**SMU DEDMAN SCHOOL OF LAW BOARD OF ADVOCATES**

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a) The role of the jury is often minimized in television trials. Students should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law and explains to the jurors the key legal issue in the case.

b) Steps in a Trial:

1. Calling of Case by Bailiff: "All rise. The Court of ______________ is now in session. Honorable Judge ____________ presiding.

2. Housekeeping: stand up and ask the judge if you may move about the well of the courtroom during questioning, statements, and arguments; introduce yourselves (side, client, team #, attorney and witness names); invoke “The Rule” that witnesses are constructively considered to not be in the courtroom during the testimony of other witnesses (this doesn’t apply to the defendant). Either side may do this, but these are the only housekeeping matters allowed.

3. Opening Statement: First the prosecutor (criminal case) or plaintiff’s attorney (civil case), then the defendant's attorney, explain what their evidence will be and what they will try to prove. Each side gets 8 minutes.

4. Prosecution’s or Plaintiff's Case: Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined (questioned so as to break down the story or be discredited) by the defense. After the last plaintiff witness has left the stand, enter any remaining exhibits into evidence and announce “The Plaintiff rests.” No motions are allowed. 35 minutes for Plaintiff to direct both its witnesses; 25 minutes for Def. to cross examine both plaintiff witnesses.

5. Defendant's Case: Same as the third step except that defense calls witnesses for direct examination; cross-examination by prosecution/plaintiff. After the last plaintiff witness has left the stand, enter any remaining exhibits into evidence and announce “The Plaintiff rests.” 35 minutes for Defendant to direct both its witnesses; 25 minutes for Plaintiff to cross examine both plaintiff witnesses.

6. Closing Statement: An attorney for each side reviews the evidence presented and asks for a decision in his/her favor. Each side gets 8 minutes, but plaintiff can reserve up to two minutes for a rebuttal given after the defense closing.
**BOA GUIDE TO OPENING STATEMENTS**

1. Prepare the substance of your opening. From the fact pattern, determine your theory of the case (the facts of how things went down from your client’s perspective; e.g. this wasn’t murder, it was suicide) and a suitable theme (the pretty package you’re selling your theory in; e.g. “No Way Out—my client was forced to defend himself against Don Jones because Jones’ vicious assault gave my client, Norah Jones, no way out.”).

2. Should be about 5-7 minutes long. Practice in front of the mirror or a buddy - and time yourself.

3. Be energetic and emotional - the judges will make strong conclusions about you and your case based on the first few moments and the first few words that come out of your mouth.

4. Strongly consider using:
   a) Players Chart – familiarizing the jurors with the names and relationships of the key players
   b) Time Line – simple, unobjectionable chart outlining relevant dates and critical events

5. Be creative, but not objectionable.

6. Avoid drawing conclusions. You want to often preface things with the phrase "The evidence will show..." or "Throughout this trial, you will learn..."

7. Memorize it or at least rely on nothing more than your outline (a small one at that).

8. Maybe have a theme; definitely have a theory of the case.

9. The theory is your version of “what really happened”; the theme is “My client was arrested because the police conducted an Incompetent, Incomplete and Incorrect investigation.”

10. Have good voice projection and posture. Don't put your hands in your pocket or behind your back.

11. Get the jury's attention from the start and keep their attention until you sit down.

12. Don't go into too much detail. Whet the jury's appetite, but save the fireworks for the rest of the trial.

13. Avoid mentioning evidence of dubious admissibility. If you mention evidence during Opening Statement, and then it never comes in - you will lose credibility with the jury.

14. Have eye contact with all of the jurors; but not creepy, lingering eye contact.

15. You can walk around the courtroom. But do not turn your back to the jury and stay at least 3 feet away from the jury box.

