FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

TRIAL COURTS

Trial Court & District Court

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YOUR STEPS AS A COURTS MEMBER

YOUR MISSION:

Representing a client's interest in a court of law by questioning witnesses and arguing a case before a judge and jury.

THINGS YOU WILL DO AS A COURT MEMBER

- Prepare opening statements, closing arguments and witness questions. Represent your client at trial.
- Meet all deadlines
- Be aware and informed of the responsibilities and duties of Court officials and knowledgeable of the facts involved in the assigned case
- Be prepared to argue the assigned case more than once
- Attend the LAUNCH training session in the fall
- Adhere to the Code of Conduct

Along the way, you will also have the chance to become a better speaker. And as an added benefit, you may even find out a little more about what is going on in the world around you!

WHAT ARE THE COURTS?

HOW THE COURTS WORK

The role of the trial courts is to determine facts, resolve civil disputes and to decide whether or not someone is guilty of a crime. The way the trial courts operate and how a trial runs is similar to what you see on TV (but not exactly). You will learn this through your participation. Once a trial is complete, the results may be appealed to a higher court. Those are the appellate courts. Here is a very basic description of how the trial and appellate courts operate in Minnesota.

THE TYPES OF COURTS:

There are both state and federal courts located in Minnesota. State courts have jurisdiction over state laws, civil disputes involving Minnesota laws and Minnesota residents and state criminal matters. The federal courts in Minnesota have jurisdiction over federal laws, disputes between residents of different states, federal crimes and federal constitutional matters. YIG courts model our state court system.

In Minnesota, the state court system is divided into two parts:

1. **TRIAL COURTS – THIS IS YOU!**
   These courts handle criminal cases, civil disputes (like whose insurance is responsible to pay for a car accident), divorce, child welfare matters, and other matters. These courts are the first level of state courts that attempt to resolve legal disputes. They attempt to resolve disputes through trials and hearings. At trial, a judge (or jury) will hear testimony from witnesses. The judge (or jury) will decide the facts of the case and apply the law to those facts to reach a decision (also known as a "verdict").
2. **APPELLATE COURTS**
   The state appellate courts are the Minnesota Court of Appeals and Minnesota Supreme Court.

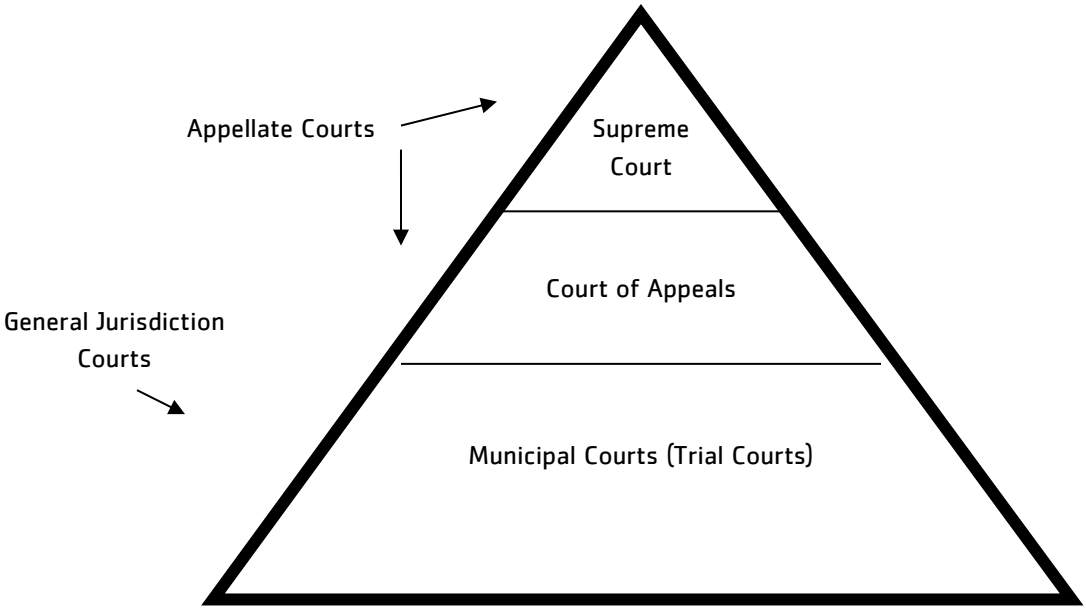
   When you appeal the decision from a lower court, you ask the Court of Appeals or the Supreme Court to review the lower court's interpretation of a law or the lower court's application of the law to particular facts. Appellate courts make their decisions based on written or oral arguments from attorneys and based on whatever other law or cases the court deems to be relevant. The decisions reached by appellate courts are written and (in most cases) published. The collected body of published decisions by appellate courts are referred to as "case law" and are used to understand the laws and constitution of the state.

   There are 19 Judges on the Minnesota Court of Appeals. A typical case for the Minnesota Court of Appeals is heard and decided by 3-5 judges, with no jury. The Court of Appeals has a mandatory

calendar. That means that the Court of Appeals has to hear and reach a decision for every case that is properly appealed from a lower court.

There are 7 Justices on the Minnesota Supreme Court. Typically, all 7 Justices will hear and decide each Supreme Court case. The Minnesota Supreme Court has a discretionary calendar. That means that the Minnesota Supreme Court can decide which cases it will hear. If you appeal to the Minnesota Supreme Court and it declines your appeal, then the lower court's decision is final. If the Supreme Court accepts your appeal, then the Supreme Court's decision will be the final decision on the matter. The Supreme Court's decisions resolve important questions about how we understand, interpret or apply our laws. That's why you will often hear about Supreme Court cases on the news.

HOW THE COURT SYSTEM WORKS TOGETHER IN MINNESOTA:
Each decision by the court can be appealed to the next level, with decisions made by the Supreme Court being the law of the land. Once they speak, it's final!



THE COURTS AT YIG

As a participant in the court program, you will participate as an appellate attorney appearing before the **COURT OF APPEALS** (for 9th and 10th graders) or **SUPREME COURT** (11th and 12th graders) AND you will serve as either a Court of Appeals Judge or Supreme Court Justice.

OR – you will participate in the **TRIAL COURT** (for 9th-10th graders) or **DISTRICT COURT** (11th and 12th graders). Trial/District Court is much like the law part of "Law and Order." This is where guilt or innocence or fault is determined. Each pair of attorneys will serve as a lawyer for one case and each participant also serves as a juror for another case (no preparation is required to serve as a juror).

STUDENT ROLES AND RESPONSIBILITIES

JUDGE
The role of the Judge is to preside at trial and to make decisions regarding the case. Judges make decisions regarding all legal arguments and objections. In a bench trial (where no jury is present), a Judge will serve as the decision maker regarding all factual matters, as well as all legal matters.
The judge is an elected or appointed youth officer.

ATTORNEY
The attorneys represent the parties in a trial. An attorney is an advocate for a client (defendant or the state) at trial. In order to prepare for this role, an attorney will need to (1) read and understand the

facts and rules, (2) develop a theory as to what "actually" happened (hopefully, one that is in line with the interests of the attorney's client), (3) develop arguments that will benefit the attorney's client, (4) prepare questions for witnesses and question witnesses, and (6) prepare and present opening statements and closing arguments for trial.

Attorney (teams) are required to:

1. Prepare to argue both sides of their case
2. Present opening statements
3. Conduct direct examination of witnesses
4. Conduct cross-examination of witnesses
5. Make appropriate objections

Attorneys will argue both prosecution and defense (in separate trials) for their case.

> *Prosecution.* Prosecution presents the case for the state. The prosecution bears the burden of proving the guilt of the defendant beyond a reasonable doubt.
>
> *Defense.* Defense attorneys present the case for the defense. Defense attorneys, through their own witnesses, present the defendant's version of the facts. Defense attorneys poke holes in the prosecution's story and version of the facts.

