-cross appropriately is likely to earn a higher score than one that has not.

F. Closing Arguments

In closing arguments, the attorney should summarize the highlights of the witness' testimony and the documents as they support his/her client's case and should use those facts to undermine the opponent's case. During the closing argument, the attorney should try to establish a persuasive link between the facts of the case and the law. Attorneys are not allowed to discuss evidence that has not been admitted at trial during the closing argument; therefore, it is important that all of the attorneys on a team cooperate to ensure that all of the evidence important to the client's case has been brought out during examinations.

The closing argument, like the opening statement, is not evidence. The closing argument is different from the opening statement, however, because the attorney argues the client's side of the case. Essentially, this means that the attorney is allowed to explain to the Judges *why* his/her client should win. The closing statement should be an organized, well reasoned presentation which emphasizes the strengths of the client's case and addresses the flaws of the opponent's case.

In preparation for a mock trial, the attorney who will present the closing argument should plan the argument well in advance; this planned argument should be based upon the facts she/he expects will be brought out at trial. However, the attorney presenting the closing argument must be extremely flexible and must listen carefully; she/he should take notes throughout the entire trial in order to refer only to evidence which has actually been admitted into trial.

An attorney must present the closing argument in a style which is comfortable to her/him. Some attorneys prefer a loud, strong style while others prefer a calm, persuasive presentation. It is important for the attorney to settle on a style that is comfortable and appropriate to the client's case. The attorney should not read from a written text of the argument, though an outline may be helpful.

The attorney should begin the closing argument with **"May it please the Court?"** Each closing argument should be concluded by confidently requesting that the Judges grant the decision her/his client seeks.

The plaintiff/prosecution will be the first to present the closing arguments, the defendant's attorney will then immediately present his/her closing argument.

Each closing argument should acknowledge the **burden of proof**.

The burden of proof refers to the quality of evidence that a party must produce to convince the Court of the truth of the claim they are making at trial. The plaintiff/prosecution has the burden to produce the evidence to prove to the Court the matter on which they are asking the Court to rule. In a **criminal** case, the burden of proof is always **beyond a reasonable doubt**. In other words, the prosecution has the burden to provide evidence to show that the defendant is guilty of the crime of which he/she is accused beyond any doubt that is reasonable. This does not mean that no doubt can exist in the minds of the Judges in order for the Judge to issue a guilty verdict; it only means that the doubt must be beyond reason.

In a **civil** case, the burden of proof is by a **preponderance of the evidence**. Proof by a preponderance of the evidence means that if one were to weigh the quality of all the plaintiff's evidence against the quality of all the defendant's evidence, one side would out-weigh the other. The Judges will decide in favor of the party that provides the greater weight of the evidence. This burden is not as great as the burden in a criminal case.

The reason for the difference of the burden of proof between civil and criminal cases results from the difference in what is at risk. In a criminal case, the defendant runs the risk of losing his/her liberty, which is an inalienable right guaranteed by our Constitution. In order for the Court to deprive a person of that liberty, the Court must be convinced beyond a reasonable doubt that the defendant is guilty.

In a civil case, the defendant is at risk of losing money or some right that is not considered as crucial as liberty. In addition, the Court is seeking to correct an injustice that has occurred to the plaintiff. If the weight of the evidence indicates that the defendant is liable, the Court will find in favor of the plaintiff in order to right that injustice.

G. Rebuttal Argument

After the defense has presented its closing argument, the attorney for the plaintiff/prosecution has the opportunity for a rebuttal argument. **If the attorney for the plaintiff/prosecution wishes to make a rebuttal argument, time must be reserved when the attorney begins the closing argument or in the Pre-trial conference.** The time reserved for rebuttal is deducted from the time available for the plaintiff/prosecution closing argument. Students may ask to reserve a specific amount of time, or he/she may wish to reserve the time remaining.

A rebuttal argument is very similar to re-direct or re-cross; it is to contradict formally the defendant's argument and to provide the plaintiff/prosecution with the "last word" to the Court. Rebuttal argument is the plaintiff/prosecution's last opportunity to make an impression on the Court.

Points for rebuttal may include stressing the interpretation of the law involved, presenting the client's side of the conflicting facts or rights involved in the case, or placing additional emphasis on any area which is extremely important to the client's case. The rebuttal argument also can be used to point to areas in the defendant's closing argument, such as arguing evidence not presented at trial or the defense's presentation of evidence which also supports the plaintiff/prosecution case.

