# STUDENT MANUAL

## CHAPTER 1

## INTRODUCTION TO THE COURT SYSTEM

### A. THE FEDERAL COURT SYSTEM

The Federal Court System consists of trial courts (District Courts and Magistrate Courts), appellate courts (United States Court of Appeals) and a supreme court (the United States Supreme Court). Generally, a case can only be filed at the federal level when there is a federal question, such as the robbery of a federal bank, at issue. If there is no federal question, one of the following criteria must be met before the process can begin: One, each party involved in the lawsuit (plaintiff and defendant) must have diversity of citizenship. Second, if the case is civil in nature the amount in controversy must be more than $50,000. If none of the above-noted criteria are met then the federal court does NOT have jurisdiction and cannot get involved. These requirements are referred to as jurisdictional requirements.

Once the case is properly filed in a United States District Court, the case may be tried before a judge, known as a bench trial or a jury trial. In a bench trial, the judge first decides from the evidence presented by the prosecution and the defense what the facts of the case are. Then the judge applies the applicable law to those facts and makes a determination of whether the facts bring the prosecution's case within the protection of applicable law (prosecution prevails), or if those facts do not bring the case within the protection afforded by the applicable law (defendant prevails). In a jury trial, the jury decides the facts of the case, from the evidence presented by the prosecution and the defense. The judge applies the law to the facts determined by the jury.

If a party believes the judge mistakenly applied the law after the case has gone to court at the federal level, then the party against whom the decision was made may appeal to the U.S. Court of Appeals and, possibly, The United States Supreme Court. An appeal may also be made if the verdict was against the weight of the evidence.

At the U.S. Court of Appeals the parties DO NOT present facts as they did at the trial level. Three appellate judges preside and hear only attorney arguments on how the law *should have been* applied to the facts. If the three appellate judges determine that the trial judge was correct in his/her application of the law, they will uphold the verdict at the trial level. Case law is then written, which states the upholding and possibly explains why the trial judge's application of the law was correct. If the appellate court determines that the trial court's ruling was incorrect, they will overturn the decision and write a similar opinion and grant a new trial. The decision of the Court of Appeals may be appealed on a similar basis to The United States Supreme Court, however, very few cases are accepted by the Supreme Court.

## B. THE MISSOURI STATE COURT SYSTEM

The Missouri State Court System operates in a similar fashion as the federal court system, but it uses labels that are somewhat different. (See the diagram below.) In the state court system, the trial court is called the Circuit Court. Each county has its own circuit court.

Each county also has an Associate Circuit Court for all cases involving less than $15,000, and for landlord-tenant matters, for uncontested divorce actions, and for other cases that are not complex. In addition, most counties have a Small Claims Court wherein cases involving less than $2,500 can be filed. People often represent themselves in small claims court.

Appeals from the state circuit courts, based on erroneous decisions of law (as in the federal system), are made to the Missouri Court of Appeals which has three districts: St. Louis, Kansas City, and Springfield. The Supreme Court of Missouri, which consists of seven judges and is located in Jefferson City, is the final court to which state cases may be appealed. But, as in the federal system, not all cases filed with the state supreme courts are accepted for hearing.

### Review for Chapter 1

1. Turn to the Case Section of the Missouri Mock Trial book. Review the caption (heading with names of parties) to the indictment and determine:

   A) Who filed the lawsuit?

   B) In what court was the case filed?

2. What are the jurisdictional requirements for filing a lawsuit in the federal court?

3. What is a bench trial?

4. What is the term used when a judge does not decide the facts of the case, but decides only how the law applies to the facts as decided by a jury?

5. When can a case be appealed?

6. To what court is a district court case appealed? Does an appellate court try all the facts of the case again using a jury trial?

7. How many judges hear cases at the appellate level?

## CHAPTER 2

## INTRODUCTION TO LAWS: STATUTES AND CASE LAW

### A. STATUTES

The law comes from many different sources, the most familiar of which is the United States Constitution and its Bill of Rights. In addition to the United States Constitution, each state has its own state constitution.

