

Mock Trial Review

wyx

Making speeches

- Pretrial
- Opening
- Closing

Pretrial

- Good day, Your Honor. My name is XXX, along with my cocounsel A. We represent the State of Midlands/ XXX (the defendant)
- Your Honor, would you first like to hear introductions from the defense counsel or the rest of our pretrial matters?
- Your Honor, we would like to ask for your preference when raising objections. When an objection is sustained, is it automatically stricken or motion to strike?
- Your Honor, we would like to evoke rule 615, which constructively sequesters all witnesses except for a designated representative of each party, and our party representative is XXX; and rule 603, where all witnesses are constructively sworn in.

Opening Statement

- May it please the court, opposing counsels, members of the jury.
- **Case theme**
- [Narrative]
 - Xxx happened (your side's story). Xxx (case theory).
- [End Narrative]
 - Burden of proof
 - Legal elements, charge
- **Case theme**
- Elements/ witnesses
- **Case theme**
- [Conclusion]
 - Burden of proof
- At the end of today's trial, my cocounsel xxx will ask you to find the defendant guilty/ not guilty

Closing argument

- May it please the court, opposing counsels, members of the jury.
- **Case theme**
- [Narrative]
- Burden of proof
- Legal elements, charge
- **Case theme**
- Elements/ witnesses, tie things together
- **Case theme**
- Burden of proof
- Find the defendant guilty/ not guilty, or liable/ not liable

Closing argument narrative types

- [One moment narrative]: Members of the jury, a lot of moments happened in today's trial, but there was one single moment that stands out. That was when...
- [Repetition of a word narrative]: X (representing a number). I heard a word x times in today's trial. That word is xxx. In fact, ...
- [Traditional story narrative]: Xxx happened (your side's story). Xxx (case theory).

Objections

- Hearsay
- Enter into evidence
- Speculation
- Substantially more prejudicial than probative
- Expert witness
- Procedural objections

Hearsay

- An out-of-court statement offered for the truth of the matter asserted
- Exceptions (are hearsay, but admissible):
 - Present sense impression: “this bottle of water is a bit cold”
 - Excited utterance: (angrily) “I’m gonna kill him!”
 - Then-existing mental/ emotional/ physical state: “You know what, I plan to rob the bank today”
 - Medical diagnosis: “The doctors said my DNA was not DNA, it was USA”
- Statements that are not hearsay:
 - Offered for effect on the listener: “She said I’m an idiot, so I was super angry”
 - Offered for subsequent actions: “That women said the suspect was in yellow, so the police looked for people in yellow”
 - Rule 801 (d)(2) Opposing Party Statement: statements of the opposing party representative are not hearsay

Enter into evidence

- Show the exhibit
 - “Your honor, permission to share the screen to show what has been previously marked as exhibit xx to the opposing party and witness?”
 - “Let the record reflect that I am now showing opposing party and witness a copy of exhibit xx”
- Lay foundation of the exhibit
 - “Mr/ Ms..., if I were to show you a copy of (exhibit’s content), would you be able to recognize it?” (Confirm the end of each affidavit/report for each witness’ knowledge)
 - “Is this a fair and accurate copy of (exhibit’s name)?”
 - “Has this been changed or altered in any way since the last time you saw it?”
- Offer the exhibit into evidence
 - “Your honor, at this time, the prosecution/plaintiff/defense offers exhibit xx into evidence.”
 - “Your honor, permission to disclose exhibit xx to the members of the jury.”

Speculation and related objections

- Definition: The witness is speculating other's state of mind.
- How to argue against: rationally based perception/ sensory perception
- More of Rule 602, not Speculation
 - Lack of personal knowledge: the witness can't/ don't know sth not related to state of mind
 - Lack of foundation: the witness can/ do know, but hasn't shown that they have the knowledge

Substantially more prejudicial than probative

- How to argue: inflames the passion of the jury, prejudicial value substantially overweighs probative value
- How to argue against: high bar, opposing counsel has to prove to you that prejudicial value substantially overweighs probative value

Expert witness

- Foundation
 - 702a: educational background & work experience
 - 702b: facts and evidence
 - 702c: reliable method
 - 702d: reliably applied to this case
- “Your honor, at this time, we would like to tender xxx as an expert witness in terms of xxx”
- Improper opinion: lay witness talking about professional info

Procedural objections

- Leading question
- Compound question
- Counsel is testifying

Impeachment

- Ask the question again.
- (If insist on the wrong answer) We would like to show the opposing witness a copy of their affidavit.
- (Show the opposing counsels, Judges, and then the witness the affidavit)
- There should not be any annotations or highlights in the affidavit used for impeachment!!!
- Is this a fair and accurate copy of your affidavit? Is this your signature at the end of this affidavit? You have taken the oath to tell the truth and nothing but the truth, is that correct?
- Now let me direct your attention to Line xxx. I'll read it out loud while you read it silently.
- Now let me ask the question again...

Demeanor in court

- Captain says “All rise” when the judge enters the court, and say “Good day/ morning/ afternoon, your honor” together
- Always say “Yes, your honor” after the judge gives you an answer or gives a ruling
- Always stand up when talking to the judge
- Don’t say sorry, say “May I ask for the court’s indulgence and xxx”
- Do not show attitude (facial expressions or unsatisfactory behaviors) towards rulings
- Do not argue after ruling has been made