As with re-direct or re-cross, rebuttal argument is not required; teams will not be penalized for choosing not to rebut. A team that appropriately uses a rebuttal argument may find the extra effort rewarded in the score.

Only the plaintiff/prosecution is entitled to rebuttal; the defense has no such opportunity.

Trial Procedures

A. Introducing Exhibits

In order for the Court to consider physical evidence as a part of the case, that evidence must be introduced during the trial. The physical evidence must be relevant to the case and the attorney must be ready to defend the relevance of the evidence. Any exhibits to be used during a mock trial tournament will be included in the case materials. If the case materials do not include exhibits, the attorneys cannot introduce exhibits at trial. There is a special procedure for introducing physical evidence which must be followed during mock trials. The first step, however, is to determine which of the witnesses is the most familiar with the exhibit in order to help introduce it.

Exhibits need to be marked for identification so that the Court can refer to the document (like a name). During the pre-trial conference, attorneys should determine if the Judges prefer to mark the exhibits before or during the trial. If the document has not been marked previously, the attorney wishing to present the evidence should say, **"Your Honor, I ask that this document be marked as Plaintiff's/Defense's exhibit A/1."** The attorney should then hand the document to the Judge for marking and then show the document to opposing counsel. Next the attorney should hand the document to the witness and ask the witness to identify the document. After sufficient foundation has been laid, the attorney should offer the document into evidence by saying **"Your Honor, I offer plaintiff's/defense's exhibit A/1 for admission into evidence."**

If opposing counsel has any objections to the exhibit, she/he should make them at this time. Possible objections include a lack of relevance to the issues of the case, hearsay contained within the exhibit, or a failure on the part of the attorney introducing the exhibit to show the document to opposing counsel. The Judge will then rule on the admission of the exhibit into evidence. Assuming the judge admits the exhibit, the attorney should continue asking the witness any questions regarding the exhibit. Once an exhibit has been entered into evidence, attorneys should refer to the exhibit by the name the judge has given it, "Plaintiff's Exhibit X" and the exhibit should be left on the judge's bench when it is not being used.

B. Witness Examination -- Refreshing Recollection

Witnesses are not allowed to use notes during mock trial tournaments. If the witness forgets important facts from their witness statement, the attorney may refresh that witness's recollection. The process for refreshing a witness's recollection is only used on direct and re-direct examination; in other words, an attorney refreshes the recollection only of his or her own witness. Refreshing recollection is similar in practice to impeachment, but the purpose is quite different. Impeaching a witness is an attempt to discredit the witness, while refreshing recollection is intended to be helpful to the witness.

To refresh a witness's recollection the attorney should first ask the witness if reviewing the statement will refresh his/her memory. Assuming the witness affirms that she/he cannot recall the information, the attorney should show the witness statement to opposing counsel and ask the Court's permission to approach the witness. The attorney should then hand the statement to the witness to review. Finally, the attorney should ask if the witness's recollection is refreshed and then ask the witness for the testimony. The witness may not read

from the statement. Witness's statements do not need to be entered as evidence in order to refresh recollection.

Though a witness may have his or her memory refreshed, it is important that the witness not depend on this procedure. A witness who cannot remember certain facts undermines her/his credibility and hurts the team's case. A fully prepared witness is much more effective; refreshing recollection should be reserved for "emergency" situations.

C. Impeachment

During cross-examination, the attorney may wish to prove that the opposing party's witness is not credible and should not be believed. The attorney must point to some evidence to prove that the witness has contradicted something he/she stated in the sworn witness statement or in earlier testimony. The procedure for pointing out such inconsistencies is called impeachment.

If the witness testifies to something which contradicts the witness's sworn statements, the attorney may produce the statement to demonstrate the witness's lack of credibility. Production of the statement for the purpose of impeaching a witness should follow a specific procedure. First, the attorney should clarify the witness's testimony: **"You have just testified that _____, is that correct?"** This locks the witness into their statement and closes any potential "wiggle room" that they may later wish to use. The attorney should then show opposing counsel that he/she will be referring to the witness's sworn statement. Third, the attorney should ask the Court for permission to approach the witness to refer to the witness's sworn statement. The attorney should hand the statement to the witness and ask if that is his/her sworn statement. The attorney should ask the witness to read silently while he/she reads aloud the portion of the affidavit that is contradictory. Finally, without pursuing the matter further, the attorney should move on to his/her next line of questioning. Attorneys should not give the witness an opportunity to explain the contradiction. Witness statements do not need to be entered into evidence.