These constitutions have been drafted and amended by the elected officials who have served in either the federal or state legislature, as appropriate. The registered voters of each state must approve any amendments or changes to the constitution. However, the interpretation and application to a particular case are left to the courts.

Both the federal and the state legislatures continue to enact laws which are called statutes, and the courts are routinely called on to interpret how these statutes apply to the particular cases presented to them.

### B. CASE LAW

When a state or federal court (the higher courts only) decides how a statute applies to a particular case, that court's decision becomes available in written form and is published in a series of books for lawyers and the public to use. These published or reported decisions written by an appellate or supreme court are called case law.

In addition to case law which interprets legislation, the appellate courts and supreme courts use their own previous decisions by affirming and enforcing recognized old laws and customs from England and the American colonies. This is referred to as common law, and also can be applied to the facts of a particular case. When the court renders a decision based on common law, the judge writes an opinion or decision for publication, which is also called case law.

**Review for Chapter 2**

1. What are statutes?

2. What is case law?

3. What is common law?

4. What do the legislative and judicial branches of government do?

5. Which statutes apply to this case? (See Applicable Statute)

## CHAPTER 3

## INTRODUCTION TO PLEADINGS AND LEGALESE

As the mock trial problem is reviewed, students will encounter many new terms used in the legal field. Students are encouraged to use the glossary at the end of this manual and to refer to legal dictionary sources for more comprehensive definitions of these terms. The attorney coach is also available for help in understanding the mock trial problem.

Pleadings are the documents filed with the court that delineate the facts of the case, the damages caused in the case, and the recovery or relief sought by the prosecution. The defendant also files pleadings in the form of responses to prosecution's claims. In this chapter you will review an indictment.

### A. THE INDICTMENT:

The first document in the mock trial problem is the indictment. An indictment is an accusation in writing, found and presented by a grand jury. In it, the grand jury charges that the person named therein has committed an illegal act. Such an indictment originates with the prosecution, and is issued by the grand jury. It is also referred to as a true bill.

An indictment must be proven during the trial beyond a reasonable doubt before the defendant may be convicted. The sole purpose of an indictment is to decide whether there is enough evidence to take the case to trial and therefore cannot be used as evidence that the offense was committed. Each element of the offense charged must be proven beyond a reasonable doubt to legally find the defendant guilty. It is the burden of proof for the prosecution to establish the

facts at such a level of certainty that there remains no reasonable doubt in the mind of the jury that the defendant committed the crime as charged.

## B. JURY INSTRUCTIONS

In chapter 1, you learned that in a jury trial, a jury is to decide the facts of a case based upon the evidence presented to them by both the prosecution and the defense. However, prior to a case being submitted for a jury's deliberation of the facts, attorneys present the judge with legal arguments as to what specific law is applicable in the case. Based upon these arguments, the judge decides what law will be applied, and informs the jury of that decision by way of written jury instructions.

Note: In preparing the prosecution's case, the attorney should use these instructions to ensure that all required facts are brought out to the jury. The defendant need not *prove* anything in a criminal case. The burden is on the prosecution to prove the defendant's guilt "beyond a reasonable doubt."

### Review for Chapter 3

1. List all facts, which if proven by the prosecution, will require the jury to find in favor of the prosecution.

2. For each of those facts, list all evidence to support the proof of those facts.
   (See Trial Notebook section of this manual--*SAMPLE SOURCES OF PROOF CHART*)

3. What is an indictment? What is another name for it?

4. Indictments are usually issued by a grand jury. T or F?

# CHAPTER 4

## INTRODUCTION TO PRE-TRIAL DISCOVERY

## A GENERAL OVERVIEW

The Pre-Trial Discovery process is described as the investigation of a case according to specific legal procedures. The procedures of case investigation are usually open to all the parties involved. When the discovery is complete, all attorneys and their clients should have a clear idea of the facts of the case. This organized investigation process allows the parties to sort out the pertinent issues in the case from all the background information.

