



FOR YOUTH DEVELOPMENT®  
FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY

## YMCA NORTH CAROLINA YOUTH & GOVERNMENT MOCK TRIAL RULES AND PROCEDURES 2018-19 RULES OF EVIDENCE

### TEAM EXPECTATIONS

1. All teams will consist of 6 YAG Judicial delegates from the same district.
2. All team members must attend one YMCA NC YAG Pre-Conference event.
3. Each team must use at least three witnesses and two attorneys in each trial. Different students must play each of these roles during each trial.
4. Teams must be prepared to present both sides of the case (Prosecution and Defense), and will present each side at least once during the conference.
5. All student attorneys must participate with case presentation as follows:
  - a. Each attorney must both direct examine and cross-examine at least one witness.
  - b. One attorney must do the entire opening and one attorney must do the entire closing in each trial. The attorney giving the opening may not also deliver the closing.
  - c. During any particular witness's testimony, objections are only permitted by the attorney conducting that witness's direct examination or cross-examination.
  - d. Each team must call three witnesses for its side of the case.
6. All roles are gender neutral, and may be filled by either male or female delegates.

### TRIAL PREPARATION

1. All participants are expected to adhere to the Code of Ethical Conduct.
  2. Delegates may only cite the materials given as part of the official case materials.
  3. All team members must adhere to the YMCA NC YAG Conference dress code.
  4. No props are allowed as part of witness portrayal.
  5. Demonstratives and visual aides are permitted, provided they do not alter the material facts of the case.
  6. During the trial, witnesses are not permitted to use notes or read for any writing unless questioned or cross-examined regarding an affidavit or trial exhibit.
  7. Attorneys are permitted to use notes in presenting their cases, though their scores may be consequently negatively affected.
  8. Attorneys are to stand when addressing the court
  9. Each witness is bound by the facts as contained in that witness' statement and any related documentation. A witness is not bound by the facts as contained in the statements of other witnesses.
  10. On direct examination, a witness may testify to limited additional facts provided the new information is immaterial to the ultimate issue and is supported by reasonable inference from the witness' statement.
  11. On cross-examination, if an attorney asks for previously unstated information, the witness may testify to limited additional facts provided:
    - a. The answer is directly responsive to the question
    - b. Any new facts are consistent with the witness' statement
- c. The new facts do not materially affect the witness' testimony

### PRE-TRIAL

1. The time allotted for preliminary and pre-trial motions is exactly 5 minutes.
2. Team members should briefly introduce themselves to the judge and evaluators, indicating member's name, delegation, and (if applicable) the witness part he or she will play.

3. The prosecution will be seated at the table closest to the jury box.
4. Teams should be sure to ask the presiding judge his or her policy for asking permissions to approach the witnesses and opposing counsel at this time.

## TRIAL RULES

1. The submission of trial briefs and written motions as evidence is not permitted.
2. Teams may not cite any legal material not issued by the NC YAG Mock Trial Leadership.
3. Water is allowed in the courtroom facility, but otherwise no eating or drinking is permitted inside the courtroom.
4. Team members are to remain seated at or behind the counsel table during trial. Permission must be granted by the presiding judge for team members to approach the bench unless otherwise specified by the presiding judge. Attorneys are to rise when formally addressing the court unless otherwise excused by the presiding judge.
5. All attorney remarks are to be directed to the judge, jury, or witness, never to opposing counsel.
6. The official time will be kept by the respective clerk or bailiff when applicable for each courtroom, though respective teams may keep their own unofficial time.
7. The time for each trial shall be allocated as follows:
  - a. Pretrial motions- 5 minutes (allowed for introductions, set up of scoresheet, etc.)
  - b. Opening statements- 3 minutes per side
  - c. Direct and re-direct- 20 minutes per side
  - d. Cross and re-cross- 15 minutes per side
  - e. Closing statements- 5 minutes per side (the party with the burden of proof may reserve up to 2 minutes for rebuttal at the discretion of the presiding judge)
  - f. Judge notes, jury deliberation, and verdict announcement- 15 minutes
    - i. Total time: **106 minutes**
    - ii. The clock will not necessarily be stopped for objections by opposing counsel, although in the case of excessive objections time may be extended at the discretion of the presiding judge. A trial that runs longer than 125 minutes will result an all-loss system for both competing teams.
8. Re-direct and re-cross examinations are permitted, provided they conform to restrictions listed in the Rules of Evidence. Re-crosses are discouraged unless absolutely necessary.
9. No team may invoke the rule of sequestration.
10. No witness may be automatically considered an expert witness. Attorneys must qualify witnesses and then ask that the witness be qualified as an expert in certain specified fields. Opposing counsel may object that particular opinions are outside the scope of the expert witness, or make other objections allowed by case materials or Rules of Evidence.
11. Witnesses are bound facts stipulated in their respective affidavits, statement of facts, background information, and/or any necessary documentation provided in the case material. Objections by opposing counsel are permitted in the case of witnesses "creating material fact" outside these stipulated facts.
12. Attorneys may request bench conferences with the judge to clear up or protest a significant procedural, mock trial rule violation or factual question. The decision of the presiding judge is final.
13. Team scores are evaluated by a number of legal experts and YMCA volunteers.
14. Conference staff will tally team scores and be responsible for the final ranking of Mock Trial Teams.