16. Have good voice projection and posture. Don't put your hands in your pocket or behind your back.

17. Address the law briefly; touch on the burden of proof, the elements, etc. The opening statement is an art form that allows you to bring up things that are helpful, give the jury an idea of what you’re going to show them so when the evidence comes in they understand what it is and how it is important, and potentially defend against what the other side may bring against you (limited though, you don’t want to call them out on something they don’t actually use).
A good direct —
Ø Accredits the Witness
Ø Sets the Scene
Ø Lays Out Details

Accredits the Witness
Accrediting the witness allows you to describe the witness in a way that makes them appear competent and sympathetic. You accredit a witness by developing the witness' background to make their testimony relevant and real. The skill is to personalize the witness without becoming tedious or obvious. Accrediting may include such facts as where the witness lives, where she is from, her work experience.

Sets the Scene
How does the witness come to know the facts that he will testify to? Did he have an opportunity to observe something? Was he in a position to see or hear? What are the specifics of the scene in terms of buildings, lighting and location? In setting the scene, you are showing that the witness testifies from personal knowledge.

Lays Out Details
Next the witness describes the details of what she did or did not observe. She describes what happened, who was involved and the time and sequence of events.

Preparing Direct
Ø Determine your goals
Ø Select topics
Ø Organize topics
Ø Select key words
Ø Anticipate problems
Ø Practice with the witness
Ø Use forms in Trial & Hearing Notebook

Determine the goal
The first and key step in preparing a direct examination is to determine what you want to accomplish on direct with the witness. Simply, why are you calling this witness:

Ø To establish legally significant facts?
Ø To corroborate another’s testimony?
Ø To get a document into evidence?

Your goals on direct depend on your overall case theory and strategy. Is the witness an upright citizen doing his or her duty? An honest, but bumbling neighbor?

Select topics
Next decide what topics that you will cover in direct. The witness may know about many things that you may not wish to include. Most often witnesses are called to establish some legally significant facts. You must be clear about what facts you want the witness to establish. You should not shy away from "negative" topics, but
be prepared to undercut any potential cross-examination of the witness. If something negative will come out on cross or in through the opponent's direct, bring it out first.

Organize topics
Organize the direct maximize the decision maker's comprehension and retention. Your goal is to tell a coherent and interesting story. At this stage you also should decide what documents you will introduce through this witness and where in the direct that the documents will be introduced.

Select key words
Many examiners do not write out their questions word for word. They do think about key words to use to set the tone of the direct. One technique is to draw a line down the center of the page. On the right, write the answers the witness will give and on the left, any key words you want to use in your questions or elements you must meet to lay a foundation.

Anticipate problems
You should anticipate any problems you might have with the witness and devise some strategies to meet them. For example, if your client is forgetful, how will you refresh his or her memory?

Practice with the witness
You must review the questions with the witness. Combining roleplay with feedback on how the witness answers is an effective technique. In judge trials and administrative hearings, some judges like to question witnesses first or will interrupt your examination with questions. Be sure to prepare your witnesses for this situation.

Tips
Ø Use diagrams and demonstrations
Ø Avoid compound, complex questions
Ø Personalize the witness
Ø Tell a story
Ø Tie up the evidence; place it in context
Ø Use transitions to structure testimony
Ø Omit redundant and unnecessary testimony
Ø Stress specific details on which conclusions rest
Ø Avoid leading questions except with preliminary or inconsequential matters or where the witness has difficulty in remembering
TEN DO’S OF DIRECT EXAMINATION

1. **Prepare Your Witness Thoroughly.** The most important time in trial preparation is for the lawyer to spend several hours with any key witness just prior to trial. It will add immeasurably to the case.

2. **Use Demonstrative Evidence.** Direct testimony can be enhanced significantly by having the witness refer to a photograph or a chart or other type of demonstrative evidence.

3. **Try Asking the Questions Without Notes.** It will impress the jury if you can occasionally stand in the middle of the courtroom with no notes and conduct a direct examination. It again shows your control of the case.

4. **Have Case Law Ready.** Have either a trial brief or xeroxed copies of cases available for you on any major points that you expect to come up during the direct examination of a key witness.

