

STEPS IN A MOCK TRIAL

1. The Opening of the Court

Either the Clerk of the Court or the judge will call the Court to order.

When the judge enters, all the participants should remain standing until the judge is seated.

The case will be announced, i.e., "The Court will now hear the case of _____ vs. _____."

The judge will then ask the attorney for each side if they are ready.

A representative of each team will introduce and identify each member of the team and the role each will play.

2. Opening Statement

- (1) Prosecution (in criminal cases)
Plaintiff (in civil cases)

The prosecutor in a criminal case (or plaintiff's attorney in a civil case) summarizes the evidence which will be presented to prove the case.

- (2) Defendant (in criminal or civil case)

The defendant's attorney in a criminal or civil case summarizes the evidence for the Court which will be presented to rebut the case the prosecution has made.

3. Direct Examination by Plaintiff

The prosecutors (plaintiff's attorneys) conduct the direct examination of its own witnesses. At this time, testimony and other evidence to prove the prosecution's (plaintiff's) case will be represented. The purpose of direct examination is to allow the witness to state the facts in support of the case.

Note: The attorneys for both sides, on both direct and cross examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

4. Cross-Examination by the Defendant's Attorneys

After the attorney for the prosecution (plaintiff) has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness.

The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination.

5. Direct Examination by the Defendant's Attorneys

After all the prosecution's (plaintiff's) witnesses have been examined by both sides, the defense will present its witnesses. Direct examination of each defense witness follows the same pattern as the above which describes the process for prosecution's witnesses.

Cross-examination by the prosecution (plaintiff's attorneys).

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

6. Closing Arguments (Attorneys)

(1) Prosecution (Plaintiff)

The closing argument is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a favorable verdict.

(2) Defendant

The closing argument for the defense is essentially the same as for the prosecution. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the fact favorable to the defense and asks for a verdict favorable to the defense.

THE JUDGE'S ROLE AND DECISION (VERDICT)

The judge is the person who presides over the trial to assure that the parties' rights are protected, and the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgement.

SUGGESTIONS FOR STUDENT ATTORNEYS

This memo will outline various techniques and tips to be followed in preparing students to be attorneys in mock trials. Included are suggestions for both the preparation before trial and the presentation at trial of the opening statement, direct examination, cross-examination, and the closing statement.

GENERAL SUGGESTIONS

1. Always be courteous to witnesses, other attorneys, and the judge.
2. Always stand when talking in court and when the judge enters or leaves the room.
3. Dress appropriately (this may mean coat and tie for males and dresses or equivalent for females).
4. Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
5. Those acting as attorneys shouldn't make objections while the other side is asking questions unless you are relatively sure that the judge will agree with your objection (judges don't like attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for the objection).
6. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and the other side.

I. OPENING STATEMENTS

Objective: To acquaint the judge with the case and outline what you are going to prove through witness testimony and the admission of evidence.

Advice in Preparing:

What should be included?

- a. Name of case.
- b. Name of attorney.
- c. Name of client.
- d. Name of opponent.

- e. A short summary of the facts.
- f. Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case.
- g. The applicable law.
- h. A clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case.

Other Suggestions:

- a. Frequently attorneys introduce their colleagues.
- b. Learn your case thoroughly (facts, law, burdens, etc.)
- c. Don't ever promise to prove something you won't or aren't able to.
- d. Write a clear, concise, and well-organized statement.

II. DIRECT EXAMINATION

Objective: To obtain information from favorable witnesses you call in order to prove the facts of your case; to present enough evidence to warrant a favorable verdict; to present facts with clarity and understanding; to present your witness to the greatest advantage; and to establish your witness' credibility.

Advice in Preparing:

What should be included?

- a. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
- b. Be sure all items you need to prove your case will be presented through your witnesses.
- c. Use clear and simple questions.
- d. Elicit information through questions and answers.
- e. Never ask a question to which you don't know the answer.

Other Suggestions:

- a. Avoid asking leading questions.
- b. Practice with your witnesses.

