HIGH SCHOOL MOCK TRIAL PROGRAM

Order in the Court:

A Guide for Teacher Advisors & Attorney Coaches

(REVISED 07/01/12)

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INTRODUCTION

A mock trial is a simulation of a judicial proceeding; that is, the enactment of either a civil or criminal trial. Participation in mock trial provides students with an insider's perspective from which to learn about courtroom procedures. Participating with judges, lawyers, teachers and community members in mock trials not only helps students bridge the gap between simulated activity and reality, but also provides them with opportunities to interact with adults who serve as resource persons. It enables them to ask thoughtful and direct questions. It also provides students with invaluable practical experience with courts and trials which enhances their knowledge about and understanding of our system of justice.

In mock trial competition, the case is tried to a panel of three to five judges, one of whom serves as the presiding judge, and three to four of whom act as scoring evaluators. The following instructional materials, however, are designed to introduce students more generally to the judicial process.

Whether a case is criminal or civil in nature, and whether it is tried to a judge or judges (a "bench trial") or to a panel of lay persons (a "jury trial"), basic trial procedures and rules are essentially the same.

In a jury trial, the jury serves as the finder of fact while the judge makes decisions about matters of law. In a bench trial, the judge serves both functions. Consequently, for mock trial competition purposes, references to "the jury" in the following materials should be applied to the scoring panel.

I. PROGRAM OBJECTIVES

A. For Students

1. Gain a basic understanding of the legal mechanism through which our society resolves many disputes;

2. Develop critical-thinking skills, oral advocacy skills, and understanding of a substantive area of law;

3. Increase understanding of the roles of persons in the judicial system; and,

4. Enjoy opportunities for the study of fundamental law-related concepts such as justice and equality.

5. Increase proficiency in basic skills such as listening, public speaking, reading and critical thinking.

6. Expand knowledge about the philosophy and content of the law as applied by our courts and the legal system.

B. For Schools

1. Promote cooperation among students of various abilities and interest.

2. Demonstrate to the community the achievements of high school students.

3. Provide a competitive event set in an academic environment.

4. Recognize those students who have devoted significant time, energy and enthusiasm to achieving and learning objectives of the mock trial program.

C. For The Community

1. Enrich law-related high school classes by providing accurate and practical information about law and the legal system.

2. Provide opportunities for positive interactions between young people and role-players in the legal system.

3. Demonstrate to the community a model for public/private partnerships in education.

II. MOCK TRIAL BASICS

A. Introduction to the Trial Process[1]

1. The Purpose

The words "Equal Justice Under Law" are carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person living in this country has the freedom and security to enjoy the benefits of life in a democratic society.

According to the democratic principles on which American society is built, every person should have a free and equal opportunity to pursue individual goals and desires. However, so that one individual's pursuit of happiness does not infringe upon another's, the citizens of this country, through the electoral and legislative processes, agree upon certain guidelines for their behavior. These guidelines comprise our system of law.

However, at times individuals come into conflict with one another, in spite of the system of laws. The reasons for conflict are varied. Laws do not cover every possible situation. Often the individuals involved do not know or understand the law. In certain cases an individual deliberately chooses to break the law.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society. The solution might be a clarification of the rights of the parties; a determination of right and

[1] Street Law, Street Law, Inc., Washington DC 20001

wrong, or guilt and innocence; a direction to one individual to take certain actions to make up for harming another's rights; or even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes. However, going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication, or with a third person. Three common ways of settling disputes without going to court are 1) negotiation, in which the parties talk face-to-face; 2) mediation, in which the parties talk through a third person called a "mediator" who helps them find a common ground on which they can agree to a solution; and 3) arbitration, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an "adversary process." This means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute, who then renders a decision. The "impartial" third party that renders the decision can be a judge or a jury. The judge or jury functions as the "trier of fact."

2. The Parties

A trial revolves around an argument involving two or more people. The people who bring their argument to the trial are called the "parties" to the case.

A civil trial involved one person complaining about something another person did or failed to do. The person who does the complaining is called the "plaintiff," and the person who is the object of the complaint is the "defendant.

In a criminal trial, a person is accused of a particular act which the law calls a crime, such as murder, robbery or fraud. The person who does the accusing is the "prosecutor." The prosecutor speaks on behalf of the government, which in turns represents the people of the state or nation. The person who is accused of the crime is the "defendant."

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

3. The Facts of the Case

Long before a trial actually takes place, some argument or incident occurs. Perhaps there is a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the "case." Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the trier of facts is to decide which facts are correct.

4. The Evidence

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all of these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "evidence."

Evidence may take several forms including:

a. Testimony: A person, called a "witness," tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.

b. Documents: Letters, notes, deeds, bills, receipts, etc., that provide information about the case.

c. Physical Evidence: Articles such as weapons, drugs, clothing, etc., that can provide clues to the facts.

d. Expert Testimony: A professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

5. The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence and the way the judge or jury considers the evidence and make a decision.

One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the "burden of proof."

In a civil case, the person who brings the case to court and does the complaining (the plaintiff) has the burden of proof. Plaintiffs must convince the judge or jury that these facts are correct "by a preponderance of the evidence," meaning that their evidence is slightly more convincing that the defendants'. Some refer to this a meaning that 51 percent or more of the evidence supports plaintiffs' side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state's case. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some state that "beyond a reasonable doubt" means that the tried of fact (judge or jury) must be at least 95 percent sure the prosecutor is correct.

6. The Defense

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents the plaintiff or prosecutor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by -the other party. For example, in a traffic accident case, suppose the plaintiff presents a witness who testifies that the defendant was speeding just prior to hitting the plaintiff's car in an intersection. The defense could then present a witness who tells the court that the plaintiff, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the plaintiff's case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways, including: 1) presenting evidence to show that the defendant was not present at the scene of the crime (called an "alibi"); 2) showing that the defendant was acting to protect him/herself (self-defense); and 3) presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

7. Preparation for Trial

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney's job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorney for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called "discovery." Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make "affidavits," which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a "deposition," which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions for attorney preparation are contained in the next section.

B. Steps in a Trial

(Note to Students: Wherever the word "PLAINTIFF" appears below, substitute "PROSECUTION" for a criminal case.)

A number of events occur during a trial, and most must happen according to a particular sequence. (The sequence may vary slightly based on state or local rules of practice.) The following is the basic sequence in the trial process:

1. Judge enters and takes the Bench.
2. Clerk calls the case.
3. Plaintiff (Prosecutor in criminal case) makes an opening statement.
4. Defense makes an opening statement.
5. Plaintiff presents case:
    a. Plaintiff calls first witness and conducts direct examination.
    b. Defense cross examines the witness.
    c. Plaintiff conducts redirect examination if desired.
    d. Steps, a, b, and c completed for each of the plaintiff's other witnesses.
6. Plaintiff rests case.
7. Defense presents case in same manner as Plaintiff in #5 above, with Plaintiff cross examining each witness.
8. Defense rests.
9. Plaintiff makes closing argument.
10. Defense makes closing argument.
11. Plaintiff offers any rebuttal argument.
12. Jury instructions (if jury trial).
13. Jury/judge deliberations.
14. Verdict/decision/judgment.
15. Order (civil trial); Sentence (if found guilty in a criminal trial.)

The *main* steps in the trial sequence above—before the judge or jury start deliberating—can be summarized as

a. opening statement by plaintiff
b. opening statement by defense

c. direct examination of plaintiff's witnesses

d. cross examination of plaintiff's witnesses

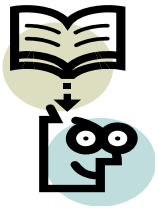
e. direct examination of defense witnesses

f. cross examination of defense witnesses

g. closing argument by plaintiff

h. closing argument by defense.

Note how the sides take turns.



Tips For Teaching: Mock Trial Basics

1. Have students brainstorm the general sequence of a mock trial and list the main steps on the blackboard. Once the whole trial process has been introduced, have students make a list or brainstorm and write on the board the actual sequence including all the steps in the trial (please refer to Handout 1).

2. Have students check newspapers and magazines for articles that mention a trial that is currently being conducted. Paste the articles to a large sheet of paper with the trial step that is mentioned in the article written in large letters at the top of the sheet. Have students post these around the classroom in their proper order.

3. Have students become familiar with the steps in a trial, the participants in a trial and the physical layout of a courtroom (please refer to Handouts 2, 3, and 4, respectively).

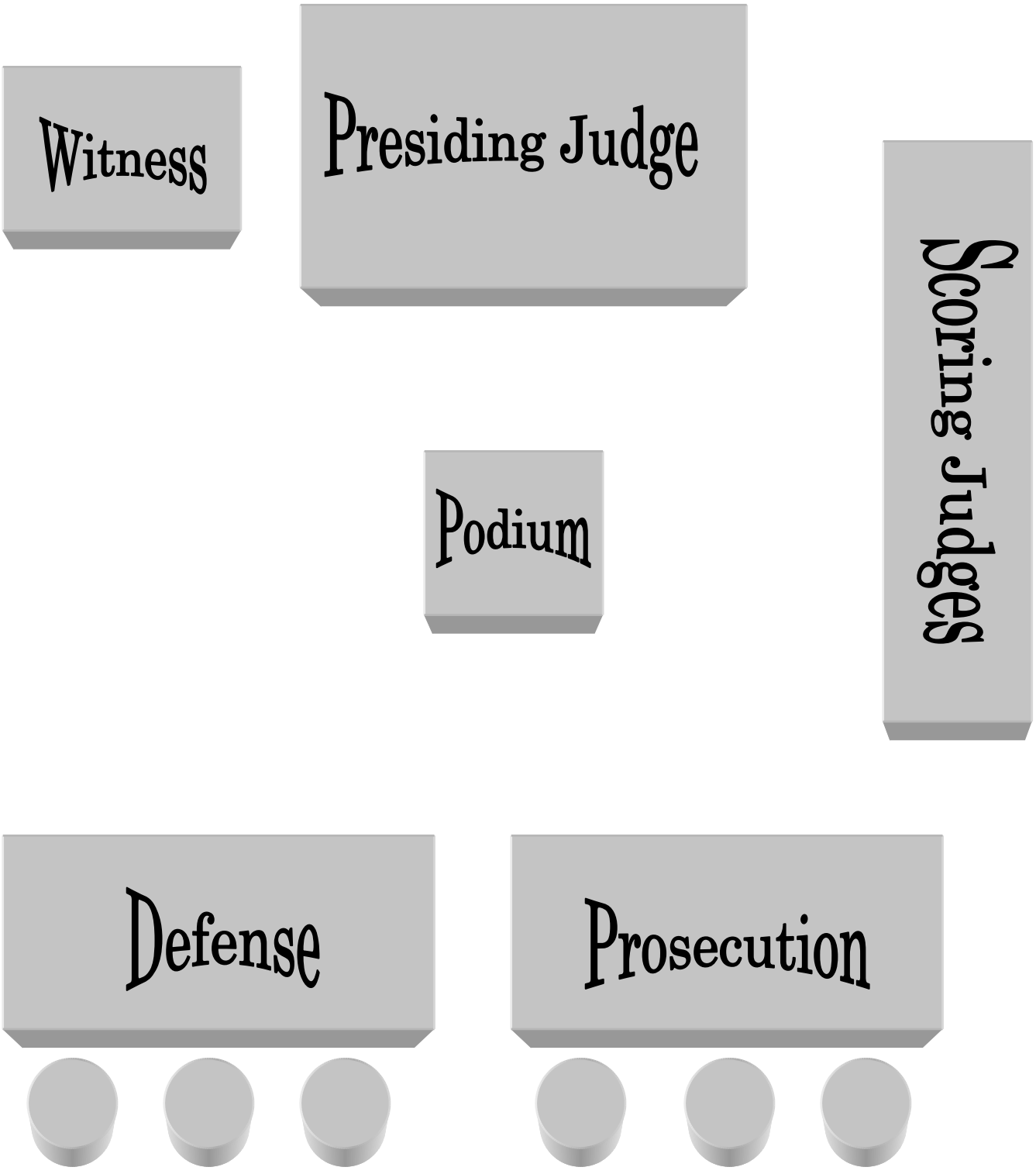
4. A courtroom visit is a good idea at this point (or after the group has begun working on the trial). Hold a debriefing session during the class period following the visit and/or have students write: What part(s) of the trial did you observe? What happened before the part(s) you observed? What happened in the trial after your left? List these on the board with the step of the trial that your group observed in the middle, and the "before" and "after" lists on either side.