5. **End Big.** Try to take the testimony of the witness to a significant factual point and end there, making a big impression upon the jury.

6. **Encourage Any Key Witness or Party to See a Trial.** For someone who has never seen a jury trial, encourage them to go to the courthouse some weeks before this case is to be tried and watch other people testifying. It should put them at ease and make things smoother.

7. **Cover Any Problems.** Try to be certain that you bring out any expected problems during direct examination so that your opponent will not have the opportunity to drive home big points during cross-examination.

8. **Direct Witness to Jury Occasionally.** It is usually good to start an occasional question with, “Now, please tell the jury about/why...”. The witness who never looks at the jury can make the jury uncomfortable.

9. **Consistency in Tone and Demeanor.** Make certain the witness is prepared to answer your questions in the same manner that they will answer questions of the opposing attorney. If a witness is extremely responsive to you and extremely unresponsive to your opponent, it will show them to be biased and prejudice.

10. **Make Certain the Witness Can be Heard.** Take responsibility for being sure that the witness is speaking loud enough for the court and jury to hear them. This is too often ignored, and results in the jury not getting important information or resenting your lack of concern about them.
TEN DON'T’S OF DIRECT EXAMINATION

1. DON’T Forget the Jury. Always be attentive to the jury --- as to whether they can see exhibits, hear evidence, and generally participate in a full way during the trial.

2. DON’T Worry About Getting the Last Word. Re-direct examination questions can be important naturally, but do not get involved in a protracted re-direct and re-cross just to get the last word. This tires the court and the jury.

3. DON’T Appear Over-Rehearsed. The jury will be more favorably impressed with a conversational tone. This can be accomplished by going over essential points with your witness but not developing word-for-word answers.

4. DON’T Fail to Make the Elements of Your Case. Have a checklist of essential questions that must be asked, and be certain that those are asked.

5. DON’T be Stiff. Use common words and everyday language. The jury will relate to you better, and will understand the case better.

6. DON’T Lead Your Witness. Your opponent will most likely object. Even if your opponent does not, the jury will recognize that you are doing the testifying.

7. DON’T Waste Time. The jury members are away from their homes and jobs. They want to move on. They will appreciate the lawyer who is organized and moving the case forward.

8. DON’T Bore the Jury. The jury will appreciate an attorney who prepares an interesting case in an interesting fashion and presents it in that way. Be careful to avoid boredom at all times.

9. DON’T Fail to Rehabilitate Your Witness. If damage is done on cross-examination, be ready to use re-direct for rehabilitation purposes. Anticipate this in preparation.

10. DON’T Sit Down. Be in charge in the courtroom. Use the space you have. Be on your feet and in control.
CROSS EXAMINATION

1. All leading questions and you know the answer to every question before you ask it; no open-ended questions.
   a. Good: “You were not an eye-witness to the accident?” (“That’s true.”) “Because you had your back turned?” (“Yes.”)
   b. Bad: “Did you see the accident?” “Why didn’t you see the accident?”

2. You are the star and in control

3. The witness should be limited to four answers: yes, no, I don’t know, I don’t remember

4. "Questions" are actually statements containing one fact each - slice the questions into easily edible portions for the jury. Eliminate tags like: “wouldn’t you agree” or “isn’t that right” or “is that correct”

5. Make a subtle nod or shake of the head to indicate what an answer should be

6. Use Transitions: “I’m going to ask you about _____ now.” Don’t say “May I ask you about....” Or “Can I ask you about...”

7. Primacy and Recency: The first and last questions may be the most important and memorable

8. How to take control of the witness:

   If the witness answers with: “Uh-huh”
   Then respond with: “Please give a verbal yes or no response so the court reporter can take down your answer.”

   If the witness answers with: “Well, blah, blah, blah” (rambling answer)
   Then respond with: “Excuse me for interrupting. Perhaps I was unclear - just simply tell the jury yes or no.”

