UNIVERSITY OF FLORIDA MOCK TRIAL

NEW MEMBER CURRICULUM

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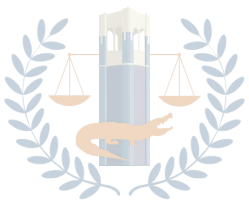

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CHAPTER ONE: OVERVIEW

INTRODUCTION

Congratulations on becoming a member of the University of Florida LitiGators. The following chapters will guide you through strategies, skills, and techniques that will help you along your journey to becoming a successful competitor and teammate throughout your time on this team. This booklet consists of 6 key components that are considered the crux of mock trial -- the opening statement, direct examination, cross-examination, witness portrayal, objection arguments, and closing argument. As you begin reading this guide you will learn what these terms mean and how these components function when it comes time to compete.

Our guide will not just give you an overview of what these components are, but it will also provide you with advanced techniques for students looking to become experienced, confident competitors, looking to take their mock trial game to the next level. The biggest advice our team can give you before you delve into the inner workings of mock trial is to enjoy what you are doing and never stop learning. Your legacy on this team and on the collegiate level is in your hands and we are beyond thrilled to lead you through your first steps in reaching your potential.

THE LITIGATOR METHOD

1. **THEORY**
2. **WRITING**
3. **TEAMWORK**
4. **PERFORMANCE**

As a team, we believe the pillars are truly what makes our program function and lays a foundation for long term success. We constantly strive to improve -- theory, writing, teamwork, and performance -- throughout all areas of our organization and you are now an integral part of helping us do that. With the proper execution of these pillars, we seek to earn "ten moments" -- moments that are thrilling, clever, the edge of your seat worthy that judges who score us feel compelled to give the competitor a ten out of ten. The more we learn to work as a team and implement these three pillars, the more successful we will be in round, and the more “ten” moments we will share as a program to advance our chances in winning a round, and ultimately, the national championship.

THEORY

Theory in mock trial is a little bit like actual scientific theory. Although there is no documentation of what happened 13 billion years ago, scientists can use evidence to support a hypothesis like the Big Bang. In a mock trial case, no one knows what happened for sure. Rather, we use evidence and sworn witness statements to develop our own "theory" for what happened on the day(s) in question. Theory-building is used to create a story that's not only believable, but makes sense to people like your judges, who may have never looked over the facts of the case before. It is the understanding your team agrees on for what happened in the mock trial case you're working on.

Theories are constrained by the materials provided in the case, by the AMTA rules, by the rules of evidence, and by believability. Theories must be coherent, cater to the talents of the witnesses on our teams, and work with the burden of proof. All of these constraints need to be considered – a highly scientific theory won't work for a team without a strong expert witness, and a defendant's story of what actually happened needs to work with their affect and physical appearance. Juries are unlikely to buy even the most coherent, well-presented theory that involves aliens, and even the best story about committing another crime, not this one, won't get us points.

Your team will be writing, directs, crosses and speeches all to help prove (or defend) your side of the case. To convince the judge and jury, you'll need to present a coherent story of what happened based on the facts that you can gather from the case packet. Your team has to be in agreement on this, not only so that those crosses, directs, and speeches don't contradict each other, or confuse the judges, but also so that they can build on each other, and by the end of the round, the judges can understand and (more importantly) believe your theory when it's time to decide on who won the round. The most important aspect of a good theory is that it's short and simple. If you can't explain the theory in one sentence, it's too complicated.

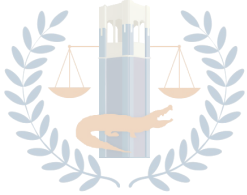
HOW DO YOU MAKE ONE?

Here's the good news: you're not alone! Your team, under the guidance of your team captain, will set aside a meeting for you to discuss theory after you've all had time to read up on the case packet and brainstorm some ideas. The best place to start is always the charge you're trying to prove/defend against. Whatever your theory is, it has to result in the defendant being liable/guilty of all prongs of the charge if you're on the plaintiff/prosecution, or not meeting at least one of those prongs if you're on the defense.

From here you can dive right into the witness statements. We recommend reading each sworn statement in order, and taking notes on the facts each one brings to the table and how they line up or conflict with other statements. Remember that there's another party trying to disprove what you want to prove, and the cases are (usually) pretty balanced, so there's going to be statements that conflict with whatever theory you develop. That's okay! You're going to always have the chance to cross witnesses who bring in those bad facts to attack their credibility, make it seem like they're lying, or just straight up didn't observe what they think they did. Don't think your theory is bad just because there's a statement that conflicts with it, but at the same time don't run with a theory that has a ton of witnesses that can disprove. It's all about finding that balance.

WHAT MAKES A THEORY GOOD OR BAD?

A good theory is short, sweet, and easy to understand. Have you ever seen one of those movies like "Gone Girl" or "Get Out" where you don't really understand everything that's going on until the very end? While they're definitely entertaining, it doesn't make for a good mock trial. Your judges will usually be scoring examinations as they happen, so if your story is not clear in their mind until your closing arguments or your last witness, it's too late. Their lack of understanding will reflect in your scores before that, and that can easily cost you the round. However, mock trials are always a balancing act. You don't want to play your entire hand in opening statements, because good teams will capitalize on knowing what your story is, and throw wrenches in your theory by getting their witnesses to contradict it. So while spotting a good theory is easy, it's not always easy to make one. You have to discuss with your team what the facts of the case tell you, and how you could get someone who has never read it before to believe that in under 3 hours of trial.



HOW DO I FIT IN?

Whatever your role may be on your team, you're a part of the theory. Since every team prepares both sides of the case, you must be ready to participate in all parts of the discussion. It does not matter whether you are a prosecution attorney or defense witness during theory-building. You should be ready to equally participate in both sides, regardless of whether the discussion directly affects your performative role.

More specifically, As a witness you have to write a good direct that helps the theory. More importantly, you have to answer questions on cross that defend your theory without making you look biased. As an attorney, oftentimes opposing witnesses will play into your theory, so your crosses have to be written to help get that information out of them. Be creative, but also believable. Happy Theorizing!

WRITING

The paradox of mock trial is that scripts play a key role, as does not looking scripted. You have to be so prepared that you don't look prepared at all – ready with exactly what you will say if a round goes perfectly, and prepared for contingencies. You will read throughout this booklet tips about writing, but here are a few tips:

- The form of questions matter as much as the questions. The first thing you should address is what should be in an examination; the second (separate) question is how to ask them.
- The flow of a direct determines its order, not the other way around. This will inevitably take more than one try.
- Read everything you write out loud before it is anywhere near final. The awkward stuff we write is crazy, and our wording is weird. So, see how you sound before you settle on your material.
- Writing for different voices is different, so knowing yourself and your own speaking patterns matters in your writing.
- Precision matters. Don't use 20 words when you can use 10. Don't use long words when you can use short ones. Don't say charge when you mean sue, or plaintiff when you mean prosecution. Be careful, edit, then edit again.
- Watch the level of your words. "SAT words" don't get more points – they get less. The trick of mock trial is writing eloquently, but simply.

TEAMWORK

Mock trial is a team sport. Every aspect of mock trial depends on your team's ability to function as a well-oiled machine: you have to know how to give feedback, to prepare together, and to work together on-the-spot in trial. When one member of your team succeeds, the entire team succeeds.

Every team member is responsible for furthering the skills of the others. This is key in both preparing for trial, and in excelling during the trial itself; it takes a team to create a cohesive case theory, and it takes a team to handle the spontaneity of the courtroom. We cannot stress this enough: our own team's success stems from our constant drive to tackle case theory, performance, objections, and various other aspects of mock trial as one unit.

In a highly competitive round, the score of the last-choice witness will matter as much as any other score on the ballot. So it needs to be as good as the first-choice one. The person not on this slide of the case may be the one who hears the opponents' theory's fatal flaw. For this reason, all members of the team need to listen. The timekeeper may give (or lose) the team a crucial competitive advantage – so they are as valued as the speakers they keep time for. Everyone pulls their weight and everyone matters.

PERFORMANCE

An adage of public speaking is that "it's not what you say, it's how you say it." There is no doubt that your content, "what you say," is important. A cohesive Case Theory framed with a theme and narrative will set any team up for victory. But, the Performance of your content, "how you say it," is equally important.

The way you perform the trial affects whether the jury believes what you're saying and whether the scorers think you're good at mock trial. The use of voice, movement, gestures, and other vocal and visual characters can greatly enhance any statement, examination,

or witness portrayal. Great performance also means being receptive and reactionary. If you notice that the jury does not take well to a certain witness style or objection argument, react: change things up in the moment. This also means occasionally stepping outside the bounds of the litany of commonly-accepted mock trial rules. Performance thus combines extensive preparation and memorization, but also the courage to be spontaneous and improvise to further your case.

TO SUM EVERYTHING UP

The LitiGator Method has been the ethos of the University of Florida Mock Trial team for many years. Look out for specific techniques that invoke one of the Pillars throughout this book; you will find that the LitiGator Method has many applications. Our hope in including our method in this book is that you take it as a new member of this team and run with it, using it to dominate your mock trial opponents.

CHAPTER TWO: BASIC SKILLS

INTRODUCTION

Before you even enter a courtroom, there are several mock trial basics that must be accomplished. These basic skills serve as the foundation to a team's case and combine to form the process of "Case Building."

Evidence + Case Theory + Theme = Case Building

These are three universal concepts utilized by all teams, but what separates winning teams from the rest is the efficiency of their case building and the strength of their basic skills. It is important to acknowledge that there are many different parts to a mock trial, from directs and crosses to opening statements and closing arguments. However, successful teams intertwine them all using their basic skills to have a cohesive case. With strong teamwork and unity, a team can master the three main basic skills (Evidence, Case Theory, and Theme) and build a symmetrical case.

CASE EVIDENCE

Evidence is the underlying framework of a mock trial case. There is an overwhelming amount of evidence and it is our job, as LitiGators, to decipher which facts we use and which facts we leave out. Think of it this way: the evidence is the planning and architectural phase of building a successful case. You'll need a solid foundation of good, cohesive facts to create a coherent case theory. Once you have the evidence in place, you can build upon it with case theory, witness personalities, and attorney presentation.

WHERE TO FIND EVIDENCE

Evidence is found in witness affidavits and exhibits. The opening statement presents a set of facts to create an easy to follow story for the jury. Witnesses give a direct examination loaded with evidence and attorneys cross examine witnesses to extrapolate helpful evidence for their case. Closing arguments utilize all the evidence presented throughout the trial to convince the jury that there is enough evidence to

believe their story. Attorneys make objections to control which evidence comes in or stays out of the trial.

GOOD FACTS

Good facts are facts that will help your side of the case. These facts should further your case theory. For example, if you are representing the prosecution in State v. Ryder (involuntary manslaughter), you are trying to show that Ryder abandoned her daughter. A good piece of evidence is that Ryder was seen alone in the middle of the night without her daughter. This matters because if Ryder was alone, where was her daughter? This makes it more likely Parker was alone too. Good facts, like this one, are used to prove the charge of the case.

BAD FACTS

Bad facts are facts that do not further your case theory; bad facts may even work against it. You'll have to sift through affidavits and exhibits to identify which facts fall under this category. Attorneys will fight to keep these facts out by making objections. Witnesses should choose the one or two worst pieces of evidence against them to combat if brought up on cross. Keeping out bad facts is crucial to spotlighting the good facts that you present.

NARRATIVE FACTS

Narrative facts can be viewed as 'fluff.' While they may not seem significant or hard-hitting, they can be used to support a cohesive case theory. For example in State v. Ryder, a defense counsel may choose to present evidence that Ryder took Parker camping because they wanted to go on adventures. Even though this fact is not crucial to the charge, it supports Ryder's story and gives them credibility.

COUNTER FACTS

These are the facts that you plan ahead in the event that opposing counsel presents damning evidence against your case. As you work more and more with the case, it will become clear which facts are most damaging to your side. You'll want to find facts that you can use to counter their evidence in order to make it less damaging to your side. For example, if you are defense and the prosecution enters the life insurance statement, you might call the defendant to give a reason as to why he or she changed

the life insurance while Parker was missing. By associating this action with a reason the jury can relate to, you'll make the prosecution's evidence less hurtful to your case.

RABBIT HOLES

With the abundance of evidence in AMTA cases, it can be easy to slip into a rabbit hole. This happens when you dig too deeply into evidence that isn't worth it for your case. The evidence may be misleading or simply unnecessary facts that blur the crucial elements you want to highlight. A common mistake for an attorney is to fall into a rabbit hole on cross examination. A stellar witness knows how to answer questions to take the attention away from the attorney and put it on them. Sometimes attorneys make the mistake of playing into the witness's testimony and end up talking in circles; thus, wasting valuable cross time. A good attorney must remain focused on the good facts and redirect the witness back to their question if they wiggle out of a direct response. You should also be wary of rabbit holes in your case theory. You can fall into a rabbit hole if you focus too much on evidence that does not matter.

Overall, evidence is the center of a case. The entire trial is based on which evidence is presented and how it is presented. Every team has the same evidence; what matters is how you utilize good facts to streamline a case theory. While it is crucial to have a quality presence as an attorney and witness, a case will fall short without the proper evidence. Control and handle of the evidence defines a winning team.

CASE THEORY

Case theory is a fundamental component of your case - you get to give a factual argument as to why your side is right. When explaining your case theory, it might be useful to consider structuring your theory similarly to an essay; there's a thesis and there are facts to support this thesis. It's important to structure this in a way that makes it easy for the jury to follow along.

Considering you are always either on the plaintiff/prosecution, or the defense, the thesis for your case will take one of two forms:

(1) The defendant is liable/guilty
(2) The defendant is not liable/guilty

When it comes to case theory, it's important to think of all of the facts that work for your side. You will start to decipher between which facts are good or bad for your side.

For example, in State v. Ryder, Parker Paige (the victim) used a hiking stick while walking along the Leckrone Loop trail. After laboratory testing was done, it was found that the diameter of the bruise found on Parker's collarbone matched the diameter of the hiking stick. This is a good fact for the prosecution because it shows that the weapon could be this same hiking stick that Parker used - making it more likely that Jordan Ryder committed the crime. If you're on the defense, you will notice that this is a bad fact for your side and one that you should keep out of your own theory, or have counterfacts prepared for.

After looking through all of the facts, you will start to highlight the ones that support your thesis and then categorize these facts under three main points; this is similar to having three body paragraphs in an essay with three main topics and reasons to support those topics. Keep in mind, your theory will be told more as a cohesive story when presented to the jury through speeches and direct examinations. It is important to have a well-structured foundation for your theory that is easy to follow along because every aspect of the trial, and every aspect of your case, depends on this case theory. Now, you will be able to structure your theory in the following way:

The defendant is/is not liable/guilty because X, Y, and Z.

CASE THEME

What is a theme? A theme is a phrase or sentence that highlights the essential and most persuasive element of your Case Theory. A theme is the lens through which your team views the case and is used to frame facts throughout the trial, from the opening statement through the closing argument. It is one of the most important parts of your case.

Note: Sometimes your theory may lend itself to a secondary theme which can also be woven throughout your case. It can be something catchy to keep the members of the jury engaged and draw their attention to important facts in your case.

WHAT MAKES A GOOD THEME?

Several factors go into creating a good theme:

- A good theme must engage and captivate the jury. Themes are often the first thing a jury hears during your entire case.
- A good theme must capture the central points of your case theory. It should address the central issue in the case and provide an explanation to the jury.
- A good theme should be simple and easy for the jury to understand. Themes are often "hooks," short phrases that are effortlessly woven throughout the trial.
- A good theme is cohesive. It should run through and make sense in every part of the case including speeches, directs, and crosses. It should be able to naturally come in conversation and should not need context to make sense.

HOW DO I COME UP WITH A GOOD THEME?

Coming up with a good theme requires thought and teamwork. It is helpful to bounce ideas off of teammates. It's good to share your theme ideas, even if you aren't confident that they truly capture your case theory. Your idea might be the spark of inspiration for the perfect theme!

Themes act as a hook. They can be quotes from the case, a roadmap for the jury to follow, or conceptual phrases that influence how the jury sees certain events or facts of the case. Here are some examples of styles:

EXAMPLE 1: QUOTES

"I was just so angry." | "It was all my fault." | "I didn't mean to do it."

These quotes were written by the defendant. They were popular themes for the prosecution who would often argue that the defendant killed her daughter because she was upset.

EXAMPLE 2: ROADMAPS

"Follow the evidence, find the defendant guilty."

"The weapon, the location, the confession."

These themes cue to the jury what the key facts of the case are. It tells them what to pay attention to and which pieces of evidence are contributing to your theory.

EXAMPLE 3: CONCEPTUAL

"40 feet."

The defendant's daughter was found below a 40 foot drop at the edge of a hiking trail. This theme provides a mental image of the moment when the victim died. Depending on the context of your speech and case theory, it could manipulate the jury into seeing the hike as a dangerous accident or seeing the defendant as a reckless parent.