5. Students should be instructed to watch a television program or see a movie having to do with a trial. Then they can discuss what the case was about, what parts of the trial they observed and whether the depiction of the trial procedure was accurate and realistic.

6. Invite a trial attorney or judge to the class to review basic trial procedure and describe different types of litigation, such as arbitration hearings, worker's compensation hearings, school board hearings and juvenile proceedings. Have the students discuss how and why do they differ from the basic civil and criminal trial procedure.

7. After general trial procedure has been covered in class, distribute the mock trial materials that you plan to use and have the students read them thoroughly. At this point you can either assign the roles of the various trial participants or wait until you have covered the rules of evidence. (This also helps ensure that students will read all of the trial materials, instead of just reading those for their parts or sides of the case.)

STUDENT GUIDE – HANDOUT 1
LAYOUT OF A COURTROOM



STUDENT GUIDE – HANDOUT 2
SEQUENCE OF A TRIAL

Opening Statements

1. Plaintiff/prosecution (P/P) introduction and opening statement
2. Defense (D) attorney introductions and opening statement

Witness Testimony

1. Direct examination of P/P witnesses
2. Cross-examination by D of P/P witnesses
3. Redirect examination of P/P witnesses
4. P/P rests
5. Direct examination of D witnesses
6. Cross-examination by P/P of D witnesses
7. Redirect examination of D witnesses
8. D rests

Closing Arguments

1. P/P closing arguments
2. D closing arguments
3. P/P rebuttal of D closing arguments (only if time has been reserved)

Deliberation

1. The presiding judge will call a recess and the panel will leave the room to complete score sheets.
2. When the judges return, they will "debrief" the teams about their presentations, but they will not tell you which side won the round or who the outstanding witnesses and attorneys, if any, were.

Clean-Up

1. Check the area around your trial table and gather all papers and belongings.

Check the spectator area and take with you any items belonging to spectators.

TEST YOUR KNOWLEDGE – HANDOUT 3
STEPS IN A TRIAL

Directions: Reorder the following sentences in the order that the events would occur in a real trial. (Fill in the blanks that follow the sentences below.)

Statement of Facts

Mark is on trial for murder.

His attorney is Ms. Heath.

The prosecuting attorney is Mr. Stevens.

Judge Kelly is presiding.

The Trial

a. Mr. Stevens delivers his closing argument.

b. Ms. Heath cross-examines the prosecution's witness.

c. Mr. Stevens examines the prosecution's witness.

d. Ms. Heath gives her opening statement.

e. Mr. Stevens cross-examines the defense witness.

f. Mr. Stevens gives the prosecution's opening statement.

g. Ms. Heath delivers her closing argument.

h. Mr. Stevens briefly rebuts Ms. Heath's closing argument.

i. Ms. Heath conducts her direct examination of the defense witness.

Write the lettered step of the trial next to the appropriate numbered step of the trial, beginning with step one and ending with step nine.		
1	**4**	**7**
2	**5**	**8**
3	**6**	**9**

.

Answers

1 = f 2 = d 3 = c 4 = b 5 = i 6 = e 7 = a 8 = g 9 = h

TEST YOUR KNOWLEDGE – HANDOUT 4
PLAYERS IN A MOCK TRIAL

Directions: Match each of the characters who participate in a trial with the description of what s/he does.

1. Bailiff (Time Keeper) _____
2. Plaintiff/Prosecution Attorney _____
3. Plaintiff/Prosecution _____
4. Presiding Judge _____
5. Clerk _____
6. Court Reporter _____
7. Defendant _____
8. Defendant Attorney _____
9. Witness _____

a. responsible for timekeeping.
b. records everything said and done at the trial.
c. gives her/his account of what s/he believes to be the facts in the case. Is asked questions by attorneys from both sides.
d. the person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of law which apply to the case or, in a bench trial, serves as the finder of fact.
e. gives her/his opening and closing statements last, cross examines the plaintiff/prosecution witnesses and objects to improper questions asked by the opposing attorney. Tries to show that there is not enough evidence to justify judgment against the defendant.
f. announces that the court is in session and which judge is presiding, calls and swears in witnesses, and marks evidence for identification.
g. initiates legal action against the defendant.
h. person accused of some wrong-doing. May be found guilty of a crime or liable for money damages (depending on the type of case) if s/he loses.
i. gives her/his opening and closing statement first, cross-examines the defense witnesses and objects to improper questions asked by the opposing attorney. Tries to show enough evidence to persuade the judge or jury that judgment should be in favor of the plaintiff/prosecution.

Answers

1 = f 2 = i 3 = g 4 = d 5 = a 6 = b 7 = h 8 = e 9 = c

III. RULES OF EVIDENCE

In a trial, the party who initiates the lawsuit has the "burden of proof" of her/his case; that is, s/he must convince the judge or jury that facts exist justifying the imposition of legal liability. If the party bringing the case is unable to carry that burden of proof, the defendant wins.

In a criminal case, that burden is much heavier; the prosecution must convince the judge or jury **beyond a reasonable doubt** that the defendant violated the law. In a civil case, on the other hand, the plaintiff must only convince the fact finder by a **preponderance of the evidence** that it is more likely than not that the defendant acted in ways that subjected him or her to legal liability.

Elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rules have been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of mock trial programs, the rules of evidence have been modified and simplified. They have been summarized below, but students competing in the mock trial competition should learn the rules by the numbers assigned to them and in the form in which they appear in the official mock trial packet so they may cite the rules with specificity in the competition.

A. Witness Examination

1. **Direct Examination** (attorneys call and question their own witnesses)

    a. Form of questions: Generally, witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a "yes" or "no" answer. Direct questions are usually phrased to evoke a more substantive answer. However, witnesses should not be allowed to give long, uncontrolled responses to direct questions.

        1) Examples
            a) Mr. Bryant, when did you first meet Angela?

            b) Mr. Bryant, how long have you been employed by the factory?

            c) Directing your attention to Saturday, October 25, could you please tell the court what you observed?

        2) Examples
            a) Mr. Hayes, isn't it true that you dislike Manuel Garcia?

b) You were not in the building that day, were you?

c) Mr. Hayes, didn't you see Jack put the money into the briefcase?

b. Evidence about the character of a party to the case: Evidence about the character of a party may not be introduced unless that person's character is an issue in the case.

1) Example

a) In a civil divorce trial, whether one spouse has been unfaithful to another may be a relevant issue, but it is not an issue in a criminal trial for theft. Similarly, a person's violent temperament may be relevant in a criminal trial for battery, but it is not an issue in a civil trial for breach of contract.

c. Refreshing a witness' recollection: If, during direct examination, a witness cannot recall a statement that s/he made in an earlier affidavit or even pre-trial notes, the attorney may help the witness to remember. The attorney must first mark and identify the statement as an exhibit and show the other side a copy. However, the statement need not actually be admitted into evidence in this situation.

1) Example

a) A witness sees a purse-snatching, offers to testify and gives a statement of events to the attorney. At trial, the witness has trouble remembering the events s/he saw. The attorney may help the witness remember by showing her/him the statement.

2. **Cross-Examination** (questioning the other side's witnesses)

a. Form of questions**:** Attorneys should ask leading questions when cross-examining the opponent's witnesses (i.e., questions should be phrased to evoke a "yes" or "no" answer, rather than a narrative one).

1) Examples

a) Ms. Bryant, you considered marrying George Hayes, didn't you?

b) Isn't it true that you are hard of hearing, Ms. Sanchez?

c) Mr. Yazzi, don't you generally prefer to avoid loud, crowded taverns?

b. What questions may be asked: Cross-examination is not limited and may cover the subject matter of the direct examination, matters affecting the credibility of the witness and additional matters, otherwise admissible, that were not covered on direct examination.

c. Impeachment: On cross-examination, the attorney may want to show that the witness should not be believed. This is called impeaching the witness. It can be achieved by asking the witness questions about the following.

1) *Prior bad conduct* that makes her/his credibility (trustworthiness) seem doubtful and shows that the witness should not be believed;

d) Example: "Isn't it true that you have had your credit cards revoked for failure to pay your bills?" or "Isn't it true that you often exaggerate events?"

2) *prior criminal convictions* of the witness, if within the past ten years for a felony or a crime involving moral turpitude, and the court determines that the value of this evidence outweighs its prejudicial affect;

e) Example: "Isn't it true that you were recently convicted of armed robbery?"

3) *prior statements made by the witness* that contradict her/his testimony at trial and point out the inconsistencies in her/his story;

a) Example: Bill Jones testifies at trial that Joe's car was traveling 90 mph. The opposing attorney asks, "Isn't it a fact that before this trial you gave a statement to the police saying that Joe's car was only traveling 50 mph?"

4) *bias or prejudice of the witness*, that is, showing that the witness has reason to favor or disfavor one side of the case; or,

a) Example: Ms. Young is the mother of the defendant. The prosecuting attorney points this out and asks, "Ms. Young, you don't want to see your son go to jail, do you?"

5) *accuracy of her/his sensory perceptions*, which are the witness' ability to see, hear or smell, or the accuracy of the witness' memory.

a) Example: Inaccurate sensory perception: Ms. Block testifies that she saw Sam, who was a block away, take a bag of marijuana from his briefcase and hand it to Joe. On cross examination, the attorney asks Ms. Block, "Isn't it a fact that you didn't have your glasses on when you claim to have seen Sam and Joe?"

3. Redirect Examination

If the witness' credibility or reputation for truthfulness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask a few more questions. These questions should be limited to the damage the attorney

thinks was done by the opposing attorney on cross-examination, and should be phrased so as to try to save or "rehabilitate" the witness' credibility.