Moreover, by carefully observing the types of discovery procedures used and the questions asked by one's opponent, an attorney might gain valuable insight into the adversary's strategy for the pre-trial preparation and the trial itself.

It is important to note that many cases are settled or plea bargained by the parties before the case ever goes to trial in court. This is due in no small part to pre-trial discovery. Requirements of an attorney's participation in this investigation process include learning the strengths and weaknesses of his own case, as well as those of the opponent's case. At this point, the attorney can make educated decisions concerning trial strategy or settlement of the case.

Both parties are given a fair amount of freedom in conducting their discovery. An attorney may seek discovery of any issue that is relevant to the case as long as the request seems reasonably calculated to lead to the discovery of admissible evidence. Although there are exceptions to this rule, this doctrine alone is sufficient for this exercise.

## B. REQUEST FOR PRODUCTION

Another discovery method that lawyers use to prepare cases for trial is a Request for Production of Documents and Things. This allows any party to request, in written form, that another party in the lawsuit produce the specified documents and make them available for copying. The Request for Production also permits an inspection, testing and/or sampling of any tangible evidence in the other party's possession. This method can be used to gain entry upon the adversary's land for such things as inspection, investigation and/or photographing. This method, however, is subject to objection by the party receiving the request. However, under Rule 25.03 of the Criminal Procedural Rules, the prosecution must disclose to the defendant any information it has which might help prove the defendant's innocence. The prosecution in a criminal case has a higher burden of proof than in other cases. If the defense fails to request information, the prosecution still holds the responsibility of offering any evidence to the defense which tends to show that the defendant is not guilty of the charged offense *or* which tends to mitigate the degree of the offense charged or reduce the punishment.

Among the most important items that can be requested by the defendant are the following:

1. The names and last known addresses of persons whom the prosecution intends to call as witnesses at any hearing or at the trial, their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statements;

2. Any written or recorded statements and the substance of any oral statements made by the defendant or by a co-defendant, a list of all witnesses of those statements, and a list of all witnesses to the acknowledgment of such statements, and the last known addresses of such witnesses;

3. Those portions of any existing grand jury proceedings which relate to the offense with which
the defendant is charged, containing testimony of the defendant and testimony of persons whom the prosecution intends to call as witnesses at a hearing or trial;

4. Any existing transcripts of the preliminary hearing and any prior trial held in the defendant's case if the prosecution has such in its possession or if such is available;

5. Any reports or statements of experts, made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

6. Any books, papers, documents, photographs, or objects which the prosecution intends to introduce into evidence at the hearing or trial or which were obtained from or belong to the defendant.

7. Any record of prior criminal convictions of persons the prosecution intends to call as witnesses at a hearing or the trial.

## C. REQUEST FOR ADMISSIONS

The Request for Admissions is another method of discovery process that permits a party to serve upon any other party a written statement of relevant facts in a case which the party is required to admit or deny. As can be seen this method can be effective in both the framing of the relevant issues in contention and the disposing of lesser matters in the case by agreement.

When an attorney receives a Request for Admissions from the opposing attorney, he or she must either object or respond in writing. Failure to respond to Requests for Admission causes all of the requests to be automatically admitted.

The lawyer receiving a Request for Admission may deny the request on the basis that they do not have sufficient knowledge or information to either admit or deny the request. However, they are required to act in good faith when responding, and attorneys can be challenged on the sufficiency of their answers.

## D. MOTION TO COMPEL OR MOTION FOR SANCTIONS

In the event a party does not respond to the discovery request as described above, the requesting party has the option of seeking a court order commanding the party to respond or face sanctions. The threat of a sanction alone often motivates parties to make overdue responses to discovery requests.