"She wasn't there."

This theme conveys to the jury that the defendant was separated from their daughter at the time of her death. This helps the defense since it dissociates the defendant from the moment of death and makes it appear as though the death was an accident.

"All the signs were there."

For a charge of manslaughter this theme conveys to the jury that the defendant should have known their daughter was at harm. It also conveys a visual of the signs that were located on the trail.

A theme is essential for creating unity because it is the first and last thing a jury hears. They may not remember the finer details, but they will remember your theme, making the theme one of the most important parts of your case. Mentioning your theme throughout the case is important; how you mention it matters just as much. Witnesses being able to casually mention the theme where it is noticeable but not corny is important, the ability to integrate the theme into (admissible) cross questions matters. If one of the opener or closer sounds bad saying it – it is not your theme. If your team laughs when you say it, more training is needed! If the theme can be in a demonstrative, or incorporated in some other creative way, all the better.

Some themes don't work. For example, "murder" shouldn't be a theme at all – but definitely not in a civil case. The theme promises more than you need to show. Complicated themes (e.g., Raul's quotes about Justice, or parts of the Declaration of Independence) are too kitchy and not catchy enough. Defensive themes (rebutting their story) are weaker than offensive themes (telling our story). Argumentative themes (e.g., "The Dirty Plaintiff is Lying") don't work because openings are penalized for being argumentative. Cerebral Themes (e.g. "Utopia") don't work – as a general rule, if you have to explain it, you should keep looking.

TO SUM EVERYTHING UP

As you will see throughout this book, theory and theme matter heavily in the performance of the whole trial. This means in how you use the witnesses you call, and how you use the witnesses that your opponent calls. Our selection of which witnesses to call should cater to our available acting skills, but our choice of what to do with these witnesses should be driven by theory, not by a simple reading of the affidavit. Our choice should be by how the material can be used to further your view of the case. Likewise, crosses should be fit to theory – you can leave some good points that don't cater to your theory on the table in exchange for material for your theory. Asking yourself how each cross can make the argument you are interested in is key. If a particular point doesn't contribute, then it likely doesn't belong. Likewise, you should think about flow – how the order of the material that you present makes the argument that you want to make to the Jury – this counts for the order of story in the speeches, the order of witnesses we call, and the order of points in a cross-examination. The more consistency and coherence these can have, the better.

CHAPTER THREE: OPENING STATEMENT

OVERVIEW

The opening statement is the first opportunity for each side to introduce the facts of the case to the jury. The opening statement will provide a roadmap for the judges to understand and follow your team's case theory throughout the trial. A good opening includes an introduction to the facts of the case, the evidence that will be introduced, the witnesses that will testify, and an explanation of the law relevant to the case. An **EXCELLENT** opening includes these fundamentals while also being persuasive, commanding, and impactful.

The opening statement sets the tone of your case, and influences how the jury will perceive your side going forward. A compelling and well-written opening will prime the judges to view your side as more polished and professional and make the jury more receptive to your theory and the evidence you will bring out in the trial.

Note that an opening is called an opening statement not an opening argument. This is the biggest trick in opening – you have to make your argument without arguing. Your story needs to be clear on both your version of the facts and why that truth matters without the arguments that a cross or closing will have. An opening that is explicitly argumentative will score poorly compared to a carefully styled story. An opening which tells a directed story will score better than one where it is not clear how the story works and why it matters.

In this chapter, we will explain the structure of an opening statement, how to write each section, and we will go over performance tips that will improve your delivery and win over the jury.

STRUCTURE

The general structure of an opening statement includes the introduction, the overall narrative or theory of your case, a section to explain the law, a brief overview of the witnesses you will call and the main evidence you will bring out, and the conclusion. Let's go through each section.

INTRODUCTION

A strong introduction will set up the rest of your speech for success! The introduction of your speech will begin with you addressing the court. This is done by saying, *"May it please the court."* According to the rules of mock trial, the timer for your speech begins after you say that phrase.

This is when your introduction begins. The key to a strong introduction is to grab the jury's attention. Most teams and the majority of competitors on this team start their speech with what is known as a Theme. Themes can be a damning quote, a rhyming phrase, a dramatic sentence or even just a few words. In general a theme should stand out to the judges. In the OJ Simpson case, *"If the gloves don't fit you must acquit"* is so distinct and catchy that we all still know it decades later. On the contrary, a theme like, *"The prosecution is lacking evidence"* is bland and unmemorable.

See Chapter 2 for a discussion of themes more generally. The theme is not chosen by or for the opener, but needs to work within the opener's speech abilities. The theme and theory should influence the structure and function of the opening.

The next few sentences after your theme are different for everyone. This is a creative part of your speech, and, although it is short, it often can be one of the most challenging sections of the speech to write. These few sentences should (like the theme) grab everyone's attention through your words, passion, and delivery. One possibility is to use these few sentences to explain your theme and draw the court's attention to the case in a dramatic way. For example, for the OJ Simpson theme your next few sentences could be about this key piece of evidence left at the murder scene (the glove), and how the prosecution is blaming your client despite the fact that this key evidence does not match Mr. Simpson.

Another possibility is to use these few sentences to dramatize a piece of the story Normally, this is done if your theme does not need any further explanation. For example, in a prosecution opening in a case of attempted murder, you could share the juicy story of how the defendant wanted to be with their lover, but had to get rid of a rival who stood in his way.

NARRATIVE

Your audience needs to be engaged. Paint a vivid picture of what happened, and why we are in court.

For example: "On July 14, 2018, Jordan Ryder took his 12-year-old daughter to a secluded campground. He brought her out onto a trail where no one else was around. You will hear that he grabbed her. She struggled, and screamed – but she could not save herself. The evidence will show you that the defendant ripped a hiking stick from his child's hands and used it to push her off of a 40-foot cliff … just. As. He. Had. Planned."

THE GOLDEN RULE

Attorneys are **not allowed** to ask the members of the jury to "put themselves in the shoes" of the victim, the defendant, or anyone else from the case. This means that an opener cannot say something like the following:

"If you were dead broke and the medical bills were stacking up, wouldn't you do whatever you needed to do in order to feed your family?"

There are many factors that impact the structure of your narrative. If your team has a complex theme or theory, your narrative section will likely be more dense. Conservely, if your team has a straightforward theme and theory, your narrative section will likely be less dense, allowing you to jump right into explaining the law. What side of the case you are on is also an important distinction to make when it comes to your narrative. As a prosecution opener, you have to introduce the jury to the case first. You have to tell a rather complete picture of the whole story.As a defense opener, you do not have to do as much exposition because the prosecution should have already covered the basic story. This extra time allows you to bring out facts that you otherwise would not have been able to. You should also use this extra time to briefly rebut what the prosecution opener said. Your voice will be the last one the judge and jury hear before direct examinations begin so you can leave them questioning the prosecution throughout the entirety of their case and chief.

You want your story to engage the jury. Chronological ordering is typically the standard format. However, this is by no means a requirement. Just remember that though you may know your case inside and out, your opening is likely the first time the

jury is hearing anything about the case. Your narrative should be clean, simple, and easy to follow. Try to keep to the important facts by avoiding trivial details. In the example above, the fact that Parker was taken to a secluded campground was worth mentioning; the fact that she was wearing a US Women's National Soccer Team jersey was not.

The biggest problem that opening narratives usually have is over-promising. Make sure that every fact that you mention in the opening will be said on either direct or cross examination in this case. So for example, in the paragraph above if no one will say that Jordan Ryder grabbed his daughter, you have to remove it or use a word or concept that someone will say. This applies to simple things as well: in a trial where no grieving widow will testify and no one will testify to the widower's state of mind, you can't say that the widower was sad. Even though he certainly was. Precision on facts will help tighten your story and improve your score.

THE LAW

The law section is the part of the opening is where you will explain what you have to prove (or if you are on the defense, what the other side has to prove). You will provide a legal framework for how the jury is to examine evidence and the importance of each fact you will bring out. You will outline each element of the charge or suit, and summarize why your side will or how the other side will not meet each element. To find out exactly what needs to be proven in a case, go to the case packet and read the indictment (for criminal charges) or the complaint (for civil suits). Either document will lay out exactly what the prosecution or the plaintiff needs to prove in order to prevail; these components are called elements. Some elements will already be proven based on stipulations or case law, so it might be important to include that in the opening.

There is a distinction with how you phrase the law section of an opening depending on what side of the case you are on. If you are on the side of the case that has the burden of proof, you will want to minimize the burden and phrase it as an easy thing to meet based on the facts of the case. For example, you would say that you do not have to prove the elements of the charge beyond any doubt, but beyond any reasonable doubt. If you are on the side of the case that does not have the burden of proof, you should enlarge the burden and make it sound virtually impossible to meet. For example, you would say that they will not be able to meet the burden of proof beyond ANY and ALL reasonable doubt, the highest burden in our legal system. In

both examples, the attorneys agree on what the burden of proof is, but they are changing its perceived difficulty using careful wording and emphasis. Below are two brief portions of a prosecution and defense attorney explaining the law in the same case:

PROSECUTION OPENING

"Today, we bear the burden of proof. We accept this burden as we will prove, beyond a reasonable doubt, that the defendant tried to take Kerry Bell-Leon's life. Simply put, if at the end of this trial, you think there is no other explanation for the death of Kerry Bell-Leon, then you must find the defendant guilty."

DEFENSE OPENING

"The prosecution has the burden of proof in this case. The prosecution must prove, beyond any and all reasonable doubt, that Dylan Hendricks is the ONLY reasonable person who possibly could have killed Kerry Bell-Leon. If at the end of today's trial, you still see any other reasonable possibilities, then you must find Ms. Hendricks not guilty."

These examples are from criminal cases, but what about civil cases? Well, there are not many differences in how the law section of the opening is structured with civil cases, but the phrasing and burden are different. In many civil cases, the plaintiff must prove *"by a preponderance of the evidence"* that the defendant is liable, negligent, or etc. The burden of proof is met if the party with the burden convinces the jury that there is a greater than 50% chance that the claim is true. In other words, the plaintiff must prove their claims by 50% and a feather, or *"more likely than not."* Sometimes in civil cases, the defendant will bring a counter-suit against the plaintiff. Then, the defendant would also have to prove their claim by a preponderance of the evidence.

Some cases have a different burden, like clear and convincing evidence. A higher burden than preponderance and lower than reasonable doubt. The standard is that your side of the case must be highly and substantially more probable to be true than not, resulting in the trier of fact having a firm belief in its factuality. Here, the burden-holder emphasizes that the jury must see it as the most likely story where the opponent argues that the belief must be strong.In a real trial, it would be the judge's responsibility to accurately explain the law to the jury members. But in Mock Trial, you must show the judges that you have a firm understanding of the legal issues for the case and that you can accurately express a legal framework.

EVIDENCE AND WITNESSES

The evidence and witnesses section is likely going to be the largest section of your opening statement. Here, you explain to the jury how you plan to prove your case in an easy, digestible way. One easy way to accomplish that is to highlight three things of importance, such as the three witnesses you plan to call, or three key pieces of evidence.

For example, using three key witnesses as a structure, the opener might say, *"Today, we will prove our case to you by providing three key witnesses. First, we will call a hiker on the trails that weekend, Kelly Doos to the stand who will tell you X. Second, we will call a local chef, Remy Mouchard to the stand who will tell you Y. And finally, we will call the chief investigator, Detective Chesney, to the stand who will tell you Z."*

X, Y, and Z are the relevant facts that will come out during that witness's testimony. You can spend several sentences on each, but be mindful of your time and of over-complicating yourself.

The LitiGators generally prefer not to use this approach. While it is easier to write than other structures, it does not flow as well. integrating who will testify into a broader story or points structure makes the focus on the elements and the story, not the truncated "you'll see this guy, then that guy" sort of format.

Using three key pieces of evidence structure, the defense opener might say, *"Today, we will show you three key pieces of evidence to prove our case. The first, a gun recovered at the scene of the alleged crime. You'll hear testimony today that this gun contained no usable fingerprints linking the defendant to this alleged crime. The second, phone records of the defendant that pinpoint her location thirty miles away from the alleged crime scene at the time in question. The third, the testimony of an eye witness who will tell you they were with the defendant herself at the time in question."*

The structure you decide to use is dependent on the facts available to you in a certain case. If you were a defense opener with a case that did not provide the defense with three strong points, you will probably want to stay away from a three key point structure.

A narrative approach focuses on telling the story that your theory proposes through the evidence the jury will see and hear at trial. Organized either chronologically or by substance, this focuses on catching the jury's attention by story-telling.

While there are many different ways to structure this section, the Litigators tend to prefer interweaving witness testimony and evidence into the narrative section of openings. However, the decision you make should be based on your style. Some openers prefer focusing chiefly on telling a compelling story. Thus, interweaving testimony and evidence into the narrative works really well here because it does not disrupt the flow of the story and introduces characters in a very organic way. However, proponents of the "three key facts" structure would argue focusing on three things allows the jury to remember the most important parts of your case throughout the trial. Ultimately, it really is your decision, so have fun and try different styles until you find what fits for you.

CONCLUSION

The conclusion is going to be the last few words the jury hears from you before your speech ends. If the jury tuned out for part of your speech, this is the time where you can regain their attention and remind them of your case and why it matters. This is also the last time the jury will hear from you before they write down your score. So, your conclusion should be dramatic and passionate!

Like the introduction, there is no specific way to write a conclusion. Although, every conclusion should do a few things. Your conclusion should re-state your theme in some way. The jury should walk away from your speech knowing for certain what your theme is. The conclusion should also tell the jury why the defendant is guilty or not guilty. The last few words of your conclusion should in some way reference the verdict you are asking for OR a major part of your case theory/theme that the jury will come to accept by the end of the trial. Generally, among our program, we do the former. This is traditionally done by saying, in a criminal case, *"At the end of today's trial, my co-counsel (name of closer) will come before you and ask you to come to the only fair and just verdict, find (the defendant/their name) (guilty/not guilty)."*

PERFORMANCE

When it comes to giving an opening statement, your performance is half the battle. Verbal and visual techniques are a great way to improve your performance and influence the jury's emotions however you see fit. Below is some practical wisdom we've learned during our years competing:

VERBAL TECHNIQUES

USE YOUR VOICE

Be confident and comfortable with your voice. Do not try to drastically change it. Speak confidently, intelligently and be sure to pronounce every word. Avoid using filler language (known better as the fluff used to buy your brain time to think: i.e. "um", "now", "really", etc.) and avoid using slang. Make sure your audience understands you.
Additionally, a lot of LitiGators have pronunciation pathologies. Many cannot pronounce contractions, others struggle with particular words (to/to, the/the, draw/drawer). When you're writing your opening be aware to avoid those pronunciation issues that you have, so that your voice will be smooth across the whole speech.

PROJECT WITH VOLUME

Your volume should vary throughout your opening statement. Create *peaks and valleys* with your voice. When you want to say something serious and thought-provoking, consider lowering your voice to a near whisper. In the same vein, if you want to rile up the emotions of your jury and light a passion in their hearts, consider noticeably raising your voice. The contrast between these two tones is a highly effective form of persuasion and leads to positive scores.

FIND YOUR PERFECT PACE

Openings are short, at most 5 minutes. There is so much information you want to get the jury that often you find yourself rushing through it. Remember to keep calm and pace yourself. A well-placed pause is by far the most effective tool in the arsenal of an opener. A brief moment of silence following a profound thought can be more important than the words themselves. A pause gives the jury time to think about what you just said. It will give them the time to truly feel the severity of your statement. Pauses after rhetorical questions, emotional moments, transitions, your theme, and

any other profound point are extremely effective. The length of your pause—especially the most dramatic ones—should feel like an excruciatingly long time. Look around when you pause, make eye contact with as many jurors as possible. Make sure everyone in the room understands the importance of what you just said.

Changing the speed of your voice is also very effective. Your pacing is not only what you do when you stop talking, but also how you choose to say each sentence. The ability to speed up when you want emotions to be heightened or simulate the feeling of fear or anxiety in your client's heart is crucial. You can also slow your voice down and carefully choose each word in order to convey the seriousness of the matter or for the jury to soak up the heart-wrenching emotion you are giving them. These techniques are vital to an effective opening.

RHETORICAL DEVICES

Rhetorical devices are not just fancy words for your teachers to quiz you on; they are highly effective methods of persuasion. The biggest one is repetition! The more you repeat something, the more someone remembers it (although try not to overdo it). If you are the defense, you want to repeat to the members of the jury just how heavy the prosecution's burden of proof is. Another device is the rule of thirds. When presenting evidence, you want to present it in threes, as this is the number that will lead to the best response from your audience. Rhetorical questions are another commonly used device that allows you to either show the jury just how nonsensical opposing counsel's argument is. It also allows you to have a question resonating in their mind for the rest of the trial waiting for someone to answer it. Here are some devices to avoid:

- Hyperbole: This can get you into a lot of trouble throughout the trial. Opening statements walk a fine line between telling the truth and embellishing it -- maintaining that balance is crucial.
- Alliteration: This device is a curveball. It can be used in themes but it can also come off as very corny if used in bad taste. Use discretion here and make sure you get the approval of a team captain or coach.
- Onomatopoeia: Although it may be enticing to add a **bang** to your opening for emphasis, you'll usually end up getting weird stares and lower scores.