B. Hearsay Evidence

Any out of court statement that is offered to prove the truth of the matter asserted (contents of the statement) is hearsay. These statements are generally inadmissible in a trial. There are, however, several exceptions to the hearsay rule, and it is important to know and understand them.

1. **Hearsay Examples** (the following statements are hearsay and are not admissible):

    a. Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there, and she told me that Joe killed Henry."

    b. In a civil trial arising from an automobile accident, a witness may not testify, "I heard a bystander say that Joe ran the red light."

    c. Sandy says, "James said that Jack has a criminal record."

2. **Hearsay Exceptions** (although hearsay is not usually allowed at a trial, a judge may permit it if one of the following is true):

    a. The statement is *an admission against interest* meaning it was made by a party in the case and it contains evidence that goes against her/his side (e.g., in a murder case, the defendant told someone that s/he committed the murder);

        1) Example: Joe is being tried for murdering Henry. The witness may testify, "Joe told me that he killed Henry."

    b. the statement describes the *then-existing state of mind* of a person in the case, and that person's state of mind is an important part of the case;

        1) Example: In the same case, the witness may testify, "I once heard Joe say, "I'm going to get even with Henry if it's the last thing I do."

    c. the statement is a *regularly-kept record* of a business or other association, recorded by someone with personal knowledge near the time the matters recorded occurred;

        1) Example: In the same case, an accounts receivable ledger kept by Henry, Joe's wholesaler, is admissible to show the size of Joe's debts to Henry.

    d. the statement is a *present sense impression*, describing an event or condition while the witness was perceiving it, or immediately afterwards.

        1) Example: In the same case, an eyewitness to the murder may testify, "I heard Joe say, 'Oh! I've killed him."

C. Opinion Testimony

As a general rule, witnesses may not give opinions, but **experts** who have special knowledge or qualifications may. An expert must first be *qualified* by the attorney who calls him or her. This means that before an expert may be asked and may give an opinion, the questioning attorney must bring out the expert's qualifications and experience. **All witnesses** may give opinions about what they *saw or heard* at a particular time, if such opinions are relevant to the facts at issue and are helpful in explaining their stories. A witness may not, however, testify to any matter of which s/he has no personal knowledge.

1. Examples

a. The witness may say, "Roy had slurred speech; he staggered and smelled of alcohol." The witness may not add, "Roy was incapable of driving a car."

b. A psychiatrist could testify that, "Roy has severe eating problems," but only after the attorney had qualified the psychiatrist as an expert in eating disorders. The attorney must demonstrate that the psychiatrist is an expert in this field by asking a series of questions about her/his education and experience in that particular field.

c. The witness works with the defendant but has never been to the defendant's home or seen the defendant with her/his children. The witness may not testify that the defendant has a bad relationship with her/his children or that s/he is a bad parent, because the witness has no personal knowledge of this.

D. Relevance Of Evidence

Generally, only relevant evidence may be presented. Relevant evidence is any evidence that helps to prove or disprove the facts at issue in the case. However, if the evidence is relevant but also unfairly prejudicial, potentially confusing to the jury, or a waste of time, it may be excluded by the court.

1. **Examples**

a. On cross-examination the defense asks Ms. Stone, "How old are you?" This question would be permitted only if Ms. Stone's age is relevant to the case.

b. The defendant is charged with running a red light. Evidence that the defendant owns a dog is not relevant and may not be presented.

E. Introduction Of Physical Evidence

There is a special procedure for introducing physical evidence during a trial. Below are the basic steps to use when introducing a physical object or document into evidence in a court.

1. "Your Honor, I ask that this letter be marked for identification as Plaintiff's (or Prosecution's) Exhibit 1." Hand the letter to the scoring judge for marking, and ask the presiding judge for permission to approach the witness.

2. Show the letter to the opposing attorney.

3. Show the letter to the witness whom you are questioning. "Mr. King, do you recognize this document, which is marked Plaintiff's Exhibit 1 for identification?" The witness then explains what it is (e.g., "Yes, this is the letter I received from the defendant, Marilyn Smith.")

4. "Your Honor, I offer this letter, marked as Plaintiff's Exhibit 1 for identification, into evidence." Offer the letter to the judge for her/his inspection.

5. After opposing counsel has an opportunity to object, the judge rules on whether or not the letter may be admitted into evidence.

    c. Example: Suppose this is a personal injury case in which the tenant claims she was injured when she tripped on a loose step in the apartment building. A neighbor who lives in the same building is testifying:

        1) Attorney: Ms. Spak, are you familiar with the condition the stairs were in the day before the accident?

        2) Witness: Yes.

        3) Attorney: I ask that this photograph be marked as Defendant's Exhibit 1 for identification.

        4) Judge: This will be Defendant's Exhibit 1 for identification.

        5) (Counsel now shows the exhibit to opposing counsel.)

        6) Attorney: Now, Ms. Spak, I show you what has been marked as Defendant's Exhibit 1 for identification. Please examine it and tell us what it is.

        7) Witness: It's a picture of the back stairs of my apartment building.

        8) Attorney: Ms. Spak, turning your attention once again to those stairs as they were the day before the accident, can you tell us whether this picture is an accurate and complete picture of the stairs as they looked at the time?

9) Witness: Yes, I would say it is.

10) Attorney: Thank you. Your Honor (handing exhibit to judge), we offer what has been marked as Defendant's Exhibit 1 into evidence.

F. Objections

Objections can be made whenever an attorney or witness has violated rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation; that is, the objection should be made as soon as the improper question is asked by the other attorney and before the witness answers, whenever possible.

When an objection is made, the judge will ask the objecting attorney the reason for the objection. Then the judge will turn to the attorney who asked the question and give her/him a chance to explain why the objection should not be accepted (sustained) by the judge. The judge will then rule on the objection, deciding whether an attorney's question or witness' answer must be disregarded ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

The following are *some* standard mock trial objections.

1. Relevance

"Objection, Your Honor. This testimony is not relevant to the facts of this case."

2. Leading question on direct examination

"Objection, Your Honor. Counsel is leading the witness."

3. Improper character testimony

"Objection, Your Honor. Character is not an issue here."

4. Hearsay

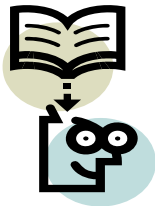
"Objection, Your Honor. Counsel's question (or the witness' answer) is based on hearsay." (If the witness has already given a hearsay answer, the attorney should also say, "and I ask that the statement be stricken from the record.")

5. Opinion testimony

"Objection, Your Honor. Counsel is asking the witness to give an opinion."

6. Lack of personal knowledge

"Objection, Your Honor. The witness has no personal knowledge to answer the question."



Tips For Teaching: Rules of Evidence

1. Review Handout 5 with the class, answering any questions that arise.

2. Review Handout 6 with the class, answering any questions that arise.

3. Have the students review Handouts 7, 8 and 9 which are hypotheticals designed to test and reinforce their understanding of the Rules of Evidence. These handouts can be used in a variety of ways, such as pre-and post-tests for evaluation purposes, in-class activities or homework assignments. For example, if you use the Handouts in class, you should ask students to stand and formally present any objections that they have to the hypothetical. You (or a law student or attorney) could act as judge and rule on the objections.

4. Have the students practice admitting physical evidence. Handout 10 presents fact patterns students may use to develop questions to get physical evidence admitted. Do these in class with students acting as attorneys and witnesses, and the teacher acting as judge. (Teachers may supply props to make enactments as real as possible.)

5. Have the students practice refreshing witness' recollection. Divide the class into groups of two and have each group prepare a brief fact pattern and the statement of one would-be witness to the case. Each team should then perform its scene in front of the class. Start by quickly summarizing the case, then have the student attorney in each group direct some questions to the witness. After a few questions, the witness should "blank out" and be unable to recall the rest of the facts. The attorney should then use the statements that they wrote to refresh the witness' recollection.

6. Have the students should practice qualifying a witness as an expert. First, brainstorm with students what facts would be best to establish that a person is an expert (e.g., place and degree of education, years of experience and/or employment in some field, and anything the person has researched and written about). Next, list on the board the questions an attorney might ask to qualify the following people as experts in their fields:

    a. ballistics expert

    b. marine biologist

    c. bartender

    d. medical examiner

    e. ski instructor psychologist

7. Divide the class into pairs and let them create a "character summary" of some expert witness, then develop appropriate questions to qualify that witness as an expert. Each team should qualify its expert in front of the class, followed by a short discussion of whether the attorney's questions and witness' answers made the witness appear to be an expert in the eyes of the other students.

STUDENT GUIDE – HANDOUT 5
RULES OF EVIDENCE

1. **No leading questions on direct examination.** This means that on direct examination, questions which suggest the answer that the examiner wants to hear may not be asked.

2. **Evidence about the character of a party may not be given** unless that person's character is an issue in the case.

   Examples: *The defendant is charged with armed robbery. A witness may not testify that the defendant has been unfaithful to his wife. The issue here is whether or not the defendant robbed someone, not whether the defendant is a good person.*

   Mary sues Joe for divorce on the grounds of adultery. A witness may testify that she knows Joe was unfaithful.

3. **Attorneys may help their witnesses remember.** This is called refreshing the recollection of the witness.

   Example: *A witness sees a purse-snatching, offers to testify at the trial and gives a statement of events to the lawyer. At the trial, the witness has trouble remembering the events s/he saw. The attorney can help the witness remember by showing the statement to the witness. (NOTE: The attorney must first mark and identify the statement and show the other side a copy. However, it need not be actually introduced into evidence, i.e., become a part of the trial record.)*

4. **Cross-examination may cover the subject matter of the direct examination, matters affecting the credibility of the witness and additional matters, otherwise admissible, that were not covered on direct examination.**

5. **The attorney may make the other side's witnesses look like they should not be believed**. This is called **impeaching** the witness. To impeach the other side's witness, the attorney asks the witness about:

   a. prior bad acts of the witness that show s/he cannot be believed;

   b. past criminal convictions of the witness, if within the past ten years for a felony or a crime involving moral turpitude, and the court determines that the value of this evidence outweighs its prejudicial affect;

   c. a prior statement of the witness which is different from (contradicts) her/his testimony at the trial;

   d. bias or prejudice of the witness (i.e., the witness has reason to favor or disfavor one side); or,

e. ability to see, hear, smell, or remember accurately of the witness (i.e., the witness' perceptions).

6. **Statements which are made out of court and which are offered to prove the truth of the contents of the statement are HEARSAY statements.** They are generally inadmissible as evidence.