   If the witness answers with: “Yes, blah, blah, blah”
   Then respond with: “Excuse me, but yes is all we need.”

9. If the witness is a jerk, let them be; the jury will notice it

10. Again - avoid starting every question with “And” or “O.K.” - these are crutch words that you don’t realize that you are using, but everyone else does

11. Write and re-write until it is perfect

12. Write down all of your questions (in normal font) and the desired answers (in bold); have the page number and line number for each answer

13. When you get a good answer, leave it alone. Don’t ask the question again. Save it for closing argument.

14. If a witness is evasive, keep asking him the question while you look at the jury. This puts pressure on the witness to stop wasting the jury’s time.
15. DON'T ask the ultimate issue questions
For example: You had 7 drinks, right? Yes (Stop with that question, then use the closing argument to say “He had 7 drinks, he must have been drunk.”)
Don’t ask: So, if you had 7 drinks, you must have been drunk? (Don’t ask that question because the witness will have the chance to explain himself and say “No, I can drink 7 drinks and stay sober”)

16. If the other side objects with “Asked and Answered”, respond with “The witness is unresponsive to the question.”

REFRESH MEMORY

1. If witness states that he does not remember or does not know an answer, you may refresh his memory.

2. See Mauet at pp.145-147 for the litany to use.

3. When witness (either your own or opponent) states that he does not remember the answer to your question.

   “Would something refresh your memory?” (Cross: “Your prior statement would refresh your memory, wouldn’t it?”)
   Ask to approach. “I’m directing opposing counsel to the witness’ prior statement, page ‘X’, line ‘Y’”
   “Witness, I’m showing you page ‘X’, line ‘Y’ of your prior statement. Please read this to yourself silently and let me know when you are finished.”
   “Does that refresh your memory” (Cross: “That refreshes your memory, doesn’t it?”)
   Then return to podium.
   I’ll ask the question again.

   [If opposing witness says that it does NOT refresh his memory, you can probably then try to impeach.]

IMPEACH

1. If a witness commits to an answer which you can show is inconsistent with a prior statement of that same witness, you may impeach that witness. You only impeach the opposing side’s witnesses or your own hostile witness.

2. It is imperative that you get the witness to commit to his answer. When asking your question, use the witness’ own exact words from his prior written statement or deposition. The witness must have no wiggle room. There is nothing worse than an improper impeachment.

3. Impeachment can also be used as Impeachment by Omission. When a witness states something on the stand that is not in his statement, you can ask him to show the court where he said that in his statement. This makes the witness look like he is just now making up new things.

4. See Mauet starting at p. 280.

Impeachment

   Ask to approach. “I’m directing opposing counsel to the witness’ prior statement, page ‘X’, line ‘Y’”
   “Witness, I’m showing you page ‘X’, line ‘Y’ of your prior statement. You remember giving a statement in this case, don’t you?”
   “When you gave that statement, you took an oath to tell the truth?”
   “The whole truth and nothing but the truth?”
“Just like you gave an oath here today in this court?”
“After you gave this statement, you were given the opportunity to review it for accuracy and completeness?”
Then show witness his signature at the end of statement. “And you signed this statement, agreeing that it was accurate and complete.”
“Witness, I’m showing you page ‘X’, line ‘Y’ of your prior statement. I’m going to read the question that you were asked and the answer that you gave. Please follow along silently.”
Then read the question and answer. “Did I read that correctly?”
Don’t say “Thank you.” Just return to podium.
Do NOT ask the question again. Just move on to the next question.

If impeachment by omission go through most of the same steps, but instead of reading a page and line number, say:
“‘I’m showing you your entire statement. Can you show the court where in your statement you said that?’
“It’s not in there is it?”
Then move on.