VISUAL TECHNIQUES

POWERFUL PRESENCE

Once the judge calls upon you for the opening statement and you enter the well, the courtroom is yours—and you have to act like it. All eyes are on you, and you must demand the attention of the ones that are not. Stand confidently in the center of the well. Your feet should be square with your shoulders, hands at your side and weight evenly dispersed between both feet. Take a deep breath and begin your opening statement.

- Trial Tip: Practice in front of a mirror or record yourself to see how you are standing and how you look. Ideally you want to find a stance that makes you comfortable but also looks professional.

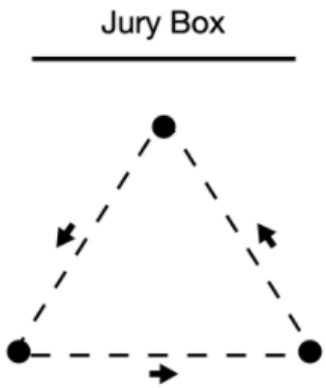
EYE CONTACT

A great way to establish your presence is through eye contact. Looking your audience in the eyes drastically improves how much they pay attention to you. A common mistake is to either to avoid eye contact entirely (by staring at timekeepers, the floor or the back wall) or holding too much eye-contact and making the listener uncomfortable. You have to find a balance. Do not stare blankly but rather imagine you are telling a close friend a story you care about.

- Trial Tip: If you feel weird maintaining eye-contact for an extended time, try staring at the space directly between their eyes (above the bridge of the nose). You should be at a far enough distance that they will not be able to tell the difference.
- Trial Tip: While delivering your opening statement, try to make each sentence or a couple of sentences directed to one person. This way you avoid flickering between the jury members and it makes your statement feel more personal.
- Trial Tip: If you are making eye-contact with your audience, that means they are making eye-contact with you. Your facial expressions can be used to further emphasize your points. For example, if you are talking about a victim's death or a rather sensitive topic, look saddened. If you are blaming opposing counsel for something, look upset and borderline angry.

MOVEMENT

Your movement should be deliberate. Try to avoid shuffling your feet, fidgeting, or walking without a purpose. Every step you take and hand gesture you make briefly distracts the listener from what you are saying, so it is important to make these shifts and movements meaningful. Try moving whenever you transition into a new point or want the jury to resonate with something important that you just said. You can also move to subconsciously affect your listener. For example, slowly move closer when you want to draw the listener in for a dramatic statement. Or walk further away when you want to make something sound less important than it actually is. Here at UF, we walk in the shape of a triangle, with each corner being a point where we stop and talk for a bit before transitioning to the next spot. It looks a bit like this graphic, to your right. By no means is this a concrete or firm method of movement, but rather it is a general path for you to follow during your opening. You should be prepared for odd shaped wells with podiums in the middle, little to no walking room or weirdly placed jury boxes. The bottom line is that you should find a movement that is not stiff, feels natural and has a purpose rather than pacing around the courtroom.



We choreograph our movement with purpose. This helps it feel fluid and reduces unplanned and unnecessary nervous movements like rocking back and forth or stepping awkwardly.

HAND GESTURES

A way you can express yourself during an opening statement is through hand gestures. For the majority of your statement, your hands should be straight down at your side. It is an odd feeling, however, it looks natural and makes the few gestures you do use very powerful. When you do use a gesture, exaggerate it. If you are pointing to the right, rather than softly lifting your arm halfway and pointing, lift your arm to shoulder level and make an outward pushing motion in the direction you are pointing. A general rule of thumb is that your hand gestures should be above the waist and extended. Large, expressive motions not only make it clear to the judges what you are doing, but it will project the confidence and passion necessary to achieve a ten.

- Trial Tip: Record yourself to see what looks weird. There is always one hand gesture that feels right in our head but once we do it, it is a different story. This method helps to weed out the good gestures from the bad.
- Trial Tip: Try to incorporate case related hand gestures. Does your case involve a hiking stick? Pretend you are holding one. Did your client get in a fight? Try making a pushing motion. These hand gestures all add to the immersive experience.
- Trial Tip: Do not ever put your hands either in your pockets or on your hips. Do not ever mess with your hair, your tie, your blouse, or your jacket. Do not ever fidget with a pen or pencil during your openings.

DEMONSTRATIVE AIDS

Demonstrative aids can be highly effective in getting one's point across. We all know the famous adage: *"A picture is worth a thousand words."* That could not be truer when you are under the time constraints of an opening statement. The use of demonstrative aids during an opening statement is still a highly debated and extremely nuanced topic in the Mock Trial world. Some judges love it, some judges hate it, and ultimately the choice of whether or not to use one is yours. If you are going to use a demonstrative aid during your opening statement, there are a few rules for you to follow:

- Make sure your demonstrative consists of non-objectionable evidence. Typically there are a few pieces of evidence in each case that are stipulated to, and will always be entered without objection. If you fail to use one of these pieces of evidence, expect an objection battle before the trial even begins.
- Hope for the best, plan for the worst. As mentioned before, you will encounter judges who will hate demonstrative aids or they might get damaged during transit. Have a back-up plan in case you are prevented from using the aid in your opening.

MEMORIZATION MATTERS

The difference between a good performance and a great one is practice and memorization. Memorize your opening statement. Memorize every word, every movement, every step. Unfortunately, there will be times where you only have a week to memorize, sometimes a day or even a few hours! But, when you stand in front of the jury, your opening statement must be delivered without notes and as close to perfect as you can get it. Different people memorize information in different ways. Common forms of memorization include repetition, recording yourself, flashcards, and performing your opening in front of family and friends.

TEAMWORK AND COHESION

This is the most important part of writing an opening statement. The opening statement provides a roadmap to the jury of exactly what is going to happen throughout the trial. If you suddenly forget your team's theme and create a new one, guess what? That is your new theme! If your opening statement does not match how the rest of your case is presented your entire team's scores will be impacted by the lack of cohesion. As an opener, if you say something is going to happen (i.e. a certain piece of evidence will come out) it better happen. Otherwise, the jury will believe you opened the trial with false promises and misinformation.

The effects of successfully communicating are just as large. If your team appears more coherent than the other, the jury will trust you more, and that will positively impact your scores. Coordinate with another member of the team to add more drama. A common trope is for a defense attorney to walk over to the defendant and place a hand on their shoulder to create sympathy.

The most important member of the team to communicate with is your closer. Opening statements and closing arguments should mirror each other. They should follow a similar structure and be consistent in their portrayal of evidence. A similar beginning is the most important part as that is what the judges are most likely to remember. If you say the theme before jumping into each paragraph then your closer should do the same. This level of cohesion adds to the professionalism of your team, and it separates average teams from good teams and good teams from great teams. However, it is important to note that an opener does not have to (and should not) present every single piece of evidence the closer might want to use in their speech. A closer is not limited to the information used in the opening statement.

THE DO'S:

- Incorporate your theme into your opening
- Tell a compelling story
- Vary your tone and pacing to highlight what's important
- Move with confidence and purpose
- Strategically choose what to reveal about the case in the opening
- Be confident
- Write carefully to construct a strong speech

THE DONT'S:

- Argue or be overly aggressive
- Break the Golden Rule (see the Narrative section)
- Make promises you won't be able to keep
  - EX: Assume evidence will get in that may not
- Fidget nervously
- Freak out if you make a mistake or forget something
  - Roll with the punches! No one will know you messed up unless you show them that you did.
- Use filler language

TO SUM EVERYTHING UP

Crafting a great opening statement is a skill that comes with lots and lots of practice. There is no such thing as the “perfect” opening statement, nor is there a “right” way to do it. Feel free to experiment with different styles until you find what works best for you. We have the utmost confidence in you and can’t wait to see what the next generation of LitiGators accomplishes!

CHAPTER FOUR: DIRECT EXAMINATION

OVERVIEW

Direct Examinations serve two purposes in Mock Trial. Firstly, they provide a method to build case theory. It is a largely uncontested opportunity to elicit the evidence you need to prove your case. Secondly, and more importantly, directs win rounds. A team earns more points on direct examinations than in crosses and speeches. A direct is a performance art, and should tell compelling, engaging, and persuasive stories.The Direct Examination is a scripted conversation between an attorney and their witness. Broadly speaking, there are three categories of witnesses: party representatives, characters, and experts. There are many ways to play each style of witness, but there are a few tried and true methods that we will discuss below.

PARTY REPRESENTATIVES

In criminal cases, the defense will always have the option of calling the defendant. The defendant is the person on trial for committing a crime. Defendants are rarely called in real trials. This is because the goal of a real trial is the verdict, not scoring points. In mock trial, defendants typically score very well. They can be played emotionally, and tug on the heart strings of the judges. Defendants also have a lot of leeway for storytelling and performance.

The prosecution in a criminal case often has the choice of calling the lead detective or police officer to the stand. Detectives must be played professionally, as to develop credibility and stature. Detectives are not called as often as defendants, because it may be hard to develop a detective that scores consistently well; it depends on the facts of the case and the person playing the role. However, detectives often do enter major pieces of evidence, and open the prosecution's story.

In a civil case, both parties (plaintiff and defense) may have party representatives that they can choose to call. Deciding to put the party representative on the stand is a strategic decision left up to the team and determined by the fact pattern of the case. There is usually lots of room to interpret the character, and some can be played emotionally while others are played more seriously. Sometimes, AMTA rules about party representatives' testimonies give an advantage to calling them. This can

sometimes give them more leeway to tell creative stories. When this happens, it likely becomes a better idea to call the witness, but it is important to work out the story you add for maximum believability.

CHARACTERS

Character witnesses are usually eye-witnesses to a crime or lay people who were tangentially involved in the case. Many examples come to mind: gas station cashiers, make-up stylists, Uber drivers, you name it. These witnesses leave a lot of room for creativity and role-playing. Witnesses dress up in what their characters would typically wear to court, and sometimes they are played "larger-than-life." Sometimes, character witnesses are played humorously to lighten the mood in a dark case, but this is something that should be done tactfully. Even the brightest of characters, however, is that person in court, so respect to the atmosphere must be paid.

EXPERTS

Expert witnesses usually have specialized knowledge in fields like science, technology, or medicine. The first few questions in an expert direct will lay the foundation of proving that the witness is an expert in the field, which we will dive into later in this chapter. After the witness is established as an expert, the witness will use visual aids brought to court to demonstrate a key fact in the case, such as whether or not the defendant's cell phone was near the scene of the crime, or whether the blood spatter indicated an accidental fall and not a purposeful push. Both sides will have experts, and the focus should be on their credibility as an unbiased professional. If this comes across, they will score lots of points and further the case theory significantly. Remember though that experts are people too – relatability matters as they try to impart information.

HOW TO PREPARE FOR DIRECT WRITING

Which directs will you write? Evaluate your team's acting talent. Take your case theory. Both matter equally. Choose witnesses that fit both and choose what they say accordingly. The standard selection of witnesses will include one party representative (such as a detective or the defendant), one character (usually played humorously), and one expert witness. Of course, there is lots of room to change strategies based on your team's theory and what works well for it. However, it is always important to strike a balance between emotion, humor, and facts.

Who is the witness and what do you want? Before you write a direct, you want to know both who the witness is and what you want out of it. Who is the witness as a full person? This involves information from a witness bio, regardless of what sort of witness it is (see the witness chapter for witness bio information). The witness's bio – his/her/their character - should reflect in the direct. What you want from the witness is about theory – what part of the evidence do you want this direct to tell us about? A direct written without a clear answer to both of these questions will be subpar.

CONTENT

One of the most important skills in mock trial is knowing what to say, and what not to say. When it comes to direct examinations, it is very important to craft a simple and coherent narrative out of a sea of facts and red herrings. There are usually over ten witnesses and each affidavit has page after page of facts and backstory. You have to determine which information from an affidavit is valuable and which is not. Rounds can be won or lost depending on how well a case theory is crafted through the selection of witnesses and the scripted direct examinations.

The Direct Examination should not explain every fact from your affidavit, or even most of them. The affidavit will intentionally bait you with bad facts -- don't fall for this trap. Sure, there might be some very damning information in the affidavit. When you come across it, consider how it plays into your theory. Does it make things too complicated? Would someone who has never heard of this case understand it? Is it highly objectionable and likely to not even make it onto the record? All of these questions must be carefully analyzed before any piece of evidence from an affidavit makes it into a direct examination. Remember, the judges do not have access to the case packet, and do not know what information you left out. In addition, you are not trying to win the verdict, you are trying to score points. It's okay to leave out useful information if it hurts your story or even the presentation of the character. Focus on a clean, simple, easy to understand narrative over unloading every good fact for your side. It is also okay to leave out great information for your side that does not fit your theory.

When writing a direct examination, it can be easy to fall into a rabbit hole and lose track of what the purpose of the direct is. When a witness is selected, the witness is selected for a reason. There is a definitive purpose as to why you are calling this witness to the stand and not another, and it needs to tie directly into your

theory/narrative. The judges will lose interest and score you down if the purpose for the witness being called is not clear. Thus, why the witness is here, using up everyone's time, should constantly be evident throughout the direct.

From an attorney's perspective, an important element of the direct examination is writing open-ended questions, rather than leading questions. A leading question suggests an answer, and sounds more like a statement of fact rather than a question. This will come in handy for cross-examinations, where you want the witness to answer with a simple yes or no. However, direct examinations should be designed to give the witness ample room to tell his or her story, so every question should be open-ended. Here is an example:

LEADING VS. OPEN-ENDED QUESTIONS

Leading: "You exited the building at 12:00 P.M, right?"
Open-ended: "What time did you exit the building?"

Leading: "In the morning, you were at the corner store?"
Open-ended: "Where were you in the morning?"

On the other side of the coin, questions need to be specific enough to guide the conversation forward in a productive manner. Questions that leave too much room for the witness to ramble are called narrative questions, and those should always be avoided. Here is an example of a few questions that demonstrate an attorney steering a conversation forward:

STEERING QUESTIONS

Instead of asking: *"Why did the house burn down?"* ask...
Q. What happened after you walked to the stove?
Q. What happened after you turned the stove on?
Q. Did anything happen while you were cooking your breakfast?

One more useful tip for writing direct examinations is looping. Through looping, you ensure that the next question always follows logically from the previous one. This coherence benefits both the witness and the attorney, because it makes the direct easier to follow and it demonstrates that the attorney is closely listening to their

witness. For looping to work, the questions and answers must be set up so that each question asks for great specificity, moves the story forward chronologically, or otherwise develops logically or conceptually from the answer elicited by the previous question. If it is done right, looping can make a scripted direct sound natural and conversational. If done wrong, it can make a direct sound like an off-off Broadway production at your local theater. Here is an example of good looping:

LOOPING QUESTIONS

Q. Mr. Fisher, do you have any idea who that man with the mask was?
A. Yeah, the man looked a lot like that guy -- Skyler Sinclair.
Q. Why do you think that the man you saw was Skyler Sinclair?
A. Well, the police interviewed me, and they had that guy Sinclair show up at the station. That's when I put two and two together.
Q. What do you mean you "put two and two together"?
A. Well, he's tall and seemed to have the same built as the guy I saw at the dock.

A witness can design a character around building on the good facts for your theory and hedging against the bad ones. A witness may be irresponsible? Maybe there is two, good kids they care for. A witness may lie? A career where honor is important. A witness underestimates a danger? They can be a daredevil. This sort of molding will allow for better 'wiggles' on cross examination and a stronger narrative on direct (see the witness chapter for more information).

STRUCTURE

There are many ways to organize a direct examination and how you deliver information to a jury. We will go through three ways of organizing a direct examination in this section. However, it is important to lay the proper foundation for a witness no matter what structure you choose. The direct examination of an expert witness uses the opening questions to establish the expert's expertise and credentials, while that of a character witness might build the character's backstory. In all direct examinations, though, the opening questions must establish who the witness is and why he or she is testifying. For example, if a witness was to testify that they saw the defendant start the fire in question, they must first establish their whereabouts on the date and time of the crime. Once the opening questions have been written and the foundation has been laid, you can choose how to organize the rest of the material in the direct.

CHRONOLOGICAL ORGANIZATION

This is a simple yet effective way to deliver information to a jury: the witness tells a story in the order in which the events happened. This is very useful when an event, observation, or timeline is a central element of the direct. These types of directs are very conversational, but can sometimes become boring and monotonous. Rely on this type of organization if the story the witness is telling is already clear in its chronological order. If the story needs a bit of narrative-reconstructing, you might want to try the next strategy. As discussed above, flow, being conversational, and the ways it is possible to get what you want out of the direct should heavily influence this choice.