### Review for Chapter 4

1. Explain the format of each of these pre-trial discovery procedures:

A. Request for Admissions

B. Request for Production

2. Review the Grand Jury testimony of each witness and comment as to whether the witness will be very helpful or somewhat helpful or not helpful to the prosecution or defense and provide brief reasons for each. Also comment as to whether the witness is a fact witness, character witness or expert witness.

## CHAPTER 5

## INTRODUCTION TO TRIAL PROCEDURE

This chapter will review all procedures of a trial from voir dire to closing arguments, highlighting various techniques and tips for a skillful presentation.

### A. PRE-TRIAL CONFERENCE

On the morning of the trial, attorneys for all parties meet with the judge in an effort to streamline trial presentation by discussing certain facts and the authenticity of documents to avoid unnecessary proof requirements. Often, attorneys take this opportunity to present arguments to the judge regarding what laws should be applied to the case. Then based on these arguments, the judge determines what jury instructions to give to the jurors prior to deliberation.

In this mock trial case, results from a pre-trial conference could have been the jury instructions. Read the Rules of Competition in the Case Materials for an example of other items which have come from a pre-trial conference for the Mock Trial Case. In addition, see the *Introduction* section about stipulations concerning exhibits, another example of a pre-trial conference agreement**.**

### B. VOIR DIRE

When a case is called for a jury trial, numerous registered-voting citizens from the court's jurisdiction are called to jury duty. However, not all these citizens will actually serve on a jury due to a process called voir dire. The attorneys in the case are responsible for selection of jurors. They ask each potential juror pertinent questions about his/her background, experience, and feelings toward numerous issues in the case. Using voir dire, attorneys are better able to select a jury panel that will be fair and impartial toward all parties.

Do you know?

1. What specifically, in the Mock Trial Case, do the prosecution and defense stipulate to regarding their depositions? Which side may introduce exhibits? List those items.

2. What happens if witnesses try to embellish their sworn statements?

3. Formulate three questions you would ask a potential juror if you were a prosecutor and three separate questions you would ask if you were a defense attorney.

## C. OPENING STATEMENTS

Once a jury is impaneled, the case begins with the prosecution's opening statement. The purpose of the opening statement is to acquaint the judge and jury with the case highlighting those facts most favorable for the client.

It is essential that an opening statement provides a clear and concise overview of the facts and witnesses and/or exhibits the attorney anticipates will be presented to prove such facts. It is also important to mention in the opening statement which party has the burden of proof or the burden of proving particular facts.

Although the opening statement is *not* the appropriate means by which to argue one's case to the jury, a skillful lawyer should be able to cogently summarize all facts in a confident manner persuading the jury as to the merit of the attorney's case.

After the prosecution's opening statement, the defense may proceed with its opening statement. The defense's opening statement should possess the same format as the prosecution's, however, the defense may choose to highlight contradictions in the prosecution's statements. This will help convince the jury that the prosecution's version of the case is incorrect.

### Review of Opening Statements:

1. What are the essential elements of an opening statement?

2. Should an opening statement be argumentative?

3. *After* you determine what evidence you will present and through what witnesses/exhibits you will present such evidence for the Mock Trial Case, draft an opening statement, which summarizes the facts of the case.

## D. DIRECT EXAMINATION

After the opening statements, the prosecution begins presenting its case by calling its first witness and eliciting testimony from the witness through a process called direct examination. The purpose of "direct examination" is to allow an attorney to question a witness about what they saw, heard, or knew about the facts of the case.

To conduct a proper direct examination of a witness an attorney should ask short questions in a logical and clear manner so that the story unfolds through the witness' testimony. A skillful attorney should not lead a witness in his/her testimony. If an attorney asks a witness a leading question on direct examination, the opposing counsel should raise an objection immediately, preferably prior to the witness' response.

It is imperative to prepare witnesses for the questions that will be asked of them at the trial, and it is equally advisable to ask only questions to which the answer is already known. In fact, many attorneys ask only those questions for which they know the witness has an answer.