Example: *Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there. Ellen told me that Joe killed Henry." The underlined statement is hearsay and may not be used.*

Exceptions to the Hearsay Rule: Although hearsay is not usually allowed at a trial, a judge may permit it if:

a. the statement (called an **admission against interest**) was made by a party in the case and it contains evidence which goes against her/his side (e.g., in a murder case, the defendant told someone that s/he committed the murder);

Example: *Joe is being tried for murdering Henry. The witness may testify, "Joe told me that he killed Henry."*

b. the statement describes the then-existing **state of mind** of a person in the case, and that person's state of mind is an important part of the case;

Example: *In the same case, the witness may testify, "I once heard Joe say, 'I'm going to get even with Henry if it's the last thing I do.'"*

c. the statement is a **regularly-kept record** of a business or other association, recorded by someone with personal knowledge near the time the matters recorded occurred; or,

Example: *In the same case, an accounts receivable ledger kept by Henry, Joe's wholesaler, is admissible to show the size of Joe's debts to Henry.*

d. the statement is a **present sense impression**, describing an event or condition while the witness was perceiving it, or immediately afterwards.

Example: *In the same case, an eyewitness to the murder may testify, "I heard Joe say, 'Oh! I've killed him.'"*

7. Witnesses may not give opinions, except for "opinions" as to what they personally saw or heard.

Example: *The witness may say, "Roy staggered, slurred his speech and smelled of alcohol." The witness may not add, "Roy was incapable of driving a car."*

Exception to the rule

An expert may give an opinion if s/he first testifies that s/he is an expert. For instance, a psychiatrist may say, "Roy has a severe eating problem" after the attorney has qualified the witness as an expert in eating disorders.

8. **Witnesses may not testify about something of which they have no personal knowledge.**

Example: *The witness works with the defendant but has never been to the defendant's home or seen the defendant with her/his children. The witness cannot testify that the defendant is a bad parent.*

9. **Only relevant evidence may be presented.** Relevant evidence is any evidence which helps to prove or disprove the facts in issue in the case.

Example: *The defendant is charged with running a red light. Evidence that the defendant owns a dog is not relevant and may not be presented.*

NOTE: Evidence that is relevant, but that is unfairly prejudicial, confusing to the jury, or wastes time, may sometimes be excluded.

Example: *In an auto accident case, both sides agree that the defendant was driving the red Ford that hit the plaintiff. Evidence about the color of the defendant's car is relevant, but will be excluded because it is a waste of time if the parties have already agreed that the defendant was driving the car in question.*

10. **Physical evidence may be introduced.** Steps that an attorney must follow to introduce physical evidence include the following:

    a. Ask the attorney panel judge to mark it for identification;

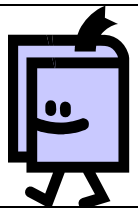
    b. show it to the opposing counsel;

    c. show it to the witness and ask him or her to explain what it is;

    d. offer it into evidence (ask the judge to admit it); and,

    e. get a ruling from the judge on whether it may be admitted into evidence.

STUDENT GUIDE – HANDOUT 6
OBJECTIONS



Objections are made when the other side has violated one of the rules of evidence. The objection should be made as soon as the question is asked by the other attorney and before the witness answers. If it is not possible to make your objection before the answer is given because it is the answer which is objectionable, object to the answer anyway and ask to have it stricken from the trial record.

When you make an objection, the judge will ask the reason. The other side has a chance to say why you are wrong and why the evidence should be allowed. The judge will then rule on the objection. If the judge says "sustained," your objection and the reason for it were correct, and the witness will not be allowed to answer. If the judge says "overruled," your objection or the reason for it was wrong, and the witness will be allowed to answer.

Below are some of the standard mock trial objections.

Relevance
"Objection, Your Honor. This testimony is not relevant to the facts of this case."

Leading question on direct examination
"Objection, Your Honor. Counsel is leading the witness."

Improper character testimony
"Objection, Your Honor. Character is not an issue here."

Hearsay
"Objection, Your Honor. Counsel's question (or the witness' answer) is based on hearsay." **If the witness has already given a hearsay answer, the attorney should also say,** *"and I ask that the statement be stricken from the record."*

Opinion testimony
"Objection, Your Honor. Counsel is asking the witness to give an opinion."

Lack of Personal Knowledge
"Objection, Your Honor. The witness has no personal knowledge to answer the question."

TEST YOUR KNOWLEDGE – HANDOUT 7
RULES OF EVIDENCE - ONE

Read each numbered statement below and answer the question that appears after it. State the reason for your answer.

1. Doug told me he had killed his brother, and Doug is on trial for the murder. Should I be able to testify to what he told me?

Answer: Yes. Although this is hearsay (an out-of-court statement being used to prove the contents of the statement), it is an admission by the defendant that goes against him or her - one of the exceptions to the hearsay rule.

2. On direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can s/he ask, "You were at school on November 30, isn't that correct?"

Answer: No. Leading questions are not allowed on direct examination, so it will have to be rephrased (e.g., "Where were you on November 30?")

3. Same situation as in 2. Can the attorney ask David, "Where were you on November 30?"

Answer: Yes. See number two above.

4. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife?

Answer: No. Irrelevant.

5. Can Harry's unfaithfulness be introduced in a civil trial for divorce?

Answer: Perhaps. The evidence is admissible only if Harry's wife has sued for divorce on grounds of adultery, or in some other way the issue has become relevant to the divorce action.

6. John made a sworn statement two days after the automobile accident he witnessed. When the case finally came to trial, and he is called as a witness, John cannot remember what happened. Can the attorney show John the statement that will help him remember? Must the attorney introduce the statement into evidence?

Answer: Yes/No *The attorney can show John the statement he made after the accident. S/He can use the statement to refresh John's recollection by showing it to him. The statement need not be admitted into evidence.*

7. Same situation as 6., only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross-examination, can the other attorney bring up the inconsistencies?

Answer: Yes. This is impeaching a witness by pointing out a prior inconsistent statement.

8. Debi is a doctor. The attorney has Debi testify to this when Debi is on the stand. Can Debi testify that, in her expert opinion, the victim was suffering from a spiral fracture of the right tibia and fibula?

Answer: Yes. Debi was properly qualified as an expert in this area.

9. Can Michelle, a plumber who worked with the victim, testify that the victim was suffering from a spiral fracture of the right tibia and fibula?

Answer: No. Michelle is not an expert in this area.

10. Sally has never seen Orren with the baby. Can Sally testify that Orren is a terrible father?

Answer: No. Sally has no personal knowledge of this.

TEST YOUR KNOWLEDGE – HANDOUT 8
RULES OF EVIDENCE - TWO

In each of the situations below, the defendant is on trial for murder and is claiming self-defense. Would you object to any of the following testimony or evidence? If so, how would you phrase your objection?

1. On direct examination the defense attorney asks, "You could hear voices from Mr. Kaufman's apartment very clearly, couldn't you, Ms. Spencer?"

Answer: Yes. "Objection, Your Honor. That's a leading question."

2. Mr. Ortega, an English teacher who knew Joe and Steve since they were in high school, testifies that Joe did not do well in high school because he had deep psychological problems.

Answer: Yes. "Objection, Your Honor. Counsel is asking the witness to give an opinion, and the witness is not an expert."

3. Ms. Ali, who lives in the apartment below Ray (the defendant), testifies that she heard Matt (the victim) yell, "Put down that gun, Ray! Enough is enough!"

Answer: Maybe. This is hearsay, but it probably fits within the "state of mind" exception, and is, therefore, admissible. It can be argued that the victim's state of mind is important where the defendant is claiming self-defense. BUT, unless opposing counsel can state the exception, your objection will likely stand.

4. Police officer Rodriguez testifies that when she entered Ray's apartment, she "saw Matt's body on the floor, bleeding all over."

Answer: Perhaps. The officer can't say she saw Matt's body unless she previously testified that she knew Matt; otherwise, she has no personal knowledge that it was Matt and could only state that there was a body on the floor.

5. The same police officer says that the defendant told her, "I killed him, the filthy swine had it coming to him."

Answer: This is hearsay, but it is admissible because it is an admission by the defendant (admission against interest).

6. The police officer says that she talked to the defendant in the police car, and that the defendant was quite drunk.

Answer: Maybe. Although she is not an "alcohol expert," the police officer can testify as to her opinion about things that do not necessarily require an expert to describe - like drunkenness, size, speed of a moving object, etc. (She might have to say the defendant "<u>seemed</u> quite drunk.")

7. Meg Chin, a bartender at the Wanderer Saloon, says that drinking seven "boilermakers" would make anyone drunk.

Answer: Yes. "Objection, Your Honor. Counsel is asking the witness to give an opinion, and the witness is not an expert."

8. The defendant, on direct examination, stated that the police officer did not say a word to him from the time of his arrest until they reached the police station. On cross-examination, the prosecuting attorney hands the defendant a sworn statement that s/he made before the trial and says, "The story you told in this pre-trial statement isn't the same, is it Mr. Kaufman?"

Answer: No. This is proper impeachment through the use of a prior inconsistent statement.

9. Jim Williams, a waiter at the Wanderer Saloon, says that Pam Sullivan, a waitress at the same saloon, mentioned to him how sweet the defendant was to be "so protective" of her when his friend, Matt, was "hitting on her" and "acting like an animal."

Answer: Yes. "Objection, Your Honor. This is hearsay."

10. Joanne testifies that she has known the defendant since high school, and that he is an extremely nice and considerate guy.

Answer: No. Joanne can testify about the defendant's good character since it is an issue in the case (because the defendant is claiming self-defense).

TEST YOUR KNOWLEDGE – HANDOUT 9
RULES OF EVIDENCE - THREE

1. Isaac is a witness in a personal injury trial. Before trial he told you, the plaintiff's attorney, that the plaintiff's car was facing north after the crash. A photo was taken which shows the accident scene. At trial, you ask Isaac which way plaintiff's car was facing after the crash. He answers "I can't remember." You want the jury to hear that the plaintiff's car was facing north. What do you do?

Answer: Refresh Isaac's recollection. First, ask if there is anything that would help him to remember (he might answer, "Yes, there was a photo taken at the accident scene that I saw - it might help me remember."). Or, more directly, ask if a photo of the scene of the accident would help jar his memory. Remember that anything may be used to help a witness remember, and it need not be introduced into evidence.

2. Terry is on trial for murder. He says that he stabbed Jane in self-defense. You are the State's Attorney. Terry's attorney has a witness, Jose, who testifies that he knew Jane, that she was a bum and never paid her bills. What do you do?

Answer: Object on the grounds that this evidence is irrelevant. Since Terry is claiming self-defense, Jane's (the victim's) potentially violent character is an issue in the case. However, her bad credit has nothing to do with whether she had a mean or violent disposition that would have forced Terry to kill her in self-defense.

3. Terry is indicted for murder. He claims he stabbed Jane in self-defense. You are the defense attorney. You have a witness, Monique, who testifies that she knew that Jane was a brute who had once beaten and kicked her for no good reason. Will this be admitted into evidence?

Answer: Yes. See the explanation in #2

4. This is a personal injury case arising from an auto crash with Bill and Ed. Ed is suing Bill for his medical expenses and car repair bills. Manuel is Bill's best friend but he has never driven with or seen Bill drive. He has heard from other people that Bill is a great driver and has never speeded or broken any of the rules of the road. Can Bill's attorney ask Tom what kind of driver Bill is?