TOPICAL ORGANIZATION

This means organizing the direct by subject. This is useful when the witness was called not to simply relay a sequence of events, but to deeply analyze specific topics. Experts, police officers, and party representatives might need to go into detail about certain aspects of the case that don't necessarily fit neatly into a timeline. You may also find the natural sequence of events to be confusing, so organizing by subject helps the jury understand what's important.

CHARACTER-DRIVEN ORGANIZATION

If something about the character you have written – like the steps to how they sell a house, or the way their bakery opens – that lends itself to natural organization for the information you want, this is also an option.

HYBRID ORGANIZATION

Sometimes you will find that a chronological organization works well for the most part, but it's necessary to interject some facts or backstory throughout the direct to help explain what's going on. In this case, it's completely fine to blend the organizational types to your needs, so long as two factors are met: 1) it's conversational and natural, 2) it's clear and concise to the jury.

Signposting is an extremely important aspect of direct structure. No matter how you choose to organize your direct, you must make the direction of the direct clear to the jury. This means the attorney should use language that indicates where the conversation is headed next and why. Here is an example of an excerpt of a direct

examination of a police officer who has previously testified that the beginning of his investigations include arriving at the scene, collecting evidence, and then fitting each piece of evidence into the 'big' picture of her investigation.

SIGNPOSTING

Q. When you arrived at the scene, was there anyone else there?
A. The first responders were still there, but that was all.
Q. What did you do when you arrived?
A. After checking that the first responders had secured the perimeter, my team started bagging, tagging, and cataloging evidence.
Q. What evidence did you catalogue?
A. I found a firearm, bullet shells, and a blood-stained T-Shirt.
Q. How did you go about determining if these pieces fit into the big picture of your investigation?
A. We ran a number of tests and analyses.
Q: Tell us what tests and analyses you ran on the firearm.

ROLES

Generally, most people are under the assumption that an attorney in Mock Trial is the main point of focus, or "the star of the show." However, in a direct examination, this can't be farther from the truth. Whenever it's your team's turn for direct examination, you want all the attention to be on the witness, as they are the ones bringing in the actual evidence and facts that you need. Not only does your case theory depend on the facts of each witness, but the majority of scores on a ballot come from witnesses. It's commonly known in the Mock Trial community that witnesses win rounds.

As such, the attorney should take a backseat during a direct examination, to give the witness all the attention. We do this to ensure that, when performing a direct examination, the judges' focus should be on what the witness is saying, the character they're portraying, and the facts that are being brought into evidence.

Now, that doesn't mean that the attorney can slack off and do whatever they want while the witness is testifying. The judges are going to constantly look to the attorney, so be sure to remain engaged, interested in what the witness has to say, and aware of potential objections. You still want to remain in control of the situation, even if you

aren't in the spotlight. For the witness, this is your time to shine. You should be engaging with your attorney, the judges, and anyone else in the courtroom that may need to be referenced to. The witness wants to give character and context to the case, but the attorney wants to interject naturally so witnesses do not give narrative answers. The entire direct examination, from start to finish, should be a conversation between the witness and the attorney. So therefore, when writing, practicing, and performing a direct examination, it should be a completely collaborative effort. Both the witness and the attorney should write the direct together, giving input on how a question is phrased, the flow of the direct, and how the answer should sound.

ENTERING EVIDENCE PROCEDURE

Sometimes in a direct examination, your team will need to bring in specific pieces of evidence that help your theory. Evidence can take the form of photographs, documents, legal records, maps or diagrams, etc. But the general procedure for how the attorney will put the evidence on the record remains the same, except for any unique judge preferences.

1. Prepare what documents that need to be entered on your direct before the round begins.
2. During the direct examination, the witness will naturally bring up the evidence that you are planning to bring in. Making this sound natural comes with how it's written and how it flows.
3. From there, the attorney asks the witness if they would recognize the document, photograph, or evidence that they just mentioned if they saw it in court today.
4. Ask the judge if you can approach opposing counsel with what has been previously marked as exhibit _____. Then, walk over to the attorney that will be giving the cross to the witness and show them the exhibits. (Rule of thumb: have three exhibits ready → one for the witness, one for the judge, and one for you to reference).
5. Ask the judge if you can approach the witness with exhibit _____.
6. Ask the judge if they would like a courtesy copy. Some judges may want a copy after it's in evidence, others don't want one at all.
7. Lay foundation. This means that the attorney asks the witness if they recognize what you just gave them. The witness will answer yes, and describe briefly what the exhibit represents. (ex. "Yes, this is a photograph of the Leckrone Loop hiking trail.") Laying foundation might also mean asking the witness more questions to

authenticate the evidence in order to combat any objections that might come up.

8. Ask the witness if the exhibit is a fair and accurate copy/representation of the evidence. (Rule: if it's a document, you want to say "copy" and if it's a picture/physical evidence say "representation")
9. Say to the judge: The prosecution/defense offers exhibit _____ into evidence.
10. The judge will then ask if there are any objections from the opposing counsel. If there are, the attorney will then argue the objection, but if not, then the exhibit is now in evidence.
11. After the witness is done talking about a specific piece of evidence and you are ready to move onto the next point, ask to approach the witness to retrieve the evidence and "publish" to the jury (which just means giving the evidence to the jury). If both of the judges are sitting next to each other, you can say "may we publish the courtesy copy to the jury?" which just means that the judges won't have two pieces of evidence that are the exact same.
12. Move on with the direct examination.

PERFORMANCE

In mock trial, often what earns points is not what you say, but how you say it. On direct, you have the opportunity to script out your part of the trial, which means you can include your own dramatic flare and plan out as much as you can about what will happen during the direct: which includes how the direct is performed. Directs can be funny, entertaining, heartbreaking, and impressive if performed right. Being fully prepared and memorized is necessary for a direct examination, but if the direct is well-written, engaging, entertaining, and performed well, that separates mediocre teams from great ones.

ATTORNEY INTONATION

Many attorneys help their witnesses write incredible directs and properly let the witness be the star during direct examinations, only to find their scores very low. They wonder what they can possibly do during direct to make their scores better, since they don't have as much control as on cross and are trying to let the focus of the presentation be on the witness. The key to scoring well as a directing attorney is the tone of your voice. You must sound interested, but not overly excited. You must vary your tone significantly more than what seems natural to you, because people listening to you cannot tell the nuances of your voice as closely as you can. It can be extremely

beneficial to record yourself giving the direct, and pay attention to how you sound asking questions. Do the questions sound casual and conversational, or scripted and monotonous? You want to sound like you're giving an interview, where you are actively engaged and excited to learn what the witness has to say. Furthermore, judges are looking for a breath of fresh air in a strict and formal environment. Try being conversational and relaxed while giving a direct examination, making everyone in the room take a deep breath and feel more comfortable in the courtroom. It will go a long way to being a memorable and likable attorney, which will positively affect your scores in the long run.

WITNESS CARRIAGE

Witnesses should make sure to sit still in their chairs. They will need to make eye contact with the judge and the jury, as well as appear to be listening to questions from both attorneys. Witnesses need to carry their characters throughout the direct and cross. Witnesses need to speak at a reasonable, understandable speed and in simple language.

THE CONVERSATION

The speed of question and response between attorney and witness matters. While long pauses are inappropriate, the witness needs to pay attention to the question and the attorney needs to hear the answer. Passing something between you (like throwing a ball) is good practice for pacing. Also, witnesses should practice natural shifting of looking between the attorney and jury, rather than a quick head movement. Attorneys should practice courtroom positioning to make this possible. The best conversations make both attorney and witness look interested in each other and their surroundings.

EXPERT WRITING

The expert witness can be the most interesting or the most boring witness of the round. An expert's success depends upon the structure of his direct examination. A good expert witness direct will generally pick no more than three facts or ideas that are essential to the case. The direct examination will then be structured around those facts. Expert directs should never rehearse the report. They should always focus on the angle your theme and theory emphasizes.

The direct examination of all expert witnesses begins with establishing proper foundation as called for by Rule 702. Generally, you want to start out by having the expert give his credentials: his title, educational background, and work experience. Once this is established, you will want to shift towards his involvement in today's case. You will want to clearly define a method that he used in coming to his conclusion. The validity of that method is key to the direct. If you lay the foundation that the method is valid early on, you will bolster your own arguments during the inevitable 702 objections. The method can be called whatever you want, as long as it sounds professional and relates to the case. Once you have the method established, the witness can begin discussing his conclusions, or, rather, how he reached them. Logically, the flow from qualifications, to method, to steps taken, to conclusion sounds and feels better. When you present the direct examination in that order, you essentially guide the judge and jury into reaching the conclusion. Legally, nothing stops you from simply asking the conclusion and sitting down, as Rule 703 provides. However, the direct examination of an expert witness is all about breaking down technical or esoteric data. You want something easily digestible for the members of the jury.

When writing the direct examination for an expert witness, each question and answer should be kept short. If a technical term or phrase is introduced, then the witness should be asked to explain it. Every answer the witness gives should have only one logical next question. You do not want the judges thinking about alternative questions and hypotheticals. If the questions or answers are too long, you will put the judges to sleep. The questions and answers should not reveal any sort of potential bias in favor of one side. The expert witness is detached and impartial. He is free to disagree with the opposing expert, but never fight. Judges, especially older judges, do not appreciate it when witnesses have name calling sessions on the stand. Two professionals can disagree over a particular issue, but that does not mean that they inherently dislike one another. When testifying, your goal is to convey your knowledge and enthusiasm for the particular subject. This is your job, after all.

DEMONSTRATIVES

A demonstrative, or demo for short, can be one of the most unique aspects of a direct. It allows the witness to explain his testimony in a visual demonstration to the judge and the jury. A demonstrative can be anything and everything; there are very few hard and fast rules governing them. However, there are three key rules to follow

when designing a demonstrative: it cannot have any electronic components, it cannot make a mess in the courtroom, and we must be able to transport it to tournaments in our van and get it into the courthouse (nothing sharp or harmful, etc.). A demonstrative should always be relevant to the witness's testimony. Additionally, a demonstrative should have a clear purpose. That is, it explains, visualizes, or demonstrates something that the judge and jury would have difficulty understanding on their own. Judges and juries do not like redundant or pointless demonstratives.

Any witness is allowed to use a demonstrative, provided that the demonstrative is within that witness's scope of knowledge. For example, an eyewitness might use a map to explain his movements on the day in question, or an expert might use a diagram to display his conclusions. However, demonstratives are not just limited to printed boards from the case packet; they can be physical objects not explicitly mentioned in the case packet. Expert demonstratives frequently involve physical objects that are not mentioned anywhere in the case packet. However, these objects are used to explain a principle or conclusion that is found in the packet. Regardless, proper foundation must be laid for any witness to use a demonstrative, whether it is a lay or an expert witness. Foundation should be laid prior to the witness stepping down. If the demonstrative involves physical objects, the witness will have to explain what those objects are and how they function. A very important note regarding expert demonstratives: they should only be used to explain a general principle, never what actually happened in the case. This will generally result in an objection and your demonstrative being stricken from the record.

Demonstratives are generally introduced in one of two ways: either the witness states *"I brought along a visual demonstration"* if they are an expert, or the attorney asks, *"would you recognize a larger copy of that exhibit."* The attorney must ask the judge if the witness can *"step down."* The witness should not be standing for more than two and a half to three minutes. Any more feels too long. When the witness is done, they will retake the stand and the direct will continue. The demonstrative should be an extension of the direct. The validity and effectiveness of a given direct examination should not rest solely on the demonstrative being performed. Always have backup questions in the event that the demonstrative is not admitted. Be prepared for the crossing attorney to use and interact with the demonstrative. The closing attorney may even use it. Once you bring out the demonstrative, it is fair game to be used, or even used against you. The facts and ideas in the demonstrative must be grounded in the case packet. If not, you can, and will, be called out if your demonstrative materially invents facts.

TO SUM EVERYTHING UP

The direct examination is the best forum to convey the story of the case to the jury on your terms. Directs are also the prime opportunity to build up your case-in-chief. Numerically speaking, it is almost impossible to win a trial without good direct examination scores. Take advantage of the opportunity to tell the story and to paint the scene for the judge. You only have three witnesses to explain your purpose--use them wisely. Each witness should be different in both character and testimony. The better you can tell the story, the higher your scores will be.

CHAPTER FIVE: CROSS EXAMINATION

MAY I INQUIRE?

Cross examination immediately follows every direct examination. This is the opportunity for opposing counsel to attack your witness' credibility and the story they just presented, or your opportunity to question the opposing witness. Similarly to direct examination, there are three cross examinations per case in chief (ie: three during the Defense's case and three during the Plaintiff/Prosecution's case). Each side has an overall 25 minute time-limit to present all three cross examinations. A cross examination typically ranges from 6-8 minutes depending on the type of witness on the stand. Expert witnesses and party opponents, like a defendant, are subjected to longer cross examinations whereas a character witness' cross examination may be shorter. Knowing when to sit down on a cross examination is a key mock trial skill. You may win a key point so convincingly that you do not need to finish your cross, and you cannot finish your cross on a clearly losing note. You will develop a sense for this through experience.

Unlike direct examination, cross time routinely goes unused. That is fine and often predictable. The goal of cross examination is to attack the story presented by opposing counsel and the witness' credibility. However, when writing an effective cross it is important to keep in mind the overall theory of your case. No matter what witness you are crossing, there will be an abundance of facts at your disposal to cross about. It is crucial to purposefully select only the facts that either call into question the witnesses credibility or strengthen your case theory. Just because you have an opportunity to identify a "bad fact" for the other side, doesn't mean it necessarily helps your side. All three cross examinations should be viewed as building blocks of the same cohesive narrative, not separated, individual units of inquiry.

A fundamental aspect of an effective cross examination is asking close ended questions. To review, open ended questions are asked during direct examination and are designed to allow the witness to cohesively tell their side of the story. Close ended questions, or leading questions, are shorter and are designed so the only appropriate answer is a yes or a no. They are supposed to "lead" the witness to a particular answer. For example, "how was the chimpanzee acting?" is an open ended

question, but you can transform it into a leading question by asking "the chimpanzee was screaming, correct?" The latter leads the respondent to two possible answers, either "yes, it was" or "no, it was not." You may not always get a straight-forward yes or no answer from the witness. The most important thing to keep in mind during cross examination is to never, ever ask a question you don't know the answer to. The key to creating an effective cross examination, both in formatting and in content, will be explored more in-depth in this chapter.

POCKETS

Organization is key to a great cross examination. It's important to have a roadmap for both yourself and the jury to follow while you are crossing the other team's witness. It's not uncommon for the witness to give you an answer you weren't expecting or say something really strange. For an inexperienced crosser this might throw off the cross in its entirety. However, for an attorney who is properly organized and prepared, they are able to navigate a difficult witness with ease. Rather than asking an array of unorganized and confusing questions it is important that your cross examination have some sort of order to it. It's best to organize your cross questions into pockets, or various lines of questioning, this way you are able to guide the jury through the points you are trying to make. You can think of pockets as a paragraph of an essay or a chapter of a book, these should be questions all related to one overarching theme or point. Any given affidavit and the case around it will lend itself to literally dozens of pockets, your theory and the context of a particular trial will let you narrow those down.

Almost as important as determining the topics of your pockets is determining the order to arrange them. In many cases you will find that your pockets will follow a natural or logical order. For example, if you are crossing the defendant it might make the most sense to start with a pocket about their bias or motive for committing the crime, then ask about where they were and what they were doing at the time of the crime, and end with them lying to the police after they were arrested. You can see in this example how the points are all in chronological order making your points easier for the jury to digest. Clarity is key to a great cross.

You may find that your pockets don't have a natural order. The witness you are crossing may have some weird facts or a unique story in which case you will need to use your best judgement when organizing your cross. It is always important to

remember that you cross should always end on a high note, you typically always want to end with your best point. You want to build up to your best point throughout and then end on a mic drop moment and sit down!

BABY-STEPPING

Inexperienced crossers will often try to cram too much information in a single question, going for one, big "slam dunk" question to illustrate an important point. However, this is a mistake. One way to maintain control in a cross examination is to draw out each point you make into multiple questions. This technique is called "baby stepping." On cross, the shorter the question, the better. Setting yourself up and then taking each point step-by-step, question-by-question, makes your line of questioning more understandable to a jury. Not only does it make your point more clear, but it makes it more significant. Consider the example below.

HOW TO BABY-STEP

The Defendant wrote in his affidavit:

"Then I picked up a gun, loaded it, pointed it at the victim's head, pulled the trigger, and watched the bullet enter the body, at which point he fell to the ground."