Some questions . . .

1. How does an attorney conduct a proper direct examination?

2. If an attorney asks a leading question on direct examination, what should the opposing counsel do?

3. Draft a non-leading question that an attorney should ask each witness on direct examination (according to this case).

## E. CROSS EXAMINATION

After the direct examination of each witness, opposing counsel has the opportunity to cross-examine the witness. The purpose of cross-examination is to discredit the witness and his/her testimony on direct examination.

An attorney conducts a proper cross-examination by asking leading questions to which the witness may only answer yes or no. The cross-examining attorney may question the witness' memory of

events or the witness' ability to perceive the facts, or establish a reason why the witness would be biased toward the party for whom he/she testified, and therefore should not be credible.

Again, it must be cautioned that cross-examining attorneys should rarely, if ever, ask questions to which they do not know the answer.

**Review of Cross-Examination:**

1. What type of questions should a cross-examining attorney ask a witness?

2. Draft one cross-examination question for each witness:

## F. RE-DIRECT EXAMINATION/RE-CROSS EXAMINATION

After the defense's cross-examination of each witness, the prosecutor may rehabilitate the witness if his/her credibility was tarnished. The prosecutor may also wish to clarify facts or statements made during cross-examination that may have confused the jury.

If the prosecution decides to re-direct, the defendant's attorney also has the option to re-cross. For purposes of this mock trial competition, only one re-direct, and one re-cross per witness will be allowed.

## G. THE PROSECUTION RESTS ITS CASE

After the prosecution has conducted direct-examinations of all the prosecution's witnesses, and after the defense has finished cross-examining of those witnesses, the prosecution *rests* his/her case and must announce same to the court. It is advisable, however, that prior to such announcement, the prosecutor check to see that all exhibits have been introduced, offered, and accepted into evidence.

## H. THE DEFENSE CASE

Once the prosecution *rests* its case, the defense attorney presents its case in the same manner outlined for the prosecution's case. Of course, the prosecutor has the opportunity to cross-examine each of the defense's witnesses. Re-direct and re-cross are also available. After the defense has concluded its case presentation, the defense must also *rest* its case and announce it to the court.

## I. CLOSING ARGUMENTS

After all the evidence is presented, each party's attorney has the opportunity to argue to the jury that the evidence, as presented, is sufficient to warrant a decision or verdict in that party's favor.

It is common for attorneys to utilize the Jury Instructions in formulating their arguments to the jury, and to remind the jury which party had the burden of proof. Such method usually provides for an organized presentation, which adds to the persuasiveness of the argument.

Throughout an attorney's case, an attorney should keep in mind the theme of the case, and it is in the closing argument that the theme is most highlighted. Attorneys should emphasize all the strengths of their case presentation, which tend to support their theme, and diminish all other facts. In addition, attorneys should also consider highlighting weaknesses of the opposing counsel's case, and demonstrating how opposing counsel did not meet his/her burden of proof.

**Review of Closing Statements:**

1. Name three issues that should be argued in closing statements.

2. After you review all the potential testimony to be presented in this case, draft a closing argument for each side in this lawsuit.

**REVIEW FOR CHAPTER 5**

List, in order, all steps which take place in the mock trial, exclusive of re-direct and re-cross:

## CHAPTER 6

## INTRODUCTION TO RULES OF EVIDENCE

The foundation of all our laws is the notion of fairness. When someone's liberty or property is taken, that person is entitled to due process of law. Due process can be described as the use of proceedings according to rules and principals in the legal system, which have been established to enforce and protect the rights of citizens. The rules of evidence have been established to ensure due process in court.

It is important to re-emphasize that certain types of evidence are not inadmissible so much as they are objectionable. If the lawyer does not bring the objectionable evidence to the attention of the court by way of an objection to the evidence, the objectionable evidence will be heard and possibly considered by the trier of fact. So hearsay evidence or irrelevant evidence is admissible unless opposing counsel objects and convinces the judge that the evidence is improper.

