

# New Hampshire Bar Association's Law-Related Education Program

Presents

## An Overview of the American Legal System

A Guide for Classroom Use  
To Be Used in Conjunction with the  
Mock Trial Competition Handbook  
(Revised September 2004)



*Developed by the New Hampshire Bar Association's Law-Related Education Program, sponsored in part by the New Hampshire Bar Association and the New Hampshire Bar Foundation. Please feel free to contact the NHBA's Law Related Education Coordinator, Robin E. Knippers at (603) 224-6942 ext. 3259 or at [reknippers@nhbar.org](mailto:reknippers@nhbar.org), or visit our website at [www.nhbar.org](http://www.nhbar.org) for more information. We welcome your comments and suggestions at any time.*



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## Introduction

The New Hampshire Bar Association's Mock Trial Program is designed to help students develop:

1. an appreciation of the American justice system;
2. an understanding of the role of law in a democratic society;
3. reasoning, analytical and oral advocacy skills through the application of civility;
4. an understanding of responsible citizenship;
5. an understanding of courtroom procedures and the role and responsibilities of judges, attorneys, jurors, witnesses and court personnel;
6. how to analyze a case and prepare for trial; and
7. how to have fun while developing team unity and an understanding of the law.

This manual attempts to fit the needs of students from elementary school through high school. Given such a wide range of ages and experiences, it is assumed that teachers will supplement or eliminate material as is appropriate. Specific information regarding the rules and procedures of the Mock Trial Competition as well as suggested scripts for particular portions of a trial can be found in the Mock Trial Competition Handbook.

The portions of a trial that the students are expected to be familiar with in order to participate in the Mock Trial Program are:

1. Opening statements;
2. Direct examination of a witness - includes knowing the proper way to ask questions and how to object;
3. Cross-examination of a witness - includes knowing the proper way to ask questions and how to object to questions; and
4. Closing arguments.

Information provided on other aspects of a trial are supplementary in nature and for classroom purposes only.

## Overview of the Judicial System

### I. The Role of Courts<sup>1</sup>

A court's job is to interpret and apply the law that the legislature enacts. Courts apply the law to specific controversies brought before them. They resolve disputes between people, companies and units of government.

Oftentimes, courts are called on to uphold limitations on the government. They protect against abuses by all branches of government. They protect minorities of all types from the majority, and protect the rights of people who can't protect themselves. They also embody notions of equal treatment and fair play. The courts and the protections of the law are open to everybody.

In any state, there are two separate court systems: (1) state courts; and (2) federal courts. The vast majority of cases—over 95%—are handled by the state courts. Most legal business—traffic offenses, divorce, wills and estates, buying and selling property—is handled by the state courts, because all these areas are governed primarily by state laws.

### II. The State and Federal Court Systems

Both the state and federal court systems are created by constitutions. The federal court system is created by the United States Constitution while the state court system is created by the New Hampshire Constitution.

A. The State Court System: Each state has its own court system. Depending on the size of the state, the state court system may have several levels. In New Hampshire, the New Hampshire Constitution sets up the New Hampshire court system. Under Part II, article 72-a, judicial power is vested with the New Hampshire Supreme Court and with the Superior Court. The legislature can create additional courts.

#### 1. The Various Levels of the State Court System

- a. Trial Courts: These courts handle the legal matters of the parties for the first time.
  1. Superior Court - hears cases involving serious crimes, lawsuits involving more than \$1,500, all equity matters and more.
  2. District Court - hears civil cases involving \$25,000 or less, small claims cases (\$5,000 or less), less serious criminal cases, juvenile cases and more.

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<sup>1</sup> American Bar Ass'n, *How Court's Work*, at [http://www.abanet.org/publiced/courts/court\\_role.html](http://www.abanet.org/publiced/courts/court_role.html) (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).

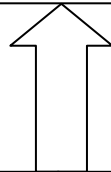
3. Probate Court - hears cases involving wills, trusts, estates, guardianship and more.
  4. Various agencies - while not an actual division of the trial court, agencies hold hearings which resemble trials.
- b. Middle-level Appellate Courts: Appellate courts review the trial court's decision to see if mistakes were made (for more information on the differences between trial and appellate courts please see page 7). This level of court generally exists only in the larger states. New Hampshire does not have a middle-level appellate court. Appellate courts do not have to review every decision from the trial court.
  - c. The Highest-Level Appellate Court: This is the court of last resort and is usually referred to as the "Supreme Court." Reviews decisions from the appellate court or trial court.