An inexperienced crosser may attempt to pack all of this information into a single question:

Q. You picked up the gun, loaded it, pointed it, pulled the trigger, watched the bullet enter the victim's body, and saw him fall to the ground?

In this example, the crossing attorney has used all of his ammo in a single question. These issues can be easily resolved through baby stepping.

Q. You picked up the gun, didn't you?

Q. You loaded it, right?

Q. You pointed it?

Q. You pointed it at the victim's head, isn't that true?

Q. You pulled the trigger, right?

Q. The bullet left the gun?

Q. You saw the bullet go into him?

Q. Then you saw the victim fall to the ground, didn't you?

THE QUESTION TOO FAR

One of the hardest things about cross-examination is knowing when to stop. Sometimes, a witness will be agreeing with everything you ask, and since the examination is going so well you will be tempted to ask what might be termed the "ultimate argument question." For example, if you're cross-examining an expert and you want the jury to believe they made a mistake in their methods, that is your argument. Therefore, you should never ask, *"you made a mistake in your methods, right?"* because the witness will never say yes, and this gives them a chance to argue against you. Rather, you should ask them about the salient facts and let the closer argue that at the end of the trial.

KNOW WHEN TO STOP

You want to establish that the witness did not see the collision until after the initial impact and therefore really doesn't know how the accident happened.

Q. You weren't expecting a collision at the intersection, were you?

A. No.

Q. You'd gone through that corner many times without any collisions occurring, right?

A. Yes.

Q. The weather was good?

A. Yes.

Q. The traffic was normal?

A. Yes.

Q. As you approached the corner you were talking with your passenger, right?

A. Yes.

Q. The first unusual thing you heard was the sound of the crash, wasn't it?

A. Yes.

Q. That's when you noticed that a crash had just occurred, isn't that true?

A. Yes.

At this point, stop! You've made your point. Don't ask the last obvious question: "So you didn't really see the cars before the crash occurred, did you?" **The witness will always give you a bad answer. Instead, save it for your closing argument.**

STYLE

Great crosses vary styles among and across packets. Some are slower, some are faster. Some are friendlier, others are more aggressive. Some are asked in the negative ("you didn't do X, right?" and others are asked in the positive ("of course you did X, right?"- knowing full well that the answer is no). Style of questions can also adapt to the direct. You can be friendlier with a folksier witness, and include believable elements of a good witness in questions.

PERFORMANCE

WITNESS CONTROL: Even though your cross will lead the witness to particular answers, the witness is a member of the opposing team. As a result, they will still try to push their own agenda. Witness control is all about constraining the witness and limiting their answer to a clear cut yes or no so that his answers only help your team. Witnesses are allowed to give context and brief explanations in response to your questions, provided that they give a yes or no answer within them. However, sometimes witnesses may refuse to answer yes or no; alternatively, sometimes the explanations they give are not brief.

When a witness is being difficult on cross examination, it is the attorney's job to control them. There are a number of methods for doing so, depending on the situation:

- Say "redirecting you back to my question," and then repeat the question.
- If the witness gives a long winded answer, ask "so that was a yes to my question?"
- If the witness didn't give a yes or no answer, ask "so is that a yes or a no?"
- Repeat the question ending with "yes or no?"
- As an absolute last resort, you can ask the judge to strike everything after the yes or no as non-responsive. This option should be avoided, if possible. Some scorers will interpret your reliance on the court to mean that you are unable to control the witness.

A key thing to keep in mind during cross is to keep your cool. You should never lose your temper, become overly aggressive, or outwardly frustrated with a witness. The best crossers can control a witness in a respectful manner. In general, never cut witnesses off. Most judges and scorers find this to be disrespectful to the witness and

the court. Whichever way you are controlling a witness, make sure your tone and demeanor matches that of the witness you're crossing. For example, a sad, distraught witness should be met with a gentle and understanding tone. If a witness is being outwardly aggressive towards you, make sure to contrast their demeanor by being calm. A good attorney controls the witness while remaining calm and friendly; a great attorney ends up with a witness who says only and exactly what she wants.

IMPEACHMENT

Impeachment is a tool that crossing attorney's need to use sometimes to control the witness. It is the only way to let the jury see clearly that a witness is lying. As a rule, you should never impeach a witness on minor points; this runs the risk of derailing your entire cross and giving the witness a chance to score some serious character points. You should really only impeach a witness if the lie they are telling is egregious! For example, the cafe owner says on the stand that no one came into their cafe the night of the murder but their affidavit states that the defendant was there that night. There are two main types of impeachments, a direct contradiction and impeachment by omission. Impeaching a direct contradiction would be impeaching on anything that explicitly goes against the information in their sworn statement. You would impeach by omission if a witness on the stand testifies to a material fact that cannot be reasonably inferred from their sworn statement. There is a very specific procedure for impeachment and it is imperative that every attorney follows these questions exactly when attempting impeachment.

IMPEACHMENT PROCESS

- You saw the defendant?
- Is it your testimony that you did not see the defendant?
- You remember preparing an affidavit for today's case?
- You swore to tell the truth in that affidavit?
- You were told to include all relevant information?
- You are aware you had until just before trial today to revise or add any additional information to that affidavit?
- Your Honor, may I approach opposing counsel and the witness in turn with the witness's affidavit?
- Let the record reflect that I'm handing opposing counsel a copy and showing opposing counsel the copy I'll be handing to the witness.

- You recognize what I've just handed you?
- This is your affidavit?
- If you turn to the last page, that is your signature?
- I want to direct your attention to line 75.
- Please read silently as I read aloud. "I saw the defendant."
- Did I read that correctly?"

For an expert witness, you can add a question about their experience testifying, and familiarity with the importance of telling the truth. For lawyers and police officers, if they are lying, you can ask a question about knowing perjury is a crime. For criminal defendants, you can ask them if they know their freedom depends on their honesty. The point of the questions leading up to the impeachment is to dramatize the contradiction.

Once the witness answers that final question and confirms you have read their sworn statement correctly, move on. You made your point. It is important that you do not continue down this line of questioning because that is an easy way to get yourself down a rabbit hole. You will find that a full impeachment is not always necessary to get the witness to say what you want them to say. Sometimes the mere threat of an impeachment is enough to get the witness to agree with you. There are plenty of ways to do this, whether asking "is it your testimony XYZ" or walking back to your counsel table and grabbing the sworn statement. Whatever it is, make sure that if you threaten impeachment, you are ready to go through with the entire process. The last thing you want is to sound surprised if a difficult witness seems unphased by your threat and dares you to go through with the impeachment.

At UF Mock Trial, we memorize the reports or affidavits of our primary cross witnesses. We do this because a good impeachment can win a round, and a bad impeachment can lose one. In highly competitive rounds, the difference is likely to come down to the exact wording of a fairly obscure passage of the affidavit. If you know it by heart, you'll be able to make the right decision on your feet at the time.

A useful tool to help with a clean impeachment is to ensure that every question in your cross has a line number that corresponds to the information in the witness's sworn statement. This not only will help you to make sure you are asking clear questions that require a yes or no answer but this will also make sure you are ready for

an impeachment. If your cross has line numbers, your co-counsel can follow along as you are asking questions and have the witness' sworn statement ready if you go in for an impeachment. This is a great way to look clean and cohesive as a team and it makes sure that you aren't standing at your table or shuffling through papers which can definitely take the wind out of a strong impeachment.

VOIR DIRE

Voir dire is a way for a crossing attorney to demonstrate a lack of credibility for expert witness testimony- usually by one of the four prongs of rule 702 in the Midlands Rules of Evidence. An attorney will object to an improper opinion during the expert witness' direct examination and request a voir dire to demonstrate the point. A good voir dire addresses only one prong of 702, and is very short (5-10 questions to which you already know the answer). So, for example, an expert who writes in their report that they have deviated from the standard method in the field, a voir dire might be something like this:

HOW TO VOIR DIRE:

Q. Your field is policy studies?
Q. The standard method in your field is process tracing?
Q. To accomplish this you need to collect primary data from at least 5 sources?
Q. In this case, you only obtained data from two sources?
Q. You were unable to complete a full process tracing?

TO SUM EVERYTHING UP

The great American jurist John Henry Wigmore said that, "Cross examination is beyond any doubt the greatest legal engine ever invented for the discovery of truth." Cross examination can be the most exciting and fun presentation in a Mock Trial round. The techniques and tips presented in this chapter will arm you with the tools you need to cross any witness you could come across. A mastery of the affidavit, a lot of preparation, and the ability to think on your feet will ensure that you maintain control of the witness and the facts.

CHAPTER SIX: WITNESSES

PLEASE, INTRODUCE YOURSELF.

At first glance, it may appear that attorneys are in control of a mock trial. They get to deliver statements, argue, and examine witnesses. Those with a deep understanding of mock trial, however, understand that in reality witnesses control a mock trial, just like they control a trial in real life. In any case, all the material, evidence and understanding of the case flows from the witnesses. Witnesses are the reason trials occur in the first place; they provide the conflict, case, and story; they are the plaintiffs, defendants, eyewitnesses, and experts; they bring the trial to life.

THE BASICS OF PORTRAYAL

HOW TO DEVELOP CHARACTER: You've been given your witness, now it's time to transform it into a credible and impactful character. Affidavits, depositions, and interrogations contain a lot of information. As a witness, it is your job to turn all of this information into a realistic, entertaining, and believable individual. Each witness will lend itself to a certain type of character. Reflecting on your personal experiences and creating a witness biography can really help bring your character to life. Detailing the characteristics of your witness can help you create a guideline for the character you want to play in trial.

Try to determine who your character is, where they come from, how they grew up, and how they would react to certain events. At UF Mock Trial, we write witness biographies before we write direct examinations. This is two or three pages about the witness adding to the affidavit. It is not meant to add to or change the case packet but to round out the person. Everyone – your teammates, your coaches, your parents, your professors – have stories that drive them – to their careers, to their accomplishments, to their personality traits. We want to know that stuff. Once you have created your character, you can move on to your performance on the witness stand.

The following page has questions that can help you build a credible witness biography:

WHO IS YOUR WITNESS?

- Where are they from?
- How did they grow up?
- Who or what influenced them to be who they are today?
- What do they look like?
- How do they dress?

HOW IS YOUR WITNESS INVOLVED IN THE TRIAL?

- What is their career?
- What are their hobbies?
- How did their actions contribute to facts in the case?

HOW TO DEVELOP PERFORMANCE: Now that you have taken the time to build a strong witness, it is time to discuss how to perform that character. Remember that a strong witness enforces the points and characteristics your team aims to convey in their theory and theme. There is no one route to learn how to "act." Rather, the expectation of any successful mock trial witness is believability. The judges must believe the information as you are presenting it whether you're doing it as a weeping defendant, a zany character, or any witness type in between.

A strong witness and a believable performance is drawn from the experiences and emotions of the actor. If an actor can channel emotions from an applicable instance and use it to enhance their performance, there is truth value added, which will elevate the performance. This ability of an actor to draw from their reservoir of feelings and personal circumstances is what separates an average witness from a show-stopping one. A lot of people can rattle off snazzy one liners or look sad while giving testimony, but it will be the witnesses who work to find the emotional connection between themselves and the character that will leave the room with the highest scores. There is a difference between a character and a caricature. No one, no matter how much they like something, is one-dimensional, and no one makes the same joke every other sentence. The biggest challenge of being a mock trial witness is portraying a whole, relatable person in a short period of time.

Writing and memorizing a direct examination should barely scratch the surface of the effort put into the performance. A key method to establishing that personal link to the character when the work is performed is tearing apart every sentence of the work

and discovering the intentions behind why the character says what they say. Techniques like these give our witnesses an edge, and may even be the difference between a round won or lost.

HOW TO MAINTAIN CHARACTER DURING UNSCRIPTED MOMENTS: You can develop a character and practice your performance dozens of times, but sometimes, stuff happens. Whether it's a sustained objection that disqualifies half of your direct or opposing counsel questioning you on topics you didn't prepare for, there will be times in mock trial where you'll be thrown off your guard. In those unscripted moments, maintaining your character could mean the difference between a good performance and a great performance.

Invest in your witness. Not being comfortable in your character may lead you to answer an unexpected question how you would normally, which may not be the same as your witness. You need to know who your witness is and how they would respond in order to navigate these off-script moments. A great witness spends time during and outside of practice thinking about how their character would react to novel situations and surprises.

It's also important to not become flustered. Sudden changes in-round may seem stressful, but they don't have to be. Take your time and answer as your witness would. If you react calmly and respond to events in character, that sustained objection or major cross point may seem insignificant to a jury because it didn't affect you.

MOCK TRIAL PROTOCOL IN WITNESS PORTRAYAL

Witnesses and attorneys in mock trial rounds are different but complementary roles. In order to score high, attorney-witness harmony is key. Besides tone matching, steady pacing, and seamless question and answer delivery, however, knowledge on evidence and mock trial rules will make all the difference for both winning ballots and promoting a fair round. Witnesses and attorneys share this burden.

SPECIAL INSTRUCTIONS

The special instructions are specific to each year's case. They provide specific rules of engagement that pertain to the matter at issue and they must be respected by both teams when preparing and performing their case-in-chiefs. Common examples of special instructions that witnesses must be mindful of may include predetermined

genders, ages, or other characteristics of involved parties, in-round time limits, or the appropriate use of distinctive accents when portraying a witness. The special instructions can be found in the front of the case packet. Consult these instructions before writing direct-examinations or developing cross-examination responses.

WITNESS ETIQUETTE

The way you carry and present yourself as a witness, both on and off the stand, are crucial to a judge's score of your performance. In a courtroom setting, there are a few things to keep in mind as a witness:

- **When awaiting your turn on the stand, you will most likely sit in the back of the room.** You will often be within the view of the judges throughout the duration of the trial. With that in mind, talking, overreacting, or any other distracting behavior is inappropriate during the trial. During fall tournaments, it is fine to have a few sheets of scratch paper and pens to communicate with other witnesses on your team, however, make sure your exchange is kept low-key. Judges commonly dock your team points if overall decorum is not maintained. During spring tournaments, you should look 100% engaged all the time.
- **When it is your time to testify, wait until your attorney's request and the judge's invitation to stand up.** Then, walk towards the stand and take your seat without serving any obvious looks to other parties in the room—just be gracious.
- **During your testimony, you will almost always get objected to by the opposing team's attorney.** During objection arguments, witnesses must maintain their composure. Do not shrug, roll your eyes, or engage in any other rude behavior when objected to. Act oblivious and calm until the argument is over and adapt to the judge's ruling without any verbal or physical reaction. When an objection happens, you must stop talking. Do not continue until someone asks you to continue.
- **Do not become hostile on cross-examination.** Maintain your character and composure throughout. For more information about how to perform on a cross, refer to the remainder of this chapter and the chapter covering cross-examination. The friendlier you are to the crossing attorney (unless you are the plaintiff victim or defendant), the better.
- **When all examinations have been exhausted, wait for your attorney to ask if you may be excused from the stand.** Stand and calmly walk back when the judge grants permission.

IMPEACHMENTS

Witness impeachment is the process of attacking the accuracy, credibility, and truthfulness of a witness's testimony. Any party may impeach a witness. In mock trial, there are two main kinds of impeachment: an impeachment by direct contradiction or by omission.When an impeachment is initiated and the witness has committed to their statements on the stand, no matter the outcome of the impeachment, witnesses must cooperate and keep calm throughout the process. Stick to your guns. Flip-flopping between answers will only hurt your credibility further. If the impeachment is improper, your attorney will object. However, feel free to explain what you meant or qualify your testimony in an attempt to nullify the crossing attorney's point.

Impeachments are a tricky concept to understand, deliver, and maneuver around. The best way to learn is to practice and watch others with more experience. You'll come to learn that, sometimes, impeachments can be used to your advantage as a witness if carefully "baited" and "averted." Practice makes perfect. Remember these notes going forward:

AFFIDAVITS: It is imperative that a witness know their affidavit.

- If their testimony in any way contradicts their prior sworn statements, they are subject to being impeached (impeachment by direct contradiction). If their testimony alludes to a fact in the case they had omitted from their affidavit, they are subject to impeachment (impeachment by omission).
- Technically, witnesses are allowed to update their statements at any point until the trial begins. In mock trial, however, witnesses are bound to the information provided in the case packet and their specific affidavit. This includes the exhibits that a witness is and is not familiar with (these can be found at the end of the affidavit).

MATERIAL INVENTION: Mock Trial exists in a "closed universe," meaning that teams must advocate based on the facts provided by AMTA in each year's case packet. Improperly inventing a fact counts as cheating regardless of when an opponent is successful in demonstrating the violation in-round via the impeachment process.

- AMTA defines an "improper invention" as: "Any instance (on direct, cross, re-direct, or re-cross examination) in which a witness introduces testimony that contradicts the witness's affidavit."
- AMTA explains "reasonable inference" by stating: "a witness's answer does not qualify as a "reasonable inference" merely because it is consistent with

(i.e., does not contradict) statements in the witness's affidavit. Rather, a reasonable inference must be a conclusion that a reasonable person would draw from a particular fact or set of facts contained in the affidavit."