Another form of impeachment is called "Impeachment by the Negative." This type is to be used when an attorney believes that a witness has unfairly testified to matters not included in their witness statement. As above, first the attorney must lock in the testimony, and then, following the same procedures, ask the witness to point to a specific aspect of their statement that validates what they've said on the witness stand. Once again, it is not necessary to dwell on the point. Move on to the next area of questioning.

After impeaching a witness, an attorney should consider ending his/her cross examination. Most likely, the witness's credibility has already suffered greatly and there is little need to continue with the cross examination.

Introduction to Iowa Mock Trial Rules of Evidence

A. Objections

An objection is a procedure by which an attorney asserts that a particular witness, a line of questioning or a piece of evidence is improper and should not be admitted into the trial. Essentially, the objecting attorney asks the Court to rule that the matter is improper or illegal. In Mock Trial, objections can be made only during direct or cross-examinations; no objections are allowed during opening or closing statements. Objections should be made in a timely manner and should include a statement of the grounds on which the attorney is challenging the matter.

The rules of evidence determine whether evidence is admissible at trial. These rules also govern the appropriate forms of objections which attorneys can make. The Federal Rules of Evidence were formulated by a national advisory committee, approved by the Supreme Court of the United States and then passed into law by the United States Congress. The Federal Rules of Evidence govern in all federal courts. All the states have enacted their own rules of evidence, as well, and those rules apply to state courts. Some of the states' rules of evidence are exactly like the Federal Rules of Evidence and some are not.

A simplified version of the rules of evidence governs mock trial tournaments, and attorneys in mock trial tournaments will be expected to try to use the objections set out in the Rule book. Penalty points will not be deducted from a team whose objections are "overruled" but a team which makes appropriate and timely objections will be awarded additional points.

In mock trials, objections are most frequently made by an attorney when opposing counsel has asked the witness a question and the attorney believes that the response would be inadmissible. The attorney should stand immediately upon hearing the objectionable question and should say, **"Your Honor, I object, (followed by the grounds for the objection)."** The opposing counsel may request an opportunity to respond to the objection by asking, **"Your Honor, may I speak to that?"** or **"Your Honor, may I be heard?"** The presiding judge may rule immediately or he/she may allow each student one opportunity to speak to the objection.

1. Questions calling for a narrative answer (Rule 104 in Rules of Evidence)

Attorneys must ask questions which call for specific answers. Questions such as "Tell us what you know about his case" are improper and should be objected to by stating **"Your Honor, I object. This question calls for a narrative answer."**

Similarly, narrative answers that go beyond the scope of the question asked should be objected to. For example, opposing counsel asks, "What color was the car?" and the witness answers, "It was blue and it was going 80 miles an hour." When a witness begins to narrate the attorney should say, **"Your Honor, I apologize for the interruption, but the witness has begun to narrate. I ask that the witness answer only the question asked and that the narrative portion of the answer be stricken from the record" or "Your Honor, I apologize for the interruption, but the witness has begun to narrate. I ask that opposing counsel proceed in a question/answer format and that the narrative portion of the answer be stricken from the record."**

2. Relevance (Rule 401-403)

Relevant evidence is evidence presented that tends to prove or disprove any fact related to the case. In other words, in order for evidence to be relevant, it must be important to an issue that one of the parties to the action is trying to prove at trial. Limiting evidence to that which is relevant helps to keep trials shorter and does not consume the Court's time with issues that are not important to the case.

If opposing counsel asks a question which appears irrelevant to the case, the proper form of objection is, **"Your Honor, I object, this question is irrelevant."**

3. Character of the Witness (Rule 404-405; 608-609)

Evidence about the character of the witness may not be introduced unless the character of the person is an issue in the case; for example, evidence of a person's temper may be relevant to an assault case, but not in a contract case. However, questions about a person's ability to tell the truth are always admissible.

