

Other Courtroom Roles

An actual criminal trial might involve the additional participants listed below. For classroom exercises, students may fill any of the roles of judge, jurors, marshal, court recorder, prosecution coordinator, and defense coordinator.

Reporters and spectators also attend some trials.

Source: Excerpted from mock trial materials prepared by the Constitutional Rights Foundation.

Rules of Evidence

In actual courtroom trials, what spoken testimony and physical evidence are allowed into evidence is governed by very complex rules. These rules are designed to ensure that both sides receive a fair hearing and to keep out any evidence that doesn't relate to the issue of the case, isn't reliable, or whose value as evidence is totally outweighed by how prejudicial it would be. The complexity of the rules of evidence used with mock trials varies, depending upon the experience of the class and teacher in conducting mock trials. A more simplified form of rules appears below. However, more challenging rules are used in mock trial competitions and by more experienced classes; for example, see the rules of evidence prepared by the Arizona Bar Foundation for use with the Arizona mock trial competition at www.azbf.org.



How a Resource Person Can Help

1. Select a mock trial case that raises issues relevant to the objectives of the concepts being studied.

2. Assist with the coordination and support activities necessary to implement a mock trial, specifically:

If desired, procure a sufficient number of attorneys and law students and a judge to serve as trial participants and/or resource persons.

Make arrangements to use actual courtrooms, if desired.

Invite non-class members to attend, if desired.

Assign roles of those involved in the trial and determine how to make jury assignments.

3. Make certain that students are familiar with mock trial procedures and their roles.

4. Assist students in developing their roles or testimony when help is needed.

5. Oversee the presentation of the trial itself.

6. Conduct the debriefing session.

The resource person may wish to arrange the classroom in a way that suggests a courtroom.

Source: Reprinted with permission from the Leader's Handbook of the Law in a Free Society project.

Standard Objections

An attorney can object any time she or he thinks the opposing attorney is violating the rules of evidence. The attorney may object to questions that the other side's attorney is asking, to answers that a witness is giving, or to exhibits that the other side is attempting to admit into evidence. Generally attorneys are not allowed to object to opening statements or closing arguments.

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for the objection. The objecting attorney should state what specific rule of evidence is being violated.

Then the judge will turn to the other attorney who asked the question or offered the exhibit, and that attorney usually will have a chance to explain why the objection should not be accepted (that is, should be "overruled") by the judge.

The judge will then decide whether the question, answer, or exhibit must be discarded because it has violated a rule of evidence ("Objection sustained") or whether to allow the question, answer, or exhibit to become part of the trial record ("Objection overruled").

Irrelevant Evidence "I object, Your Honor.

This testimony is irrelevant to the facts of the case." This means that the witness's answer, the attorney's original question, or the exhibit will not help the trier of fact to decide the issues in the case.

Leading Questions "Objection. Counsel is leading the witness."

Leading the witness is only objectionable when done on direct examination. Leading questions are proper on cross-examination. A leading question is one that suggests the answer to the question and is usually answered by "yes" or "no."

Hearsay "Objection. Counsel's question (the witness's answer or the exhibit) is based on hearsay."

Hearsay is a statement made outside of the courtroom. Statements that are made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true.

The most common hearsay problem arises when a witness is asked to tell what another person said to him or her.

There are many exceptions to the hearsay rule. Two of the most common are

- a. That a witness may repeat a statement made by either party in the case if the statement contains evidence that goes against his or her side; OR
- b. If a person's state of mind at the time of a certain event is important, any statements made about that event at the time the event occurred concerning the speaker's intent, knowledge, or belief will be admissible.

Lack of Personal Knowledge "Objection. The witness has no personal knowledge that would enable him or her to answer this question." The witness is testifying to things that the witness has not directly seen, heard, or experienced.

Opinion "Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on the subject, opinions will not be allowed.

Expert witnesses may give opinions, if they explain the basis for the opinion, which is called "laying a foundation." An expert witness is someone who by training or experience has special knowledge in the case.

Argumentative Question "Objection. That question is argumentative." Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner. Badgering is harassing or asking again and again. While attorneys questioning the other side's witnesses can be forceful and pressing, if they go too far a judge will sustain an objection for being argumentative.

Speculation "Objection. Counsel is asking the witness to speculate in order to answer the question." Attorneys cannot ask questions that get witnesses to guess at answers.

Special Rule for Mock Trials An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If the attorney believes a witness has gone beyond the information provided and is providing new information that is totally out of character and will change the outcome of the trial, use the following objection:

"Objection. The witness is creating material fact that is not in the record."

Hints on Objections Attorneys should object only when they are sure there is a reason and they have a specific objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness should be the only attorney able to raise objections when the opposing side conducts its examination of that witness.

Once an objection has been made, the witness should stop talking until the objection has been resolved. If the objection has been overruled, the attorney asking the question should persevere and ask the question again to ensure that the witness gets to answer the question or the exhibit gets admitted into evidence. Many times once the objection is overruled, the attorney doesn't follow up and pursue the issue.

When judges rule against attorneys, attorneys should take the ruling gracefully, not making facial expressions or gestures that show the ruling affected them. Similarly, attorneys pleased with a ruling should not thank the judge for it.

When objections are sustained, attorneys should move on to another question and end their questioning on a strong note.

If the judge has overruled an objection by an attorney, that attorney should not be afraid to object to another question.

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