- AMTA clarifies the rule against material invention concerning cross-examination by stating: "On cross-examination, a witness commits no violation or Improper Invention when she or he testifies to material facts not included in her or his affidavit—as long as the witness's answer is responsive to the question posed. In other words, a witness is allowed to invent material facts on cross-examination as long as the witness remains responsive to the question posed.
- Attorneys who ask questions to which the witness's affidavit does not provide an answer risk receiving an unfavorable answer in trial. Notwithstanding the aforementioned rules, however, nothing in this section is intended to prevent attorneys from attempting to challenge a witness's credibility by demonstrating an omission through use of the witness's affidavit. Sometimes, the rules are different for some witnesses, but that will be in each case and discussed clearly at practice.

MAJOR TAKEAWAY: DO NOT invent material facts during your case-in-chief. Make sure direct-examination responses do not qualify as material inventions by consulting your team and coaching staff. Failure to be diligent and cautious could result in serious sanctions against the LitiGators by AMTA.

RULES OF EVIDENCE

A good witness will be familiar with the Midlands Rules of Evidence (MRE) and aim to limit the amount of unnecessarily objectionable material in their direct-examination in advance or practice how to maneuver around an objection in the round. As Litigators, attorneys and witnesses, we study and regularly test knowledge of the Midlands rules of evidence. How you do on these evaluations is indicative of performance – the more you know about constraints on your performance, the better your performance will be!

Witnesses will never have to argue objections before the court. Your directing attorney will be responsible for that. However, in the event that an objection is made and sustained under a particular rule, the attorney may rephrase their question to reflect the judge's ruling, and the witness must adapt accordingly—this often calls for a certain degree of improvisation when responding and an understanding of the

ruling's evidentiary basis. Some rules are more important than others for witnesses to comprehend in order to write, perform, and deliver quality answers during direct and cross-examinations. Below is a non-exhaustive list of evidentiary rules in their objection form (with rules #'s and explanations) that will commonly be of issue to a witness while writing or giving direct/cross answers:

OBJECTION! RELEVANCE.

Rule 401

The relevance of any testimony is determined by whether it has any tendency to make a fact of the case more or less probable, and if that fact is of consequence in determining the action. Relevance objections are one of the most common objections made in the round. This is especially the case for character witnesses who frequently over-embellish or extend their humor to the point that opposing counsel believes it will either hurt their case or score likeability points for your team. Witness-attorney pairs should be able to defend the relevance of any one of their contentions when writing out their direct examination, especially if it is central to their case theory.

OBJECTION! MORE PREJUDICIAL THAN PROBATIVE.

Rule 403

Although it may be relevant testimony, it can still be objected to on the basis that its prejudicial effect substantially outweighs its probative value. The key here is the term "substantial." The prejudicial effect must be so substantial that it risks inflaming the passions of the jury in order to trump its probative value. As a witness, avoid responses that are overly prejudicial. For example, in a murder trial, avoid describing the blood and gore of a scene to the point that is either distasteful or unnecessary to prove or disprove the matter at issue.

OBJECTION! IMPROPER CHARACTER EVIDENCE.

Rule 404

Rule 404 is a notoriously tricky evidentiary matter. At its core, it's a prohibition against character-based propensity arguments. The rule states"evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." In other words, it's forbidden to argue that because John was an angry last Tuesday, he's more likely to have committed murder on Wednesday. However, it gets tricky as there are several further restrictions or exceptions to this outlined in the MRE. The point here is to carefully word your responses so as to not improperly illicit a character trait for action in conformity purposes. Find an exception or permitted use.

OBJECTION! LACK OF PERSONAL KNOWLEDGE.

Rule 602

When testifying to any matter, the foundation must be laid that the witness has personal knowledge of that matter. In other words, an attorney-witness pair must establish the witness's ability to testify to a certain set of facts. For example, if the witness saw a crime unfold, then she would be able to attest to the physical characteristics of the assailant and victim. However, the former fact must be established before the latter is discussed. With respect to opinion testimony, the need for personal knowledge for a lay witness is outlined by rule 701, while expert testimony must meet the prongs of rule 702. Rule 701 maintains that lay witness testimony must a) be rationally based on the witness's perception, b) be helpful in understanding the testimony or determining the fact at issue, and c) not be based on scientific or technical knowledge within the scope of rule 702. When writing out direct-examinations responses, witness-attorney pairs should seek to lay sufficient foundation for the witness's personal knowledge to avoid or counter this objection.

OBJECTION! IMPROPER OPINION.

Rule 702

You'll hear this objection almost every time you testify as an expert witness. Rule 702 has four prongs, and as an expert witness, it is your duty to know each and every one of those prongs. The four prongs are, essentially: 1) That you have the prerequisite knowledge to come to a conclusion. This means that you have the required educational background either through schooling or other means. 2) That you had enough information to reach a conclusion. 3) That the method you used to reach your conclusion was reliable. Basically, you need to have some "scientific" way of explaining how you got to your findings 4) You used the method reliably and correctly. If you get an objection under 702, be ready to lay the proper foundation if the judge asks you.

OBJECTION! HEARSAY.

Rule 802

The rule against hearsay prohibits testimony that is an out of court statement being used for the truth of the matter asserted in the statement. Some out of court statements are definitionally NOT hearsay (rule 801). These include 1) a declarant-witness's prior statement and 2) an opposing party's statement. Otherwise, if an attorney-witness pair is going to illicit a hearsay statement in their direct-examination, they must be prepared to list one of several exceptions listed under rule 803.

WITNESS TYPES: THE DEFENDANT

BODY LANGUAGE: Using non-verbal cues can be a powerful way to communicate a character's story. By using body language, witnesses can create a more complete picture of their character. In terms of the defendant, body language can play a significant role in the creation and maintenance of a credible character throughout a trial. Your main goal should be to create a character that is friendly, warm, and believable. Creating certain movements that are specific to your character and highlighting more emotional portions of a direct examination through non-verbal cues can help you be a more credible witness. For example, it may be appropriate for an emotional defendant to cry and be shaky on the stand, while it may be appropriate for a different defendant to be more charismatic and friendly. Recounting your story can be much more powerful if you use body language.

EMOTION: In a way, a defendant's emotion on the stand is the most critical of all defense witnesses. You are on trial. This case most likely centers around your words and actions. If your emotion is not believable, it can jeopardize the believability of your team's case theory. For defendants, it is a good idea to practice your character with varying emotions. It may seem obvious (or easy) to portray a defendant as sad or angry. However, holding on to one emotion for your entire performance will make you appear biased, boring, and unbelievable. People's emotions vary! Opposing counsel and their witnesses will have already tried to paint you in a bad light, but remember that it is important to try to stay neutral, friendly, and likable. Your emotion can drastically alter that narrative.

Choose wisely where you express certain emotions. It may be appropriate to express happiness when talking about a loved one or good news, but holding that emotion throughout your performance - especially as a defendant - could appear disingenuous. Sadness can be a great way to win sympathy from your judge and jury, but you must build-up to it. If you start your performance sad, you limit the effect your emotion can have later when something truly melancholy is brought up. Although controversial, it is sometimes okay to be angry as a defendant. You usually see this on cross-examination. If opposing counsel accuses you of heinous acts, a natural response may be to act angry. Be cautious, however. You want the judge and jury to empathize with you. Throwing a fit or screaming in rage will not help your case. Showing disgust or anger through your facial expressions and tone, however, may convince the jury to agree with you.

STORYTELLING: An affidavit has a lot of information! Although the number of facts can be initially overwhelming, it is important to use these facts to create a story. Translating the facts of the case into a story helps to create a clearer picture of what happened to judges. Use the information about your defendant to paint a picture of who they are, where they come from, what happened, and why it happened. By using your personal experiences, you can elaborate on your defendant's narrative. Creating a witness bio for your defendant and detailing who they are can be a powerful tool in creating a realistic and believable character. Building credibility for a defendant can be difficult. Because of this, storytelling is so important. The way you phrase and detail your answers to questions can completely change the meaning.

For example, let's say your attorney asks you "What happened after your daughter went missing?" Instead of responding with "I looked for her," say "I panicked. I didn't know what to do. I called out her name and after a while I went looking for her." By adding details to the story that do not contradict any of the facts in the case, you can create a more realistic and believable narrative.

TRIAL PRESENCE: The defendant will be present (and therefore must be in character and listening to the proceedings) throughout the whole trial. The defendant can and should testify to being aware of other testimony at trial and contextualize it. In addition to being in character the whole trial, the defendant needs to be able to (subtly) react to the proceedings.

TESTIMONY: A defendant's testimony typically comes from an interrogation or interview, not an affidavit. (Although this can change). As a result, the grey matter which they can work with is abundant. Your use of grey matter as a defendant could fortify or harm your team's case theory. It is also important as a defendant to control the narrative. In a way, the case is about you. (You are on trial, of course). Make sure whatever you say does not contradict your team's other witnesses. Your testimony may differ slightly or completely contradict opposing counsel's witnesses. Know the facts that pertain to you well, so you can form a strong testimony, which can withstand cross-examinations.

You can also draw from other witness testimony to form your own. As a defendant, you are typically in the room for all examinations. Utilizing witnesses' testimony to strengthen your own allows you to connect your story with your teammate's

testimony and portray the facts from a new perspective. It can make the story sound more believable, strengthen your team's theory, and enhance your performance.

TIP FROM EXPERIENCE: Don't let opposing counsel's control of the grey matter and narrative dissuade your control and performance. Their witnesses may have made great use of testimony and painted you in a terrible light. That's okay! You are prepared. (Also, a lot is said in trial. Judges may have forgotten that previous testimony). Control the narrative like you practiced and adjust if necessary.

WITNESS TYPES: THE VICTIM

DON'T PLAY THE VICTIM. BE THE VICTIM: In a mock trial, there are happy witnesses, and there are sad witnesses. Sad witnesses are typically known as "victims." Anyone can be a victim-witness. Don't let stereotypes hold you back (Guys can cry too!). In social situations, when someone "plays the victim," it is often an inauthentic attempt to gain sympathy from their peers. You don't want that in a mock trial. Don't play the victim. Be the victim. You need to commit to the role to connect with your jury.

BODY LANGUAGE: As a victim in a mock trial, body language can be tricky. Of course, you want to appear as sad or upset; however, this can have negative effects on scoring. Let's say you're being forced to testify about the death of your spouse. If you act well and appear as if you are angry, upset, or unwilling to testify, you may also appear as distant, hostile, or unfriendly. While this might be beneficial in some specific circumstances, people scoring you may not like that. Remember you want to connect with the jury. Try to use body language to engage with the jury. Make sure that you face the jury and make eye contact. Occasionally glancing away from the jurors and staring off into the distance during particularly upsetting events could convey sadness (and it can be fun). A hand gesture towards the jury can be utilized to show you're reaching out and trusting them with your personal story. Occasionally slouching could even be a way to show tiredness (but watch your posture!). Covering your face during objections or wiping away (nonexistent) tears might convince your audience you are actually crying.

EMOTION: Sad witnesses are sometimes referred to as emotional witnesses. Part of your purpose of a victim is to be emotional and gain sympathy from the jurors. You need to be emotional but not so emotional that you appear fake. Emotion can come

from your storytelling and your expressions.

Your eyes can convey emotion well. Maybe you tear up at the mention of your old friend. Or perhaps you find it difficult to look the jury in the eye when you mention how they passed. In short, your eyes can tell a story just as much as your voice can. Use your eyes to say what you can't put into words. Emotional directs cannot be one-note. We should see a progression of emotions, where the witness reacts genuinely to what we are talking about throughout the direct.

Crying in a mock trial is usually coupled with a victim (or a team after a harsh round, but don't worry about that). Getting those tears to flow can come from many things. You may be able to do so on command. Sometimes just putting yourself into your character's situation is enough. Other tips include rubbing vapor rub under your eyes, thinking sad thoughts, or holding your eyes open until they water. Facial expressions are also important when crying; everyone expresses sadness on their face differently. As a victim, you should try to feel comfortable expressing vulnerability through crying and facial expressions while acting. It can improve your performance. Once you know how to cry, choose the right moment to release the waterworks. If you cry while introducing yourself, what will you build up to? Be careful. Save your tears for the saddest moment of your direct examination.

TIP FROM EXPERIENCE: You don't need tears to cry! In some cases, just appearing as if you are crying (or about to) can convince the jury that your emotion is real. Don't force tears. If you commit to the character, the tears may come naturally. If they don't, no worries! You can still tell a compelling, heartfelt story if your emotion is there.

STORYTELLING: As a victim, you are telling an emotional story. You should be concise and detailed. At times, you might have the urge to give a soliloquy about your past life or lost lover. Don't become lost in overdramatizing events or people. Focus on being succinct while tugging at the jurors' heartstrings.

Tone inflection and volume play a big part in conveying emotion and engaging with your audience. Speeding up during dramatic scenes or slowing down during important events can make your storytelling seem more natural. Showing excitement or dismay not only through your eyes or expressions but also your voice can increase your believability too. Volume can be tricky with sad witnesses. You take on a somber tone, and you lower your voice for effect, but you're actually making it harder for the jury to

TIP FROM EXPERIENCE: Pausing is a great way to add suspense and emotion to a story, but use them wisely. Pausing too much can drastically lengthen your direct and seem out of place or disingenuous. Practice pausing in your performance with your teammates and ask their opinions. What may seem like a short pause in your head could seem much longer to your audience.

WITNESS TYPES: THE COP/DETECTIVE

CREDIBILITY: The cornerstone of stoicism and dependability, there is a reason why the cop has always been a safe and dependable witness call in mock trial. More often than not, the cop lays out a thorough timeline of events that paints a clear picture of the circumstances and events surrounding the crime. They are often the most credible witness called. That being said, however, the cop witness will almost always have to defend their investigation during cross. These combined factors lead to a few key character qualities that always yield strong scores. A cop is firm in their answers; they present information in a matter of fact way. They rarely goof off on the stand, as it takes away from their credibility as a serious officer of the law. Delivery is overall very important, as the jury will see the cop as someone who is truthful; if the cop is stuttering and taking protracted pauses on the stand, their trustworthiness will be called into question.

A mastery of the facts of the investigation is absolutely essential for portraying the cop. Times, dates, locations, and events must all be committed to memory, as even a single mistake made on the stand will make the day of opposing counsel. The cop is held to the highest standard of knowing the case; while every witness should know the case, the cop really, REALLY has to know, as their performance and scores overall pretty much count on it. Police officers are often the hardest characters to act – if we choose to portray police officers, we recommend that the witness spend time among police officers to achieve a more realistic portrayal.

DEMEANOR: Most cop portrayals fall victim to the "evidence dump" cliché, meaning that all they do is present information to the jury and little else, which is pretty much the case. Because of this, a strong cop witness will give the character some personality or a quirk that makes them more than just a walking stack of evidence. Remember to show emotion when appropriate; this will also separate your cop from being a robotic-fact dispenser. The cases are sad at times, and the cop is allowed to let their demeanor reflect it while maintaining professionalism.

WITNESS TYPES: THE EXPERT

OVERVIEW: The expert witness is, as the name implies, an expert. What he is an expert in, and the scope of his expertise depends on the information in the case packet. Generally, the expert witness is written in such a way to allow for a general expertise in a particular area. That expertise can then be narrowed down and developed to fit the particular needs of your case theory. The expert witness offers the greatest potential in terms of fact development for your side's case. However, it is important to keep your testimony to the facts of the case. An expert who is impeached will instantly lose their credibility. An impeachment is viewed as a lie. Your testimony must always be grounded in the facts of the case. A smart crossing attorney will know when you are stretching the facts, and chances are you will get called out. Judges will pick up on factual leaps you make, and they will ask you about it in comments. As Litigators, we tend to research the expert witness' substantive contribution. If we understand the science, we are likely to be able to explain it better, and to fill holes in the explanations from the report. Regularly, internet and library research as well as talking to professors give our experts the edge in rounds.

IMPARTIALITY: The expert witness must always maintain an impartial stance. Impartiality is key to scoring well as an expert: experts who appear argumentative or combative are viewed as being biased. On cross, you should try to avoid fighting with the attorney. It is very important that you pick your battles. Generally, you should only fight on questions relating to your conclusion. When answering questions, never give the crossing attorney more than they are asking for, even on a seemingly innocent question. If you over-answer, then you might inadvertently say something bad for your side of the case. If the crossing attorney is smart, they will take it and run. A simple yes or no can be the most powerful answer an expert can give on cross because it gives the crossing attorney absolutely nothing to work with.