Advice in Presenting:

- a. Try to keep to the questions you've practice with your witnesses and ask a limited number.
- b. Be able to think quickly if the witness gives you an unexpected answer and add a short follow-up to be sure you obtain the testimony you wanted.
- c. Be relaxed and clear in the presentation of you questions.
- d. Listen to the answers.
- e. If you need a moment to think, ask the judge if you can discuss a point with your co-counsel for a moment.
- f. Be sure to have all documents marked for identification before you refer to them at trial; then refer to them as Exhibit A, or Exhibit 1, etc. After you have finished using the exhibit, if it helps your case, ask the judge to admit it as evidence.

What Does the Opposing Attorney Do During This Time?

- a. Objects to testimony of introduction of evidence when necessary.
- b. Takes down pertinent testimony and prepares for cross-examination of witnesses.

III. CROSS-EXAMINATION

Objective: To make the other side's witnesses less believable in the eyes of the trier of fact; to negate you opponent's case; to discredit the testimony of your opponent's witnesses; and to discredit the evidence which has been presented.

Advice on Preparing:

- a. Attorney should attempt to explain, modify, or discredit that which has been introduced as evidence.
- b. Use narrow, leading questions.
- c. Do not have witness repeat statements unless you are leading somewhere.

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Types of Questions to Ask:

- a. Questions that establish that the witness is lying on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there).
- b. Questions that show that the witness is prejudiced or biased (e.g., the witness testifies that he or she has hated the defendant since childhood).
- c. Questions that weaken the testimony of the witness by showing his or her opinion is questionable because he or she was in a poor position to see the incident (e.g., the witness with poor eyesight claims to have observed all the details of a fight that took place 500 feet away in a crowded bar).
- d. Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (e.g., a psychiatrist testifying to the defendant's need for dental work or a high school graduate testifying that in his or her opinion the defendant suffers from a chronic blood disease).
- e. Questions that reflect on the witness' credibility by showing that he or she has given a contrary statement at another time (e.g., the witness testifies to the exact opposite of what he or she testified to during the pretrial hearing).

(This may be done by asking the witness, "Did you make this statement on June 1st?"; and then read it or show a signed statement to the witness and ask, "Is this your statement?"; and then ask the witness to read part of it aloud or read it to the witness yourself and ask, "Did you say that?")

Other Suggestions:

- a. Anticipate each witness' testimony and write your questions accordingly. Be ready to adapt your question at trial depending on the actual testimony.
- b. Never ask anything but a leading question (questions that suggest the answers and normally only require a yes or no answer).

- c. Be brief. Don't ask so many questions that well-made points are lost.
- d. Prepare short questions using easily understood language.

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Advice in Presenting:

- a. Be relaxed and ready to adapt your prepared question to the testimony that is actually heard during the direct examination.
- b. Always listen to the witness' answer.
- c. Don't give the witness the opportunity to reemphasize the strong points made during direct examination.
- d. Don't quarrel with the witness.
- e. Never try to allow the witness to explain anything. Keep to the yes or no answers whenever possible. Try to stop the witness if his or her explanation is going on and hurting your case by saying, "You may stop there, thank you." or "That's enough, thank you."
- f. Don't harass or intimidate the witness by the questions you ask them.
- g. Know your case inside and out.
- h. It is essential that you appear confident in your case.
- i. Eye contact with the judge is recommended.
- j. Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.).
- k. Do not read all the way through; look up occasionally at the judge.

IV. RE-DIRECT AND RE-CROSS EXAMINATION

If either attorney wishes, he/she can conduct re-direct or re-cross examination (this privilege is within the judge's discretion). This is most often done to either re-establish or again discredit statements by the witness.

V. CLOSING STATEMENTS:

Objective: To provide a clear and persuasive summary of : (1) the evidence you presented to prove the case, and (2) the weaknesses of the other side's case.

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Advice in Preparing:

What should be included?

- a. Thank the judge for his/her time and attention.
- b. Isolate the issues and describe briefly how your presentation resolved these issues.
- c. Review the witness testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses.

(Remember to adapt your statement at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side.)

Closing statements should not be totally composed before the trial, as they are supposed to highlight the important developments for the plaintiff and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be.