The next page contains a diagram illustrating the various levels of the New Hampshire Court System. In New Hampshire, the Supreme Court also reviews the decisions of many administrative agencies.

# THE NEW HAMPSHIRE COURT SYSTEM

## N.H. SUPREME COURT

Hears appeals from all courts, administrative agencies, and supervises the judicial branch, answers questions from federal courts and more.



### PROBATE COURT

Hears cases involving wills, trusts, estates, guardianship and more.

### DISTRICT COURT

Hears civil cases involving \$25,000 or less, small claims cases (\$5,000 or less), less serious criminal cases, juvenile cases and more.

### SUPERIOR COURT

Hears cases involving serious crimes, lawsuits involving more than \$1,500, all equity matters and more.

### N.H. ADMINISTRATIVE AGENCIES

Numerous agencies oversee various departments and hold hearings which resemble court proceedings.

2. Selection of State Court Judges: Judges in state courts are chosen in a variety of different ways. In some states, they are elected. In other states, they are appointed by the governor. Such appointments may require approval by the legislature or by a judicial nominating commission. In New Hampshire, the Governor nominates a judge and the Executive Council confirms the judge. The Executive Council is made up of five elected representatives from each of five districts in New Hampshire.

B. The Federal Court System:<sup>2</sup> Article III of the United States Constitution establishes the judicial branch as one of the three separate and distinct branches of the federal government. The other two are the legislative and executive branches. Through fair and impartial judgments, the federal courts interpret and apply the law to resolve disputes. The courts do not make the laws. That is the responsibility of Congress. Nor do the courts have the power to enforce the laws. That is the role of the President and the many executive branch departments and agencies.

The only court that is specifically mentioned in the United States Constitution is the United States Supreme Court. Article III, § 1 of the Constitution gives Congress the power to create "inferior Courts as the Congress may from time to time ordain and establish." Based on this authority, Congress has created the United States District Courts and the United States Courts of Appeal systems.

1. The Various Levels of the Federal Court System: Just like the state court system, there are three basic levels of courts in the federal system. They are the United States District Courts, the United States Courts of Appeal, and the United States Supreme Court.

a. The United States District Courts: The United States District Courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the District Courts can hear nearly all categories of federal cases, including both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. The United States District Court for the District of New Hampshire is located in Concord, New Hampshire.

b. The United States Courts of Appeal: The United States Courts of Appeal are intermediate appellate courts. The country is divided geographically into circuits. New Hampshire is located within the First Circuit, so

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<sup>2</sup> American Bar Ass'n, *How Court's Work*, at [http://www.abanet.org/publiced/courts/court\\_role.html](http://www.abanet.org/publiced/courts/court_role.html) (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).



appeals from the United States District Court for the District of New Hampshire are heard at the First Circuit in Boston, Massachusetts. Also in the First Circuit are Maine, Rhode Island, Massachusetts and Puerto Rico.

- c. The United States Supreme Court: This is the highest court in the country. The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law.
2. Selection of Federal Judges: The Justices of the Supreme Court, judges of the courts of appeals and the district courts are appointed under Article III of the Constitution by the President of the United States with the advice and consent of the Senate. Article III judges are appointed for life.
- C. When a Case is Heard in State Versus Federal Court: Federal courts are only allowed to hear certain cases according to the United States Constitution. The following are a few examples of the kinds of cases that might end up in federal court: (1) cases arising under the United States Constitution, federal laws, and treaties; (2) cases affecting Ambassadors, other public Ministers and Consuls; (3) controversies to which the United States is a party; and (4) controversies between two or more states or between citizens of different States involving more than \$75,000.

### **III. The Role of Trial and Appellate Courts**

A state court system and the federal court system are made up of both trial courts and appellate courts. Each type of court plays an important but different role in the judicial system.