TESTIMONY: The expert witnesses in a mock trial case tend to cover technical, scientific, or mechanical issues outside the scope of the average person's knowledge. Generally speaking, the judge and jury will have no idea what you are talking about. It is your job as an expert witness to boil down the facts of the case into something that is easily digestible for the judge and jury. Confusing experts are boring experts, and no one likes a boring expert. Use some technical jargon, but not too much. The expert should always appear confident and knowledgeable. When you are asked a question, give yourself some time to answer.

For instance, when you ask your professor a question, they generally do not respond immediately. They take a few seconds to compose an accurate and informative answer. That is what you must do. The faster you talk, the less confident you will seem. When you are up on the stand, you are the smartest person in the room. Your crossing attorney might not know what they are talking about, but do not let that fluster you. Stay calm and do not let them dig you into a hole or box you into a corner. Never be afraid to ask the crossing attorney to repeat a question. Chances are, if you did not understand it, then the judges did not either. We often try to distill methods and information with not only demos but pneumonic devices, acronyms, metaphors, and examples (See the demonstrative section of the Direct Examination chapter).

STYLE: Now, what does an expert wear? Simple answer: anything within reason. A suit and tie is perfectly acceptable. However, mock trial is a competition where witness portrayals and scores are based on certain stereotypes. For instance, if you are a psychologist testifying, it is acceptable for you to wear a tweed blazer and a bowtie. It is perfectly acceptable to wear mismatched blazers and pants. Your appearance should match your demeanor and personality on the stand while still maintaining a level of professionalism expected in your field.

WITNESS TYPES: THE CHARACTER

OVERVIEW: A character witness, unlike experts, cops, and defendants, is usually one that has derived an entirely original character from the information provided in the affidavit. As a character witness, you are given creative freedom to invent a witness who can recount the events of the day in question while delivering entertaining, yet credible answers during direct and cross-examination. This is achieved by thoughtfully constructing a person's personality, likes and dislikes, career, hobbies, physical appearance, and speech patterns. The actor must become this person—thinking, behaving, and speaking the way such a character would in the real world.

BUILDING A CHARACTER WITNESS: CREATIVITY

As character witnesses, "go back to the drawing board" is a phrase we hear all too often. Character witnesses are frequently forced to reimagine their character following feedback at in-team practices, scrimmages, or competitions. And so, creativity is key. Think outside the box, try new things, and, most importantly, do good research. Draw inspiration from popular or trending movies, TV shows, books, and the arts when inventing your character. If attending a competition, use regional

references to amp up your character's relatability and likeability. As the saying goes, when in Rome, do as the Romans do.

BUILDING A CHARACTER WITNESS: LIKEABILITY

It should go without saying that your character should be likable. Character witnesses do not want to alienate their audience. With that said, likeability is a hard line to define. Without complicating matters too much, the key thing to remember here is to use caution when employing sarcasm and darker humor; do not be insensitive; do not allude to overly controversial political, economic, and social issues; and never tread the line of being obnoxious! An unlikeable or unrelatable character will always overshadow a seamless direct examination and good acting skills.

BUILDING A CHARACTER WITNESS: CREDIBILITY

An important facet of any type of witness is that the information you present must be believable and acceptable to the judges, and in order to best give off that impression, the character must be very credible. At the end of the day, you are there to give an account of the events as they (or the way you're going to spin it) unfolded—that is your primary purpose for coming to court at all. You can play the wildest, zaniest, witness out there, but as long as you make them sincere and credible as well, the witness will be strong. With that in mind, DO NOT create witnesses who are overtly slimy, insincere, abrasive, or otherwise unbelievable. It is unbelievable how quickly judges will dislike your character and discount the information you present simply based on delivery and character choices. Knowing the ins and outs of the affidavit also lends itself to credibility, as misinterpreting, or simply not knowing, key facts will tank your credibility. Ultimately, just 1. Portray a sincere character, and 2. Know the affidavit. With these, your credibility AND character will be off the charts.

BUILDING A CHARACTER WITNESS: CONSISTENCY

Consistency, or lack thereof, is a trap even the most seasoned character witnesses fall prey to. A character witness can start a direct fantastically; their character is clear and entertaining, the acting choices are natural, and the witness/attorney back and forth is present. However, as the direct-examination goes on, the fire goes out, the witness loses their quirks and eventually becomes just a person answering questions. The lack of consistency is noticeable, and it will cost you points. A character witness MUST commit to the quirks and body language of their characters from the moment they step onto the stand to the moment they walk away. Losing steam breaks the illusion of the character you have worked so hard to create. The best thing you can do to

keep your momentum is know your lines, know the affidavit, be confident in the character you have built, and **be in the moment.** Recognize that you are not a Mock Trial competitor answering questions to your teammate whom you'll eat dinner with after the round. You are a character, a person separate from yourself, who is answering questions to attorneys you have never met before to present information that will aid the jury in determining a guilty or not guilty verdict for the defendant.

CHARACTER DEVELOPMENT TOOLS: ACCENTS

Accents are among the biggest gambles you can take as a witness within the realm of mock trial. You may get a judge who loves accents and gives you fantastic scores, or you may get a judge who can't stand them and rates you horribly, even if your accent was strong. Either way, if you are going to perform an accent, it must be well-practiced and approved by a coach and/or captain. The more natural and well-rehearsed an accent sounds, the higher the likelihood of it scoring well. The most important piece of a good accent, besides being believable, is that it must be understandable; you may have the most realistic-sounding accent in the room, but if the judges cannot understand the direct, you will lose points.

Something else worth noting is to make sure the accent is consistent with the character being portrayed. Affidavits more often than not give actors a lot of leeway when creating characters. That being said, just make sure your accent does not contradict the facts of the character or the way the character will be portrayed. An example is: if your character is very heavily indicated of being from the Midwest and their character traits reflect it, it may not be wise to give them a European accent, as it will create friction with how the character is explained within the affidavit. Or, if you want to play your character as meek and unassuming, giving them a loud, eccentric accent may cause similar dissonance.

CHARACTER DEVELOPMENT TOOLS: COSTUMES

Costuming is an incredibly important tool for character witnesses; because of the limited time a character has on the stand to make a good impression and be entertaining, a costume can give the witness that extra bit of mystique or goofiness to make them lasting. As with the accent, it is important to walk the line with costuming: if you dress blandly, you will not be memorable, but if you dress too ostentatiously and gaudy, the judges will think you're in a Halloween costume and score you poorly. The witness must obviously be in attire appropriate for a courtroom, but beyond that, feel free to add a splash of color here and there, or do something

cosmetically to give the suit or dress an extra pop; it really will go the extra mile if done subtly. If your character is loud, let that reflect in the outfit; likewise, if they are shy and soft, find a creative way to let that show in the choices you make with your costume. The outfit you wear is an extension of the character, and thus, is quite important in selling a memorable and interesting character (Side note: Our program is not big on choices such as wigs, or makeup beyond what is used for most witnesses; these items are crutches that can easily be compensated for by the rest of the costume and the performance).

TO SUM EVERYTHING UP

Witnesses are the gatekeepers of evidence. All facts flow through them. As a result, it is crucial to your team's success that you learn how to emphasize good facts, deflect bad facts, and control grey matter. Witnesses also have the power to imbue the facts they relay with believability and life through their character. Your greatest charge as a witness is to give a complexion to the evidence. Great witnesses know never to take this charge lightly.

CHAPTER SEVEN: OBJECTIONS

OBJECTION, YOUR HONOR!

No word is as closely associated with the legal profession as OBJECTION!, and in this chapter you will learn what they are and how to make them. As you learned in the first chapter, evidence is the underlying framework of a mock trial case because evidence is what a jury uses to determine guilt or liability. However, not all evidence is created equal, and the court does not want to jury to hear blatantly irrational or unreasonable facts. The Midlands Rules of Evidence (MRE) is a collection of rules which determine what evidence the jury is allowed to hear.

If an attorney tries to present evidence which violates one of the rules in the MRE (or if a witness says something which violates a rule) then it is the opposing attorney's job to stand up and object! When you object, you are telling the judge "Hey, this is not allowed!" During an objection battle, one attorney argues that the evidence violates a rule and the other attorney argues that it does not. The judge moderates the argument, and eventually either sustains the objection or overrules it. If an objection is sustained, that means the judge was convinced that the evidence violates a rule, thus it is inadmissible and the jury cannot hear it. If an objection is overruled, that means the judge was not convinced that the evidence violates a rule, thus it is admissible and the jury can hear it.

Objections require you to think on your feet. When you find yourself in an objection battle, your only weapons will be your knowledge of the MRE and your wits. This chapter will help you sharpen both. First, we will explore the most common rules of the MRE. Then, we will provide you with practical tips about how to consider the role of objections when writing material, when to object, how to argue an objection, and what to do after the judge issues a ruling.

THE 400'S

The overall purpose of Article IV of the Midlands Rules of Evidence is to ensure that evidence used in a trial is relevant to the case at hand and does not unfairly prejudice any party or witness in the case. Each rule in this article is designed to keep evidence in a trial focused on the specific issue at hand. The article begins with one of the most important rules in the entire MRE: Rule 401.

RULE 401: TEST FOR RELEVANT EVIDENCE

Evidence is relevant if:

- *It has any tendency to make a fact more or less probable than it would be without the evidence; and*
- *The fact is of consequence in determining the action*

Rule 401 defines what type of evidence is relevant. Remember that evidence can be anything from witness testimony (the words a witness says while on the stand) to physical documents and items. For example, if an eyewitness to a robbery says, "I saw a man in a red shirt pick the lock," that quote is considered evidence. If a police officer finds the lockpick and submits it to the court, the lockpick itself is also considered evidence.

Since the definition of evidence is so broad and can include so much, the court needs a way of excluding evidence that is not relevant to the case at hand. Rule 401 provides that metric with a simple test: does the evidence make a consequential fact in the case more or less likely? Of course, the examples above obviously pass this test, as they are relevant to proving who committed the robbery. But evidence about the defendant's favorite flavor of ice cream does not make any fact in the case more or less likely. If evidence like this is brought up, an attorney can object to that irrelevant evidence.

Suppose that you are an attorney and you hear an objectionable statement. You can immediately stand up and say, "Objection: Name of Objection." You may also add, "pursuant to Rule XYZ," if you know the rule number. You should not immediately explain why you made the objection. Some judges will ask you to explain, but most prefer to give the opposing counsel a chance to respond first. Below is a common argument for a relevance objection, specifically using Rule 401:

"Whether or not James hates chocolate ice cream does not make any fact in this case more or less likely. It does not help the jury determine who committed the robbery."

The most important part of a relevance objection is whether the evidence makes any fact in the case more or less likely. Every response to a relevance objection, whether you are making one or defending against one, should have those words in the

response. In this situation, the directing attorney did a poor job of explaining why the evidence makes it more likely that James committed the murder. Perhaps the victim was eating chocolate ice cream. Without that information, the evidence seems to be useless towards the goal of the jury: to determine whether the defendant is guilty of murder.

TRIAL TIP: The bar for relevance is extremely low. This means that almost any piece of evidence brought into a trial can be construed in some way to be relevant to the case. It is highly unlikely that a relevance objection will be sustained, unless the evidence is so clearly irrelevant that there is little argument to be had over it.

There are two important lessons to derive from this fact. First, do not make relevance objections unless you are confident the judge will immediately understand why you are objecting and rule in your favor. You shouldn't need to explain a relevance objection in most cases. Second, if someone makes a frivolous relevance objection on your material, sometimes you may need to remind the judge that the bar for relevance is low, which should help you win the objection battle.

RULE 403: BALANCING PROBATIVE VALUE

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Law is about balancing fairness. Sometimes evidence is relevant, but extremely unfair to one side or another. Of course, all evidence is supposed to help one side and hurt the other, but certain pieces of evidence may hurt too much and help too little. For example, suppose that the prosecution in a murder trial enters a gruesome picture of the victim's body, filled with blood and gore. Of course, this evidence is relevant. It demonstrates that the victim was murdered. However, there is no need to prove that fact with this picture. Both sides probably agree that the victim was murdered, but the defense is arguing that someone else did it. The picture doesn't prove the defendant committed the crime. All it does is inflame the passions of the jury, making them emotional and prejudiced against whoever is sitting in the defendant's chair in handcuffs. In this case, the prejudicial effect of the graphic image substantially outweighs its probative value. Even though it's relevant, it can be kept out by Rule 403.

This rule is important, but often needlessly abused. Be very selective when making an objection using this rule. The bar for winning a 403 objection is very high. For evidence to be kept out using this rule, the probative value of the evidence must be substantially outweighed by the prejudicial effect. It is not enough to simply say that the evidence is prejudicial. After all, every piece of evidence is prejudicial in some way.

When using this objection in round, or defending against it, you should always use the following language: "The prejudicial effect of X substantially outweighs any probative value," or "the probative value of X is not substantially outweighed by its prejudicial effect." Remember to give reasons and arguments as to why you are making this claim. For example, "X has probative value Y and Z to the case, and little prejudicial effect because of this and that."

There are other ways to use Rule 403 as well. You can keep evidence out if its probative value is substantially outweighed by other factors, such as misleading the jury or needlessly presenting cumulative evidence. These are less common, but may still occur. You may notice that a witness is reading every single text message in a document already entered into evidence. In this case, reading the texts is needlessly cumulative. The messages are already in evidence for the jury to read, and they aren't pinpointing one or two for attention. Simply reading all of them biases the jury against the defendant, and that is what Rule 403 is designed to protect against.

RULE 404: CHARACTER EVIDENCE

(a) Character Evidence

> ***(1) Prohibited Uses.*** *Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.*

This rule is difficult to understand at first, but gets easier with practice. At its root, this rule is designed to keep out evidence that is based around a person's character traits. This rule exists because the American Judiciary system determined that this type of evidence is not strong. It's easy to fabricate and hard to directly link to a crime. However, it's also very persuasive and compelling to a jury. That's what makes it dangerous, and why this rule exists to keep it out.

Evidence such as "James gets angry easily," should not be used as proof that he got angry on the night of the murder.

The language used above is very important to break down. Note that the rule does not prohibit evidence of a person's character trait on its own. It says it's not allowed when that evidence is being used to prove that on a particular occasion, the person acted in accordance with that trait. This is known as **propensity evidence.** I can say James gets angry easily, as long as I'm not using it to prove that he got angry on a specific day. However, it's hard to find other reasons for that evidence. In many cases, the evidence of a character trait is either being used for propensity (to prove that a person acted in accordance with a character trait at a particular moment) or it's irrelevant to the case at hand.

THE 600'S

RULE 602: PERSONAL KNOWLEDGE

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses."

This rule is one of the more simple rules in the MRE. Essentially, the rule states that a lay witness cannot testify to a matter they do not have personal knowledge of. Logically, this makes sense: if someone doesn't have knowledge of something, how can they testify about it?

Often, the witness themselves might accidentally give you a hint that they do not have personal knowledge of an event. For example, a witness may try to testify to the contents of a conversation but say something like, "I couldn't hear what they were saying but I'm pretty sure they were talking about the murder." You would stand up and say "Objection, lack of personal knowledge."

The judge may ask you to elaborate if they aren't sure which part of the statement you are objecting to. If they ask you to explain your objection you could say something along the lines of, "The witness testified that they couldn't hear the actual conversation. Thus, the witness lacks the personal knowledge to testify that the conversation was about murder."

Here, the judge may give opposing counsel a chance to respond or make a ruling right then. The important thing to remember in lack of personal knowledge objection argument is to demonstrate why the witness wouldn't have the knowledge to state what they did. The judge may also overrule your objection but ask opposing counsel to lay foundation for the witness's knowledge. In this case, you would sit back down and allow opposing counsel to ask some follow up questions to establish the witness's knowledge. If you don't feel they have, stand up and object again. You can say "You Honor, I re-raise my objection to a lack of personal knowledge."

RULE 608: IMPEACHMENT, ATTACKING CREDIBILITY

This rule can be a bit tricky so it is recommended that you read over the actual language of the rule a few times first. Essentially, it states that evidence of a witness's character for truthfulness (or untruthfulness) can be brought into trial to attack the credibility of a witness. Put frankly, this is the rule that essentially lets you expose witnesses as uncredible. The truthfulness or lack thereof of a witness can be established through the witness's reputation or through opinion.

In the Mock Trial world, both teams will sign a form about their intent to offer character evidence during the captains' meeting. This form will be provided to the judge during pre-trial. Signing this form does not mean either team can have a free-for-all with character evidence, though. It just notifies both sides of the intention to provide character evidence, but that evidence still has to be admissible subject to the rules of the MRE.

For example, if you are cross examining a witness who lied several times the morning of an investigation, you can ask questions like:

- "You told the camp owner you forgot your license at home, right?"
- "That was a lie?"
- "You told her you had been planning this camping trip for a while, right?"
- "That was also a lie?"
- "You told us on direct examination you went back to the cafe on the night of July 14th?"
- "The very next morning, You told Detective Chesney you had been sleeping in your tent that whole night?"
- "So you also lied to Detective Chesney?"