When an attorney raises an objection, he/she should be sure to raise the objection at the earliest possible moment, i.e., immediately after the opposing attorney asks a question and, most important before the witness answers. If an attorney raises an objection after the evidence has already been elicited from the witness, the judge will be less likely to sustain the objection. However, if the judge does sustain the objection after testimony has been elicited, the objecting attorney should move to strike the elicited testimony from the record.

Finally, when a lawyer raises an objection, he/she should stand and state the objection succinctly. Usually, the judge will allow the examining attorney to respond to the objection by stating reasons why the evidence is not objectionable and not in violation of the rules of evidence. The judge will then either sustain or overrule the objection.

## A. RULES OF EVIDENCE

Although lawyers spend many years learning the rules of evidence and their application, a few of the most important rules of evidence have been modified and adapted for the mock trial competition and are presented below:

### 1. Form of the Question

a. An attorney who questions a witness on direct or cross-examination should ask short, clear and concise questions of the witness. If an attorney's question is overly complex, is a compound question, or just plain confusing, the opposing attorney should object to form of question and ask for the question to be rephrased.

a. In addition, you learned in chapter 5 that attorneys may not ask leading questions on direct examination of a witnesses. Remember that a leading question is one that suggests a yes or no answer. If a questioning attorney asks a leading question, the opposing attorney should object to the form of the question as being leading. (Remember: attorneys may ask leading questions on cross-examination.)

### 2. Narration

a. While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The question must not be so broad that the witness is allowed to wander or narrate the whole story.

b. At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds that the witness is narrating or that the answer is beyond the scope of the question.

### 3. Relevant Evidence

a. An attorney's questions must inquire into only those facts or opinions which relate to the subject matter of the case, or which are relevant. Similarly, a witness' response to the question must also be relevant.

b. For example, if the issue is whether a man shoplifted, an attorney is not to present evidence that the man kicked his dog, drives fast, got divorced, or is an atheist. The

opinion that the man is a bad person must be excluded because there is an unfair risk that the jury will rule against the man because he is a bad person and not because he actually shoplifted. Therefore, an objection that such information is irrelevant would probably be sustained. *HINT*: If the question of the opposing attorney makes you think, "So what"," who cares?", or" What does that have to do with anything?", an objection is probably in order.

**4. Hearsay**

Non-examining attorneys should watch for a witness' testimony which asserts what someone else, other than a party involved in the lawsuit, said or did. For example, if a witness states, I heard a guest say that he saw the defendant drink ten beers at the party, the non-examining attorney should object on the grounds of hearsay. Though hearsay is not usually allowed at a trial, the judge may sometimes allow it if:

a. The hearsay was said or done by an individual involved in the case and contains evidence which goes against the party for which he/she is testifying, i.e., in a murder case, the defendant told someone he committed the murder. This is called Admission By A Party Opponent Exception; or

b. A person's state of mind is important to the outcome of the case. If the hearsay describes a state of mind, it may be admitted. This is known as the State of Mind Exception; or

c. It is a memorandum, report, or other record (1) made at or near the time the matters recorded occurred; (2) was made by someone with personal knowledge of the matters recorded or from information submitted by someone with such knowledge; and (3) it was the regular practice of the business, association, or government agency to make such a record. This is called the Business Record Exception.

**5. Opinion Evidence**

a. As a general rule, witnesses may not testify as to their opinions. Their testimony should be limited to the facts of the case.

b. Expert witnesses may aid in understanding the facts of the case and are the only witnesses allowed to testify as to their opinions.

c. The examining attorney must *prove* a witness's expertise in a certain area. Prior to a witness being qualified as an expert, he/she must testify as to the possession of special skills and/or knowledge in some science, profession or business which is not common to the average man and which is possessed by the witness by reason of special study or experience.