## CODE OF ETHICAL CONDUCT

Mock Trial Delegates are expected to adhere to the same high standards of scholarship that are expected of students in their academic performance.

Coaches, observers, guests, advisors, and parents are not permitted to talk to, signal, communicate with or coach any member of a currently competing team during trial. This rule remains during any recess time that is called by the judge, until such time as a verdict is announced by the jury.

Any persons directly associated with the Mock Trial Team's preparation are not allowed to view other teams in competition so long as they remain in the competition themselves.

Delegates must consistently uphold and adhere to the Y Core Values and are expected to show the utmost respect to their competitors and all personnel associated with the YMCA NC YAG Program.

## Y&G Mock Trial Training

**What are you being scored on?**

**Opening Statement:**

- Gives an overview of case
- Has a case theme
- Explains team's theory of the case
- References all three witnesses to be called
- Clear and concise
- Discuss burden of proof
- Non-argumentative
- Asks for a specific verdict
- Attorneys giving opening statements *may* use notes, but points may be deducted
- Stays within time allotted

**Direct Examinations:**

- Properly phrased questions (not leading)
- Proper courtroom procedure
- No objection overuse
- Effective handling of objections
- Knowledge of Modified Federal Rules of Evidence
- No unfair extrapolation
- Handled evidence appropriately and effectively

**Cross Examinations:**

- Properly phrased questions (leading)
- Effective control of witness
- Effective impeachment of witness (where applicable)
- No objection overuse
- Effective handling of objections
- Knowledge of Modified Federal Rules of Evidence
- Handled evidence appropriately and effectively

**Witnesses:**

- No notes (as is required)
- Credibility
- Understanding of facts
- Appropriate courtroom decorum
- Answers all questions properly (no narratives or being non-responsive)
- Avoids unfair extrapolation

**Closings:**

- Gives an overview of the day's trial
- Continues the case theme
- Summarizes team's theory of the case
- References points brought out on all witnesses
- References points that damaged opponent's case
- Clear and concise
- Discuss burden of proof
- Discuss applicable law
- Non-argumentative
- Asks for a specific verdict
- Persuasiveness
- Attorneys giving opening statements *may* use notes, but points may be deducted
- Stays within time allotted

## Opening/Closing

### What you need in a great opening or closing:

1. Theme
  - Short phrase, saying, word
  - Incorporate throughout your case
2. Explanation of facts
  - Explain what facts both sides agree on
  - Explain what facts your side is asserting
  - Explain, clearly and concisely, what you are going to prove throughout the case
3. Explanation of charges
  - Tell what the defendant is charged with
  - Tell how you are going to either prove or refute each aspect of that charge
4. Explanation of reasonable doubt
  - Explain reasonable doubt in a way that favors your side
5. Outline case-in-chief/trial
  - Openers: tell what your three witnesses are going to say
  - Closers: tell what *everyone* said, what weaknesses you showed in the other side's case, and how you proved yours
6. Ask for verdict
  - Openers: tell that your co-council will ask for a verdict at the end of the trial
  - Closers: ask for the verdict