- A. Trial Courts: A trial court is where a case begins. Both sides usually present evidence, most often by having witnesses testify. Either a judge or a jury can decide the case.
- B. Appellate Courts: After a trial court has finished with a case, one party may not be happy with the results. In that case, one party may attempt to appeal the decision. Appeals are generally heard before a panel of justices. The number of justices on an appellate court in the state court system may vary from state to state, but it is usually odd in number in order to avoid tie votes. For example, the New Hampshire Supreme Court is composed of five justices.

Appellate courts differ from trial courts in that witnesses do not testify and new evidence cannot be presented. Instead, lawyers for both sides present arguments based solely upon what occurred during the trial. To win on appeal, a party needs a

majority vote of the justices. It is extremely difficult to win an appeal.

#### IV. Civil v. Criminal Law<sup>3</sup>

The entire body of law can be divided into two parts: civil law and criminal law.

A. Civil Cases. Civil cases involve conflicts between people or institutions such as businesses. A civil case usually begins when a person or organization determines that a problem can't be solved without the intervention of the courts. In civil cases, one (or more) of these persons or organizations brings suit (i.e., files a complaint in court that begins a lawsuit). Examples of civil suits include automobile collisions, contract disputes, and custody disputes. Another type of civil case is a case that requests injunctive relief. This means that the plaintiff is requesting that the court order something to happen or stop something from happening. For example, if a power plant located next door to your home began dumping hazardous chemicals in a nearby river every Friday, you may want to seek injunctive relief requesting that the court immediately order the power plant to stop such activity.

1. Burden of Proof: The plaintiff in a civil case has to prove its burden to prevail, this is called the "burden of proof." The degree of proof required in a civil case is far less stringent than in a criminal case. The defendant does not have to prove that he or she is not liable.

The next page contains an illustration of how a civil case may move through the New Hampshire Court system.

#### 2. How a Civil Case Moves Through the Courts

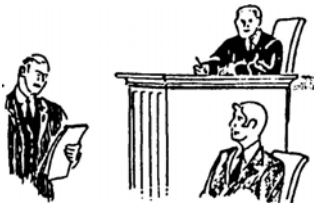


**Legal Counsel:** Mr. and Mrs. Citizen were hit from behind by Mr. Driver. They meet with a lawyer to decide if they should sue Mr. Driver for losses due to their injuries, such as medical bills, lost wages, and pain and suffering.

**Filing Suit:** The Citizens sue Mr. Driver in Superior Court in the county in which they live. The case will usually take a year to prepare before the trial is held. During this time each side investigates their case and is allowed to obtain information from the other side.

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<sup>3</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/courts/cases.html> (last visited October 1, 2004).  
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**Trial:** Mr. Driver asks for a jury trial and says it was not his fault. At trial, twelve adults sit on the jury. Both sides present their evidence to the jury. Attorneys argue their case in closing arguments.

**Jury's Verdict:** The judge instructs the jury to decide the facts and to apply the law to those facts in reaching its decision. The jury deliberates in secret until they reach a unanimous decision. The jurors award \$250,000 in damages to the plaintiffs, Mr. and Mrs. Citizen.



**Appeal:** Mr. Driver's lawyer files an appeal with the NH Supreme Court, located in Concord. Oral Argument: Both lawyers argue their case in front of the five justices of the New Hampshire Supreme Court. Mr. Driver's lawyer claims that the verdict was too high and that errors in the law were made by the trial judge in the manner in which the jury was instructed. The Opinion or Decision: The NH Supreme Court decides Mr. Driver's appeal has merit and overturns the verdict. The Court orders a new trial which will be held again in Superior Court.

- B. Criminal Cases: In contrast to civil law, criminal law involves punishment for acts that have been deemed to be contrary to standards imposed by society. Such punishment may include:
- (a) imprisonment;
  - (b) fines; or
  - (c) restitution (or repayment) for the victim.

Criminal actions may begin with an arrest, a complaint filed by a victim to the authorities that leads to an arrest, or an indictment or information that leads to an arrest. The state is therefore a party to any criminal case involving a violation of state criminal law, and the United States is a party to federal criminal cases.

Violations of criminal law can generally be divided into two types.