Answer: No. Manuel has no personal knowledge of this. Also, what he has heard from others is hearsay.

TEST YOUR KNOWLEDGE – HANDOUT 10
INTRODUCING PHYSICAL EVIDENCE

1. Sam is on trial for murder. The prosecution is trying to prove that he got the gun that was used to kill the victim from a friend's (Silvio's) gun cabinet. Silvio, who has an extensive collection of both revolvers and shotguns, is on the witness stand. You are the prosecuting attorney and you want to get the murder weapon admitted into evidence. What do you do?

*Answer: Have the gun marked as an exhibit. Show opposing counsel and then Silvio the gun and ask Silvio if he can identify it and, if so, how. (This is called **laying a foundation**, and it must always be done before physical objects can be entered into evidence.) Once a witness has clearly identified the object (in this case, the gun), then the attorney asks the judge to have it admitted into evidence. Remember that it is marked and given to opposing counsel before questions are asked. If opposing counsel doesn't object, it is admitted into evidence; if counsel does object, the court rules whether or not to admit it into evidence.*

2. Mr. Slumlord is being sued in a personal injury case. A tenant in his building tripped on the back stairs and hurt her back. She claims that the stairs had been in terrible condition for some time. Mr. Slumlord wants to prove that the stairs were actually in good condition the day before the tenant's accident, so he had brought a picture of the stairs that was taken just before the tenant fell. Another tenant from the building is now testifying, and, as the attorney for Mr. Slumlord, you want to get the photograph of the stairs admitted into evidence. What do you do?

Answer: Same as #1 above.

3. Rose was walking one morning when she saw a car and a bus collide at an intersection. When the police arrived, Rose told them that Peter, the driver of the car, had been going about 20 mph. She later signed a statement to that effect at the police station. At trial, in the case between Peter and the bus company, Rose testifies that Peter was traveling at 45 mph. On cross-examination she now denies that she ever said that Peter has been driving at 20 mph. You are Peter's attorney and you want to get Rose's sworn statement to the police into evidence in order to impeach her. What do you do?

Answer: The statement need not be introduced into evidence here, but it can still be used to impeach Rose. Once she denies having made the earlier statement, the attorney should hand her a copy of it and ask her if she recognizes her signature. When she identifies the signature, the attorney should then point out the part in which she says Peter was only going 20 mph and have her read it aloud. If the attorney still wants the written statement in the record, it may be marked for identification and shown to opposing counsel even after the witness has been questioned about it, and then the attorney may request the judge to admit it into evidence.

IV. STEPS IN A MOCK TRIAL

A. Opening Statement

1. Description

The opening statement is the introduction to the case, the very first time the attorneys for each side get to tell the judge and jury about what happened to their clients. The first impression is very important; it "paints a picture" of the case that will be presented for each side. Opening statements should include: 1) a summary of the facts according to each party; 2) a summary of the evidence that will be presented at the trial; and 3) a statement regarding what the party hopes to get out of the trial. A test of a good opening statement is this: If the jurors heard the opening statement and nothing else, would they understand what the case is about and would they want to decide in your favor?

2. Style Points

a. Plaintiff's Attorney: Since this attorney speaks first, it is very important for the plaintiff's opening statement to include a good summary of the facts, presented in a light most favorable to the plaintiff. If the opening statement presents a very convincing picture of the plaintiff's case, the defense team will have a much harder time changing the minds of the judge and jury.

b. Defense Attorney: The defense team always has the task of showing that the plaintiff's version of the facts is not correct. In preparing an opening statement, the defense attorney will have to guess how much detail and what kind of emphasis the plaintiff's attorney will make in the plaintiff's opening statement. The defense attorney should be ready to make adjustment in his or her prepared statement while the plaintiff's attorney speaks. The defense attorney should highlight the facts that are in dispute, and emphasize the kinds of evidence the defense will present to show that the plaintiff is wrong.

c. Both Attorneys should practice making eye-to-eye contact with the judge while speaking.

3. What to Include

a. The opening statement on behalf of the P/P may include:

1) An introduction of yourself and your client;

Example: "May it please the court, ladies and gentlemen of the jury, my name is_____, counsel for _____, the plaintiff/prosecution in this action."

2) A cohesive summary or outline of what your evidence will be presented in chronological order or any other orderly sequence of events;

Example: "The evidence will indicate that...", "The facts will show...", "Witness X will be brought to testify that...", "Witness Y will be called to tell you that...."

3) An acknowledgment that the burden of proof rests with you and the degree of that burden.

4) The P/P's opening statement should not include any references to evidence whose admissibility is doubtful or to anticipated defense evidence.

b. The opening statement on behalf of the defendant may include:

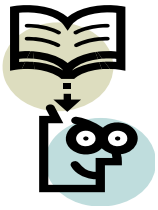
1) an introduction of yourself and your client;

2) a reminder that opening statements are not evidence;

3) a cohesive (but non-argumentative) reference to anticipated deficiencies in your opponent's evidence, plus a summary of what your evidence will be; and,

4) a reminder that the burden of proof rests with your opponent, and a conclusion which indicates that in closing you will return and request the jury to find in favor of the defendant.

5) The defendant's opening statement should not include references to evidence whose admissibility is doubtful.



Tips For Teaching: Opening Statements

1. Review Handout 11. Ask students to articulate the purpose of the opening statement, then brainstorm with the students how they think it differs from a closing argument. The best way to teach the purpose and format of opening statements is to have each student prepare one and present it to the class. Preparation of an opening statement is an exercise in written, verbal and critical-thinking skills. Since this activity requires familiarity with the case (i.e., a full review of the facts and witnesses' statements and an understanding of the "theory" of the case), it is a very useful introductory assignment in a mock trial unit.

2. There are a variety of excellent mock trials of varying lengths in the Street Law text and teacher's manual, as well as materials available from the Youth for Justice. Also, the Center for Civic Values does have prior years' cases as well as various teacher resource manuals that contain mock trials available for purchase. Choose one of these to use as an exercise in writing opening statements. Have the students read the trial materials for homework, then divide the class in half; one side will be attorneys for the plaintiff/prosecution and the other side will represent the defendant in the case.

3. Students should each write a brief opening statement for their side and practice them in class with their fellow students and at home with their family or friends. The following class period should be spent with students presenting their statements aloud. Alternate between P/P and D so that the rest of the class hears and compares the statements from the point of view of the court.

4. After the presentations, ask students which presentations they thought were the best and why. What things, from the court's perspective, stood out the most in their minds? What was the most interesting, informative and/or persuasive? What are some of the problems with the opening statements? What are some advantages of strong opening statements?

STUDENT GUIDE – HANDOUT 11
OPENING STATEMENTS

1. The opening statement is given first by the plaintiff/prosecution, then the defense. Opening statements should:

   a. Outline the case - provide a framework to analyze the case;

   b. state the facts of the case that you expect to prove;

   c. explain facts which may seem to be against you;

   d. (defense in criminal cases) stress the state's burden of proof, i.e., show guilt beyond a reasonable doubt;

   e. not be argumentative;

   f. not make any conclusions; and,

   g. not refer to evidence if its admissibility is doubtful because it may violate one of the rules of evidence.

2. The opening statement should begin with a formal address to the judge: "May it please the court, Your Honor, Counsel, my name is _____, counsel for _____ in this action."

3. The opening statement, which outlines the case, should be presented in chronological order or another orderly sequence of events.

4. The opening statement should include the following types of introductory phrases:

   a. The evidence will indicate . . . .

   b. The facts will show . . . .

   c. Witnesses will present evidence to show . . . .

   d. Witness A will testify on the state's/plaintiff's behalf that . . . .

   e. Witness B will tell you . . . .

B. Direct Examination

1. Description

After the opening statements, the process of "witness examination" begins. First, the plaintiff's team presents its witnesses, then the defense team. Each time a witness is called to the stand, the attorney who called the witness asks a series of questions called the "direct examination." These questions are designed to get the witness to tell a story, reciting what he or she saw, heard, experienced or knew about the case. The questions must ask only for facts, not for opinions (unless the witness has been declared to be an "expert" in a particular subject, such as a doctor or a police detective). In addition, the attorney may only ask questions and may not make any statements about the facts, even if the witness says something wrong. When the direct examination is completed, an attorney for the other side then asks questions to show weaknesses in the witness' testimony, a process called "cross examination."

2. Style Points

a. Attorney Conducting Direct Examination: Questions should be designed to get the witness to tell the story in a logical manner. Avoid lengthy or complicated questions. Leading questions cannot be used on direct examination. (See Rules of Evidence section.) Uncontrolled narrative questions are also not permissible - the attorney may not set her/his witness on "automatic pilot" with a narrative question and let the witness fly alone. Multiple and repetitious questions are objectionable, too. A well conducted direct examination must be carefully prepared in advance by the attorney and practiced with the witness. The direct examination is most effective when questions are put to the witness in plain language, rather than legal or technical jargon which may seem unduly long, stilted or unnatural. Be prepared to rephrase questions in case the witness does not understand a question or fails to remember facts accurately, or in case the other side objects to a question. (Grounds for objections are discussed in the Rules of Evidence section.)

b. Opposing Attorney: Listen carefully to the questions and answers, since cross examination must be limited to subjects discussed in the direct examination. Listen for violations of the Rules of Evidence, and be prepared to make good objections.

c. Witnesses: The most important factor is the believability (often called "credibility") of the witnesses. Witnesses should tell their stories clearly with as little hesitation as possible. It's important for witnesses to know the facts thoroughly.

NOTE: At the close of cross examination (see next section) the attorney who conducted the direct exam may do a "redirect." A redirect examination follows the same rules as direct. However, the questions are limited to subjects discussed in the cross examination.

3. What to Include

The following is a list of the sorts of questions that might be asked on direct examination:

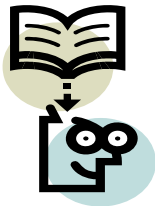
a. "What happened then?" or "What did you see?"

b. "How long have you worked for Ms. Smith?"

c. "What happened after you saw the yellow car?"

d. "How far away was the other car when you first saw it?"

e. "How long did you stand there?"



Tips For Teaching: Direct Examination

1. Review Handout 12. Ask students to articulate the purpose of direct examination, and then brainstorm with the class how it differs from cross-examination and list their responses on the board.

2. To help them prepare direct (and later, cross-) examination questions, students should set up a "question and answer checklist." Draw a line down the center of a sheet of paper and head the two columns "questions" and "desired answers." Then, after reading through the facts and witnesses' statements in the mock trial being used, list the information they want to get out of a particular witness in the direct examination on the "desired answers" side of the sheet. (Remember, the witnesses' answers should be relatively brief and very clear.) Once they have planned the testimony, sentence by sentence, that they want to elicit from the witness, the "questions" side of the sheet should be filled out. This exercise illustrates the need for a careful and understandable delivery of the relevant facts to the jury via the attorney's controlled questioning. In addition, it allows students to develop their analytical and writing skills.