### What not to do:

#### Openers:

- Don't open on hearsay statements, no matter how sure you are that they will get in. It is always possible that these things will get kept out, and then your opening seems weaker.
- Don't open on cross-examination points. It is always possible that you will not get out what you want to on cross, and then your opening seems weaker.
- Don't give a narrative of what the other side is doing. Tell what you will do; even if you are simply refuting their case, you should still spend most of your time explaining how

#### Closers:

- Don't forget about the opening. Explain how your co-council promised something in his/her opening, and how your side has delivered.
- Don't forget about crosses. Explain what you got out on cross, or how you discredited the witness you crossed. It's important that you made holes in the other side's case.
- Don't forget about your case-in-chief either. Even if you destroyed every single witness on cross, it's important to talk about what your side did, as well, particularly for the prosecution.

### What is reasonable doubt?

Well, which side are you on? Reasonable doubt can have a completely different meaning depending on whether you are arguing for the prosecution or defense, and you should explain it in your opening/closing statement accordingly.

#### Prosecution will say...

- Reasonable doubt is a doubt based on reason and knowledge
- It is not based on emotion
- It is not based on a fear of conviction
- It is not based on sympathy
- It is a doubt for which a definite reason can be given

Defense will say...

- Reasonable doubt is the highest burden of proof in our justice system
- If the jury has any reason not to convict the defendant, that is reasonable doubt
- If even a single piece of evidence brought forth by the defense creates even a small doubt, that is reasonable doubt enough to stop a conviction
- If a single piece of evidence the prosecution fails to clarify creates even a small doubt, that is reasonable doubt enough to stop a conviction
- If the prosecution fails to answer any important question fully, that is reasonable doubt enough to stop a conviction

Actually all of this is true. Here's one definition: "Reasonable doubt means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the evidence or lack of evidence. It is not a doubt which is based on mere guesswork or speculation. A doubt which arises merely from sympathy or from fear to return a verdict of guilt is not a reasonable doubt. A reasonable doubt is not a doubt such as may be used to escape the responsibility of a decision."

The bottom line is that both sides can explain the definition in their own terms to make their case seem favorable.

### What is Hearsay?

The most confusing concept ever. Rule 801(c) defines hearsay as an out of court statement brought into court to prove the truth of the matter asserted... Wait what?

The definition of hearsay can be broken down easily into 3 parts

1. Statement
  - Contains an assertion
  - Assertion: claim that something is true, or that the declarant believed something to be true
  - Oral assertions, written assertions, and nonverbal assertions can all be considered statements
2. Out of court... brought into court
  - It should be pretty easy to tell whether or not a statement was made in court, but sometimes this requires clarification
  - Anything that anyone said, wrote, or asserted out of court can be called hearsay
  - It does not matter if the declarant is going to testify in the trial
  - It does not matter if the declarant is the one testifying to what they said
  - It does not matter if the declarant said it while under oath or in an affidavit
  - If it is said out of court, it can be considered hearsay
3. Truth of the matter asserted
  - The statement must be brought into court as evidence that something is true
  - Ex. Person A tells Person B, "It is raining," and then Person B puts on a raincoat. The statement, "It is raining," cannot be admitted to show that it was raining. That same statement, however, would be completely admissible to show why Person B put on a raincoat.

### How to do Things:

#### Impeachment

This is how you make the witness not lie. When a witness says something that contradicts what they said in their affidavit, you impeach them.

1. Hear contradiction
  - When a witness says something wrong, you should immediately know that they did so.
2. Clarify testimony
  - They get a chance to correct themselves, and you get a chance to call attention to their incorrectness
  - "Is it your testimony that \_\_\_?"
3. Ask about affidavit
  - "You prepared a sworn statement before today's trial, correct?"
  - "And you were told to include all relevant facts?"
  - "And you were told to tell the truth in this statement?"