CROSS EXAMINATION OF BELL
Abbreviated Version

Bell’s Experience

Mr. Bell, you have been running your family’s funeral home for about seventeen years?
Yes. (20:6)

And your family has owned the business since 1965?
Yes. (20:6)

So it is safe to say you have well over seventeen years of experience in the funeral home business?
Yes. (20:6)

Fit / Weight

(Incredulous tone of voice) And after seventeen years of experience, you believe that if a body physically fits in the casket, the casket should support that weight?
Yes. (23:6-7)

Regardless of what the body weighs?
YES.

You helped Mr. Fudd select a casket?
Yes.

And you sold him a casket?
Yes.

You took his money?
Yes.
But you never asked Mr. Fudd how much his grandmother weighed, did you?

No. (22; 19-21)

In fact, when Mr. Fudd mentioned his grandmother was heavyset, you did not ask any other questions did you?

NO (22; 16-18)

It was a tight fit getting her into that casket?

Yes. (23:3)

In fact you were concerned that her body, clothes, and accessories might not fit in the casket that Mr. Fudd had selected?

Yes. (23:1-2)

You did not share your concerns with Mr. Fudd?

No.

No one at your funeral home actually weighed Myra Fudd, did they?

Yes, we did. (23; 1-2)

[If they say yes, repeat the question strongly and try to back him down. Can probably convince the witness otherwise.

MR. BELL, THIS IS A PRETTY IMPORTANT PIECE OF INFORMATION IN THIS TRIAL. I NEED TO BE SURE THAT YOU ARE UNDERSTANDING ME AND THAT I AM UNDERSTANDING YOU. NEITHER YOU NOR YOUR EMPLOYEES ACTUALLY WEIGHED MS. FUDD?

NO.]

IF Bell says he personally weighed her, back off.

IF Bell says an employee weighed her:
You did not personally weigh Myra Fudd?

You just took someone’s word for it that she weighed about four hundred and twenty five pounds?

You say about four hundred and twenty five, because if you had really weighed her, you would know her exact weight?

Wrong

Nowhere in your sworn deposition did you say that you weighed Myra Fudd?

We learned her weight by weighing her.

You never read the specification sheet for the Golden Finished Pine model casket?

No. (21: 8-12)

You never read what the specification sheet said about how much a body should weigh?

No.

You just decided to shove Ms. Fudd’s body in the casket, and hope it didn’t break?

No.
TEN DO’S OF CROSS EXAMINATION

1. **Control the Witness by Asking Only Leading Questions.** In so doing, you hold the witness tightly and prevent him from slipping away. Ask questions that permit the witness to answer only “yes” or “no”.

2. **Control the Questions.** Ask simple questions that are easily understood, and avoid compound or multi-part questions. Never ask open-ended questions; word each question narrowly, and have a reason for every question you ask. Finally, never ask narrative-generating questions; they allow your opponent to re-open direct examination and blunt the effectiveness of your cross.

3. **Control the Flow.** Organize your cross-examination by chronology and subject matter. Ask your questions in a sequence that tells a story that is easily followed. Use descriptive words to highlight the significant points. Pause briefly after obtaining helpful admissions. Impeach the credibility of a witness before you attack the credibility of his testimony.

4. **Control the Subject Matter.** Never permit the witness to repeat his direct testimony, and never allow yourself to belabor minutiae. Avoid opening the door to disastrous redirect examination by refusing to explore uncharted territory. Take verbatim notes on the witness's direct testimony; you cannot successfully attack what you cannot remember.

5. **Always be Courteous Never Harsh or Overbearing.** You should always be polite, creating the impression that you are both friendly and fair. This attitude not only contributes to a pleasant courtroom atmosphere, but also makes you more appealing to jurors and does not alienate them from your client.

6. **Have a Good Faith Basis for Questions that You Ask.** Should you be challenged by your opponent and be unable to provide sufficient underlying proof for your questions, you will have egg on your face and the jury will distrust you forever.

7. **Start Big.** The jury will have just finished listening to the direct examination. Start their thought processes going in your favor with some major points.