- (a) **Felonies.** A felony is crime that has been defined by the legislature as a serious crime. The minimum penalty for a felony is generally greater than one year of incarceration. Examples of felonies are murder, possession of large amounts of illegal narcotics, assault with a deadly weapon, burglary, and arson.
- (b) **Misdemeanors.** A misdemeanor is a crime that has been defined by the legislature as less serious than a felony. An example of a crime considered a

misdemeanor in most states is shoplifting.

1. **Burden of Proof:** In a criminal trial, the burden of proof rests with the government, which must prove beyond a reasonable doubt that the defendant is guilty. The defendant does not need to prove his or her innocence—the burden is on the government.
2. **Right Not to Testify:** Because the government has the burden of proof, the defendant is not required to call any witnesses or present any evidence. This means that the defendant cannot be forced to testify. Because the Fifth Amendment to the U.S. Constitution protects against self-incrimination, the prosecution cannot require the defendant to take the stand and explain what happened, nor can it comment or speculate on the reasons the defendant has chosen not to testify. The jury will be instructed not to take into account the fact that the defendant did not testify.

Below is an illustration of how a criminal case moves through the New Hampshire Court system.

### 3. How a Criminal Case Moves Through the Courts



**Arrest:** Mr. Driver is arrested and charged with aggravated driving while intoxicated, a misdemeanor. The police officer reads him his rights before asking questions about the incident. The police officer files a complaint in court.



**Arraignment:** Mr. Driver is brought before a District Court judge in the area where he was arrested. Mr. Driver enters a plea of not guilty at his arraignment. He is released on bail and given time to obtain a lawyer.



**Trial by judge:** Mr. Driver is presumed innocent until proven guilty. If he chooses a judge trial, the judge decides the facts and makes rulings of law.



**Trial by jury:** If Mr. Driver chooses a jury trial a jury will hear his case. The judge instructs the jury that Mr. Driver is innocent until proven guilty. **Verdict:** Mr. Driver is found guilty and the judge sentences him to jail for 10 days and a fine of \$500. Mr. Driver appeals

to the NH Supreme Court, claiming that the trial judge made an error of law or that insufficient evidence existed for the findings made.



**Appeal to the New Hampshire Supreme Court:** The prosecutor and Mr. Driver's lawyer argue their case in the NH Supreme Court. Mr. Driver's lawyer argues that the conviction should be overturned, claiming errors occurred in the trial court. The Decision or Opinion: The NH Supreme Court decides Mr. Driver's case by reviewing the facts and the law. It upholds the conviction. Mr. Driver is required to serve his 10-day sentence and pay the fine.

## V. THE JUDGES, JURIES AND ATTORNEYS

Judges, juries, and attorneys each play important but different roles in the judicial system.

### A. Judge<sup>4</sup>

Even though he or she works for the state, a judge is not a law enforcement officer. A judge is not a prosecutor. Judges don't arrest people nor try to prove them guilty.

Judges are like umpires in baseball or referees in football or basketball. They make sure that the rules of court procedures are followed by both sides. Like the ump, they call 'em as they see 'em, according to the facts and law—without regard to which side is popular (no home field advantage), without regard to who is "favored," without regard for what the spectators want, and without regard to whether the judge agrees with the law.

### B. Jury<sup>5</sup>

A jury is a group of people summoned and sworn to decide on the facts in issue at a trial. The jury is composed of people who represent a cross-section of the community. People accused of breaking a criminal law are guaranteed the right to a trial by jury by both the state and federal constitutions. Some criminal defendants decided to be tried by a judge instead of by a jury. Parties to a civil case can decide to have their case tried before a judge or a jury.

The jury listens to the evidence during a trial, decides what facts the evidence has established, and draws inferences from those facts to form the basis for their decision. The jury decides whether a defendant is "guilty" or "not guilty" in criminal cases, and "liable" or "not liable" in civil cases. They generally do not have the right to ask questions of witnesses,

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<sup>4</sup> American Bar Ass'n, *How Court's Work*, at [http://www.abanet.org/publiced/courts/judge\\_role.html](http://www.abanet.org/publiced/courts/judge_role.html) (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).

<sup>5</sup> American Bar Ass'n, *How Court's Work*, at [http://www.abanet.org/publiced/courts/jury\\_role.html](http://www.abanet.org/publiced/courts/jury_role.html) (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).

but some judges permit jurors to submit written questions for the judge and lawyers to consider. If appropriate, the questions may be asked.