3. Again, the best strategy for teaching students the purpose and format of direct examination is to let them try it themselves. Teachers could use the sample mock trials they selected for the opening statement exercise or choose another one for this activity. Divide the class in half and assign them sides of the case. You may wish to further divide each half of the class, asking each group of a few students to prepare direct examination of one of the witnesses for its side. Collect and comment on all of their papers and select one student from each group to conduct her/his direct examination in front of the class (with another student acting as witness). The rest of the class could act as opposing attorneys and make objections to any improper questions or answers.

STUDENT GUIDE – HANDOUT 12
DIRECT EXAMINATION

1. Direct examination is conducted by attorneys of their own witnesses. It should be designed to get facts from the witnesses which are understandable and to convince the Court to accept your position. Questions on direct examination should:
   a. Make the witness seem like s/he ought to be believed;
   b. keep the witness "in control" (prevent the witness from rambling since this might weaken the effect on her/his testimony); and,
   c. not be leading (where the attorney is telling the story for the witness).
2. The attorney calls the witness for direct examination:
   a. "Your Honor, we call _____ ."
   b. After the witness is sworn in by the bailiff or clerk, some introductory questions
   c. should be asked requesting such information as:
   d. Name, address and occupation;
   e. length of residence or present employment, if this information is relevant in establishing the witness' credibility; and,
   f. further questions about professional qualifications if you wish to
   g. qualify the witness as an expert.
3. The following are examples of proper questions to ask on direct examination.
   a. Directing your attention to (date), could you please tell the court what occurred?
   b. What happened then? (or) What did you see?
   c. How long did you see...?
   d. Did John (the defendant) say anything about...?
   e. How long have you worked with Ms. Smith?
4. Conclude your direct examination:
   a. "Thank you, _____. That will be all, Your Honor." (The witness remains on the stand for cross-examination by the opposing attorney.)

C. Cross-Examination

1. Description

The purpose of the cross examination is to show the judge and jury that a given witness should not be believed because that witness: 1) cannot remember facts; 2) did not give all of the facts in the direct examination; 3) told a different story at some other time; 4) has a reputation for lying; 5) has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge toward one of the parties. The cross examination questions are designed to bring out one or more of the above factors.

2. Style Points

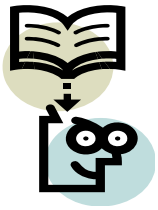
a. Attorney Conducting Cross Examinations: This attorney must know precisely what kind of weaknesses he or she wants to show in the witness, and then design the questions to point them out. Questions should be short; "leading" questions (discussed in the Rules of Evidence) are allowed (for example the attorney may use questions with phrases like, "Isn't it true that . . .?") Questions should not be long or argumentative, nor should they ask the witness "How," "Why" or "Could you explain." Questions are best that call for a simple "yes" or "no" answer. Questions that give the witness a chance to make an explanation will usually not help the cross examiner's case.

b. Opposing Attorney: Listen carefully for violations of the Rules of Evidence, and be prepared to make objections. Listen carefully to the kind of attack the cross examiner is making ; decide whether the attack is successful. After the cross examination, the opposing attorney may conduct a "redirect" examination to give the witness a chance to explain or correct some points made in the cross examination.

c. Witness: Witnesses should try to give explanations whenever possible. Witnesses must pay close attention during cross examination, since the attorney may try to confuse the witness. They should try to stick to the facts they recited on direct examination.

3. What to Include

a. Cross-examination is not limited and may cover the subject matter of the direct examination, matters affecting the credibility of the witness and additional matters, otherwise admissible, that were not covered on direct examination. A firm idea of your objectives at this state of the trial is just as important to an effective cross-examination as an understanding of the law and rules of evidence.



Tips For Teaching: Cross Examination

1. Review Handout 13. Ask the students to articulate the purposes of cross-examination and how it differs from direct, then list their responses on the board or on an overhead projection.

4. To help them prepare cross- examination questions, students should set up a "question and answer checklist." Draw a line down the center of a sheet of paper and head the two columns "questions" and "desired answers." Then, after reading through the facts and witnesses' statements in the mock trial being used, list the information they want to get out of a particular witness in the cross examination on the "desired answers" side of the sheet. (Remember, the witnesses' answers should be relatively brief and very clear.) Once they have planned the testimony, sentence by sentence, that they want to elicit from the witness, the "questions" side of the sheet should be filled out. This exercise illustrates the need for a careful and understandable delivery of the relevant facts to the jury via the attorney's controlled questioning. In addition, it allows students to develop their analytical and writing skills.

2. Again, the best strategy for teaching students the purpose and format of cross examination is to let them try it themselves. Teachers could use the sample mock trials they selected for the opening statement exercise or choose another one for this activity. Divide the class in half and assign them sides of the case. You may wish to further divide each half of the class, asking each group of a few students to prepare cross examination of one of the witnesses for its side. Collect and comment on all of their papers and select one student from each group to conduct her/his cross examination in front of the class (with another student acting as witness). The rest of the class could act as opposing attorneys and make objections to any improper questions or answers.

STUDENT GUIDE – HANDOUT 13
CROSS EXAMINATION

1. Cross-examination of then witness by the opposing attorney follows direct examination. The purposes of cross-examination are:

    a. To test the witness' trustworthiness and believability in order to cast doubt on the validity of the witness' story; and,

    b. to establish some of the facts of the cross-examiner's case wherever possible.

2. Cross-examination should:

    a. Use leading questions which are aimed at getting "yes" or "no" responses;

    b. never include questions to which the attorney does not know the answer

3. The following are examples of proper phrasing of questions.

    a. Isn't it a fact that _____

    a. On (date), when you made a statement in your attorney's office, you said _____.didn't you?

4. Cross-examination should conclude with, "Thank you, _____. That will be all, Your Honor."

D. Closing Arguments

1. Description

Lawsuits are usually won during the course of the trial, not at the conclusion. They are won by witnesses, exhibits, and the manner in which the attorney paces, spaces and handles them. Sometimes, however, lawsuits have been lost by fumbling, stumbling and incoherent closing arguments. This is not intended to minimize the importance of closing arguments, but rather to emphasize its proper position as a summation of the evidence and a relation of that evidence to the issues in the case.[2] The purpose of the closing argument is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing.

2. Style Points

a. Plaintiff's Attorney: Remember, the plaintiff has the burden of proving the facts in a civil case by a preponderance of the evidence. Therefore, the plaintiff's summary of the favorable evidence presented is extremely important. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack. Cite the law clearly and correctly, and make a clear argument regarding how the law requires the judge or jury to rule in the plaintiff's favor.

b. Defense Attorney: Summarize all of the evidence presented to weaken the plaintiff's case. Emphasize the inability of the plaintiff to meet the burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.

3. What to Include

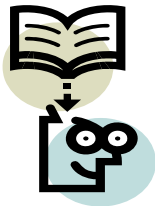
a. a summary of the evidence presented that is favorable to the presenting attorney's side;

b. a summary of the case;

c. a legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing (an "argument" telling the judge or jury why all of the evidence dictates a decision in your favor i.e., tell what the verdict should be and why).

d. new information may NOT be introduced in the closing argument.

[2]Brown and Seckinger, Problems in Trial Advocacy, 1977



Tips For Teaching: Closing Arguments

1. Review Attachment 14. Ask students to articulate how closing arguments differ from opening statements in purpose and style, and list their responses on the board. The best way to teach the purpose and format of closing arguments is to have each student prepare one and present it to the class. Preparation of an closing argument is an exercise in written, verbal and critical-thinking skills. This activity requires familiarity with the case (i.e., a full review of the facts and witnesses' statements and an understanding of the "theory" of the case).

2. Divide the class in half: one side will be attorneys for the plaintiff/prosecution; and, the other side will represent the defendant in the case.

3. Students should each write a brief closing argument for their side and practice them in class with their fellow students and at home with their family or friends. The following class period should be spent with students presenting their arguments aloud. Alternate between P/P and D so that the rest of the class hears and compares the statements from the point of view of the court.

4. After the presentations, ask students which presentations they thought were the best and why. What things, from the court's perspective, stood out the most in their minds? What was the most interesting, informative and/or persuasive? What are some of the problems with the closing arguments? What are some advantages of strong closing arguments?

STUDENT GUIDE – HANDOUT 14
CLOSING ARGUMENTS

1. Closing arguments for the plaintiff/prosecution should:

   a. Begin with a proper address to the court;

   b. summarize (persuasively and forcefully) the strong points from witness testimony;

   c. note flaws in the witnesses' testimony which support the claims of your side;

   d. be well-organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument);

   e. emphasize - in criminal cases - that guilt **beyond a reasonable doubt** was shown by the state, or in a civil case the plaintiff must convince the fact finder by a **preponderance of the evidence** that it is more likely than not that the defendant acted in ways that subjected him or her to legal liability;

   f. be presented so that notes are barely necessary and eye contact can be established; and,

   g. be emotional and strongly appealing (unlike the "neutral" opening statements).

2. Closing arguments for the defense should:

   a. Begin with a proper address to the court;

   b. summarize (persuasively and forcefully) the strong points from witness testimony;

   c. note flaws in the testimony which support the claims of your side;

   d. be well-organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument);

   e. raise questions about the weight of the evidence;

   f. be presented so that notes are barely necessary and eye contact can be established; and,

   g. be emotional and strongly appealing (unlike the "neutral" opening statements.

V. TEAM MEMBER ROLES/RESPONSIBILITIES

A. Attorney Coaches

As a mentor and a role model, you are critical the success of your team. Of primary importance is your ability to impart to the students that we are a society governed by the rule of law. By the end of the mock trial season, it is our hope they will have a keen understanding and an abiding respect for the law and the legal system. We realize this is not an easy charge, but who better than you -- the lawyer -- can help them develop that understanding and respect? Naturally, they will look to you for guidance in both their performance and their courtroom decorum. As a result, it is critical that you demonstrate for them professional and ethical behavior.

And, as much as you will want to help the students, to point them in the right direction, and to give them the benefit of your experience, remember that the students and teachers will develop a better understanding of the case and learn more from the experience, *if the attorney-advisors do not dominate the preparation phase of the competition.* To achieve the educational goals of the mock trial program, the preparation phase of the contest must be to be a **cooperative effort** of students, teacher and attorney coach. Remember, it is critical to avoid (even the appearance of) "talking down" to students and/or stifling discussion through the use of complicated "legalese."

Finally, the session descriptions below are suggestions only. You and the teacher advisor should approach the tasks in whatever order you deem appropriate, *provided that all of them are covered*.

1. First Session

a. Prior to meeting with the team, confirm the teacher advisor has already distributed the case materials among the team members, and they have read and are familiar with them.

b. At the first meeting, confirm the students understand the sequence of a trial, the steps in each sequence, the layout of the courtroom and the participants in a mock trial. If the team members are not clear on these concepts, review them prior to moving forward.

c. Discuss with the team Review the Federal Rules of Evidence (mock trial simplified version) included as a separate packet in the case materials. Ensure the team members know the hearsay rule and all its exceptions.