8. **End Bigger.** A strong finish will leave the jury with favorable thoughts about your case. Find some major point for the closing of your cross-examination.

9. **Be Organized.** The jury will appreciate the lawyer who has taken the time to organize his or her case so as to move the case along rapidly and get them home or back to work sooner.

10. **Use Space in the Courtroom.** Unless the judge restricts you, use distance and position to your advantage. It keeps the jury more alert, and can contribute to emphasis and effect.
TEN DON'T’S OF CROSS EXAMINATION

1. DON’T Argue with a Witness. When you do, you lose control not only over yourself but also over the witness. You sacrifice your professionalism and call into question your confidence in your case. Worst of all, you allow the witness to control you. A lawyer never scores points by arguing with a witness. You win your battle by eliciting the answers you need or the responses you want through skillful questioning.

2. DON’T Answer the Questions of an Opposing Witness. If you allow this, the witness controls the cross-examination rather than you.

3. DON’T Argue with the Judge. When you argue with a judge in front of the jury, you commit a mortal sin against self-control. A lowly lawyer can never win an argument with a judge, particularly when it is carried out in front of an audience.

4. DON’T Allow Yourself to be Baited by Your Opponent. Worry about your case, not your opponent! If you permit your opponent to get your number, you have sacrificed self-control and concentration at your client's expense. Some jurors may be amused by a shouting match between you and the other lawyer, but the judge and your client will not be amused. Also, these unprofessional interludes will contribute nothing to your case.

5. DON’T Let the Jury See that Your Case has Been Hurt by an Answer. Once in a while, even though you have asked nothing but leading questions, you will elicit an answer that seriously damages your case. This is the time for the utmost self-control; do not change your demeanor, your expression, or the pace of your cross-examination. If you do, you risk revealing that your case has been hurt, and you may even highlight the damage.

6. DON’T “Kill” a Witness Unless the Jury Wants Him Demolished. The lawyer in the courtroom is very much like the matador in the bullring. In facing his adversary the matador does not immediately plunge the sword into the body of the bull. If he did, the crowd might very well feel sorry for the bull.

7. DON’T Cross Examine Just to be Talking. If there is no impact to be had by cross-examination, just announce that you have no questions. This itself will carry a big impact.

8. DON’T Re-Affirm Points that Hurt You. If a witness has given direct testimony that is against you, avoid giving them any opportunity to repeat that testimony.

9. DON’T Rely on the Judge to Discipline the Witness. It is a sign of courtroom weakness to call upon the judge to discipline the witness. Try to do it yourself. Use the judge only as a last resort.

10. DON’T Be Cocky. Even when you have great questions for the witness, do not let the jury see you as a typically conceited lawyer. Ask as many killing questions as you can, but try to keep the tone as respectful and truth-seeking as you can.


CLOSING ARGUMENTS
Heather Lynn Long | Sommerman & Quesada, L.L.P.

I. GETTING STARTED- The Who, What, When, and Where

A. **Who** are you? **Who** is listening?

- Which party do you represent?
- Criminal v. Civil
- Speak like your audience

B. **Where** have you been? **Where** are you going?

- Key events the jury has seen:
- What’s coming next:

C. **What** do you want? **What** don’t you want?

- Persuading the jury to follow your directions
- Knowing the charge
- Preempting/rebutting the other side

D. **When** do you speak? **When** does the other side speak?

- Order of speaking:
- Criminal v. Civil
- Objections

II. ESSENTIAL INGREDIENTS- Recipe for Success

A. Theme- spice it up

- Matching your open
- Using the other side’s words
- Grabbing attention

B. Explanation of Evidence
- Highlight the good stuff
- Address the bad stuff
- Be consistent
C. Use the Evidence/Demonstratives

- Evidence that corroborates
- Evidence that rebuts
- Evidence that highlights

D. Explanation of Charge

- Tell them how to answer
- Show them how to answer
- Use this as a format to lay out your evidence

E. Explain/Minimize the Burden

- Goal as Plaintiff/Prosecution:
- Goal as Defendant:
- Affirmative Defenses:

F. Ask for What You Want

- Relate it back to the charge
- Relate it back to the theme
- Be consistent

III. OTHER USEFUL TOOLS

- Psychodrama (Gerry Spence)
- Listening to the other side close
- Anecdotes
- Be creative
- Be yourself
Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you will need to know a little about the role that evidence plays in trial procedure. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations (so you won't feel completely foolish), and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in our competition is to structure the presentations to resemble those of an actual trial.