- "And you were given until yesterday to update this document?"
4. Show/verify affidavit
    - Get the affidavit, which should be on your bench
    - Show opp-council. "Let the record reflect that I am approaching opposing counsel with the witness's statement."
    - If they ask you what lines you will be referring to, show them the contradiction, or just say, "the document in its entirety."
    - "May I approach the witness?"
    - "This is a copy of your sworn statement, is it not?"
    - "And that's your signature on the last page?"
  5. Elicit contradiction
    - "Please read along silently as I read lines \_\_\_\_. " \_\_\_\_." Did I read that correctly?"
    - The piece you read should directly contradict what the witness said on the stand.
  6. Retrieve affidavit
    - If you have walked away, "May I approach the witness and retrieve the statement?"
    - Get the statement
    - Walk away like a BOSS.

### Impeachment by Omission

Impeachments by omission are incredibly hard, and run a high risk of being ineffective. Use them sparingly, and only when the witness invents material fact while you are crossing them. That being said, a successful impeachment by omission will usually tank the score of the witness you are crossing.

1. Hear contradiction
 

When a witness says something not in their statement, you should immediately know that they did so.
2. Clarify testimony
  - They get a chance to correct themselves, and you get a chance to call attention to their incorrectness
  - "Is it your testimony that \_\_\_?"
3. Ask about affidavit
  - "You prepared a sworn statement before today's trial, correct?"
  - "And you were told to include all relevant facts?"
  - "And you were told to tell the truth in this statement?"
  - "And you were given until yesterday to update this document?"
4. Show/verify affidavit
  - Get the affidavit, which should be on your bench
  - Show it to opp-council. "Let the record reflect that I am approaching opposing council with the witness's statement."
  - If they ask you what lines you will be referring to, say, "the document in its entirety."
  - "May I approach the witness?"
  - "This is a copy of your sworn statement, is it not?"
  - "And that's your signature on the last page?"
5. Elicit omission
  - "Now can you please show me where in your affidavit where you included \_\_\_?"
  - Generally, they will look through the affidavit. If there is anything in the statement that somewhat mirrors what the witness just said, they will win the impeachment. This is why you do not impeach by omission unless you are ABSOLUTELY SURE there is nothing even remotely like what the witness is saying in the statement.
  - Give them a maximum of 30 seconds to search.
  - "You didn't include that in your statement, did you?"
6. Retrieve affidavit
  - If you have walked away, "May I approach the witness and retrieve the statement?"
  - Get the statement
  - Walk away like a BOSS.

### Entering Evidence

Remember: mark/move

The phrasing of these questions can be modified for the specific piece of evidence or for cross-examination.

1. Establish familiarity
  - "Are you familiar with \_\_\_\_?"
  - "Would you recognize a copy of \_\_\_\_ if you saw it today?"
2. Show/verify evidence
  - Get evidence
  - Show opp-council. "Let the record reflect that I am approaching opposing council with a copy of the document marked Exhibit \_ for identification."
  - "May I approach the witness with the exhibit?"
  - Give the document to the witness
  - "Is this \_\_\_\_?" or "What is this?"
  - "Is it a fair and accurate copy?"
  - "Has it been altered in any significant way?"
  - At this point, if you are attempting to enter this under a hearsay exception, lay that foundation *without talking about the specific contents of the document.*
3. Move to enter
  - "Your honor, at this time, I ask that exhibit \_ be moved into evidence."
  - Be ready for that hearsay objection.
4. Tender
  - Now that it is evidence, you can show it to everyone
  - If you have copies for the judges/jury, "Permission to tender a copy to the bench and publish to the jury?"
  - If not, at the end of the direct or when you are done using the evidence, "Permission to tender to the bench?"

### Tender an Expert Witness

1. Foundation
  - Have the witness explain any and all specialized knowledge, skill, experience, training, and other credentials they have in their field
  - Degrees they have obtained, books they have written, jobs they have held, tenure in those jobs, awards they have won, etc
2. Movement
  - "Your honor, at this time I move that \_\_\_ be qualified as an expert in the field of \_\_\_\_."
  - Choose your field carefully. You have to word it broadly enough that the witness can get out all the facts you want, but tightly enough that opp-council cannot get their objection sustained
3. Objection
  - More often than not, opp-council will object to the qualification of an expert (if not, assume they have a definite reason for it)
  - Be ready to explain how the foundation you have laid satisfies the requirements in 702(a)
  - If the objection is sustained, you can always lay more foundation and try again.