- d. Review the physical evidence. Outline the strengths of your evidence and also outline the anticipated weakness of the other side's evidence. (This section too must be adapted at trial.)
- e. State any applicable statutes and any case materials that show they support your side.
- f. Remind the judge of the required burden of proof (the amount of evidence needed to prove a fact). If you are plaintiff's lawyer, you must tell and convince the court that you have met the burden. If you are the attorney for the defense, you must inform and convince the court that other side has failed to meet its burden.
- g. Argue your case by stating how the law applies to the facts as you have proven them.
- h. Don't forget to request the verdict/remedy you desire.

Other Suggestions:

- a. Be sure your statement is well-organized.
- b. Rehearse as much as possible.

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Advice in Presenting:

- a. You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc. in the other side's case that actually come out at trial. You can't anticipate everything perfectly before the actual presentation of the case.
- b. Argue your side, but don't appear to be vindictive. Fairness is important.
- c. Be relaxed and ready for interruption by certain judges who like to ask questions during the closing statements.

Some of the Things Most Difficult for Team Members to Learn to Do:

- A. To decide which points are the most important to prove their side of the case and to make sure proof takes place;
- B. To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;
- C. To follow the formality of court, e.g., standing up when the judge enters, or when addressing the judge; calling the judge "Your Honor," etc.;
- D. To phrase questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions);
- E. To refrain from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessens the impact of points previously made. (Stop...recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!!!);
- F. To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

SUGGESTIONS FOR STUDENT WITNESSES PARTICIPATING IN
THE ARIZONA HIGH SCHOOL
MOCK TRIAL PROGRAM

This memo will outline various techniques and tips to be followed in preparing students to be witnesses in mock trials. Included are suggestions for both the preparation before trial and the presentation at trial of the opening statement, direct examination, cross-examination, and the closing statement.

GENERAL SUGGESTIONS

1. If you are going to testify about records, familiarize yourself with them before coming to trial.
2. Do not try to memorize what you will say in court, but try to recall just what you observed at the time of the incident.
3. When you are called to the stand, don't be nervous. There is no reason to be.
4. If asked whether you have discussed the case with anyone, you should indicate any occasion that you have talked with the prosecutor, the defense attorney, or anyone else.
5. When answering questions, speak clearly so you will be heard. The judge must hear and record you answer; therefore, do not respond by shaking your head "yes" or "no".
6. Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated.
7. Do not give your personal opinions or conclusions when answering questions unless specifically asked to do so. Give only the facts as you know them, without guessing or speculating. If you do not know, say you do not know.
8. If you realize you have answered a questions incorrectly, ask the judge if you may correct your mistake.

9. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.
 10. Be polite while answering the question. Do not lose your temper with the attorney questioning you.
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11. Always be courteous to witnesses, other attorneys, and the judge.
 12. Always stand when the judge enters or leaves the room.
 13. Dress appropriately (this may mean coat and tie for males and dresses or equivalent for females).
 14. Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
 15. If the judge rules against you in the case, take the defeat gracefully and act cordially toward the judge and the other side.

I. OPENING STATEMENTS

Objective: To obtain information from favorable witnesses your attorneys call in order to prove the facts of your case.

Advice in Preparing:

- a. Learn the case inside out, especially your witness statement (or affidavit).
- b. Know the questions that side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to illicit from your testimony.
- c. Practice with the attorney.

Advice in Presenting:

- a. Be relaxed and in control as possible, an appearance of confidence and trustworthiness is important.
- b. Don't read or recite your witness statement verbatim. You should know its contents beforehand.

- c. Be sure that your testimony is never inconsistent with facts set forth in your witness statement (or affidavit).
- d. Don't panic if the attorney or judge asks you a question you haven't rehearsed.

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III. CROSS-EXAMINATION

Objective: To make the other side's witnesses less believable in the eyes of the trier of fact.

Advice in Preparing:

- a. Learn the case thoroughly, especially your witness statement.
- b. Anticipate what you will be asked on the cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, problems in your testimony, and be prepared to explaining them.
- c. Practice.