Every student (other than Judges) will serve as an attorney.

CLERK

Clerks serve as the administrators for the trial. Clerks swear in witnesses. Clerks inform the judge when the parties are ready. Clerks confirm that parties are ready. Judges will select a clerk before each trial from other judges or from attorneys that are not arguing during that time. In order to be prepared for the clerk's rule, a student should read and understand the general trial script (with a focus on the Clerk's roles).

JUROR

It is the job of a juror to listen to and follow the judge's instructions. Jurors hear evidence and testimony, deliberate (discuss a case) and determine the facts in a case.

Every student will serve as a juror during the program.

WITNESSES

Witnesses provide testimony in the cases, based on the witness statements. Witness Statements are included in your Case Materials. Advisors, law students and college students serve as witnesses. Witnesses try to act as though they are the people described in the witness statements.

PREPARING FOR THE COURTS

STEP 1 – LAUNCH TRAINING SESSION

As a court member, your work will begin at LAUNCH. You will have the opportunity to spend most of the day with other court delegates as roles within this program area are decided. Your Program Specialists and Officers will assign attorney partners and cases. You will have the opportunity to ask questions about the case/case law.

Attending LAUNCH is vital to your success at Youth in Government. This information will also be posted on the Center for Youth Voice website. You will receive the following:

CASE MATERIALS

The Case Materials are what you need to read to understand your particular case. They include a summary of the events, a description of the charges and the Judge's instructions to the Jury. Most importantly, the Case Materials contain the testimony of the witnesses that you will be examining. You should briefly examine the summary and carefully read the witness testimony. You will prepare your questions for the witnesses and your opening statement and closing arguments based on the information contained in these materials.

Preparation is the key to a fun and productive court experience. We look forward to working with you during the upcoming YIG conference.

STEP 2 – READING YOUR CASE

Reading case law is a lot like putting together a puzzle. Sometimes you have to be persistent to find which pieces connect together. Sometimes you don't have all of the pieces, so the puzzle is impossible to solve. It is a rare occasion when you are able to fit together the pieces quickly! What we're trying to tell you is that patience is a big part of this program area.

1ST: READ THE FACT PATTERN

Every case starts with a fact pattern. This is the chain of events that leads to the two parties going to court. When a case comes to the Trial or District Courts, it is being heard for the first time, so the decisions made here matter! Your job is look at the facts of the case and seek key pieces that will convince the jury that your client is correct, regardless of which side you are arguing on.

2ND: READ THE CHARGES AND JURY INSTRUCTIONS

Consider what the Defendant is being charged with and what threshold must be met for the Defendant to be found guilty. This section explains what the particular charge means and gives some details about what that kind of charge looks like. Remember, everyone is innocent until proven guilty, so the Jury Instructions allow you to see what needs to be proven to reach a guilty verdict. This is the measuring stick that will be used every time you try your case at YIG.

3RD: CONSIDER THE STIPULATIONS

Stipulations law out the final facts before you get to the Witness Statements and Exhibits (physical evidence) and include information that is not delivered though those means. These may consist of clues relating to how searches were conducted, background on certain witnesses, how Exhibits may be displayed, and even what is and isn't permissible during the Trial. Stipulations contain some of the best hints to help you win a case, so make sure to pay close attention to them.

4TH: REVIEW WITNESS STATEMENTS AND EXHIBITS

Every case contains statements from some witnesses that have been called by the Prosecution and others that have been called by the Defense. Review these thoroughly, as every single thing within them is there to help or hinder your case, regardless of the side your client is on. In fact, during the conference, you will likely be arguing both sides, so make sure you know these inside and out.

Exhibits are physical evidence as it relates to the trial at hand. As is the case with the witness statements, all of these will help or hinder your case and should be studied closely. Check out the "Use of Exhibits" information at the end of this section for more on these.

STEP 3 – PREPARING YOUR COURT MATERIALS

You've read through the case and now you're ready to do some puzzle solving! When presenting any case, the lawyer is an advocate for their client. As an advocate, the lawyer must prepare and present persuasive arguments to the court that are favorable to their client or their client's interests.

In Youth in Government, Trial and District Court Delegates do not compile a brief (described below). Instead, they complete the Case Preparation Worksheet to assist them in composing their arguments. In either program area, delegates must prepare arguments for both sides of their assigned, as they will be representing both the Prosecution as well as the Defense at various points throughout the conference.

On the next page is the "Case Preparation Worksheet." This is a mandatory tool to be used by both Trial and District Court delegates in preparing their materials. You must enter information from this worksheet into Regy.

In the YIG appellate courts, lawyers prepare a brief. In a brief, the lawyer argues for their client in writing. A brief is a formal document a lawyer uses both to convince a court that the client's argument is sound and to persuade a court to adopt that position. A brief must honestly state the law, the facts of the case, and the reasons for the conclusions in a clear and concise manner. The brief writer must attempt to make the client's position seem as strong as possible, emphasizing favorable arguments and minimizing the force of opposing arguments. It is not enough that the client's position appears logical or even desirable—it must seem compelling.

The brief writer knows their basic conclusions in advance. Their work involves a search for arguments and materials to support those conclusions and that show their client's position is stronger and should prevail.

CASE PREPARATION WORKSHEET

You must prepare both sides of your case and be ready to present both. Preparation starts with reading these reference materials, reading your case materials, and discussing them with your partner or others in your delegation. After you have read the materials and discussed them with your partner, then you and your partner should consider going through the exercises set forth below (at least once for each side of the case). Preparation and knowledge of the case materials are important to your success at trial.

GENERAL QUESTIONS

1. Who is the **PROSECUTION**?

2. Who is the **DEFENSE**?

3. In a few brief sentences, describe what really happened from the **PROSECUTION'S PERSPECTIVE**.

Note: "what really happened" is not limited to the statements in the case materials, it includes your theories as to why certain people acted the way that they did or whether or not each witness is telling the truth. For example: While a parent's testimony about a child may claim innocence, you may believe that a parent would lie to protect the child.

4. In a few brief sentences, describe what happened from the **DEFENSE'S PERSPECTIVE**.

5. Identify and rank at least five of the strongest facts and arguments in favor of the **PROSECUTION'S** version of the facts.

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6. Identify and rank at least five of the strongest facts and arguments in favor of the **DEFENSE'S** version of the facts.

   -
   -
   -
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7. For the **PROSECUTION:**
   a. What testimony helps the most?

   b. What testimony hurts the most?

8. For the **DEFENSE**:
   a. What testimony helps the most?

   b. What testimony hurts the most?

9. What are the things (we call them "elements") that must be proven before the defendant can be found guilty of the charges?

10. Rank the elements of each charge from easiest to prove to hardest to prove. (For example: in a murder case, if there is a body, it will be easy for the prosecution to prove that someone has died).

11. For each witness (for both sides), identify the specific facts in the witness testimony that you believe support the **PROSECTION'S** theory of what really happened.

12. For each witness (for both sides), identify the specific facts in the witness testimony that you believe hurt your theory and support the **DEFENSE'S** theory of what really happened.

OPENING STATEMENT

1. Prepare an opening statement (write it down).

2. Practice saying it out loud several times, in front of your partner.
3. Read it to someone who has not read the case. Ask them:
   - Who do I represent?
   - What is this case about?
   - What will my partner and I be trying to show during the trial?
   - What testimony will be important to my partner and my case?

4. Revise your opening statement based on input from your listeners.
5. Now practice giving your opening statement until you can say it from memory.

WITNESSES

1. For each of your witnesses, highlight the information that you need to get from the witness to show what you believe really happened. We recommend using one color highlighter for the information that is helpful to the Prosecution and a different for information that is helpful to the Defense.
2. Think about information for each witness that hurts or distracts from your case. What questions can you ask to minimize the damage that information does to your case?
3. Write down the important questions that you will ask each of your own witnesses (REMEMBER: you will be representing both the Prosecution and the Defense at the conference. Plan accordingly). This will be direct examination. These should not be leading questions.

