

Handout 8

Evidence Overview

Not all of this evidence can be used at trial. The Rules of Evidence regulate what kinds of evidence can be used during the trial. The following explains some of the rules of evidence. We will use the case about the Bible-only prison policy to provide an example of the rules, including potential objections that can be raised, responses, and likely outcomes.

- *Relevance*. All evidence and witness questions and answers must be *relevant*—that is, only evidence that is related to the case's subject and helps to establish a legal proposition at issue in the case may be considered.
 - **Question:** Mr. Anthony, are you a Christian?
 - **Objection:** Objection, Your Honor, this question is irrelevant to this case.
 - **Response:** Your Honor, this series of questions will show that Mr. Anthony is using the Bible-only policy to push a Christian agenda.
 - **Likely result:** The question is probably proper.
- *Hearsay*, or second-hand testimony, is often inadmissible (not allowed) in court. Witnesses usually must have directly seen, heard or experienced whatever it is they are testifying about. This is to improve the reliability of the testimony. For purposes of this mock trial hearsay evidence is only allowed if the witness is repeating a statement that was made directly to him by another witness in the case.
 - **Testimony:** My cellmate Joe told me that the rule in this prison was, I couldn't keep the Koran in my cell.
 - **Objection:** Objection, Your Honor, hearsay.
 - **Likely result:** This hearsay testimony isn't reliable (there are much better ways to find out what the rule was), so the objection would be sustained.
- *Character evidence*, defined broadly as any evidence showing a person's general tendency to act in a certain way, is nearly always inadmissible. This is because character evidence is often unfairly prejudicial, wastes time, and confuses the jury.
 - **Question:** Mr. Williams, how many times have you been incarcerated?
 - **Objection:** Objection, Your Honor, counsel is trying to introduce character evidence.
 - **Response:** Your Honor, this series of questions will show that the bible-only policy is commonly used in prisons.
 - **Likely result:** The response is very unpersuasive. It seems much more likely that the real goal of the question is to taint Mr. Williams' credibility by portraying him as a repeat offender. The objection would likely be sustained.
- *Privileged information*, such as conversations between a husband and wife, a client and a lawyer, or a patient and a doctor, is excluded from trial. This is because we want to respect these types of private relationships, and not encourage distrust or betrayal.

Other rules of evidence govern the form of questions and answers.

- Lawyers cannot ask their own side's witnesses *leading questions*—questions phrased in a way that suggests the desired answer. This is to protect against untruthful answers.
 - **Question.** Mr. Williams, you tried to keep the Koran in your cell, didn't you?
 - **Objection.** Objection, Your Honor, counsel is leading the witness.
 - **Resp.** Your Honor, I'll rephrase the question: Mr. Williams, did you try to keep a book in your cell?
- The witness must answer reasonably specific questions, not provide *narration*. In other words, they must limit their answer to the information that the question calls for. This is to limit testimony so that it is relevant and time efficient.
 - **Question:** Did you try to keep any books in your cell?
 - **Witness:** I tried to keep the Koran in my cell. I have read the Koran every day since I could read and keeping the book in my cell, is the only way for me to keep up with my daily prayers. The Koran is a really important book for Muslims like me. It represents . . .
 - **Objection** Objection, Your Honor, the witness is narrating.
 - **Response:** Your Honor, the witness is giving us a complete statement of the reason he wanted to keep the Koran in his cell.
 - **Likely outcome:** The judge is likely to say something like: Mr. Williams, please just answer the question; don't go on to talk about related things.
- Except for technical experts, who can give opinions about matters relating to their field, witnesses cannot give opinions in their testimony. Testimony is limited to *facts, not opinions* for witnesses that are not testifying as experts. This is because the opinions of witnesses are typically irrelevant.
 - **Testimony.** Inmate Witness: If every inmate was allowed to keep just one book in their cell, it wouldn't cause a safety hazard.
 - **Objection.** Objection, Your Honor, the witness is giving an opinion.
 - **Likely outcome.** Objection sustained. That kind of opinion is appropriate for an expert, but not for this witness.

Introducing Documents into Evidence

Many times attorneys will want to question a witness about a document—for example, a letter, policy, or report. Before asking the witness about the item, the attorney must first introduce the evidence. To introduce documents (or physical evidence), the parties must follow this procedure.