Advice in Presenting:

- a. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- b. Be sure that your testimony is never inconsistent with the facts set forth in the witness statement.
- c. Don't read or recite your witness statement word for word.
- d. Cross-examination can be tough, so don't get flustered.

IV. CLOSING STATEMENTS

Objective: To provide a clear and persuasive summary of: (1) the evidence presented to prove the case, and (2) the weaknesses of the other side's case.

SUGGESTIONS FOR DEBRIEFING

The following are some questions to be used to lead into a debriefing discussion. If possible, a debriefing session should be held following each round of the competition.

- I. In debriefing a mock trial, the aspects of the enactment which an instructor might emphasize in the ensuing class discussion include an analysis of:
 - the experiences and feelings of the participants;
 - the roles of the actors and procedures found in the courtroom drama; and
 - the legal case itself.

- II. Some pivotal questions that might be used to promote class discussion and student analysis of the enactment are presented below:
 - Who are the major characters or participants in a trial?
 - What do you think is the purpose or function of each? Is each important? Explain.
 - How are the functions of each participant related?
 - How well did the participants in the mock trial fulfill their roles?
 - What are the major events (parts) in a trial?
 - In what order do these events occur?
 - Is each a part of event on a trial important? Why or why not?
 - Is the sequence or order of events in a trial important?
 - With what crime were the defendants charged?
 - What legal questions or issues were raised by the case?

- What arguments did the defense present?
 - What arguments did the state present?
 - What evidence did the state present in support of its arguments?
 - What evidence did the defence present in support of its arguments?
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- Do you feel the state made a good presentation? Why or why not?
 - What facts or arguments were not presented? Why?
 - Do you feel the judge was fair? Why or why not?
 - Did you agree or disagree with the verdict? Why?
 - If the judge returned a verdict of guilty, do you feel that the defendant might have grounds for an appeal? Why?

III. For Further Study and Discussion:

- How does the case presented in the enactment differ from:
 - a. an appeals case
 - b. a civil (criminal) case
- Do you believe that our trial system helps ensure a defendant a fair trial? Why?
- What changes, if any, would you recommend be made in the system? Why?

MOCK TRIAL OBSERVATION SHEET

Please note comments about each presentation, including things which could have been done differently or improved upon.

PLAINTIFF TEAM

DEFENSE TEAM

Opening Statement

Opening Statement

Direct Exam of Witness #1

Cross-Exam of Witness #1

Direct Exam of Witness #2

Cross-Exam of Witness #2

Direct Exam of Witness #3

Cross-Exam of Witness #3

Cross-Exam of Witness #1

Direct Exam of Witness #1

Cross-Exam of Witness #2

Direct Exam of Witness #2

Cross-Exam of Witness #3

Direct Exam of Witness #3

Objections

Objections

Procedures for Using Documents

Procedures for Using Documents

Closing Argument

Closing Argument

OBSERVER'S NAME:

DATE:

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MOCK TRIAL TIME SHEET

PLAINTIFF _____ V. DEFENDANT _____

ROUND _____ JUDGE _____ ROOM # _____

SUGGESTED TIME LIMITS

Opening Statement	5 minutes total (2 1/2 minutes per side)
Direct Examination	30 minutes total (15 minutes per side)
Cross-Examination	30 minutes total (15 minutes per side)
<u>Closing Arguments</u>	<u>10 minutes total (5 minutes per side)</u>

TOTAL	75 minutes total (37 1/2 minutes per side)
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PLAINTIFF:

DEFENDANT:

Opening Statement _____

Opening Statement _____

Direct/Re-Direct Exam _____

Cross-Examination _____

Witness #1 _____

Witness #1 _____

Witness #2 _____

Witness #2 _____

Witness #3 _____

Witness #3 _____

TOTAL TIME _____

TOTAL TIME _____

Cross-Examination _____

Direct/Re-Direct Exam _____

Witness #1 _____

Witness #1 _____

Witness #2 _____

Witness #3 _____

TOTAL TIME _____

Closing Arguments _____

TOTAL TIME _____

Witness #2 _____

Witness #3 _____

TOTAL TIME _____

Closing Arguments _____

TOTAL TIME _____