4. With your partner, decide who will question each individual witness (there is a "one attorney per witness" rule).
5. For each of your opponent's witnesses, highlight information that you need to get to show what you believe really happened.
6. For each of your opponent's witnesses, highlight information that hurts or distracts from your case. What questions can you ask to minimize the harm that information does to your case.
7. Write down the important questions that you will ask each of your opponent's witnesses. This will be cross-examination. These should be leading questions (yes or no answers).

8. With your partner, decide who will cross-examine each witness (one attorney per witness).

CLOSING ARGUMENT

1. Prepare a closing argument (write it down).

2. Practice saying it out loud several times, in front of your partner.
3. Read it to someone who as not read the case. Ask them:
   - What do you think really happened here?
   - What testimony/witnesses are important to my conclusions?
   - Do my arguments sound reasonable? Do they sound believable?
   - Based on what I just read you, would you find in favor of my client?

4. Revise based on comments.

STEP 4 – SUBMIT YOUR COURT MATERIALS

You've completed the Case Preparation Worksheet! Great job! Your arguments at the conference will be all the stronger for it, now.

After gotten feedback on a on the arguments you compiled in the Case Preparation Worksheet, you should write your final draft and submit it on Regy. You have been assigned a template on Regy. The template will have a variety of text boxes. Though the text boxes do not mirror the Case Preparation Worksheet exactly, the work you did to complete it will help you in completing your Regy assignment. Fill in the content, section-by-section, with information from your Case Preparation Worksheet.

Regy has the capabilities for back-and-forth editing. It is possible for your materials to be reviewed by your Delegation Director and you may be given additional instructions/conditions to fulfill before the materials can be submitted to the State Office for distribution to the courts Officers, Officials, and Program Specialists.

Please be prompt in completing your court materials so you and the entire courts team can be well-prepared for Youth in Government. Plan ahead in case of technical difficulties.

IF YOU DO NOT 'FINALIZE' YOUR MATERIALS AND SEND IT TO YOUR DELEGATION DIRECTOR, IT WILL NOT MAKE IT TO THE CONFERENCE.
Please take care that you fully complete the process.

It is strongly encouraged that you bring a printed and digital version of your court materials with you to Youth in Government, just in case something goes wrong. It will help you win your arguments!

PRESENTING YOUR ARGUMENT

Once your court materials are written and submitted, you must figure out how to convince everyone that your brilliant argument should win!

At Youth in Government, you and your partner(s) will present your argument in front of a jury multiple times throughout the weekend. Each time, you may be arguing a different side of the case and you may be arguing against completely different legal teams, so the outcome may be completely different every time you present your case. You need to prepare for anything the witnesses many bring up, address the other side's argument, and focus the jury on the three or four things that should decide the case in your favor.

As such, it is important that you and your partner(s) prepare your argument in advance and practice it! If your team is all from the same delegation, ask your delegation for time to present your argument to fine-tune it and make it MAGNIFICENT! If you have other delegates in the same program area as you, even better! You may have the same case and can practice arguing against each other. Usually, most delegations will have time set aside for this, but you may need to talk to your Delegation Director or Chair. When you do this, keep a few things in mind:

- You are looking for weak points in your argument, so be open for arguments against it.
- Deliberating it with your peers can help you clean up any last messy sections.
- Write down areas that you may need to address as you go along.

If your partner(s) are not in your delegation, use online collaboration tools to prepare your argument. You may be able to FaceTime or Skype to practice. If so, try inviting parents or friends to join so they can give you feedback.

TIPS FOR PREPARING FOR YOUR TRIAL:

1. Your opening and closing argument should be written out in detail for your presentation at Youth in Government. Be creative! Questions for each witness should be written out.
2. A good argument will cover all facets. Use facts and reasoning from your own experiences.
3. Find the facts that help you the most and don't forget to hammer them home.
4. Remember who is being blamed for what – be sure to keep the facts straight.

OKAY! YOU'VE DONE YOUR RESEARCH AND WRITTEN YOUR PRESENTATION
NOW ON TO THE COURT HEARING!

OTHER PREPARATION TIPS

USE OF EXHIBITS

Attorneys may introduce diagrams, reports and notes included under the heading "Evidence" in the Case Materials. Any copies of enlargements that you want to introduce as evidence must be true to the copies included in the Case Materials.

Here are some steps to follow when introducing physical evidence (maps, diagrams, etc.):

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.
2. When you first wish to introduce the item during trial, request permission from the judge: "Your honor, I ask that this item be marked for identification as Exhibit # _."
3. Show the item to the witness on the stand. Ask the witness if he or she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)
4. When you finish using the item, give it to the judge to examine and hold until needed again by you or another attorney.

MOVING THE ITEM INTO EVIDENCE

Exhibits must be introduced into evidence if attorneys want the court to consider the items as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence at the end of the witness examination.

1. "Your honor, I ask that this item (describe) be moved into evidence as the State's (or Defendant's) Exhibit #__ and request that the court so admit it."
2. At this point, opposing counsel may make any proper objections.
3. The judge will then rule on whether the item may be admitted into evidence.

NOW DO SOMETHING WITH IT!

Ask more questions about it to let the jury know why it is important.

DISTRICT COURT PRE-TRIAL MOTION

District Court attorneys are required to prepare and argue a pre-trial motion that will have a direct bearing on their case (prepare both sides). Generally, the pre-trial motion will be an argument between the parties about whether certain charges or certain evidence may be included in your trial.

The judge's ruling on the pretrial motion will have a direct bearing on the charges or evidence in the trial and the possible outcome of this trial.

No written materials are required to be presented. However, it may be a good idea to prepare an outline of your arguments for your own use at the hearing. Arguments should be based on the legal authorities included in the Case Materials

AT THE CONFERENCE

TRAINING

The first day of Youth in Government is devoted to the final preparation of youth lawyers and case preparation. The courtroom procedures and process are explained at that time. This is also when trials and jury duty are scheduled for the weekend.

COURT HEARINGS

This is where all the magic happens! As soon as your case is called in the courtroom, you'll become an attorney and/or the jury. This is your moment to shine, and all your practice and hard work will be put to the test. Some of your time will be spent either listening to presentations by other divisions of the court or making your own presentation. Listen carefully and be respectful towards everyone's presentation so they will do the same for you.

A NOTE ON FACILITIES

We are the first teen program to be permitted to use the prestigious chambers and our relationship with the courts and the Capitol are very important to the future of the program. We expect that all property the YMCA is allowed to use during the course of the program will be treated with respect. The YMCA has always been known as a great organization to work with because of the caliber of its participants. Keep up the great work and thanks for your cooperation!

TIPS ON PRESENTING

- The number one thing to remember while presenting your case is to be **CONFIDENT**. With confidence comes smooth, well-worded arguments.
- Be **PREPARED** – nothing looks worse to a jury than a delegate scrambling through notes to answer a question.
- Be a **MASTER** of the case. If you know the case inside and out, upside and down, you will be beyond ready to adjust to your opponent, answer questions, and win.
- Know as much as you can about both sides of the argument, even if one partner is "specializing" on either side. Witnesses can reveal the right information at the wrong time or otherwise surprise you, so you and your partner(s) should be ready to respond to anything.
- **PERSUADE YOURSELF.** At Youth in Government, each team is required to argue both sides of a case, even if you don't agree with one side. This means that you need to convince yourself that what you are saying is **100% CORRECT, JUST, AND LEGAL,** even if in reality you do not. By doing this, you will not only convince yourself that you are right, but the jury members as well.
- Cut to the chase. Just because an argument is long, often this can distract 'readers' from the central and most important part of your case. You are limited in speaking time so everything you say should have meaning. Cut out the fluff, get to the point and hit it hard.
- **RELAX.** This is supposed to be fun!

