BASIC TRIAL PROCEDURES

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

B. Courtroom and participants

judge	attorneys
witnesses	jurors
bailiff	court reporter

C. Beginning the trial

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

D. The trial

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

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

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

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

OPENING STATEMENTS

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

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

An opening statement on behalf of the prosecution should include:

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

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

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

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

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

The opening statement on behalf of the defendant should include:

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

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

DIRECT EXAMINATION

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

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

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

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

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

CROSS-EXAMINATION

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

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

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

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

CLOSING ARGUMENTS

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

Closing arguments should include:

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

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

WHO ARE THE CHARACTERS IN THE COURTROOM DRAMA?

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

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

RULES OF EVIDENCE - A STUDENT GUIDE

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

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

Examples:

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

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

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

Example:

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

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

Example:

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

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

Example:

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

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

-the lawyer asks the witness about:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRE-TRIAL MOTIONS

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

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

OBJECTIONS

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

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

Standard mock trial objections:

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

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

witness."

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

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

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

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

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

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