Reasonable Inference

Consider the following:

Defendant while inside a department store puts a necklace into her purse. The security guard sees her. The guard approaches defendant and says, "I want to talk to you." The defendant runs away.

The fact at issue us, did the defendant steal something? The logical inference is that a reasonable person does not run away if he/she has nothing to hide. The fact of running away can be used to show the defendant's state of mind, i.e. that the defendant had a culpable (guilty) mind.

The above hypothetical is an jury example of an accurate use of reasonable inference. It is ultimately the responsibility of the jury to decide what can reasonably inferred. However, it is the students; responsibility to work as closely within the fact situation and witness statements as possible.

Objections

An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, form being admitted. It should be noted that a single objection may be more effective in achieving this goal than several objections. Attorneys can and should object to questions which call for improper answers before the answer is given, (You must know your case and be QUICK)

As with all objections, the JUDGE will decide whether to allow the testimony, strike it or simply note the objection for later consideration. Judges' rulings are final. You must continue the presentation even if you disagree. A proper objection included the following elements:

attorney addresses the judge,

attorney indicated that he/she is raising an objection.

attorney specifies what he/she is objecting to, e.g. the particular word, phrase or question, and

attorney specifies the legal grounds that the opposing sides is violating.

Example: (1) "Your honor, (2) I object (3) to that question (4) in the ground that it is compound"

Allowable Evidentiary Objections

Facts in the Record

One objection available which is not an ordinary rule of evidence allows you to stop an opposing witness from creating now facts. If you believe that a witness has gone beyond the information provided in the Witness Statements, use the following form of objection:
"Objection, your honor. The answer is creating a material fact which is not in the record." or

"Objection, your honor. The question seeks testimony which goes beyond the scope of the record.

Relevance

To be admissible, any offer of evidence must be relevant to an issue in the trial. This rule prevents confusion of the essential facts of the case with details which do not make guilt more or less probable.

Examples:

A witness may say that she saw a man jump from a train. This is direct evidence that the man had been on the train. It is circumstantial evidence that the man had just held up the passengers.

Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault, while testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun is circumstantial evidence of the defendant's assault.

Form of Objection: "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record."

Laying a Proper Foundation

To establish the relevance of circumstantial evidence, you may need to lay the foundation. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts, which is really background information like you saw in the clips from last year.

Example:

If attorney asks a witness if he saw X leave the scene of a murder in question, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof related to the case.

Form of Objection: “Objection, your honor. There is a lack of foundation.”

Personal Knowledge

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it.

Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: The witness knew the victim and saw her on March 1, 1991. The witness heard on the radio that the victim had been shot on the night of March 3, 1991. The witness lacks personal knowledge of the shooting and cannot testify about it.
Form of Objection: “Objection, your honor. The witness has no personal knowledge to answer that question.”

Character Evidence

Witnesses generally cannot testify about a person’s character unless character is an issue.

Examples:
The defendant’s minister testifies that the defendant attends church every week and had a reputation in the community as a law-abiding person. This would be admissible.
The prosecutor calls the owner of the defendant’s apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even though, the evidence and the prejudicial nature of the testimony would probably outweigh its probative value making it inadmissible.

Form of Objection: “Objection, your honor. Character is not an issue here.” or

“Objection, your honor. The question calls for inadmissible character evidence.