TRIAL/DISTRICT COURT HEARING PROCEDURE

1. The judge will be announced and enter the room. Follow the clerk's instructions.

2. Introductions and swearing in of jury members.

3. The presiding judge will ask if each of the attorney teams is ready.

4. The attorneys will deliver their arguments.
    - Each side gets 20 minutes to present their argument. Each attorney on your team **must** deliver a portion of the presentation; typically, teams split the time in half.
    - Examination of witnesses – you examine/cross-examine the witnesses. This is your chance to shape the case based on the questions you ask, and the responses given.
    - Each team will have the ability to redirect and recross-examine witnesses if requested and permitted by the judge.
    - Be courteous when addressing the court. Before beginning your arguments say, "Thank you your honor, may I address the court?" Each member of the attorney team should say that before their presentation.

5. The attorneys deliver closing statements.

6. The presiding judge thanks the attorneys and asks the jury to deliberate the case in private.
    - The jury bases their decision on the persuasiveness of the arguments of the attorneys.

7. Shortly after, the court will reconvene for the verdict. Everyone sits where they did for the hearing, but the procedure is just to read the ruling of the court.

On the following pages, these steps are given in greater detail, along with possible language for them.

STEPS IN A TRIAL

OPENING STATEMENT

The opening statement outlines the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

- Explain what you plan to prove and how you will prove it.
- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

- "Your honor, my name is (full name), the prosecutor representing the State of Minnesota in this action;" or
- "Your honor, my name is (full name), counsel for (defendant) in this action."

Proper phrasing includes:

- "The evidence will indicate that..." "The facts will show..."
- "Witness (full name) will be called to tell..."
- "The defendant will testify that..."

DIRECT EXAMINATION

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions (leading questions call for "yes" or "no" answers.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

- "Your honor, I would like to call _____ (name of witness) to the stand."

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to make the witness feel comfortable. Appropriate inquiries include:

- The witness's name.
- Length of residence or present employment, if this information helps to establish the witness's
- credibility.
- Further questions about professional qualifications, if you wish to qualify the witness as an
- expert.

Examples of proper questions on direct examination:

- "Could you please tell the court what occurred on that day?"
- "What happened after the defendant slapped you?"
- "How clear was your view of the defendant?

- "Did anyone do anything while you waited?"
- "How long did you remain in that spot?"

Conclude your direct examination with:

- "Thank you, Mr./Ms. (last name of witness). That will be all, your honor." (The witness remains on the stand for cross-examination.)

CROSS-EXAMINATION

Cross-examination follows the opposing attorney's direct examination of the witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible.

Cross-examination should:

- Call for answers based on information given in Witness Statements or the Fact Situation.
- Use leading questions, which are designed to get "yes" and "no" answers.
- Reduce the changes that the witness will make a statement supporting your opponent.

In an actual trial, cross-examination is restricted to the scope of issues raised on direct examination. Because YIG attorneys are not permitted to call opposing witnesses as their own, the scope of cross-examination in YIG is not limited in this way.

Examples of proper questions on cross-examinations:

- "Isn't it a fact that…?"
- "Wouldn't you agree that…?"
- "Don't you think that…?"
- "When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

- "I have no more questions for this witness, your honor."

IMPEACHMENT A WITNESS' CREDIBILITY (BELIEVABILITY)

During cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness' credibility (believability). Sometimes it is referred to as "impeaching a witness."

Impeaching a witness' credibility is done by asking questions about the witness' relationships, the witness' prior conduct or prior statements. The goal is to call into question whether or not someone should believe the witness' other testimony.

A witness also may be impeached by introducing the witness's statement and asking the witness whether he or she has contradicted something in the statement (i.e., identifying the specific contradiction between the witness's statement and oral testimony).

Example: (relationship)

- "You're the victim's mother, right?"

Example: (prior statements)

- "The night in question, you told the police officer that you didn't see anything, were not wearing your glasses and that you had only arrived on the scene after the murder took place occurred?"

Example: (Prior conduct)

- "Is it true that you hit your nephew when he was 6-years-old and broke his arm?"

Example: (Past conviction)

- "Is it true that you've been convicted of assault?"

(NOTE: These last two types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened – otherwise, you're badgering the witness.)
Examples: (Using signed witness statement to impeach)

- "Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"
- "Would you read the third paragraph aloud to the court?"
- "Does this not directly contradict what you said on direct examination?"

IMPORTANT: Once you've asked the questions that call into doubt the witness' credibility, you do not declare that the witness is impeached. You have to argue to the jury, as part of your closing argument, that the witness should not be believed.

RE-DIRECT EXAMINATION

Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only. They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination." It is sometimes more beneficial not to conduct re-direct for a particular witness. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.
If the credibility or reputation for truthfulness of a witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to "save" the witness through re-direct. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness's truth-telling image in the eyes of the court.

CLOSING ARGUMENTS

A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:
Be spontaneous, synthesizing what actually happened in court rather than being "pre-packaged."

- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well-organized.
- Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.

Proper phrasing includes:

- "The evidence has clearly shown that…"
- "Based on this testimony, there can be no doubt that…"
- "The prosecution has failed to prove that…"
- "The defense would have you believe that…"

Conclude the closing argument with an appeal to convict or acquit the defendant.

SAMPLE SCRIPTS

Included here are examples of what various parts of a court hearing will look like. Reference this as you prepare with your partner(s) and with your other delegation members.

TRIAL SCRIPT

Clerk: All rise. Court is now is now in session. Judge _____ presiding.

Judge: What is the case, please?

Clerk: State of Minnesota versus _____.

Judge: Is the prosecution ready?

Prosecution: Yes, your honor.

Judge: Is the defense ready?

Defense: Yes, your honor.

Judge: The clerk will now swear in the Jury.

Clerk: Will the members of the Jury please stand and raise your right hand?

[Clerk waits for everyone to comply]

Do you swear to that you will fairly try the case before this court, and that you will return a true verdict according to the evidence and instructions of this court, so help you God? Please say "I do."

[Wait for response]

Please be seated.

Judge: Ladies and gentlemen of the Jury. You have now been sworn in and the trial is about to begin.

Here are some basic rules about your job as a juror:

Your job will be to find what the facts are in this case by considering the evidence.

As judge, I will apply these rules of evidence and tell you what you can and cannot consider as evidence.

What is evidence.

1. Evidence is what a witness says on the stand. This is called "testimony."
2. Evidence can be items like photographs and documents. These items are called exhibits.
3. Evidence can be facts that the parties agree on. These agreements are called stipulations.

What is not evidence:

1. Nothing that the attorneys say during the trial, including opening statements and closing arguments is evidence. However, listen to their statements – they are intended to help you understand the evidence.

2. The attorneys' questions are not evidence. The witnesses' answers are.

3. Objections are not evidence.

4. Anything you hear outside of this courtroom is not evidence.

Deciding the Facts.

It is your job to decide the facts. Your best guide is your own good judgment and experience.

You must decide whether a witness is to be believed and what weight to give a witness' testimony.

This is a criminal trial.

A defendant in a criminal case is presumed to be innocent. This presumption stays with the defendant throughout the trial, until the State has proven the defendant's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. In deciding whether the State has proved its case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, defendant is entitled to a finding of not guilty.

The defendant, _____, is charged with the following:

[READ CHARGES LIST FROM CASE MATERIALS]

I will instruct you later as to the specific findings that you must make in order to reach a decision regarding these counts.

Does the prosecution wish to make an opening statement?

Prosecution: Yes, your honor.

Judge: Proceed

Prosecution: You honor, Ladies and Gentlemen of the Jury …

[Prosecution's opening statement follows]

Judge: Does the Defense wish to make an opening statement at this time?