### Objection Cheat Sheet

#### Step 1: Make an objection

#### Form Objections:

##### Argumentative (badgering the witness)

- If the attorney is being too aggressive or if the questions are raised in an unnecessarily argumentative manner
- "Objection, your honor, argumentative," or, "Objection, your honor, opposing council is badgering the witness."
- Applicable rules: 611(a)(3) (protect witnesses from harassment or undue embarrassment)

##### Asked and answered

- The question has been asked and the witness has given a sufficient answer
- "Objection, your honor, asked and answered."
- Applicable rules: 403 (needlessly presenting cumulative evidence/wasting time)

##### Leading

- The attorney asks a leading question on direct examination
- "Objection, your honor, this question is leading."
- Applicable rules: 611(c)

#### Compound question

- When the question has multiple parts. (Ex. "You went to the park and then walked home and then you saw the defendant standing over the victim.")
- "Objection, your honor, this is a compound question."

#### Narrative

- When the question calls for an extremely long speech from the witness, or when the witness gives an extremely long speech
- "Objection, your honor, this question calls for a narrative," or, "Objection, your honor, narrative."

#### Completion

- When opposing council asks a question while the witness is still speaking
- "Objection, your honor, I ask that my witness be allowed to finish his/her answer."

#### Relocation

- When opposing council is standing in an annoying place where you cannot see the witness or the demonstrative
- "Your honor, I ask that opposing council move so I can see my witness," or, "Your honor, I ask that I be allowed to move to see the visual aid."
- Only use this objection in extreme cases

*Comment: Form objections object to the form, not the content of the question, and ask not that opposing council withdraw their question, only rephrase it. Therefore, form objections generally do **NOT** require that a rule be cited.*

### Knowledge Objections:

#### Lack of personal knowledge

- When opp-council has not introduced evidence to show that the witness has knowledge about an event
- "Objection, your honor, lack of personal knowledge."
- Cite Rule 602
- When asked to respond, explain clearly what the witness lacks personal knowledge about

#### Speculation

- When a lay-witness gives an opinion that he/she is not qualified to give
- Use this when someone asks or talks about the state of mind of someone else: what they saw, heard, felt, wanted, decided
- "Objection, your honor, speculation," or, "Objection, your honor, this question calls for speculation."
- Cite Rule 701

#### Improper expert opinion

- When a witness gives an expert opinion as a lay-witness or when an expert gives an opinion outside his/her area of expertise
- "Objection, your honor, this is an improper opinion."
- Cite Rule 702
- When asked to respond, express clearly why the witness is unqualified to give the testimony

#### Lack of foundation

- When opp-council tries to expert a witness without laying the foundation necessary
- "Objection, your honor, opposing council has not laid proper foundation to show that this witness is qualified as an expert in \_\_\_\_ field."
- When asked to respond, explain why the witness is unqualified.

*Comment: Speculation and lack of personal knowledge are **NOT** the same thing. Lack of personal knowledge is a foundational objection and opp-council may be allowed to lay foundation to show personal knowledge; speculation states that the witness may not give the testimony in question.*

### Relevance Objections

## Relevance

- When the question or testimony is irrelevant to the case
- "Objection, your honor, relevance."
- Applicable rules: 401

## More prejudicial than probative

- When opposing counsel elicited testimony that either
- Creates unfair prejudice, confuses the issues of the case, misleads the jury, creates undue delay, wastes time, or needlessly presents cumulative evidence
- Can be to the phrasing of the question (word choice) or to the testimony in general
- Standard is SUBSTANTIALLY more prejudicial than probative
- "Objection, your honor, \_\_\_\_\_ is substantially more prejudicial than probative."
- Cite Rule 403, and the specific problem in that rule the question is causing

## Other Objections

### Hearsay

- When the question calls for hearsay or the witness testifies to hearsay
- "Objection, your honor, this question calls for hearsay," or, "Objection, your honor, this is hearsay."
- Applicable rules: 801, 802
- If opp-council says the testimony is not hearsay, explain why it is
- If opp-council cites an exception under Rule 803, explain why the testimony does not fall under that exception