**6. Lack of Personal Knowledge.**

A witness' testimony must be based on what the witness saw, heard (not hearsay) or experienced. If it is not, the non-questioning attorney should raise an objection that the witness has no personal knowledge of the particular subject matter at hand.

**7. Speculation**

A witness may not speculate as to what may have happened or what someone may have done or thought. If the questioning attorney poses a question which calls for the witness to speculate, the non-questioning **attorney should object on the grounds that the question calls for speculation.**

**8. Badgering the Witness**

Questioning attorneys should always act in a dignified manner, and not belittle or harass any witness. If a questioning attorney gets too rough with a witness, opposing counsel should object on the grounds that counsel is badgering the witness. This objection is mainly used by the attorney who called the witness to testify.

**9. Asked and Answered**

If a question has been asked and answered by a witness, an attorney should not ask the same, or very similar question of that witness again. If the attorney does, the opposing attorney should object by stating, "Objection Your Honor, the question has been asked and answered."

**10. Improper Character Testimony**

Evidence about the character of a party may not be introduced unless the person's character is relevant to the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not relevant in the mock trial problem. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but it is not an issue in a civil trial for breach of contract.

**11. Beyond the Scope of Examination**

On direct examination, an attorney should elicit from a witness all facts and admissible opinions relevant to the case. On cross-examination, an attorney may address matters discussed in direct examination, matters affecting the credibility of the witness, and for purposes of this trial, other

relevant matters not raised on direct examination. However, re-direct is strictly limited to rehabilitation of the witness due to cross-examination testimony, and re-cross is limited to matters addressed during re-direct examination.

**12. Refreshing a Witness' Memory**

If a witness is unable to recall a statement made during his/her Grand Jury testimony, the examining attorney should request the court's permission to refresh the witness' memory by allowing the witness to view the statement. Note: the document offered to the witness is *not* to be treated as evidence or offered into evidence. However, if the witness' memory is not refreshed by viewing the document, the attorney may wish to lay a foundation to offer the document into evidence. (See below)

## C. INTRODUCING DOCUMENTS/EXHIBITS

1. Prior to trial, an attorney should have all exhibits marked for identification as either Prosecution/Defense Exhibit A, B, C or 1,2,3 etc. If this is not possible, such marking can usually be made by the court clerk, if available.

2. The next step is for the attorney offering the exhibit to show the evidence to opposing counsel and to the judge. The attorney may want to make copies of the exhibit for the opposing counsel and the judge to avoid spending time passing the original exhibit around.

3. The attorney then shows the original exhibit to the witness and asks the witness if he/she recognizes the document and to identify the document for the court.

4. Assuming that the document is admissible evidence, the offering attorney next turns to the judge and says "Your Honor, I offer this document into evidence as the Prosecution's/Defendant's Exhibit ____. If opposing counsel does not object to the document, the court will thereafter admit it into evidence.

5. Once the document is admitted into evidence, the attorney may proceed in asking the witness questions regarding the document or exhibit.

## D. IMPEACHMENT

1. In cross-examination, an attorney attempts to show to the trier of fact why the witness is not credible . This technique is called impeaching the witness.

2. An attorney can impeach the witness with prior conduct which makes the veracity of the witness' statements doubtful or by demonstrating that the witnesses statements were contradicting.

3. For the purpose of this competition, if, during direct examination, a witness contradicts a

statement made during the deposition, on cross-examination an attorney should impeach the witness by using the following procedure:

a. The attorney should repeat the testimony on direct examination which contradicts the Current statement; i.e.: You stated on direct examination, didn't you?

b. If the witness responds affirmatively, the questioning attorney should then inquire as to the witness' recollection of the statement which had been taken, and emphasize that a sworn statement is testimony given under oath.

c. The attorney should then ask the witness to read the statement which conflicts with the direct examination testimony, or the attorney should read the statement.

d. Then the attorney should ask the witness to admit having so testified at the Grand Jury.

e. Finally, an attorney should carefully consider whether further demonstrating or dramatizing of the conflict in statements would be necessary. Often, the contradiction itself is enough to damage the witness' credibility.