Defense: Yes, your honor

[In the alternative, defense may reserve its right to make an opening statement later, after the prosecution rests – This is not recommended, but it is an option. If the defense would like to make an opening statement later, when asked if it will make an opening statement now, the defense should state: No, your honor. We will make our opening statement after conclusion of the prosecution's case.]

Judge: Proceed with your opening statement.

Defense: Ladies and Gentlemen of the Jury, your honor …

[Defense makes opening statement]

After opening statements, the prosecution may call its first witness.

Judge: Does the prosecution wish to call its first witness?

Prosecution: Yes, your honor.

[Prosecution Witness Procedure]

[This will be repeated for each Prosecution Witness]

[It mirrors the Defense Witness Procedure]

Prosecution: The Prosecution calls _____.

Clerk: *[Directs witness to the stand – after witness is on the witness stand]*

Please stand and raise your right hand *[Clerk raises right hand as well].*

Do you swear that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

[Alternative: Do you affirm under the pains and penalties of perjury that the testimony that you will give in the case will be the truth, the whole truth and nothing but the truth?]

Witness: I do.

Clerk: You may be seated. Please state your first and last name for the record.

Witness: *[States name]*

Prosecution: *[Begins direct examination]*

Witness: *[Answers direct examination questions]*

Prosecution: *[At the end of Prosecution's questions]*

I have no further questions of this witness, your honor.

Judge: Does the Defense wish to cross-examine this witness?

Defense Yes, your honor *[or "No your honor."]*

[Defense cross-examines witness]

Witness: *[Answers Defense questions]*

Defense: No further questions for this witness, your honor.

Judge: Prosecution, any redirect? [At Judge's option]

Prosecution: "Yes, your honor" or "No, your honor."

[Judge may or may not allow redirect.]

[If judge allows redirect – Judge must allow re-cross]

Judge: *[If no more redirect / re-cross]*

The witness may be excused.

Does the Prosecution wish to call another witness?

[Repeat Prosecution Witness Procedure until the Prosecution does not wish to call any more witnesses]

Prosecution: No, your honor.

Judge: Does the Prosecution rest?

Prosecution: Yes, your honor.

Judge: Does the Defense wish to call a witness

[Defense Witness Procedure]

[This will be repeated for each Defense Witness]

[It mirrors the Prosecution Witness Procedure]

Defense: The Defense calls _____.

Clerk: *[Directs witness to the stand – after witness is on the witness stand]*

Please stand and raise your right hand [Clerk raises right hand as well].

Do you swear that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

[Alternative: Do you affirm under the pains and penalties of perjury that the testimony that you will give in the case will be the truth, the whole truth and nothing but the truth?]

Witness: I do.

Clerk: You may be seated. Please state your first and last name for the record.

Witness: *[States name]*

Defense: *[Begins direct examination]*

Witness: *[Answers direct examination questions]*

Defense: *[At the end of Defense's questions:]*

I have no further questions of this witness, your honor.

Judge: Does the Prosecution wish to cross-examine this witness?

Prosecution Yes, your honor *[or "No your honor."]*

[Prosecution cross-examines witness]

Witness: *[Answers Prosecution questions]*

Prosecution: [No further questions for this witness, your honor]

Judge: [Judge's option]

Defense, any redirect?

Defense: Yes, your honor [or "No, your honor."]

[Judge may or may not allow redirect.]

[If the Judge allows redirect, then the Judge must allow re-cross]

Judge: *[If no more redirect / re-cross]*

The witness may be excused.

Does the Defense wish to call another witness?

[Repeat Defense Witness Procedure until the Defense does not wish to call any more witnesses]

Defense: No, your honor.

Judge: Does the Defense rest?

Defense: Yes, your honor.

[All of the evidence has now been presented]

Judge: Does the Prosecution wish to make a closing argument?

Prosecution: Yes, your honor.

Judge: Proceed

Prosecution: Your honor, ladies and gentlemen of the Jury…

[Prosecution makes closing argument]

Judge: Does the Defense wish to make a closing argument?

Defense: Yes, your honor.

Judge: You may proceed.

Defense: Your honor, ladies and gentlemen of the Jury…

[Prosecution makes closing argument]

Judge: Ladies and Gentlemen, it is now your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict.

As I mentioned before, this is a criminal case. A defendant in a criminal case is presumed to be innocent. This presumption stays with the defendant throughout the trial, until the State has proven the defendant's guilt beyond a reasonable doubt. The defendant does not have to prove innocence.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. In deciding whether the State has proved its case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, defendant is entitled to a finding of not guilty.

After you arrive in the jury room to discuss the case, you must select a jury member to be foreperson. That person will lead your deliberation.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict.

When you agree on a verdict, notify the clerk.

I am about to give you the elements of each of the charges against the defendant.

If you find each of the elements of a count have been proven beyond a reasonable doubt, you must find the defendant guilty of that count. If, however, you find that the State has failed to prove all of the elements of a count beyond a reasonable doubt, then you must find the defendant not guilty on that count.

The defendant in this case has been charged with the following counts:

[READ CHARGES LIST FROM CASE MATERIALS]

****[Alternative A]*

In determining whether the Prosecution has proven these counts beyond a reasonable doubt, you will consider …

[READ SPECIFIC JURY INSTRUCTIONS FROM CASE MATERIALS]

***[Alternative B – Read the following

My clerk will provide you with a copy of the elements of each charge.

When you reach the jury room, read the instructions carefully and begin your deliberation on each count.

Judge: I will now ask the clerk to take you to the jury deliberation room.

Clerk: All rise.

[IF Option B – Clerk Provides copy of the specific jury instructions to the Jury after they are in the deliberating room.]

[Clerk says "All rise whenever Judge or Jury is in motion]

[JURY LEAVES]
[JURY DELIBERATES]
[JURY INFORMS CLERK OF A VERDICT]

Clerk: All rise [for return of the judge]

Judge: The clerk will go get the jury please.

Clerk: All rise [for return of jury]

Jury: [Sits]

Judge: Have you reached a verdict?

Foreperson: Yes, your honor.

Judge: To the charge of _____, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: To the charge of _____, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: To the charge of _____, what is your verdict?

Foreperson: [Guilty/Not Guilty]

Judge: Defense, the Jury has found you [repeats findings].

Ladies and gentlemen of the Jury, you are dismissed.

This case is closed.

SAMPLE OBJECTION SCRIPT

Below is an example script for the process of making an objection. Once a party has made an objection (and stated the nature or reason for the objection), the judge may rule on the objection or may ask either party for additional information or for explanations as to why the judge should sustain (agree with) or overrule (disagree with) the objection. The following is just one example.

Defense:	[Stands]
	Objection, your honor.
Judge:	Grounds?
Defense:	Relevance, your honor.
Judge:	Prosecution, how is this relevant to the charge?
Prosecution:	You honor, I am trying to show...
Judge:	I am going to sustain the objection. Prosecution, ask a different question and move on.
Prosecution:	[Follows judge's instructions and continues with questioning]

ORDER OF THE PRE-TRIAL MOTION

1. Court is called to order
2. Defense (moving party) presents Pretrial Motion arguments
3. Prosecution (opposing party) presents Pretrial Motion arguments
4. Rebuttal arguments (both)
5. Judge rules on motion and thus determines which charges will be in contention during the trial

DISTRICT COURT PRE-TRIAL MOTION SCRIPT

Note: This section does not apply to Trial Court participants – only to District Court participants.

Clerk: [Confirms Prosecution and Defense are ready – Informs Judge When Ready]

All rise. Court is in Session. The Honorable Judge _____ presiding.

Judge: [Enters room – no need to do this if a prior hearing has been conducted]

What case is this one?

Clerk: State of Minnesota versus _____, your honor.

Judge: Very well. This is a hearing on a preliminary motion regarding this case. Both sides will have the opportunity to present their arguments for or against the motion. I may interrupt your presentation at any time to ask clarifying questions.

At the conclusion of the arguments, each side will be offered a brief opportunity to rebut the other side's argument.