Opinion/Speculation

Witnesses may not normally give their opinions in the stand. Juries must draw their own conclusions from the evidence. However, estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

Example: A taxi driver testifies that the defendant looked like the kind of guy who would shoot old people. Counsel could object to this testimony and the judge would require the witness to state the basis for his/her opinions.

Form of Objection: “Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record.”

Hearsay

If a witness offers an out-of-court statement to prove a matter asserted in that statement, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth of the witness’s testimony. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced.

Examples:

Joe is being tied for murdering Henry. The witness testifies, “Ellen told me that Joe killed Henry.” If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.

However, if the witness testifies, “I heard Henry yell to Joe to get out of the way,” this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. As I told you in class, Hearsay is a very tricky subject.

Form of Objection: “Objection, your honor. This testimony is hearsay. I move that it be stricken from the record.”

Leading Questions

As a general rule, the direct examiner (like we saw in the clips), is prohibited from asking leading questions: he/she cannot ask questions that suggest the desired answer. Leading questions are permitted on cross-examination.
Examples:

Counsel for the plaintiff asks the witness, “During the conversation, didn’t the (BAD) defendant declare that he would not deliver the merchandise?”

On the other hand, counsel could rephrase her/his question, “Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?”

Form of Objection: “Objection, you honor. Counsel is leading the witness.”

**Argumentative Questions**

An argumentative question challenges the witness about an inference from the facts in the case.

Example: Assume that the witness testifies on direct examination that the defendant's car was going 80 mph just before the collision. You want to impeach the witness with a prior inconsistent statement. On cross-examination, it would be permissible to ask, "Isn't it true that you told your neighbor, Mrs. Ashton, at a party last Sunday that the defendant's car was going only 50 mph?"

The cross-examiner may legitimately attempt to force the witness to concede the historical fact of the prior in consistent statement.

Now assume that the witness admits the statement. It would be badgering to ask, "How can you reconcile that statement with your testimony on direct examination?" The cross-examiner is not seeking any additional facts; rather, the cross-examiner is challenging the witness about an inference from the facts.

Questions such as "How can you expect the judge to believe that?" are similarly argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit facts.

Form of Objection: Objection, your honor. Counsel is badgering the witness."

**Asked and Answered**

Asked and answered is just as it states, that a question which had previously been asked and answered is asked again. This can seriously inhibit the effectiveness of a trial.

Examples:

On Direct Examination - Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me get your testimony straight. Did X stop for the stop sign?"

Counsel for X correctly objects and should be sustained.

BUT: On Cross-Examination - Counsel for X asks B, "Didn't you tell a police officer after the accident that you weren't sure whether X failed to stop for the stop sign?" B answers, "I don't remember." Counsel for X then asks, "Do you deny telling him that?"

Counsel A makes an asked and answered objection. The objection should be overruled. Why? It is sound policy to permit cross-examining attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.
Form of Objection: "Objection, your honor. This question has been asked and answered.

**Compound Question**

A compound question joins two alternatives with "or" or "and" preventing of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example:

(Using "Or") "Did you determine the point of impact (of a collision) from conversations with witnesses, or from physical marks, such as debris in the road?"

(Using "and") "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Form of Objection: "Objection, your honor, on the ground that this is a compound question."

The best response if the objection is sustained on these grounds would be, "You honor, I will rephrase the question," and then break down the question accordingly. Remember, there may be another way to make your point.

**Narrative**

A narrative question is one that is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable and the objections should be sustained. (Pay Attention Judges)

Form of Objection: "Objection, your honor. Counsel's question calls for a narrative."

**Non-Responsive Witness**

Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or he/she "forgets" the event in question. This is often purposely used by the witness as a tactic in preventing some particular evidence to be brought forth. This is a ploy and the questioning attorney may use this objection to "force" the witness to answer.

Form of Objection: "Objection, your honor. The witness is being non-responsive."

**Outside the Scope of Cross-Examination**

Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination."

Form of Objection: "Objection, your honor, "Beyond the scope"