2. Second Session

a. Examine and discuss the factual basis of the case, witnesses' testimony, and the strengths and weaknesses of each side of the case. Remember - your team must prepare to present both sides. Key information might be listed on the blackboard as the discussion proceeds so that it can be referred to at some later time. Categorize facts: important, damaging, conflicting.

b. Discuss the law involved in the case and the burden of proof.

c. Put the students on the stand with notes and then have the attorney coach proceed with an example of direct and cross-examinations.

d. Determine the roles of the team members, establishing who will act as witnesses and attorneys. Since each team is required to represent both sides of the case during the competition, all roles in the case should be assigned and practiced.

e. Emphasize that team members should not memorize their roles since, in a real trial, they would have to play it by ear. Rather than memorizing his/her role(s), each student should concentrate on knowing all the facts of the case.

3. Third Session

a. Go through the trial from beginning to end, ensuring all the following steps are covered..

b. Work with the student attorneys, concentrating on what should be covered in an opening statement and a closing argument. Remember that the role of the attorney coach is that of a consultant, not an author. Give the students ideas, but don't write statements for them. Ask other members of the team what they think should be included in the opening and closing.

c. Have witnesses called to the stand to be examined by student attorneys. Work with students to develop questioning techniques, that will elicit testimony to support either side of the case. Have other team members make suggestions to both witnesses and attorneys.

d. Have attorneys practice making objections, and discuss both the style and substance of the objections thoroughly.

e. Have attorneys practice responding to objections. This is one of the most difficult skills for students to master, and it can only be achieved through knowing the rules inside and out.

4. Subsequent Sessions

a. Conduct cross-examination and define possible areas where objections could occur; look for other areas that your team's attorneys might want to focus on during cross-examination; have all team members make suggestions.

b. Practice opening statements and closing arguments, how to lay a foundation for exhibits, what to do when the opposing team objects to your questions.

c. Discuss appropriate courtroom decorum and etiquette.

5. Last Session Prior to Regionals

a. Conduct a final run-through of the entire trial. Allow team members, attorney coach(es) and the teacher advisor(s) to act as the presiding judges and the opposing team's attorneys.

b. Enlist the support of community members, especially attorneys or judges, to sit in and offer suggestions.

c. You are encouraged to attend the regional competition. This will not only bolster the team's courage, but it will also demonstrate to them your commitment and your interest in their achievements.

6. If Your Team Advances to State Finals

a. Only 8 of the competing teams statewide will advance to finals. Advancing teams are posted on the CCV web site, www.civicvalues.org, generally by the Tuesday evening or Wednesday morning following regionals.

b. If your team is among those that advance, the four weeks between regionals and finals are the team's opportunity to improve its performance. The ballots from regionals will be provided to the teacher advisor, and these should be reviewed to identify potential areas for improvement.

7. If Your Team Does Not Advance to State Finals

a. First and foremost, let your team know you are aware of and respect the work they have invested to prepare for regionals. Naturally, if they didn't really work hard, that sentiment should be down-played. But, any student who shows up for practice, learns his or her role and actually works hard should be congratulated regardless of the outcome.

b. Consider attending the championship round with our team. From the experience, your team members will have an accurate perception of the level of expertise that must be achieved to advance to the final round, and they may feel better about not advancing when they have the opportunity to view the presentations of those who did and compare it with their own performances at regionals.

B. Teacher Advisors

Your role as a mentor and a leader is critical to the success of your team. Your general responsibilities include assisting your team members with the following:

1. **Education and Sportsmanship**

   Learning about the law and the legal system, as well as the substantive issue around which the case is based, is the primary goal of the Mock Trial program. Healthy competition helps to achieve this goal; however, teacher advisors must remember their responsibility to keep the competitive spirit at a *reasonable level*. The reality of the adversary system is that one party wins and the other loses, and teacher advisors must prepare their teams to accept *graciously* either outcome in a mature manner. Teacher advisors can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.

2. **Rules of the Competition and Procedure**

   Please ensure that you and your team members have read the rules thoroughly several times. You are expected to help your team members learn and adhere to them, as well as to the Code of Ethical Conduct.

3. **Role Assignments**

   Team members should be strongly encouraged to select roles based on their interests and abilities, not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern. Note that all witnesses, unless otherwise noted, are gender neutral and may be played by males or females.

4. **Team Preparation**

   Teams must learn and prepare to present both sides of the case. Once your team has done this, you are strongly encouraged to arrange and conduct practice mock trials (scrimmages) prior to regional and state final competitions. Scrimmages require only one attorney to act as a presiding judge because it is not necessary to award points to teams during these practice rounds. Your attorney coach may be able to help you obtain use of a courtroom, but classrooms or other facilities may also be used.

5. **Working with an Attorney Coach**

   While the Center for Civic Values is available to help locate an attorney to coach a team entered in the competition, you, as a local teacher, are often the best judge of a suitable person to assist your team. Possible sources include the following: parents or relatives of students, alumni, acquaintances, local law firms, county attorney's office, school board members or local judges. (If after exhausting all possible avenues, you are still unable to find an attorney to work with your team, contact CCV by writing to mocktrial@civicvalues.org)

   Since attorneys have time limitations, they should be used as consultants when their expertise is needed, but they do not need to be present at all team activities or practices, unless they wish to do so. As a consultant, the attorneys should advise students, but should not author any portion of the team's trial materials.

a. After You Have Identified Your Attorney Coach

1) Invite her/him to attend the training workshop in your area.

2) Provide her/him with a copy of the mock trial materials so s/he can become familiar with the case problem and rules of competition, evidence and procedure.

3) Discuss meeting times and places with students.

4) Discuss the case and the attorney's suggestions regarding strategy and arguments for both sides.

b. Before Meeting With Your Attorney Coach

1) Have the students learn the statement of facts and witness statements (in affidavits) as thoroughly as possible. You might try having the students quiz each other - one student looks at the facts and affidavits and asks the other student(s) questions; then reverse roles.

2) Try brainstorming with your students to elicit factual arguments for both the plaintiff/prosecution and the defense; i.e., which facts support the plaintiff's/prosecution's case and which facts support the defendant's case?

3) Have students try to string facts together to make a logical assumption about the case.

4) Have students read through the procedures for trial of civil/criminal cases, the simplified rules of evidence, and the mock trial rules. Discuss with your students and be sure to write down any questions they have for your attorney coach. For rules clarification, contact the Mock Trial Director at the Bar Association.

5) Conduct lessons designed to familiarize students with the court system and civil or criminal procedure. It will help your team if they observe a real trial before the mock trial. Contact the clerk of the district court in your county to find out when a trial is scheduled at the courthouse. The public is invited to attend these trials.

c. Together With Your Attorney Coach

1) Learn the problem, the rules of competition and procedure and the rules of evidence.

2) Develop a case strategy. The entire team should work together on this process. You should be sure your attorney understands that her/his role is to serve as a consultant to the students, not as a director or decision-

maker for the team. For the educational goals of the mock trial program to be achieved, it is the team members who must be the ones who actually prepare their own presentations, which should be consistent with the strategy that has been established. Consider the following when developing your team strategy:

a) What are the strengths of your case? These are the points and issues you will want to emphasize.

b) What are the weaknesses of your case? These are the points and issues for which you must prepare a counter-argument.

c) Are your strategies integrated? That is, are the witnesses and attorneys all promoting the same "theme" and "theory?" You need to work as a team during the course of the trial, and each team members must always be certain about where you are headed.

d) Where are the possible holes in your strategy? You don't want to be confronted with surprises at trial, and you must be prepared to cope with the unexpected.

e) Is there a particular key witness whom you will want to exploit during cross-examination?

f) Will we need to use all our time? If your strategy has been achieved, before you have used all your allotted time, that is fine.

g) While it is not necessary for mock trial purposes, you may wish to research cases cited as references in order to better understand the trial.

3) Other considerations when preparing your case:

a) In which order to call your witnesses

b) Physical position in the courtroom

c) What information should be contained in your opening statement and closing argument. (Again, remember that the coaches may give the students ideas, but should not write the statements for them.)

d) What questions to ask on direct and cross-examination of each of the six witnesses.

e) How to avoid asking objectionable questions and what to do if one of your questions is objected to.

f) How and when to object to the opposition's questions.

g) How to introduce exhibits and offer them into evidence.

h) How to exhibit proper courtroom decorum and good sportsmanship.

d. Practicing With Your Attorney Coach

1) Observe a real trial in county or district court.

2) Consider asking a speech or drama teacher to observe your team in action and offer suggestions for improving the students' presentations.

3) Practice the trial in full, including direct and cross-examinations, in front of your attorney coach or another local attorney or judge who is willing to sit in and offer suggestions. Your team should have presented it's entire case several times prior to the regional competition in February.

4) Set up a scrimmage among your own team members, if there are enough students participating. Have one group present the prosecution/plaintiff's side and the other group present the defense. If you do not have enough students on your team, set up a scrimmage with another school, to give teams the full flavor of participating in a mock trial. Arrange for a local attorney or judge to preside, if at all possible, conduct the trial in a courtroom.

C. Student Attorneys

This information in this section offers various hints to help students prepare to be attorneys on the mock trial teams. Included are tips and techniques for both advance preparation before trial and presentation at trial of the opening statement, direct and cross-examinations, and closing argument.

1. General Suggestions

a. Always be courteous to witnesses, other attorneys, and the judge.

b. Always stand when talking in court and when the judge enters or leaves the room.

c. Dress appropriately.

d. Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.

e. If the judge rules against you on a point or in the case, take the adverse ruling gracefully and be cordial to the judge and the other team. Remember that not everyone can win the competition, so learn as much as you can and have fun while participating in the project.

2. Opening Statement

a. Objective

1) To acquaint the presiding judge and the scoring judges (the jury) with the case; and, to and outline what you are going to prove through witness testimony and the admission of evidence. Argument, discussion of law, or objections by the opposing attorney are not permitted.

b. Advice for Preparing - What to Include

1) Name of case
2) Names of attorneys (you and your colleagues).
3) Name of client (the State, if you are the prosecution; the defendant, if you are the defense)
4) Name of opponent
5) A short summary of the facts
6) A clear and concise overview of the witnesses, testimony and physical evidence that you will present, stating how each will help prove your case.
7) Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case
8) Conclusion and request for relief.

c. Advice for Preparing - What to Avoid

1) Too much detail, which can tire or confuse the court
2) Exaggeration and overstatement
3) Argument, which violates the basic function of the opening statement (i.e., to provide the facts of the case from your client's viewpoint)

d. Advice for Presenting

1) Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.)
2) Do not read the opening; make eye contact with the jury tell your story, preferably without the use of notes.
3) First and last sentences should be the strongest, to capture the judges' attention and leave them with a lasting impression.
4) Be earnest, loud and clear

e. Other Suggestions

1) Learn your case thoroughly (facts, law, burdens, etc.)
2) Never promise to prove anything that you will not or cannot

3) Write a clear, concise, and well-organized statement - after hearing your opening the jury should have a very clear idea regarding what the case is about.