At the end of your presentation, I will rule on the motion.

I understand that this is a defense motion. Is the defense ready to begin?

Defense: [Stands]

Yes, your honor.

Judge: Very well. Defense, go for it.

Defense: [Stands]

Thank you, your honor.

[Argues motion - Sits]

Judge: Does the prosecution wish to argue against the motion?

Prosecution: [Stands]

Yes, your honor.

Judge: Go for it.

Prosecution: [Stands]

Thank you, your honor.

[Argues motion - Sits]

Judge: Defense, any rebuttal?

Defense: [Stands]

Yes, your honor.

Judge: Proceed.

Defense: [Stands]

[Brief Rebuttal - Sits]

Judge: Prosecution, any rebuttal?

Prosecution: [Stands]

Yes, your honor.

Judge: Proceed.

Prosecution: [Stands]

[Brief Rebuttal - Sits]

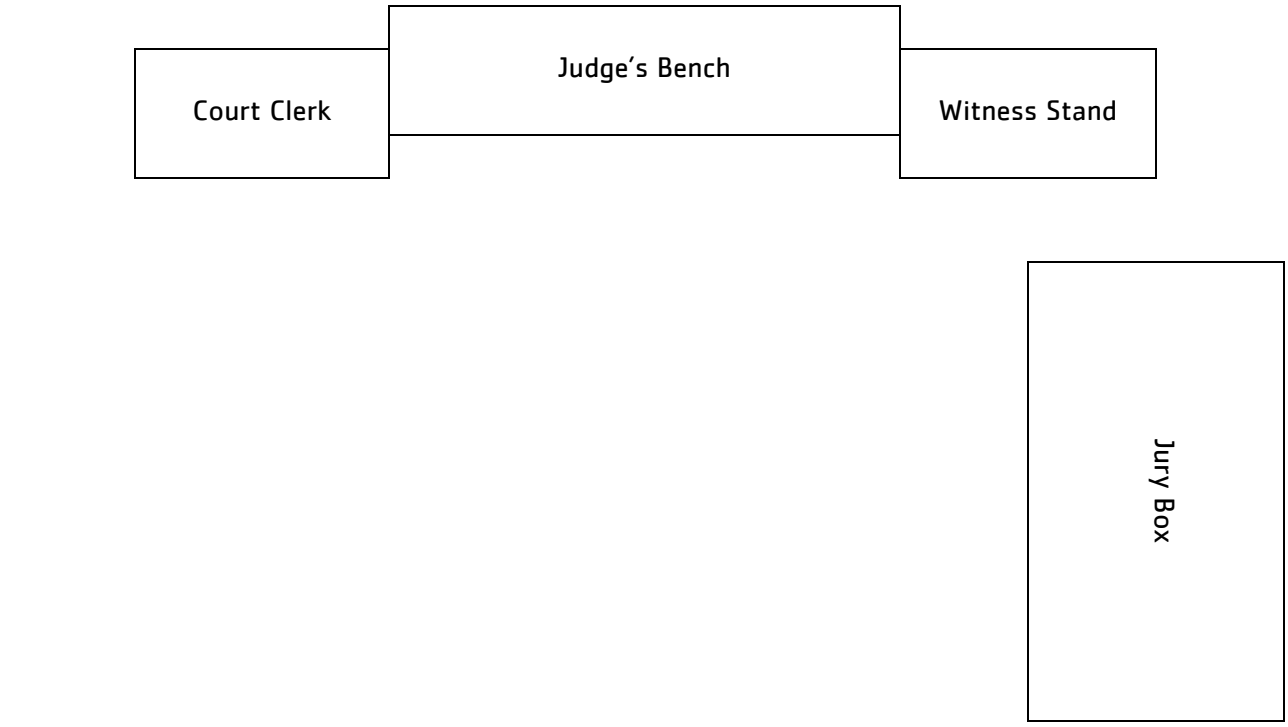
Excellent: At this time, I'm ready to give my ruling.

I rule [for / against] the Defense's motion.

The charge of _____ [will / will not] be included in the charges at trail

Clerk: [Records the results of the pre-trial motion for trial]

DIAGRAM OF A TYPICAL COURTROOM



RESOURCES

GENERAL LEGAL CONCEPTS

THE PRESUMPTION OF INNOCENCE

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof. The prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

THE CONCEPT OF REASONABLE DOUBT

Despite its use in every criminal trial, the term "reasonable doubt" is hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the triers of fact can say that they have a firm conviction of the truth of the charge.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (the judge or a jury) must apply his or her own best judgment when evaluating inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant's guilt. It is up to the fact finder (the judge or the jury) to decide whether an interpretation is reasonable or unreasonable. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

RULES OF EVIDENCE AND OBJECTIONS

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a trial, you need to know 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, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

OBJECTIONS

It is the responsibility of the party opposing the evidence to prevent its admission by a timely and specific objection. Objections not raised in a timely manner are waived. An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. *A single objection* may be more effective than several objections. Attorneys can and should object to questions that call for improper answers before the answer is given.

You are not limited to the objections described in these materials. If you try an objection that is not listed, be prepared to explain it to the judge. 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 includes the following elements:

1. attorney addresses the judge,
2. attorney indicates that he or she is raising an objection,
3. attorney specifies what he or she is objecting to, e.g., the particular word, phrase or question, and
4. attorney specifies the legal grounds that the opposing side is violating.

Example: "(1) Your honor, (2) I object (3) to that question (4) because it is a compound question."

ALLOWABLE EVIDENTIARY OBJECTIONS

1. Relevance

   Relevant evidence makes a fact that is important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue in the trial. The court may exclude relevant evidence if it is unfairly prejudicial, confuses the issues, or is a waste of time.

   Either direct or circumstantial evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial (indirect) evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e., if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

   Example: Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault. 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.

   Objection: "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record." or "Objection, your honor. Counsel's question calls for irrelevant testimony."

2. Laying a Proper Foundation

   To establish the relevance of circumstantial evidence, you may need to lay a 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.

   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 relates to the case.

   Example: If attorney asks a witness if he saw X leave the scene of a murder, 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.

   Objection: "Objection, your honor. There is a lack of foundation."

3. Lack of Personal Knowledge

   A witness may not testify about any matter of which the witness has no personal knowledge. 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: From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

   Objection: "Objection, your honor. The witness has no personal knowledge to answer that question." or "Your honor, I move that the witness's testimony about…be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)

4. Character Evidence

   Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

   Example:

A. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

B. 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 then, the evidence and the prejudicial nature of the testimony might outweigh its probative value making it inadmissible.

Objection: "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."

5. Opinion (other than an expert)
Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible. It is admissible where it is (a) rationally based upon the perception of the witness and (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Example: A witness could testify that, "I saw the defendant who was elderly, looked tired, and smelled of alcohol." All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Objection: "Objection, your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."

6. Expert Witness and Opinion Testimony
An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if he or she has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. Qualified experts may give an opinion based upon personal observations as well as facts made known to them outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may not state an opinion as to whether the defendant did or did not have the mental state in issue.

Example: A doctor bases her opinion upon (1) an examination of the patient and (2) medically relevant statements of patient's relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay but are proper basis for opinion testimony because they are reasonably relevant to a doctor's diagnosis.

Objection: "Objection, your honor. There is a lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

7. Hearsay

   Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not present and under oath and therefore cannot be cross-examined. Because these statements are unreliable, they ordinarily are not admissible.

   Testimony not offered to prove the truth of the matter asserted is, by definition, not hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the subsequent actions of a listener is admissible.

   Example:

   A. Joe is being tried 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.

   B. However, if the witness testifies, "I went looking for Eric because Sally told me that Eric did not come home last night," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents (that Eric did not come home). Instead, it is being introduced to show why the witness looked for Eric.