The character of the witness concerns some trait about the witness other than honesty or truthfulness. The issue of character is different from the issue of credibility, which relates to whether the witness is telling the truth at trial or whether the witness has any interest in the outcome of the case. Questions concerning the character of the witness that are not relevant to the credibility or honesty of the witness, are not admissible and should be objected to by opposing counsel. The character objection is typically used to protect your own witnesses.

The correct form for this sort of objection is **"Your Honor, I object. This question calls for improper character evidence."**

4. Lack of Personal/Professional Knowledge (Rule 601-602 and Rule 702-704)

A witness is not allowed to testify to something about which he or she does not have personal knowledge. In order to be reliable, witnesses may only testify to those things which they have personally witnessed. If the witness does not have personal knowledge of the event, he/she is most likely testifying from hearsay or presenting an opinion about what happened. The appropriate objection in this case is **"Your Honor, I object. The witness does not have the personal knowledge to answer this question."**

In the case of an expert witness the Court makes an exception and admits the testimony of the witness even though the witness may not have personal knowledge of the event. An expert witness is someone who has special knowledge and training in a particular area which is related to the matter about which he/she is testifying. For example, doctors are used regularly as expert witnesses. In order to admit the testimony of an expert witness, however, the attorney must first introduce evidence as to the special training and knowledge of the expert witness, as well as evidence that the expert has adequate knowledge of the particular case about which she/he is testifying.

A lay witness is not allowed to give an expert opinion. For example, a mother may testify that her child looked very thin, but cannot testify that the child was malnourished.

5. Leading questions. (Rule # 611c)

A leading question is one which suggests the answer desired by the attorney asking the question. This type of question is not allowed on direct or re-direct examinations. Often, but

not always, leading questions call for a "yes" or "no" answer. To determine whether a question is leading, student attorneys should ask themselves if the question implies the answer. For example, the following is a leading question: "Isn't it true that you saw the defendant carry out the gun?".

Leading questions may be asked on direct examination only if they center around preliminary foundational matters, such as where a person lives. However, it is better for attorneys to avoid leading questions entirely during direct and re-direct examinations.

The correct form for making this sort of objection is, **"Your Honor, I object. Counsel is leading the witness."**" An appropriate response is, **"Your Honor, this is merely foundational."**

6. Beyond the Scope (Rule 611b)

Attorneys are not allowed to ask questions on cross examination that are beyond the scope of the testimony covered during direct examination or beyond the scope of the witness's statement provided with the case materials. During re-direct examination, attorneys are limited to asking questions within the scope of cross examination and during re-cross, attorneys are limited to asking questions within the scope of re-direct.

The appropriate form for an objection when an attorney asks a question that is beyond the scope of the previous examination is, **"Your Honor, I object. Counsel is asking a question which is beyond the scope of my cross/re-direct examination."** An appropriate response to such an objections is, **"Your Honor, Counsel brought up this issue on his/her examination when she/he asked _____."**

7. Hearsay (Rule 801-804)

Hearsay is defined in the Rules of Evidence as a statement, other than one made by the declarant while under oath, offered into evidence to prove the truth of the matter asserted.

Hearsay is inadmissible because it is impossible to determine the reliability of the person who made the out-of-court statement, since that person is usually unavailable for cross-examination.

Attorneys should listen for words like "said", "told", "heard" in order to identify potential hearsay objections. If the statement being quoted was made originally by someone who is not present in court (someone other than the witness who is testifying), the statement is likely to be hearsay -- for example, "My friend told me that the car was going 80 miles an hour." is hearsay.

The proper form of a hearsay objection is **"Your Honor, I object. Counsel's question calls for hearsay,"** or **"Your honor, I object. The witness's answer is based on hearsay and I ask that my objection precede the answer and the answer be stricken from the record."** An appropriate response to the hearsay objection is **"Your Honor, this answer is an exception to the hearsay because (state the appropriate exception)."** The hearsay exceptions are listed in the Rules & Procedures book.

8. Argumentative/Badgering the Witness (Rule 1101)

If, on examination, the opposing attorney is treating a witness roughly or asking the same question several times in an effort to harass the witness, counsel may protect their

witness by objecting: **"Your Honor, I object, Counsel is being argumentative"** or **"I object, Counsel is badgering the witness."**

9. Asked and answered (Rule 1102)

Asked and answered -- just as it states -- is when a question which already has been asked and answered is asked again. Generally, the Court will allow some flexibility in ruling on this objection, especially in cross-examination. The proper form is **"I object, this question has been asked and answered."**

10. Assumes facts not in evidence (Rule 1103)

The attorney may object to questions asked by opposing counsel which include facts that have not been shown to exist. In some ways, this objection is similar to the Lack of Foundation objection described above. However, this objection also encompasses facts or information that have not been included with the case materials or information which may not be brought out in court.