### Character evidence

- When opp-council tries to enter character evidence to show conformity therewith
- "Objection, your honor, this is improper character evidence."
- Cite Rule 404
- Be prepared to explain that they are showing conformity therewith, and if the character is the defendant or victim why 404(a)(2) does not apply

### Improper impeachment

- When opp-council tries to impeach your witness, but there was no contradiction between the affidavit and the testimony
- "Objection, your honor, this was an improper impeachment. No contradiction was elicited, so any statements read from the affidavit are hearsay."

**Step 2:** "Your honor, I move to strike any relevant testimony."

## What to do When You Get Objected to

**Step 1:** "Your honor, if I may respond..." or "Your honor, may I respond?"

## Step 2: Responses

### Form Objections:

#### Argumentative (badgering the witness)

- If your question was not argumentative, say why
- "Your honor, I can rephrase."

#### Asked and answered

- If the witness did not give the answer you wanted last time: "Your honor, the witness has not sufficiently answered the question," or, "Your honor, I'm simply asking for a yes or a no," or "Your honor, the witness's answer was ambiguous; I'm simply asking for clarification."

#### Leading

- If it was leading: "Your honor, I can rephrase."

- If it was not: "Your honor, my question did not assert any answer."
- If it was a yes or no question, "Your honor, yes or no questions are not inherently leading. A leading question must suggest an answer and my question did not."

#### Compound question

- If it wasn't compound, explain that
- "Your honor, I can rephrase."

#### Narrative

- If it wasn't narrative, explain
- "Your honor, I can rephrase."

#### Completion

- There is no response to this. Apologize and let the witness finish.

#### Relocation

- Move.

*Comment: Form objections object to the form, not the content of the question, and ask not that opposing council withdraw their question, only rephrase it. Therefore, form objections generally do **NOT** require that a rule be cited.*

### Knowledge Objections:

#### Lack of personal knowledge

- If you have laid foundation: "Your honor, proper foundation has been laid to show that the witness has personal knowledge of \_\_\_\_."
- If you have not laid foundation: "Your honor, I can lay proper foundation."

#### Speculation

- Cite rule 701
- "Your honor, under Rule 701, this is a rationally based perception by a lay witness."
- Explain what the witness has said to back that perception (for instance, if the person's face turned red and they frowned and started screaming, that person being angry is a rationally based perception)

#### Improper expert opinion

- If testimony is given by a qualified expert in the field: "Your honor, the witness has been qualified as an expert in the field of \_\_\_\_, and therefore is qualified to give this opinion."
- If the testimony does not require expert testimony in the first place: "Your honor, no expertise is required in this area; the witness is giving this testimony as a lay witness."

#### Lack of foundation

- If you believe proper expert foundation has been laid: "Your honor, under rule 702(a), I have laid foundation to show this witness's credentials in this field."
- If not: "Your honor, I can lay more foundation."

*Comment: Speculation and lack of personal knowledge are **NOT** the same thing. Lack of personal knowledge is a foundational objection and opp-council may be allowed to lay foundation to show personal knowledge; speculation states that the witness may not give the testimony in question.*

### Relevance Objections

#### Relevance

- Explain why the testimony is relevant; tell what fact the testimony tends to make more probable and/or explain why this testimony relates to your theory of the case.
- Bias is always relevant
- Applicable rules: 401
- *Comment: "the bar for relevance is very low," is **NOT** an accurate response to a relevance objection.*

#### More prejudicial than probative

- Explain probative value
- Tell why problem opp-council has is a low risk
- Respond only to the problem opp-council has (Ex. if they say wasting time, do not explain why this doesn't create unfair prejudice)
- "Your honor, to be excluded under Rule 403, evidence must be *substantially* more prejudicial than probative. This testimony, however, has great probative value because \_\_\_\_\_, while the risk of \_\_\_\_\_ is extremely low because \_\_\_\_\_."