   Objection: "Objection, your honor. Counsel's question calls for hearsay." or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

Out of practical necessity, courts have recognized certain general categories of hearsay that may be admissible. Exceptions have been made for certain types of out-of-court statements based on circumstances that promote greater reliability. The exceptions listed below and any other proper responses to hearsay objections may be used in the trial.

a. Admission against interest by a party opponent—a statement made by a party to the legal action of the existence of a fact that helps the cause of the other side. (An admission is not limited to words, but may also include the demeanor, conduct, and acts of a person charged with a crime.)
b. Excited utterance—a statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.
c. State of mind—a statement that shows the declarant's mental, emotional, or physical condition.
d. Declaration against interest—a statement that puts declarant at risk of civil or criminal liability.
e. Records made in the regular course of business
f. Official records and writings by public employees
g. Past recollection recorded—something written by a witness when events were fresh in that witness's memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)
h. Statements for the purpose of medical diagnosis or treatment
i. Reputation of a person's character in the community
j. Dying declaration—a statement made by a dying person respecting the cause and circumstances of his or her death, which was made upon that person's personal knowledge and under a sense of immediately impending death.

k. Co-conspirator's statements—(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) the statement was made prior to or during the time that the party was participating in that conspiracy; and (c) the evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of this evidence.

ALLOWABLE OBJECTIONS FOR INAPPROPRIATELY PHRASED QUESTIONS

1. Leading Questions

   Attorneys may not ask witnesses leading questions during direct examination. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

   Example: Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

   Counsel could rephrase the question, "What, if anything, did the defendant say during this conversation about delivering the merchandise?"

   Objection: "Objection, your honor. Counsel is leading the witness."

2. Compound Question

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

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

   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, "Your honor, I will rephrase the question," and then break down the question accordingly. Remember that there may be another way to make your point.

3. Question Calls for Narrative Answer

   A narrative question 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.

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

OTHER OBJECTIONS

1. Argumentative Question

   An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement.

   Example: Questions such as "How can you expect the judge to believe that?" are 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.

   Objection: "Objection, your honor. Counsel is being argumentative." or "Objection, your honor. Counsel is badgering the witness."

2. Asked and Answered

   Witnesses should not be asked a question that has previously been asked and answered. This can seriously inhibit the effectiveness of a trial.

   Example:

   A. 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:

   B. 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.

   Objection: "Objection, your honor. This question has been asked and answered."

3. Vague and Ambiguous Questions

   Questions should be clear, understandable, and as concise as possible. The objection is based on the notion that witnesses cannot answer questions properly if they do not understand the questions.

   Example: "Does it all happen at once?"

   Objection: "Objection, your honor. This question is vague and ambiguous as to what 'it' refers to."

4. Non-Responsive Witness

Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or the witness "forgets" the event in question. This is often purposefully used by the witness as a tactic to prevent some particular evidence from being brought forth.

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

5. 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, opposing counsel may object to them.

   Objection: "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."

OBJECTION CHART

Throughout your trial don't be afraid to stand and make objections. If a question is asked and it seems strange, or out of place to you, it may be objectionable. Here are some more objection situations that might arise during your trial:

OBJECTION	EXPLANATION OF THE OBJECTION	WHY IS IT AN OBJECTION?	EXAMPLE
Argumentative	No question should ask a witness to agree to a conclusion. Nor should a question be asked solely to sway the jury, rather than elicit information from the witness.	We want the facts. We don't want emotionally charged theater.	Objection your Honor, the question is argumentative.
Asked and Answered (Repetition)	No questions should be asked to elicit the same testimony from the same witness (just so the information can be repeated).	We've got limited time. People start to believe things they hear more than once or twice. However, having a witness repeat their own testimony doesn't make it more or less true.	Objection your Honor, this question has already been asked and answered.
Badgering the Witness	Counsel may not harass the witness during testimony.	Verbally abusing a witness gets in the way of the witness providing thoughtful, honest testimony or answering the questions actually asked.	Objection your Honor, badgering the witness.
Relevance	Questions should not be asked if they are not reasonably likely to help the jury reach a verdict in the matters.	We have limited time. We want a logical connection between the questions asked and the trial.	Objection your Honor, how is this relevant to the case?
Lack of Personal Knowledge / Calls for an opinion	A witness may not testify to a fact of which the witness has no personal knowledge.	We want witnesses to tell us what they actually know -- not what they think someone else knows. Not to draw conclusions as to what "might" or "could" have happened" Note: Objection doesn't apply to experts expressing opinions within their area of expertise.	Objection your Honor, lack of personal knowledge.
Leading Question	During direct examination, questions cannot lead the witness towards a conclusion ("yes" or "no" answer). Keep them open ended.	On direct, we want the witnesses to testify in their own words -- not in the lawyers' words. BTW: Leading questions are strongly *encouraged* on cross-examination.	Objection your Honor, leading the witness.
Hearsay	A questions should not elicit an answer that consist of (a) an out of court statement (b) by a declarant (a person) other than the witness (c) that is trying to prove that the statement, itself, is true.	Witnesses are testifying as to what they, themselves, did, said and observed. If someone else did it, said it or observed it, get the declarant to testify under oath. Note: If witness = declarant, not hearsay!	Objection your Honor, hearsay.

EXCEPTIONS TO RULE AGAINST HEARSAY AND A FEW THINGS THAT ARE NOT HEARSAY:			
(a) Present Sense Exception	A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.	The declarant makes the statement as the event is unfolding. Declarant did not have the time to make up the statements. *Example:* many 911 calls.	Not hearsay, your Honor, the question asks about the declarant's present sense impression (describing events).
(b) Excited Utterance	A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.	"Ouch!" "Whoops!" "That piano missed me by an inch!"	Not hearsay, your Honor, the answer involves an excited utterance.
(c) Dying Declaration	A statement (a) made by a declarant while under the belief that the declarant's death was immanent (b) relating to the cause or circumstances of the declarant's impending death.	*Nemo moriturus praesumitur mentire*[1]	Dying declaration, your honor.
(d) Statements by Police Concerning Investigation Steps	Generally, a police officer may testify about statements made by others, such as victims or witnesses, when such testimony is not offered to prove the truth of the declarants' statements, but is instead used to show why or how the officer took certain investigative steps.	Police are explaining why they did or said something in the course of their duties – they are not trying to prove that what the person said was true. "I stopped him because I was told he had drugs." (answers the question: "why did you stop him?").	Exception to hearsay your honor. It is a statement by a police officer concerning investigative steps.
(e) Statement by a party in Interests	Out of court statements by a declarant that is a party to the lawsuit (and is subject to testifying under oath and cross-examination at trial).	Two sides to every trial. If one side said something before trial that hurts its case, let that person confirm or deny it, under oath, in front of the court. The jury can figure it out.	Statement by a party in interest, your Honor. Exception to hearsay.

[1] It's Latin. Look it up.

JUDICIAL TERMS

ACQUITTED: Found by a jury to be cleared from a charge of a crime.

ACTUAL OR CONSTRUCTIVE: Actual implies a real and concrete existence: one which can be directly experienced; Constructive implies a secondhand experience established in the mind of the law through arrangement, interpretation and inference.

ADJUDICATE: To settle or determine the outcome of something through the use of the judicial authority; to litigate.

ADMISSION: A Statement made by a person affirming a fact or circumstances from which guilt may be concluded.

ADVERSE RULING: An order made by a court, which is contrary to your interests.

ADVOCACY: The art of pleading or defending a case.

AFFIDAVIT: Sworn, written statement.

AFFIRM: Generally, an affirmation is an approval of something. In the appellate court, to affirm a judgment is to declare that it is correct and that the decision of the lower court is still in effect.

AMBIGUOUS: Capable of being understood in two or more possible ways.

ANSWER: To answer is an attempt to resist a set of alleged facts introduced by Plaintiff.

APPEAL: The complaint made to an appellate court of an error committed by a lower court whose judgment the appellate court is called upon to reverse or affirm.