### C. Bench v. Jury Trial

When there is a jury, the judge decides questions of law, such as what evidence will be admitted while the jury determines or finds questions of fact, such as who ran the red light. Sometimes an entire case is decided by a judge without the help of a jury. In this situation, the judge not only decides how the trial proceeds, the judge also decides who wins or loses.

The judge instructs the jury on the legal principles or rules that must be followed in weighing the facts. If the jury finds the accused guilty or liable, the judge decides the defendant's sentence.

### D. Attorneys

Attorneys (or lawyers) are hired by the parties or by the government to present one side of the case to a jury or to a judge. In a criminal trial, attorneys hired by the government are called "prosecutors." Under both the New Hampshire and the United States Constitutions, a criminal defendant can have an attorney defend him or her. If a defendant cannot afford to hire an attorney on their own, then the government must provide an attorney for the defendant free of charge. In civil cases, both the plaintiff and the defendant must pay for the attorney on their own. If someone cannot afford an attorney in a civil case, that person can attempt to act as their own attorney (which is called acting "pro se").

## VI. Steps in a Lawsuit

Below are highlights of how a lawsuit normally proceeds. Criminal<sup>6</sup> and Civil lawsuits generally proceed in the same way but some important differences in the two types of lawsuits are described below. For the 2004-2005 academic year, the Mock Trial Competition problem is a civil case.

### Step 1: Filing the Civil Lawsuit<sup>7</sup>

1. In civil cases, a paper called a "writ of summons" or a "bill of equity" (complaint) is filed in court. The person filing the suit is often referred to as the "plaintiff;" the person or entity against whom the case is filed is often referred to as the "defendant."
2. The complaint states the plaintiff's version of the facts, the legal theory under which the case is brought (breach of contract, for example), and asks for certain damages or

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<sup>6</sup> The bringing of a criminal lawsuit is more complex than a civil suit, please contact the Bar Association if you would like further details.

<sup>7</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/courts/pleadings.html> (last visited October 1, 2004) (©The American Bar Association. Reprinted by Permission).

other relief.

3. After being notified, the defendant files a response to the complaint (which is called an answer) which admits or denies the allegations made in the complaint.
4. The defendant may file a counterclaim, which says that the plaintiff has injured the defendant in some way, and should pay damages. ("You're suing me? Well then, I'm suing you."). If a counterclaim is filed, the plaintiff must be given the opportunity to respond.

## **Step 2: Lawyers Gather Facts<sup>8</sup>**

To begin preparing for trial and to gather facts about the case, both sides engage in a process called "discovery." Discovery is the formal process of exchanging information between the parties about the witnesses and evidence they'll present at trial. Discovery enables the parties to know before the trial begins what evidence may be presented.

One of the most common methods of discovery is to take depositions. A deposition is an out-of-court statement given under oath by any person involved in the case.

Often a witness's deposition will be taken by the opposing side and used to discredit the witness's testimony at trial if the trial testimony varies from the testimony taken during the deposition (A lawyer might ask a witness at trial, "Are you lying now or were you lying then?").

## **Step 3: Lawyers Prepare for Trial**

Lawyers decide which facts are important to bring out at the trial based upon their burdens of proof and prepare questions that will get witnesses to testify about those facts. Lawyers review their questions with their witnesses, and likely questions to be asked by opposing counsel, before the trial.

## **Step 4: Jury Selection**

In New Hampshire, potential jurors are selected from a list of names that include individuals who hold a valid New Hampshire driver's license and were registered to vote in the last state election. Potential jurors go to a particular court as instructed and wait to see if they will be selected to serve on a jury. The judge usually makes a brief statement explaining what kind of case is to be tried and inquiring whether there is any reason the potential jurors cannot serve. The judge or the lawyers then ask the potential jurors questions as to whether they have any knowledge of the case or have had specific experiences that might cause them to be biased or unfair. This questioning of the potential jurors is known as "voir dire" (to speak the truth).

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<sup>8</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/discovery.html> (last visited October 1, 2004).  
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## Step 5: Trial Begins

### Step 5a: Opening Statements

The purpose of opening statements by each side is to tell jurors something about the case they will be hearing. The opening statements must be confined to facts that will be proved by the evidence, and cannot be argumentative.