Attorney: Your honor, I wish to have this document marked for identification as [Plaintiff's Exhibit A, Defendant's Exhibit 1].

(Attorney takes the document to the clerk who marks the Exhibit letter/number. The attorney shows the item to opposing counsel. The attorney then shows the item to the witness)

Attorney: Do you recognize the item marked as [Plaintiff's Exhibit A]?

Witness: Yes.

Attorney: Can you please identify this item?

Witness: [States what the document is e.g. a letter I sent to Brad Smith].

The attorney can begin to ask the witness questions about the document.

Handout 9
Trial Structure

(As the judge enters)

CLERK (hits gavel three times): All rise. (Everyone stands) The U.S. District Court for the District of Oregon, Portland Division is now in session. The Honorable Judge [JUDGE LAST NAME HERE] presiding.

JUDGE: Please be seated. Calling the case of Prison Legal News v. Redwood County Jail. Are both parties ready?

PLAINTIFF and DEFENSE ATTORNEYS: Yes your honor.

JUDGE: We will begin with the Plaintiffs' opening statement.

PLAINTIFF ATTORNEY: May it please the court, I am [name], here representing the plaintiff. [Opening Statement]

JUDGE: We will now hear the Defendant's Opening Statement.

PLAINTIFF ATTORNEY: May it please the court, I am [name], here representing the defendant. [Opening Statement]

JUDGE: We will now hear the plaintiff's case. The plaintiff may call its first witness.

[The following procedure should be used for each witness for the plaintiff]

PLAINTIFF'S ATTORNEY: The plaintiff calls [name]. (Witness walks to stand).

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.

(Plaintiff's attorney questions the witness)

PLAINTIFF'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the defendant have any questions?

DEFENDANT'S ATTORNEY: Yes, we do your honor.

(Defendant's attorney questions the witness)

DEFENDANT'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the plaintiff have any further questions for this witness?

PLAINTIFF'S ATTORNEY: [Yes/No], your honor.

(If the plaintiff's attorneys have more questions for the witness, their redirect is limited to questions arising from the plaintiff's questioning of the witness. The plaintiff's counsel will inform the court when it is finished questioning the witness.)

JUDGE: The witness is excused. Does the plaintiff have any additional witnesses?

PLAINTIFF'S ATTORNEY: Yes, your honor (follow script above)

[or]

No your honor. The plaintiff rests.

JUDGE: The defendant may call its first witness.

[The following procedure should be used for each witness for the defendant]

PLAINTIFF ATTORNEY: The defendant calls [name]. (Witness walks to stand).

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.

(Defendant's attorney questions the witness)

DEFENDANT'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the plaintiff have any questions?

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PLAINTIFF'S ATTORNEY: Yes, we do your honor.

(Plaintiff's attorney questions the witness)

PLAINTIFF'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the defendant have any further questions for this witness?

DEFENDANT'S ATTORNEY: [Yes/No], your honor.

(If the defendant has more questions for the witness, their redirect is limited to questions arising from the plaintiff's questioning of the witness. The defendant's counsel will inform the court when it is finished questioning the witness.)

JUDGE: The witness is excused. Does the defendant have any additional witnesses?

DEFENDANT'S ATTORNEY: Yes your honor (follow script above)

[or]

No your honor. The defense rests.

JUDGE: We will now hear closing argument.

PLAINTIFF'S ATTORNEY: [Closing Argument]

DEFENDANT'S ATTORNEY: [Closing Argument]

JUDGE: Thank you. I will take these arguments into consideration. Court is adjourned.

Handout 10
Courtroom Roles

Role 1: Judge

During the trial, the judge must be attentive, engaged, and in control of the courtroom. Judges need to be familiar with trial procedure to make sure the trial proceeds in an orderly manner, and must resolve disputes about application of the rules. At the close of each subpart of the trial, the judge tells the parties what happens next. Unlike juries, which decide cases simply by voting, and do not need to explain their vote, judges must provide a written explanation of their decisions.

To prepare for the trial you should:

1. Read through all the case and evidence material so that you are very knowledgeable about the facts.
2. Familiarize yourself with the law pertaining to this case. You are going to decide the case by deciding what the legal standard requires based on which facts you believe.
3. Familiarize yourself with trial procedure. This is particularly important for the judge, who needs to make sure everything runs smoothly in the courtroom. Use the space below to write a “cheat sheet” for trial procedure.