APPEAR: To be physically before the court, to be in evidence.

RESPONDENT: The party who won in the trial court or lower court who is answering a petition or appellant's case in the appellate court.

APPELLANT: The party who brings an appeal to a higher court because they lost in the lower or trial court.

ARBITRARY: An action not based on any rational factors.

ARRAIGNMENT: The arraignment of an accused consists of calling the prisoner by name, reading the charge and asking for the entry of a plea.

ARGUE: To debate on a side of a case before the court.

AUTHORITIES: The body of works, statutes, precedents, judicial decisions or textbooks of the law which deal with questions of law.

CIVIL LAW: That branch of law that relates to private rights as opposed to public wrongs.

CLAIMANT: One who claims or asserts.

COERCION: To be compelled in action or thought against one's will.

COMPLY: To obey or act within the boundaries of a law.

CONCLUSIVE: Beyond question or further inquiry.

CONCUR: To agree; to act together. In the appellate courts, a concurring opinion is one filed by a justice who agrees with the decision stated in the majority opinion but wishes to set forth a separate view of the case.

CONSENT: Implies a voluntary agreement in which one party accepts an action of another.

CONTENTION: Something that is maintained or asserted as truth.

CONTRACT: An agreement between two or more parties.

CONTRAVENES: To oppose or to counter.

CONVICT: To be found guilty.

DECISION: Finding made by a court.

DEFENDANT: The party who stands accused of a civil or criminal wrong.

DISSENTING OPINION: An opinion filed by a justice which disagrees with the majority opinion and sets forth that justice's differing points of view.

DOCTRINE: A rule or well-established principle.

ENACT: To establish by law.

EN BANC: The entire court sitting.

ESTOPPEL: Estoppel is an action that bars a person from saying or doing something because in the past that person had said or done something which contraindicates the new action or words.

EVIDENCE: Anything that is introduced to a court to establish something as a fact.

EVIDENCE, DIRECT: Proof of facts by a witness who saw or heard something relevant to the case, such as an eyewitness.

EVIDENCE, CIRCUMSTANTIAL: Evidence based on a presumption an inference.

EXIGENCY: Calling for immediate action.

EXTRINSIC: From outside sources.

FELONY: A crime punishable by imprisonment in the state prison.

FINDING: After deliberation, the result decided upon.

FINDING OF FACT: A conclusion based on evidence arrived at.

FRAUD: An intentional action done by one party against another which deceived the party.

FUNDAMENTAL LAW: The basic law, like the constitution.

GENERAL LAW: Laws that affect the community at large.

HABEAS CORPUS: A formal writ aimed at stopping an illegal detention.

HYPOTHETICAL: A made up set of facts.

IMMUNITY: A privilege that exempts a person from a charge.

IN RE: Concerning the affair.

INAPPLICABLE: Not suitable; cannot be applied.

INCORPORATE: To write or make a part of.

INDICIA: Signs or indications.

INFERENCE: To draw conclusions from already established facts.

INHERENT: Involved with the essential character of something.

INTEND: To plan on something but not to have yet completed it.

INTERALIA: Among other things.

INTRODUCED INTO EVIDENCE: Presented to a court for finding of fact.

IPSO FACTO: By the fact itself.

JUDICIAL NOTICE: Official recognition of certain facts which are universally accepted.

NEXUS: Latin for the link or band.

OBJECTION: The act of a party taking exception to a matter.

OBJECTION OVERRULED: The court's ruling considering an objection insufficient.

OBJECTION SUSTAINED: To consider the objection sufficient and grant it.

OPINION: Written explanation filed by the court at the close of a hearing listing the reasons and authorities used.

ORDINANCE: An enactment by a city or country of a law.

OVERRULED: To void judgment or decision.

PER SE: By himself, taken alone.

PETITIONER FOR CERTIORARI: Bring the records of a trial court before the appellate court for review by special writ.

PETITIONER: The party presenting the request stated in a petition.

PRESUMPTION: An assumption that something is true without proof.

PREVAIL: To win.

PRIMA FACIE: Latin for a first sight.

PROBABLE CAUSE: A reasonable belief that an allegation is probably true.

PRO SE: By himself.

PROCEEDINGS: The general format used to conduct judicial business.

PROSECUTE: To charge an individual with a crime and follow the case through to end.

QUASH: To make void.

RATIONALE: An explanation of how an opinion was arrived at based upon authorities.

REMAND: To send a case back to the court of origin.

RENDER: To render judgment is to announce the decision.

Response: An allegation made by a defendant in which certain facts are admitted to be true, but are considered by the defendant to be insufficient enough to stop plaintiff from continuing his action.

REVERSE: to overrule; to make void.

SHOW CAUSE: To present a court with reasons why any intended course of action should not be carried out.

SUBPOENA: A command to appear before a court.

SUPRA: Latin for above.

SUSTAINED: A judgment made in a superior court that maintains the decision of a lower court to uphold.

TENET: A principle.

TO WIT: That is to say.

TRIBUNAL: A judicial court; fact finder.

NEXT YEAR

Before you pack up the cases and put the legal pads into storage, you should think about next year and what you might want to do.

If you really enjoyed the debate part of being an attorney or judge…

YOU MAY WANT TO CONSIDER BEING A LEGISLATOR.

Legislators are the people who are in the forefront of the legislative process. They represent the people of the state and try to come up with ways that the government can serve them better – they make, change or get rid of laws. You get a chance to come up with your own good ideas for legislation and use all your debating skills to get your bills passed. Your primary focus is legislation, but you get to speak and debate in groups more, like on the floor of the house and in committee. If you like coming up with new ideas, enjoy debating and speaking in public and want to improve our society, being a legislator may be right for you!

If you liked the debate, but you're interested in national issues…

YOU MAY WANT TO CONSIDER BEING IN THE NATIONAL ISSUES FORUM

Like the legislature, the National Issues Forum debates and discusses issues, and members work to pass proposals through. However, the National Issue Forum focuses on issues related to the federal government, while the legislature works on state issues.

If you are interested in fighting for a cause…

YOU MAY WANT TO CONSIDER BEING A LOBBYIST.

A lobbyist is the person behind the scenes who pushes the legislative process. You probably had some experience with them in committees or debate this year, and hopefully you got to talk to your own teammates. Lobbyists represent clients, and they try and get certain bills to pass or fail depending on how it affects their client's interests. You can use all your debating and negotiating skills to convince legislators to think your way one-on-one, or you can organize campaigns about legislation to reach whole groups. Your primary focus is still legislation and you also get to use your debating skills. If you like networking, have a cause you believe in passionately, and love to convince others to join your cause, being a lobbyist might be right for you!

If you didn't really enjoy the judicial aspect of government…

YOU MAY WANT TO CONSIDER BEING IN THE MEDIA.

The media plays a vital role in the way the government runs, and there are a variety of jobs to choose from. You could be the journalist that discovers the big scoop about a controversial bill, or you may want to run a feature on personalities or social aspects of YIG. You could be a photographer or a layout editor, or even try your hand at advertising. You could interview legislators on a particular bill for a television or radio broadcast. The Media is a great place to be, plus you get a great picture of all the different parts of Youth in Government!

If you loved being a part of Youth in Government…

YOU MAY WANT TO BECOME AN ELECTED OFFICER OR APPOINTED OFFICIAL

YOUTH OFFICERS – GRADES 9 – 12

Officers for the program are elected by participants in each program area at Youth in Government, to take office at the conclusion of the conference and complete their leadership the following January. Youth Officers preside in the program areas during YIG.

APPOINTED OFFICIALS – GRADES 9 – 12

Shortly after Youth in Government, the newly elected Youth Officers appoint delegates to assist in the leadership of their program area. Some appointed positions include: Floor Leaders, Committee Chairs, Administrators, Press Secretaries, and Presiding Judges/Justices.