The trial begins with the opening statement of the party that brought the case to court. The defense lawyer next presents an opening statement. In some states, the defense may reserve its opening statement until the end of the plaintiff's or government's case. Either lawyer may choose not to present an opening statement.

### Step 5b: Direct Examination by Plaintiff's Lawyer<sup>9</sup>

Lawyers for the plaintiff or the government begin the presentation of evidence by calling witnesses. This is called a "direct examination." Witnesses may testify to matters of fact, and in some instances, give opinions. They also may identify documents, pictures or other items introduced into evidence.

Generally witnesses cannot state opinions unless they are experts. Expert witnesses are people that the judge decides know a lot about a particular subject. For example, a professional baseball player can testify and give his opinion of whether a pitch was a curve ball or a fast ball.

#### Questioning a witness

A lawyer during a direct examination should ask questions that do not suggest an answer, these are called open-ended questions. Open-ended questions usually begin with "who", "what", "where", and "how". For example, "What did you see?" "Who was driving?" Lawyers should not ask "leading questions" on direct examination. Leading questions suggest the answer to witness. An example is, "Isn't it true that you saw John waiting across the street before his wife came home?" Oftentimes a leading question requires a yes or no answer.

#### Objecting to a question

The other lawyer may object to questions asked during direct examination for many reasons under the rules of evidence. Some examples of objections are "leading the witness," or "calls for speculation." Please refer to the Mock Trial Competition Handbook for the Rules of Evidence applicable during the Mock Trial Program.

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<sup>9</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/courts/directexam.html> (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).



Most courts require a specific legal reason be given for an objection. This is the attorney's chance to explain to the judge why he or she does not like the question and why it should not be allowed. The other attorney can then explain why there was nothing wrong with the question. The judge will then either sustain or overrule the objection. If the objection is sustained, the lawyer must re-phrase the question in a proper form or ask another question. If the objection is overruled and the witness answers the question, the lawyer who raised the objection may appeal the judge's ruling after the trial is over.

A ruling by the judge does not mean that the judge is taking sides. He or she is merely saying, in effect, that the law does, or else does not, permit that question to be asked.

### **Step 5c: Cross Examination by Defendant's Lawyer<sup>10</sup>**

When the lawyer for the plaintiff or the government has finished questioning a witness, the lawyer for the defendant may then cross-examine the witness. Cross-examination is generally limited to asking questions only on matters that were raised during direct examination. The purpose of cross-examination is to challenge that to which the witness has just testified.

#### Questioning a witness

During cross-examination, leading questions are usually asked. These are questions that can be answered with a yes or a no response. One reason for allowing leading questions is that the witness is usually being questioned by the lawyer who did not originally call him or her, so it is likely that the witness will not want to help the lawyer as much.

On cross-examination, the attorney might try to question the witness's ability to identify or remember or try to make the witness look dishonest.

#### Objecting to a question

Opposing counsel may object to certain questions asked on cross-examination if the questions violate the state's laws on evidence or if they relate to matters not discussed during direct examination.

### **Step 5d: Presentation of Evidence by the Defense**

Once the plaintiff has finished presenting its case, it is the defendant's turn. The defense lawyer may choose not to present any evidence, in the belief that the plaintiff or government did not meet its burden of proof. Usually, however, the defense will offer evidence.

The defense presents evidence in the same manner as the plaintiff or state, and the plaintiff or government also has the right to cross-examine the defense's witnesses.

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<sup>10</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/courts/crossexam.html> (last visited October 1, 2004).  
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## **Step 5e: Closing Arguments<sup>11</sup>**

When the defense attorney finishes, the attorneys have a final chance to try and convince the judge or jury that they are right. Unlike the opening statement, during closing arguments, a lawyer can argue to the jury regarding the evidence presented. The lawyers cannot talk about issues outside the case or about evidence that was not presented.

## **Step 6: Charging the Jury**

When the attorneys are done, the judge instructs the jury about the relevant laws that should guide its deliberations. The judge reads the instructions to the jury. This is commonly referred to as the judge's "charge to the jury."