## Other Objections

### Character evidence

- First, say that you are not trying to show conformity therewith: "Your honor, this evidence does not go to show conformity therewith."
- Next, say what you *are* trying to do. This will vary greatly depending on the type of character evidence you are using.

If past bad acts: "Under Rule 404(b)(2), evidence of past bad acts is admissible to show \_\_\_ (Motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident)."

If it is about the defendant/victim: "Under Rule 404(a)(2), character evidence is admissible to show evidence of a pertinent trait of a defendant/victim."

If it goes to the truthfulness/untruthfulness of a witness: "This goes to the witness's character for truthfulness/untruthfulness under Rule 608."

## Hearsay

*These are most confusing responses ever. They get their own category.*

### If the defendant made the statement

- If you are the prosecution and the defendant made the statement: "Your honor, this statement is being admitted by a party opponent, and therefore is not hearsay under Rule 801(d)(2)."

### If an expert witness used the statement in his/her conclusions

- "Under Rule 703, an expert witness can testify to all facts and data they used to make their conclusions, even if the facts relied upon were hearsay."

### If the phrase contains no assertion

- This can apply to questions, commands, exclamations, etc.
- This *does not always apply* to questions, commands, exclamations, etc.
- "Your honor, under Rule 801(a) to be a statement, a phrase must contain an assertion. The phrase, "\_\_\_\_" contains no assertion, and therefore cannot be considered hearsay."

### If you are not trying to prove the truth of the matter asserted

- Out of court statements can be admissible for purposes other than to show the truth of the matter asserted.
- Effect on the listener, subsequent action, etc. are all responses to hearsay objections.
- "Your honor, these statements are not being entered for the truth of the matter asserted, but for \_\_\_\_\_."

### If the statement falls within an exception to hearsay in Rule 803

- First, pick an exception. Just one. You cannot effectively argue multiple exceptions at once.
- If your first choice fails, you may be able to ask for a chance to give an alternate response, but *do not count on that*.
- "Your honor, while this statement is indeed hearsay, under Rule 803( ) this is a(n) \_\_\_\_\_, and therefore admissible into court."
- When asked for further response, explain the foundation you have laid to show what exception this is.

*Comment: Things that are **NOT** proper responses to hearsay objections*

- "This witness is testifying today, and therefore can be cross examined, so this is not hearsay."
- "The witness is unavailable to testify, so this is not hearsay."

**IF YOU USE THESE RESPONSES, YOUR STATEMENT WILL BE KEPT OUT OF COURT**

## Sample Direct

### Direct Examination of Billie Isaacs

**Can you please introduce yourself to the court?**

Hi there, I am Billie Isaacs.

**Where do you work?**

I currently work at Starbucks, but I used to work at Dunkin' Doughnuts

**What did you do at Dunkin' Doughnuts?**

Ride operator. Mostly operated the Tunnel of Terror. It was scary!

**What did working as a ride operator entail?**

Have you ever tried dealing with children on rides? Teens tryna' get all frisky, then you have the youngens' who throw up all over the place. They sure as heck did not tell us that in training, then again, what little training we did have.

**Well, what was the training process like?**

You mean 5 minutes where they handed us a sorry excuse of a handbook and said to memorize them?

*\*enter handbook into evidence\**

*\*Is this it, insert sassy stapled papers comment\**

**So, what is the problem with learning from the handbook?**

Like I said, I was a ride operator. No one really showed me how to actually work the rides, and the description of the rides don't make sense whatever

**What does it say in the handbook about the ride controls?**

There's a lever and a button on EVERY ride that does the exact same thing!

**What are these levers and buttons supposed to do?**

There's a big red button that is supposed to be the emergency stop. It makes the ride stop and all the lights come on. And there is supposed to be a blue lever marked maintenance that turns all the lights off and the ride keeps running. But we're never supposed to touch that.

**How is that different from the actual rides?**

It's not supposed to be different. And on most of the rides, it's not! But it's the exact opposite on the Tunnel of Terror!!!!

**What do you mean?**

First of all, nothing is labeled. And on top of that, well, the handbook says that the big red button will stop the ride. But to stop the Tunnel of Terror you have to pull the blue lever. And if you hit the big red button, then all the lights go off! It's the maintenance mode.