Role 2: Witnesses

During a trial, it is important that witnesses only respond to the questions asked of them, and that they stick to their original story. You want the judge to believe that you are a credible witness. The opposing side will try to show that you cannot be believed or that there are inconsistencies in your story.

To prepare for the trial, you should:

1. Read through your statement. As much as possible, try to see this case from your character's perspective.
2. Review the rules of evidence so you know the types of testimony you are permitted to give.
3. Pair up with the other witness from your team to practice questioning each other. This will help you to learn more about your witness. Drill each other until you can answer every conceivable question without looking at your statement. Use the space below to create a "cheat sheet" that you can review before going to the witness stand.

Role 3: Direct Examination Attorneys

Direct examination questions should be designed to get the witness to tell a logical story about what s/he saw, heard, or experienced. The questions should ask only for facts, not for opinions. (For example, "What did you see?" Not "Did that seem dangerous?") You should ask open-ended questions that begin with why, where, when or how. During direct examination, you may only ask questions; you may not make any statements about the facts. You may have the opportunity to conduct a redirect examination if, during cross-examination, your witness says something that requires explanation or correction.

To prepare for the trial, you should:

1. Read through all the statements from your witnesses.
2. Pair up with the other direct examiner from your team and outline a series of open-ended questions for each witness. Review the Rules of Evidence to make sure you know the types of questions you can ask. Think about how the witness's testimony connects to the theory of the case. Write your questions in the space below.
3. Think about how you might rephrase questions in case the witness does not understand, gives an incorrect response, or there is an objection.

Role 4: Cross-Examination Attorneys

During the trial, it is important that you pay close attention to questions and responses given during direct examination. You want to undercut the opposing side's testimony, and you are only allowed to ask questions about subjects that came up during direct examination. Make sure that questions are not long or argumentative. It is best if they require only a simple yes or no answer, not long explanations. You don't want to give the witness a chance to explain their response. Leading questions that begin with something like, "Isn't it true that..." *are* allowed, and it is a good idea to use them.

To prepare for the trial, you should:

6. Read the opposing witness statements and think about how they could support the opposing case. Think about how to weaken or cast doubt on their statements. You want to highlight any inconsistencies, to show that the witness's story is implausible.
7. Discuss the questions and responses that might come out of the direct examination. Plot out a series of cross-examination questions you can then use to address the material that comes out of direct examination. Use the space below to record your potential questions.

Role 5: Opening Statement

The opening statement is the introduction to the case and the very first time attorneys get to tell their side of the story. The opening statement should include a summary of the facts, a summary of the evidence, and a statement regarding what your party hopes to get out of the trial.

To prepare for the trial, you should:

1. Work with the other attorneys to understand the core arguments that will be presented.
2. Write the opening statement for the case. The opening statement should paint a picture of the case, summarizing the evidence and testimony.

Role 6: Closing Argument

The purpose of the closing argument is to convince the judge or jury that the evidence presented is enough to win the case. The closing argument should summarize the facts, and evidence, and present a legal argument about how the law requires the judge or jury to interpret the evidence and decide the case.

To prepare for the trial, you should:

1. Work with the other attorneys to understand the core arguments that will be presented.
2. Prepare an outline for the closing argument. You can then write this in full during the trial.

Role 7: Media Reporters

The media reporters will provide a written or oral account of the trial at the close of each day of the mock trial. During the trial, the media reporters must be attentive, engaged, and taking note of everything that happens in the courtroom. The media reporters need to be familiar about the facts of the case and the pertinent law to make sure they fully understand the legal arguments that are being made. Although the media reporters should present both sides, the written account should revolve around a specific theme or lens that shapes the account.

To prepare for the trial you should:

1. Read through all the case and evidence material so that you are very knowledgeable about the facts.
2. Familiarize yourself with the law pertaining to this case.
3. Discuss with the other media reporters potential themes and lenses that you could use in writing the account of the trial.

Role 7: Clerk

The clerk will be responsible for calling the court in session and swearing in the witnesses. During the trial, the clerk will follow the script below.

(As the judge enters)

CLERK *(hits gavel three times)*: All rise. The U.S. District Court for the District of Oregon, Portland Division is now in session. The Honorable [Judge name] presiding.

For each witness:

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.