**REVIEW FOR CHAPTER 6**

Study the Grand Jury testimony of each witness and complete Testimony Charts (see chapter 7) for each witness, and determine for each possible testimony what is objectionable under these delineated rules of evidence.

## CHAPTER 7

## PREPARATION OF A TRIAL NOTEBOOK

The trial of a case, whether to a judge or to a jury, is an attorney's opportunity to create a masterful presentation of his or her case through words, pictures, exhibits, and even body language. The more masterful the presentation, the more professional, and even credible, the attorney becomes. To aid you in your organization and presentation of this case in representation of your client, you should prepare your own trial notebook, which at least in part, has the same elements as the trial notebooks used by the most skillful attorneys in their trial presentations.

1. The first section in your trial notebook should be the Directory, which is a list of names, phone numbers and addresses (and even class schedules) of all persons who are directed in any way with the case, i.e., witnesses, the opposing party’s witnesses, your teacher and attorney coach. (See Sample Directory at end of this chapter.)

2. In addition to the Directory section, a separate Witness List should be prepared by determining the order in which your witnesses will testify. In determining the order of your

witnesses, you must be aware that neither the judge nor the jury knows any details of the case, therefore, it is best to inform the court of the facts of your case through a strong fact witness as early as possible in your case. Expert witnesses usually testify after all the other witnesses because an expert's opinion is predicated on the facts of the case. *Note:* It may be best to determine the order of your witnesses *after* you have completed the other sections of your trial notebook so that you will be better acquainted with the facts and the witnesses. You might also contemplate the order of witnesses your opponent will use in the presentation of his/her case, as this will add to your preparedness if such order of witnesses were to come to fruition. The Witness List could also be used to document the assignment of roles. (See sample Witness List at the end of this chapter.)

3. The next section of your trial notebook should be a Things To Do section. This will provide a convenient checklist for general procedures and tasks that need to be completed before you are ready to try your case. A sample list has been provided for you at the end of this chapter, but you are encouraged to add to the list all of the smaller tasks you find necessary to accomplish the outlined tasks. You are also encouraged to create deadlines for each tasks. As you complete each task, you can check it off. This will help with feelings a sense of accomplishment and progress as you near your goal of an organized presentation at trial.

4. The fourth section of your trial notebook is probably the most vital part of your trial preparation, the Sources of Proof section. In this section you should chart the prosecution's accusations as well as defendant's rebuttals. Next to each statement note the facts necessary to prove it. Then, along the side of your list of facts should be the witnesses and/or evidence you will use to prove those facts. (See Sources of Proof Chart at the end of this chapter.)

5. However, before you begin the Sources of Proof chart, you may find it necessary to determine the testimony of each witness, considering likely objections. One of the best ways to determine what a witness *can* testify to is to chart each witness's testimony. (See Testimony Charts at the end of this chapter.)

   Once all of these charts are completed, you will be ready to prepare your opening and closing statements, which, upon completion, should be included in your trial notebook. In addition, you should utilize these charts to help you to formulate both direct and cross examination questions for each witness, which of course, can be included in your notebook.

6. The last section of your trial notebook is the working section, Trial Notes and Exhibits. In this section you can list your exhibits by number or letter. Then at trial they may be checked off as the exhibit is offered into evidence. You may also want to take notes of some of the testimonies at trial so you can formulate an up-the-moment closing argument for your client.

This version of a trial notebook is rather abbreviated and not as detailed as those that attorneys use for real trials. You will learn from this experience some of the preparation that trial attorneys undertake to acquaint themselves with the witnesses and facts of the case. It is this preparation that assists attorneys in doing their best when representing their clients at the trial level.