In giving the instructions, the judge describes to the jury the issues in the case and defines any terms or words that may not be familiar to the jurors. He or she will discuss the standard of proof that jurors should apply to the case - "beyond a reasonable doubt" in a criminal case, and usually "preponderance of the evidence" in a civil case.

The judge tells the jury that they must follow his instructions regardless of what the jurors believe the law is or ought to be. In short, the jurors determine the facts and reach a verdict, within the guidelines of the law as determined by the judge.

After receiving the instructions and hearing the final arguments, the jury retires to the jury room to begin deliberating. In most states the first order of business is to elect one of the jurors as the foreperson. This person's role is to preside over discussions and votes of the jurors, and often to deliver the verdict.

## **Step 7: Verdict**

After reaching a decision, the jury notifies the bailiff, who notifies the judge. All of the participants return to the courtroom and the decision is announced. The announcement may be made by either the foreperson or the court clerk.

Possible verdicts in criminal cases are "guilty" or "not guilty." In a civil suit, the jury will find for the plaintiff or the defendant. If the jury finds for the plaintiff, it will also usually set out the amount the defendant should pay the plaintiff for damages, often after a separate hearing concerning damages. The jury will also decide any counterclaims that may be part of the case.

After the decision is read and accepted by the court, the jury is dismissed, and the trial is over. At this point either party may decide to appeal all or part of the trial court or jury's decision.

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<sup>11</sup> American Bar Ass'n, *How Court's Work*, at <http://www.abanet.org/publiced/courts/closingarguments.html> (last visited October 1, 2004). (©The American Bar Association. Reprinted by Permission).

## VII. Legal Glossary

**affidavit:** A statement made by a witness under oath.

**answer:** A legal paper filed by a defendant's lawyer in which the defendant denies the complaint against him or her.

**appeal:** A request to take a case to a higher court for review.

**attorney:** A person who has been licensed to represent others in legal matters.

**bailiff:** An officer of the court who has charge of the accused person while he or she is in the courtroom, and also looks after the jurors.

**bench trial:** Where the judge and not the jury decides guilt, innocence or liability.

**beyond a reasonable doubt:** The standard of proof necessary to convict a citizen of a crime.

**charge the jury:** Instructions given to the jury by the judge, prior to their deliberation, in which the judge explains the law pertaining to the case, the possible options the jury has, etc.

**circumstantial evidence:** Indirect facts about the circumstances involved in a case from which you can deduce or figure out how the event might have happened.

**civil judgment:** A court decision in a civil suit which requires one party to pay money or to take certain actions, as a result of the breach of some legal duty.

**civil law:** All areas of the law except those involving crimes.

**civil matters:** Matters or cases pertaining to the private rights of people.

**closing argument:** Summary remarks made to the jury by attorneys for both sides after all the evidence has been presented in a trial.

**compensate:** To make amends; to give something in place of something which has been harmed or lost.

**complaint:** A legal paper filed in court which describes the plaintiff's claim against the defendant.

**court:** Place where civil and criminal trials are held.

**court reporter:** A legal stenographer who records court proceedings.

**crime:** An act which harms others physically, economically or psychologically and which is declared by legislative statute to be illegal.

**criminal case:** An action brought by the state, county, or city against an individual, charging the

person with committing a crime.

**criminal law:** The body of law which deals with acts which are declared crimes against the people.

**cross examination:** Questioning of witnesses for the opposing side during a trial or hearing.

**damages:** Money claimed by, or ordered paid to a person who has suffered injury or loss due to the fault of someone else.

**defense attorney:** The lawyer who represents the defendant.

**deliberation:** The act of discussing and coming to a decision in a legal case.

**deny:** For the judge to refuse to agree to an attorney's statement, objection, desire to enter in evidence, etc.

**deponent:** The person whose testimony is taken at a deposition. See deposition.

**deposition:** Sworn statements made by witnesses in response to questions from an attorney.

**direct examination:** Questioning of a witness during a trial by the attorney who called the witness.

**equity power:** The power of a court NOT to apply an established rule of law to a particular situation in order to avoid an unjust result.

**evidence:** Matters of fact which tend to prove or disprove other matters of fact.

**examination:** The questioning of a witness by a lawyer at a trial or deposition. When the lawyer who called the witness to the stand questions the witness, the examination is called a "direct examination." When the opposing lawyer questions the same witness, it is called "cross-examination."