11. Lack of Foundation (Rule 1104)

The grounds for objecting on the basis of "lack of foundation" are similar to objecting to "lack of personal knowledge." In this situation, the attorney is challenging whether opposing counsel has asked appropriate questions (laid a proper foundation) to establish that a witness is qualified to talk about the subject matter which is being questioned. The difference between the two objections is that in the "lack of personal knowledge" objection the attorney is arguing to the Court that the witness does not have the knowledge to answer the question, while in the "lack of foundation" objections, the attorney is arguing that while the witness may have the personal or professional knowledge, opposing counsel failed to ask the preliminary questions (foundation) necessary to establish that the witness in fact has the personal or professional knowledge to answer the question. If the objecting attorney does not specify how proper foundation has not been laid, the opposing party may request an explanation.

12. Speculation (Rule 1105)

A witness may not testify about the motives, intentions, or reasons behind the actions of another, or guess about the meaning attributed to the actions of another. A proper objection is, **"I object, this question calls for speculation."**

13. Unresponsive (Rule 1106)

The attorney directing or crossing a witness may object if the witness does not directly respond the questions put to him/her. The objection may also be made when a witness's testimony goes beyond what was asked. In mock trials, where there is a strict time limit on examination of witnesses, it is important to control a witness to provide only that information requested - but they must provide that information if at all possible.

14. Unfair Extrapolation (Rule 1107)

This objection may be used if a witness on direct examination includes in his/her testimony facts or information not included with the case materials and this information has a potential to affect the outcome of the trial. For example, if a witness testifies that s/he lives in a

blue house and that information was not included in the witness statement, an unfair extrapolation objection may or may not be warranted. If the color of the house is not relevant to the case, no objection should be made. If, however, the color does matter (e.g. a neighbor sees a suspect run into a red house; the driver of a car was blinded by the glare of the sun off of a white house; or another witness has testified that for religious reasons s/he never enters a blue house) an unfair extrapolation objection is appropriate.

An alternative method of handling an unfair extrapolation is through the use of impeachment by the negative. (See discussion under Trial Procedures - C. Impeachment above.)

Note: Students may request that the judges note any serious rule violations on the ballot and bring these to the attention of the competition coordinator for review. Judges' rulings during the trial are final, but issues such as rule violation allegations may be taken under advisement for further review.

APPENDIX A: Sample Mock Trial Team Roster & Division of Team Responsibilities

EXAMPLE
Metro City Community School
Mock Trial Team

Team Members:
Pat Anderson
Tracy Brody
Kim Cavanaugh
Terry DeWinters
Sam Edison
Francis Fisher
Sandy Grabinowicz
Jan Hunt
Mickey Ivins
Kerry Jackson

As Prosecution/Plaintiff:	
Witnesses:	Anderson
	Brody
	Cavanaugh
Attorneys:	DeWinters
	Edison
	Fisher
	Grabinowicz
Timer:	Hunt
Alternates:	Ivins
	Jackson

As Defense:	
Witnesses:	Brody
	DeWinters
	Jackson
Attorneys:	Fisher
	Grabinowicz
	Hunt
	Ivins
Timer:	Anderson
Alternates:	Cavanaugh
	Edison

In the Iowa Mock Trial competition, there are 8 attorney responsibilities on each side of the case: *Opening Statement, Direct Exam of Witness 1, Direct Exam of Witness 2, Direct Exam of Witness 3, Cross Exam of Witness 4, Cross Exam of Witness 5, Cross Exam of Witness 6, Closing Argument*. Each student performing In an attorney role must undertake 2 of these responsibilities for each side of the case for which they are an attorney.

At the Middle School level, the only restriction Is that the student who delivers the opening statement may not also give the closing argument. Any other combination Is acceptable.

At the High School level, again no attorney may deliver both the opening statement and the closing argument. In addition, no attorney may perform either 2 direct examinations or 2 cross examinations. Therefore, the permutations of the division of attorney responsibilities at the high school level Is much more limited than at the middle school level.