**If you weren't trained, how did you find that out? (\*\*or something like that)**

I figured that out after my "training" when I wanted to stop the ride, so I hit the red button just like I had been trained to do.

### **What happened when you hit the red button?**

ALL THE LIGHTS WENT OFF AND THE RIDE KEPT GOING. ...thank goodness only park employees were on there! Tunnel of terror is not an easy ride to operate

### **Move to Aug 30. How did August 30th start?**

Strange day. I was called into Mr(s) Longstreet's office. (s)he kept pulling out bracelets and asking if I could tell the difference! And I couldn't! And she asked a couple of other things too

### **What else did she ask?**

She kept asking if I thought Cameron Poole was trustworthy. She was real intent on whether she could trust Cameron Poole. I didn't really know so I just went back to my ride.

### **How did the day proceed?**

It was a great day! But since I thought Mr. Longstreet was watching a little closer, I didn't want to leave early for once.

### **Did you end up leaving your shift early on August 30<sup>th</sup>?**

Yes. Whit had come up and asked a couple times if everything was okay. And then Whit came and said Longstreet said I could go home early and I would still get paid, and who am I to argue with that? I'm sure not one to look a gift horse in the mouth! So I headed to the locker room to grab my stuff and go home. But I heard something weird

### **What did you hear?**

Well, I saw Mr. Longstreet and Miss Floyd in the office. I wasn't trying to listen, but then they suddenly started screaming! I saw Mr. Longstreet look really upset. His face was red and he was yelling. He was asking about the books and what would happen if the police saw them. I ran off real quick I wish I hadn't seen anything.

### **Why is that?**

The next day I got fired. I didn't even get an explanation! I tried to argue, but he just yelled that NEXT TIME I SHOULD MIND MY OWN BUSINESS

### **Have you seen Mr. Longstreet since you left ?**

It was so strange. I was working at Starbuck's a few weeks later and I saw Mr. Longstreet come in and sit down. Then I saw Cameron Poole walk in! He sat at the table with Mr. Longstreet for a few minutes.

### **Did you see him leave?**

Yes. I saw Cameron Poole take a big black bag from under Mr. Longstreet's table and then leave.

### **Sample Cross – Cross – Rory Shelton**

- You worked at Dunkin' Doughnuts in the summer of 2015?
- And that was the summer that Cameron Poole was working in the ticket booth
- And that was when you started noticing off-brand bracelets
- So you decided to investigate
- You eavesdropped on Cameron Poole
- And you claim you heard some conversations between Cameron Poole and Whit Bowman
- And you thought all of this was suspicious
- So you decided to go to Mr. Longstreet and tell him everything
- You knew exactly what you were to tell Mr. Longstreet, didn't you
- So you went to his office on August 30
- But Mr. Longstreet was busy
- He was talking to Cameron Poole
- They seemed to be having a little meeting, didn't they
- They were whispering
- And then they shook hands

- But decided you'd just come back later
- So you did
- But Mr. Longstreet was busy again
- This time, he was talking to Haley Floyd
- She seemed really upset
- She was yelling
- In fact, she was yelling, "I just can't do this anymore!"
- But Longstreet brought her back into his office
- And you didn't want to interrupt that meeting
- So you decided to come back later
- Because you knew you needed to tell Mr. Longstreet everything you knew about Poole
- Every conversation Cameron Poole had with Whit Bowman
- You were ready to tell Mr. Longstreet everything
- You were ready to be the hero
- But you never got the chance
- Because Cameron Poole robbed the ticket booth
- But on August 30<sup>th</sup> you were interviewed by Detective Kimball
- And he asked you if you had any information
- If you had seen anything suspicious
- Anything involving Whit Bowman
- And at no point did you tell Detective Kimball about any of these conversations
- You told him about where Bowman and Poole worked a few summers ago
- You told him the details of what rides they worked
- You also told him all about JC Longstreet
- You told him about Longstreet and Cameron Poole meeting
- You told him about Longstreet and Haley Floyd meeting
- You never told anyone about Poole and Bowman talking
- And, as far as you know, no one else even heard these conversations