**expert witness:** A person who, because of training, work or experience, is qualified to testify on the technical or specific facts in a case (for example, a doctor).

**fact:** Something that really exists; a known event or thing.

**felony:** A major crime such as murder, arson, etc. The penalty can be imprisonment in the state prison for more than a year.

**foreperson:** A juror elected by the jury to act as its spokesperson and leader.

**hearsay:** Evidence that a witness has heard from someone else.

**hearsay evidence:** Secondhand evidence; something the witness did not personally see or hear.

**impartial:** Fair; without prejudice; unbiased.

**injunction:** An injunction is a special request that the Court take some immediate action to stop something from happening or to allow something to happen.

**interpret:** To make clear the meaning.

**irrelevant:** Has nothing to do with the case.

**judge:** A person appointed or elected to hear and decide a case, and to make certain that legal procedures are followed.

**judgment:** The judge's decision in a case.

**jurisdiction:** The area and types of cases which a court has authority to hear and to decide.

**jury (Grand):** A jury which hears complaints and accusations of a crime, deciding whether there are sufficient facts to support charges, and can make formal accusations or indictments.

**jury (Trial or Petit):** In New Hampshire, a group of 12 people chosen and found satisfactory to both sides in a lawsuit to decide the facts of the case and to render a verdict.

**lawyer (see attorney):** A person who has been licensed to represent others in legal matters.

**leading question:** A question asked by an attorney to which a witness can answer "yes" or "no."

**liable:** Responsible for paying the damages; having been found to have committed the tort.

**misdemeanor:** A minor offense. The penalty can be a fine or imprisonment of less than a year in a county jail called the "House of Corrections."

**mock:** Make-believe; pretend.

**motion to dismiss:** A request made by an attorney to a trial judge to end or dismiss a case, for example, because of lack of evidence.

**negligence:** An unintentional tort which occurs when damages result from a person's failing to perform a legal duty to exercise a reasonable standard of care for others. Many negligence cases, for example, involve automobiles. The doing of something that a reasonable person would not, or should not, have done, or the failure to do something that a reasonable person would have, or should have done.

**New Hampshire Constitution:** The basic principles, rights, and beliefs of the citizens of New Hampshire.

**opening statement:** Introduction to the case given by the attorneys for each side at the start of a trial.

**overrule:** A judge's decision to deny an objection or motion made by attorneys in the case.

**petitioner:** Another term for a "plaintiff" in a case requesting injunctive relief.

**physical evidence:** Tangible items used to prove or disprove a point in a trial.

**plaintiff:** A person who brings a civil suit in a court of law.

**pleadings:** The documents which form the factual and legal issues to be determined in a civil trial. For example, the plaintiff's complaint and the defendant's answer.

**precedent:** Previous court decisions used for guidance in deciding questions of law in a similar case.

**prejudice:** Predetermined opinion or bias.

**preponderance of evidence:** A lesser degree of proof, used in civil cases, in which the jury or judge decides what, according to the evidence presented during trial, is more likely to have happened than not.

**presumption of innocence:** The theory behind due process, that a citizen accused of a crime by the government must be proved guilty beyond a reasonable doubt by the evidence presented.

**prosecuting attorney:** Lawyer who asserts the interests and rights of the people of the state against the defendant in a criminal trial.

**prove:** Show with evidence that something exists or is true.

**respondent:** Another term for a "defendant" in a case requesting injunctive relief.

**stipulation:** Facts in which both parties to a lawsuit agree.

**sustain:** When the judge agrees with an objection, statement, or motion made by an attorney in a case.

**testimonial evidence:** Statements or depositions by witnesses in a trial. (See evidence, hearsay evidence, testimonial evidence, circumstantial evidence.)

**trial:** A proceeding in a court for the purpose of settling a legal problem by considering the evidence on both sides.

**unanimous:** In total agreement. In N.H. jury decisions, both civil and criminal cases must be unanimous.

**United States Constitution:** The basic principles and beliefs which establish the structures and operation of the federal government of the United States.

**verdict:** The decision made by the jury or judge in a trial.

**voir dire:** "To speak the truth."