RULE 611: MODE/ORDER OF EXAMINING WITNESSES, PRESENTING EVIDENCE

- ***(b) Scope of Examinations.*** *The initial cross examination is not limited to matters discussed on direct examination. Re-direct and re-cross examination are permitted. But any re-direct or re-cross examination may not go beyond the subject matter of the examination immediately preceding it and matters affecting the witness's credibility.*
- ***(c) Leading Questions.*** *Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily the court should allow leading questions:*
  - *(1) on cross- examination; and*
  - *(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.*

When giving a direct or cross examination, you can discuss anything that is relevant to the witness within the case material provided. However, if you choose to re-direct your witness, you have to stay within the topics brought up in the preceding cross-examination. Re-directs are typically used sparingly and kept short because of this limitation. The same rules apply to a re-cross.

THE 700'S

Article VII of the MRE applies to Opinion Testimony. These rules apply whenever a witness goes beyond merely recounting their observations, and uses their knowledge and reason in order to conclude something about what they observed. The majority of these rules regulate expert opinions.

RULE 701: LAY OPINIONS

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
(a) *rationally based on the witness's perception;*
*(**b**) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and*
(c) *not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.*

Rule 701 allows witnesses to share common sense conclusions which are based on facts they personally know. However, the conclusion (i.e. the opinion) cannot be based on outrageous leaps of logic. A lay opinion must logically flow from the knowledge of the witness. If an opinion is based on anything more than just common sense (say, specialized training), then it must meet the more rigorous prongs of rule 702.

TRIAL TIP: Keep in mind that opinions cannot be presented as facts, and witnesses must use subjective language (e.g. "it seemed like") whenever they go beyond just describing what they saw (or heard, smelled, etc.). If a witness states as a fact something they inferred, but do not personally know, that statement might be inadmissible under rule 602 – Need for Personal Knowledge.

RULE 701 VS. 702: A good rule of thumb for deciding whether an opinion falls under rule 701 or rule 702 is whether you could respond to an objection with the phrase "it doesn't take a genius to know this." If it doesn't take a genius, chances are it falls under rule 701.

RULE 702: TESTIMONY BY EXPERT WITNESSES

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
***(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;*
***(b)** the testimony is based on sufficient facts or data;*
***(c)** the testimony is the product of reliable principles and methods; and*
***(d)** the expert has reliably applied the principles and methods to the facts of the case.*

As you learned in the chapter on witness portrayal, Expert Witnesses have specialized knowledge related to a specific field of work or study. Unlike rule 701 – which requires that lay opinions be based solely on common sense – rule 702 allows Experts to use their uncommon specialized knowledge to form their opinion. Expert opinions carry a certain air of prestige and authority, so the prongs for the admissibility of expert opinions is more demanding than those for lay opinions.

THE 800'S

The 800's, or essentially rules regarding hearsay, are incredibly useful tools in understanding what testimony can - and cannot - come out in round.

RULE 801: THE DEFINITION OF HEARSAY

Definitions that apply to this Article:

(a) *Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.*

(b) *Declarant. "Declarant" means the person who made the statement.*

(c) *Hearsay. "Hearsay" means a statement that:*

> ***(1)*** *The declarant does not make while testifying at the current trial or hearing; and*
>
> ***(2)*** *A party that offers in evidence to prove the truth of the matter asserted in the statement.*

The conventional definition of hearsay that would be used in an objection is as follows: "An out of court statement being offered for the truth of the matter asserted."

Hearsay rules exist to prevent unverified evidence from coming into the courtroom. Testimony that is said during a trial is usually sworn under oath and under a penalty of perjury. But statements made outside of court are not held to the same standard, so the court uses the hearsay rule to protect those out of court statements, which could be factually false, from coming in.

Remember that not all out of court statements are immediately objectionable, they must also have a truth value that is being used. Questions and commands, for example, assert no truth value. Statements such as "Where is the walking stick?" or "Put the walking stick over there" do not assert where the walking stick actually is or if someone moved it. A sentence has truth value if you can say that it is true or false.

Sometimes you may need to use a statement with truth value, but for a reason other than the truth in the statement. The two most common forms of this are when you need to use a statement for its effect on the listener or the subsequent action of the listener. For example:

Suppose an eyewitness to a ski accident says "the helmets are in the closet." While this

statement may be true or false, the actual truth value of it may not matter at all. You may only be concerned with what the listener did after hearing the statement, regardless of whether the statement is true or false. In that case, you would respond to a hearsay objection by explaining that you aren't using this statement for its truth value, but for the subsequent action of the listener: the defendant went to the closet.

TRIAL TIP: As explained in 801(a), hearsay isn't confined to just a verbal statement. It also includes written documents or even a gesture such as a nod or a thumbs up. Any form of information from outside the courtroom that has a truth value can be subject to a hearsay objection. If you can prove that a hearsay statement is being used for anything other than it's truth value then you will most likely be able to enter that statement.

RULE 801(D)(2)(A) AND (B): OPPOSING PARTY STATEMENTS

Rule 801(d) Statements That Are Not Hearsay. *A statement that meets the following conditions is not hearsay:*

(2) An Opposing Party's Statement. *The statement is offered against an opposing party and:*

> ***(A)*** *Was made by the party in an individual or representative capacity;*
>
> ***(B)*** *Is one the party manifested or adopted or believed to be true*

One of the most common examples of an out of court statement that is not hearsay is an opposing party's statement. In the case of State of Midlands V. Ryder, the prosecution's opposing witness would be Jordan Ryder. Therefore, any out of court statements made by Ryder can be used by the prosecution for their truth value. Note that this rule is one-directional. Since the defense's opposing party is the State of Midlands and not Jordan Ryder, any out of court statements, being used for their truth value, made by Ryder brought out by the defense would still be subject to hearsay objections.

Under rule 801(d)(2)(B), this also includes any statement the opposing party manifested or adopted to be true. Examples of this would be if the opposing party wrote the statement themselves or signed a document.

RULE 803: EXCEPTIONS TO THE RULE AGAINST HEARSAY

The MRE lists 23 different exceptions to hearsay. While you do not have to know them all immediately, it is important to have an understanding of the most commonly used ones and any that are specific to the case at hand. These exceptions exist because statements made under these conditions are likely to be trustworthy. These are the exceptions you should be familiar with:

1. Rule 803(1): Present Sense Impression. *A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.*

- A statement of someone describing what they saw as or right after they saw it.
- For example, if a witness had said "That little girl is falling off the cliff" as they saw her falling off of the cliff, it is an exception to hearsay and can be used for its truth value.

2. Rule 803(2): Excited Utterance. *A statement relating to a startling event or condition, made while the declarant was under the stress of the excitement that it caused.*

- A statement made under the stress of a startling event.
- For example, if right after seeing a dead body you say "I can't believe Jordan Ryder would do such a thing," it can be argued that the statement was made under the stress of seeing a dead body and therefore be an exception to hearsay.

3. Rule 803(3): Then-Existing Mental, Emotional, or Physical Condition. *A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity of terms of the declarant's will.*

- A statement describing a state of mind or physical condition.
- While this rule has many components, the phrases "motive, intent, or plan" and "mental feeling, pain, or bodily health) will be most relevant.
- For example, if a witness says:
  - "I heard the girl say her leg hurt," that would be describing a physical condition and would be an exception to hearsay.
- Another example would be if a witness says:
  - "I heard her say she was going to push her daughter off a cliff." This would be an exception to hearsay as it is evidence of intent or plan.

BONUS TIPS

- Be sure to check the stipulations to see if a certain piece of evidence has already had any objections under the MRE waived. Since stipulations are agreed upon by both sides before the trial even starts, it looks unprofessional to object to something covered by a stipulation.
- Someone's own statement, whether they said it in their affidavit or stated it outside of the current trial, can also be subject to hearsay objections.
    - If opposing counsel starts to read the witnesses's affidavit out loud, object to hearsay.
- An objection can also be made to knowledge based on hearsay. If someone makes a statement regarding information that could only be obtained through hearsay, it would be objectionable.
- Listen to opposing counsel argue but don't look at them.
- Don't interrupt opposing counsel.
- When you want to be heard, ask to be heard.
- Don't argue too much.
- Always use rule numbers when you reference the MRE.
- Word your responses with the wording of the rules.
- Learn to always object but not to over object.

TO SUM EVERYTHING UP

The rules of evidence have a mystical character to them. The MRE is not a barrier to overcome, but a tool at your disposal. Much like the Force, the rules flow through everything – so if you learn how to interpret and command the rules, you can steer a trial in whatever direction you see fit.

CHAPTER EIGHT: CLOSING ARGUMENT

MAY IT PLEASE THE COURT.

Many people believe that a trial ends when the defense rests their case-in-chief. These people could not be more wrong. Before closing arguments, you've only made introductions. In your opening statement, you introduced the law and the evidence. In your case-in-chief, you presented the evidence. And sure, if you've used the advice we offer in this guide, you'll have framed the law and the evidence in a way that's helpful to your case. But, the jury still won't understand how all the pieces of the puzzle fit together. Why do the defendant's emails matter? What exactly was the timeline? And why in the world did they call that baker to testify?

In the chapter on the Opening Statement, we told you not to argue explicitly. The exact opposite is true for the Closing Argument. The closing is your opportunity to connect all the testimony and evidence you've presented to each other and to the law. If the opener's job is to create a roadmap, the closer's job is to arrive at the destination. It is your opportunity to lead the jury, through logic and rhetoric, directly to the conclusion you have wanted them to draw throughout the trial.

Before the closing, 130 of the 140 points in the round are finished. The round should shape the closing rather than you fitting the closing to the round. But if we are doing well, both will be shaped by our strong and coherent theme and theory. Properly placing a closing within instead of above this framework is key to a team winning strategy.

That said, the closing is also your last chance: your last chance to tell the story of your client, your last chance to convince the jury of your case, the last chance to win points over your opponent. We've competed in rounds where entire ballots came down to the closing argument. In this chapter, we'll discuss what you need to do to make sure that you win those ballots if you're ever in the same situation.

CLOSING STRUCTURE

INTRODUCTION

It is important to start your closing off strong. The jury will remember most the beginning and end of your speech. The introduction is your chance to catch and keep their attention for the next nine minutes. Your introduction should take about a minute or minute and a half – you want to save most of your time for your arguments. It's best to start your closing with your team's theme. The introduction is when you need to remind the jury of the big picture. This is best done through an appeal to emotion. For example, in a murder trial you may want to start by telling the story of the victim to capture the judge's attention. If you are a defense closer you can use emotion too, it's your job to humanize the defendant -- don't shy away from talking about the tragic details. You can even embrace it and use them to your advantage.

The introduction is one of the few sections of your closing that you can, and should, script out. Not only do you have the chance to script out what you are going to say, but also how you are going to say it. By scripting out your inflection, movements, and pace you have the opportunity to fine tune your delivery and ensure an impactful introduction. This will also allow some of the mirroring of the opening statement, a technique that will help the coherence of your case to the attention of the judge and jury. Even though your introduction will be scripted, you shouldn't sound like a robot when delivering it. The ability to sound natural and comfortable while closing is what separates a good speech from an excellent one. We will go over tips on how to achieve this in the "Preparation" section.

A good introduction can make or break any closing argument. Done well, your introduction retells the story to the jury in a way that puts all the pieces together. This is your chance to show the judges your range, you are able to utilize emotion to build up drama and suspense. Using the peaks and valleys mentioned previously in the book, the best closers know when to be loud and passionate or when to get quiet and use silence for emphasis. A great tip to remember while practicing the introduction of your closing is knowing when to pause. If you are about to make a really big point, instead of gradually getting louder, try getting quiet or even pausing for a few seconds. This will make your speech more interesting to listen to and judges will pay more attention at your quiet points.

THE LAW

After your introduction, you should talk about the burden of proof and what you will have to prove for the burden of proof. Make it simple and you can include an analogy if you want. For example, for a civil case, an analogy could be to picture a set of scales, and if even a feather of evidence tips the scales to your side, the jury should decide in your favor. For a criminal case, the prosecution will want to stress that the burden is not beyond ALL doubt, just beyond all "reasonable" doubt, while the defense will want to stress that even one small possible reasonable doubt should bring a verdict of not guilty.

After explaining the burden of proof, you must explain the elements of the law. For the prosecution or plaintiff, this must be thorough, although be sure to make it understandable for the jury. On the defense, you have more leeway, but you might want to briefly restate the burden, emphasizing the parts that benefit your side and the parts that you are going to be arguing.

ARGUMENTS

This is your chance to argue the facts of the case and to connect those facts to the law. Present what you proved, or disproved, using the testimony and exhibits that were admitted throughout the trial. A good closing organizes your case theory into a coherent, easy-to-understand structure, preferably one that mirrors the opening speech on your team. Signposting is one way to ensure your structure is clear. Signposting is a great way to transition from point to point and can help walk judges through the structure of your speech. A well-organized argument is key to a successful closing.

TRIAL TIP: Signposting is the technique of using transitions to signal where you are going in a speech. Signposting makes speeches more coherent and fluent, and should be used in both openings and closings.

Always adapt your closing to reflect what happened during the round. If you highlight specific events and witness testimony, your closing will be more dynamic and more convincing. It is better to sound responsive than rehearsed because it shows the judges that you were listening during the trial and can think on your feet. In particular, using the testimony of opposing witnesses or exhibits entered by opposing counsel is

a powerful way to make your argument more credible. For example:

"Even the defense's own witness saw the defendant enter the victim's apartment building."

This is not a closing STATEMENT, you cannot just rattle off the good facts for your side and point out the other side's bad facts. This is a closing ARGUMENT – you have to link those facts to the charge and show the jury why they matter. Jordan Ryder's hiking stick matched the bruise on Parker's shoulder. So what? That is important because it shows the stick made contact with Parker... it shows Jordan used the stick to push her off the cliff. A witness got impeached. So what? It matters because if they lied, how can we trust any of their testimony? Your job is to connect the dots of the case into the arrow that points to your charge: Guilty, Not Guilty; Liable, Not Liable.

PREPARATION

MEMORIZATION AND PRACTICE

Preparing for a closing argument can be daunting, and trial can frazzle even the most seasoned competitors. Memorizing the parts of your closing that can be memorized is a must, as it will allow you to focus on the parts of your closing that are not memorized, such as arguments based on opposing witness testimony. There are a few things to keep in mind when memorizing closings. Memorized speeches might sound robotic and rehearsed. To avoid this, present your speech to yourself in front of a mirror or record yourself. Pay attention to your gestures, posture, movement, and cadence. Do your movements look awkward, predictable, or mechanical? With enough practice, the rehearsed parts of your closing will be indistinguishable from the extemporaneous part of your closing.

A good closing responds in real time to the case of the opposing team. Since it is impossible to predict every fact and detail that will come out in trial, it is impossible to fully prepare your closing beforehand. To account for this, attorneys should always be taking notes throughout the trial, revising and outlining their closings to respond to the facts of the opposing team's case. Other parts of the closing that aren't subject to as much change can be memorized, such as your discussion of the law or your introduction. Finally, you can also attempt a theme flip, or taking the opposing team's.

case theme and turning it against them. You also want to work on ways to talk about the key facts in the case in simple and fluent language so that even when you don't say exactly the same thing, you have a good vocabulary, decreasing the awkwardness.

PRESENTATION

When you first start to give closings, you will likely want to script things out. Avoid this urge as much as possible. You will not be able to memorize 9 minutes of verbatim text. Instead, draw up an outline and think through how you would talk about each point. The burden and law section can be similar each time you close, but try to ensure that you do not sound robotic with your delivery. It is also okay to have your intro stay the same, but an effective intro often uses information or witness quotes that happened in each specific trial.

In defense closing and prosecution/plaintiff rebuttal, you can utilize a theme flip – a concise, cutting statement that turns the other team's case theme on its head. For example, if the prosecution team's theme is that the defendant was desperate, a defense closer can point out all the flaws and holes in the prosecution's case-in-chief and say that the only desperate thing the jury saw today was the prosecution's case.

As with any speech, it is important to exhibit standard public speaking skills. Use hand motions and move around the well purposefully, for example when you make an important point or move on to a new topic. Inflect your voice; you can be louder and quicker for the most important arguments and slower and quieter when explaining the law. Use emotion, as any case is likely to have an emotional aspect that has the potential to move the jury. Record a video of yourself giving a closing and watch it so that you can see what you look and sound like, because it is often hard to tell.

TO SUM EVERYTHING UP

An excellent closing argument is your chance to put everything together for the jury. If done well, it can win a round. Although getting up and giving a nine minute speech may seem like a daunting task, if you spend the time preparing and structuring your closing ahead of time you will have no trouble giving a perfect 10 of a closing! The best way to score is to balance your preparation with quick thinking, preparation, and content directly relating to the round that just occurred. Your work is cut out for you but follow the steps outlined in this chapter and you are on your way to being a seasoned closer. Good luck!