3. Direct Examination

a. Objectives

1) 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.

b. Advice for Preparing - What to Include

1) Isolate the information that each witness can contribute to your case and prepare a series of questions designed to elicit that information.

2) Make sure all items that you need to prove your case will be presented through your witness.

3) Use clear and simple questions.

4) Elicit information through questions and answers.

c. Advice for Preparing - What Not to Include

1) Any question to which you do not know the answer

d. Advice for Presenting

1) Be a "friendly guide" for the witnesses as they tell their stories. Let the witnesses be the stars.

2) Try to ask only the questions that you have practiced with your witnesses; ask only the questions, which are necessary to elicit the desired testimony; and stay within your time limits.

3) Be prepared to think and respond quickly to an unexpected answer from a witness and add a short follow-up to be sure you obtained the testimony you wanted.

4) Present your questions in a relaxed and clear fashion; be sure to listen to the answers.

5) If you need a moment to think, ask the judge if you can discuss a point with your co-counsel.

6) Be sure all documents are marked for identification purposes before you refer to them during trial. Refer to them as Exhibit 1, etc. After you have finished using the exhibit, if it helps your case, ask the judge to admit it as evidence.

e. Other Suggestions

1) Ask open-ended questions. These usually begin with "who," "what," "when," "where," "why," or "how," or by asking the witness to "explain" or "describe."

2) Avoid asking leading questions (there are a few generally accepted exceptions to this rule, i.e., questioning on preliminary matters such as name, address, occupation).

3) Practice with your witnesses.

4) Don't ask questions requiring opinion testimony, unless the witness has been certified as an expert by the court.

5) Remember that in the event your witness' memory fails, you may refresh his/her memory by the use of the transcript. (Refer to The Simplified Rules of Evidence)

f. What does the Opposing Attorney do during this Time?

1) Objects to testimony or introduction of evidence when necessary.

2) Takes down pertinent information and prepares for cross-examination of witnesses.

4. Cross-Examination

a. Objective

1) To make the other side's witnesses less believable in the eyes of the trier of fact; to negate your opponent's case; to discredit the testimony of your opponent's witnesses; and to discredit real evidence that has been presented.

b. Advice for Preparing

1) Carefully analyze all possible adverse testimony and other evidence to find weaknesses; an attorney should attempt to explain, modify, or discredit the opponent's evidence by exposing its weaknesses.

2) Jot down ideas or key words, which may be used to write out the cross-examination questions later. Prepare short questions using easily understood language.

a) Types of Questions to Ask

i. 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).

ii. Questions to show that the witness is prejudiced or biased (e.g., the witness testifies that s/he has hated the defendant since childhood).

iii. Questions to weaken the testimony of the witness by showing his/her opinion is questionable because of poor circumstances such as location or lighting (e.g., a witness who has poor eyesight claims to have observed all the details of a fight that took place 100 feet away from him/her in a crowded bar).

iv. Questions to show that an expert witness or even a lay witness, who has testified to an opinion, is not competent or qualified because s/he does not have the proper 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/her opinion the defendant suffers from a chronic blood disease).

v. Questions to reflect on a witness' credibility by showing that s/he gave a contrary statement earlier (e.g., the witness' testimony is different from what s/he testified to during the pretrial hearing).

3) Prepare leading questions that suggest the answers and require only a “yes” or ”no.”

4) Know your case materials thoroughly. It is essential that you appear confident in your case.

c. Advice for Presenting

1) Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.

2) Always listen to the witness' answer.

3) Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.

4) Be fair and courteous; don't quarrel with the witness.

5) Use narrow, leading questions that suggest an answer to the witness (these are generally questions that require a "yes" or "no" answer). Do not allow the witness to explain anything (i.e., do not ask "Why?"). Try to stop the witness if his/her explanation is extensive and hurting your case by saying "You may stop here, thank you," or "That's enough, thank you."

6) Don't harass or intimidate the witness by the questions you ask. It may be useful not to insist on an answer.

7) Save the ultimate point for closing.

8) Eye contact with the witness is recommended.

d. Other Suggestions

1) Anticipate each witness' testimony and write your questions accordingly. Be ready to adapt your questions at the trial depending on the actual testimony.

2) Be brief. Don't ask so many questions that well-made points are lost in the shuffle.

e. What does the Opposing Attorney do during this Time?

1) Listens carefully, objecting when appropriate, and noting pertinent testimony to prepare for re-direct, if necessary.

2) Protects the witness from having his/her credibility threatened by the demeanor of the cross-examining attorney (e.g., by requesting that the judge instruct the attorney to stop arguing with the witness).

5. Re-Direct Examination

a. If either attorney wishes, s/he can conduct re-direct examination. This is most often done to "rehabilitate" a witness if the cross was effective or to reinforce a witness' statement that was made during the direct examination.

6. Closing Arguments

a. Objective

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

b. Advice for Preparing - What to Include

1) Thank the judge for his/her time and attention.

2) Isolate the issues and describe briefly how your presentation resolved those issues.

3) 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 final statement to reflect what the witnesses actually said rather than relying on just the anticipated weaknesses of the other side.)

4) Closing arguments should not be composed entirely before trial since they should highlight the important developments for each side, which occurred during the trial. Relaxed and informal statements are likely to be more effective.

5) 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.)

6) State the applicable statutes, which support your side.

7) Remind the judge of the required burden of proof. If you are the plaintiff's/prosecution's lawyer, you must tell and convince the court that you have met that burden. If you are the attorney for the defense, you must inform and convince the court that the other side has failed to meet its burden.

8) Argue your case by stating how the law applies to the facts as you have proven them.

9) Don't forget to confidently request the verdict/remedy you desire.

c. Advice for Presenting

1) You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc. in the other side's case that actually came out during the trial. You can't anticipate everything perfectly before the actual presentation of the case.

2) Argue your side, but don't appear to be vindictive. Fairness is important.

3) Be relaxed and ready for interruptions by certain judges who like to ask questions during closing arguments.

4) Do not make objections during the other side's closing argument.

5) Do not read throughout your presentation. It is much easier to avoid reading if your notes contain only a brief outline/list of the important points you want to remember to cover. If you are using notes, make eye contact with the judge as often as possible.

6) Rehearse as much as possible (this will help you feel comfortable presenting your closing without reading it).

7) Make sure your argument is well organized.

D. Student Witnesses

Witnesses play a key role on the mock trial teams. While many students may consider the attorneys roles as more important, mock trial judges report that their decision depends as much on the witness' performances as on those of the attorneys. Many a trial has been won or lost on the witness stand.

1. General Suggestions

a. Familiarize yourself thoroughly with the case materials. Know what you should testify to and what other witnesses know. Witnesses may not use notes while being questioned.

b. Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (i.e., play the role as if you are the person whose identity you are assuming). You must establish your credibility as a witness by accurately portraying the character. Demonstrate knowledge and understanding of the person (both their strengths and weaknesses).

c. Go over your testimony repeatedly with your attorneys. Have them cross-examine you on the weaknesses in your testimony. Be prepared to handle hostile questions.

d. You are not allowed to make up testimony on direct examination. If asked a question during cross-examination, to which the case materials supply no answer,

you may make up an answer, which will not be inconsistent with your previous testimony. (Refer to the Rules of the Mock Trial Competition, section E.3.)

e. Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that a question be repeated. If you realize that you answered a question incorrectly, ask the judge if you may correct your answer.

f. When answering questions, speak clearly so you will be heard. The judge must hear and record your answer; therefore, do not respond by shaking your head "yes" or "no."

g. Do not give your personal opinion or conclusions when answering questions unless specifically asked. Give only the facts as you know them, without guessing or speculating. If you do not know, say so.

h. Be polite while answering questions. Do not lose your temper with the attorney questioning you. Remember that you are there to tell what you know, and not necessarily to be an advocate for your side.

i. Always be courteous to witnesses, other attorneys, and the judge(s).

j. Always stand when the judge enters or leaves the room. Always say "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.

k. Dress appropriately (to show respect for the court).

l. If the judge rules against you in the case, take the defeat gracefully and act cordially toward the judge and the other side.

2. Opening Statements

a. Objective

8) To acquaint the judge with the case and outline what your attorneys are going to prove through witness testimony and the admission of evidence.

3. Direct Examination

a. Objective

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

b. Advice for Preparing

1) Know the case inside out, especially your witness statement (or affidavit).

2) Know the questions that your side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.

3) Practice with the attorney.

c. Advice in Presenting

1) Be as relaxed and in control as possible. An appearance of confidence and trustworthiness is important.

2) Don't read or recite your witness statement verbatim. You should know its contents beforehand.

3) Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or affidavit).

4) Don't panic if the attorney or judge asks you a question you haven't rehearsed.

4. Cross-Examination

a. Objective

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

b. Advice for Preparing

1) Learn the case thoroughly, especially your witness statement.

2) Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, and problems in your testimony, and be prepared to explain them.

3) Practice, practice, practice.

c. Advice for Presenting

1) Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.

2) Be sure that your testimony is never inconsistent with the facts set forth in the witness statement.

3) Don't recite your witness statement word for word; instead answer questions as they are asked in a smooth and natural style.

4) Cross-examination can be tough, so don't get flustered.

5) Your job as a witness is to tell the truth, as you know it, about what happened. It is not your job to be an "advocate" for your side or to argue with opposing counsel.

VI. HOW TO SUCCEED IN MOCK TRIAL

A. Make the Most of Your Presentation

1. Dress Appropriately

a. Your personal appearance affects the way people view you and your performance, and, therefore, you should dress appropriately for the courtroom. What does appropriately mean? It means business, not casual, dress. For young women, this could be a dress, a skirt and jacket, or slacks and a jacket. (If you wear a skirt or dress, be conservative in your choice of hem length.) For young men, it could be slacks and a shirt and tie, or slacks with a jacket and tie or a suit. Costumes of any kind, including uniforms, are prohibited under the mock trial rules, but it is acceptable to dress "in character."

2. Prepare the Courtroom

a. Arrive at the courtroom at least 15 minutes early so that you can acquaint yourself with the layout, make any necessary adjustments and be ready to start the trial exactly on time.

b. The prosecution team sits at the table closest to the jury box, and the defense team sits at the other table. You may not rearrange the room.

c. If you are video taping the trial (allowed only if both teams agree), put the camera and the person who will be filming in the jury box. (Be unobtrusive -- draw no attention to yourself.)

d. If you are representing the prosecution, ensure your timekeeper is seated where all participants, including the presiding judge, can easily see the time cards as they are being held.

e. Confirm the trial tables seat three attorneys comfortably. Be sure that there is adequate room to rise from your chair and adequate passageway to approach the bench or the witness. If the mock trial case includes a defendant who is testifying, s/he may also be seated at the table with the attorneys. If the defendant will not be testifying, the rules prohibit placing anyone at the trial table to "represent" that character.

f. Attorneys should neatly organize their materials on the tables. Get rid of all unnecessary papers, briefcases and pencils.

g. Witnesses should seat themselves in separate areas of the spectators' section.

h. Ensure neither team members nor spectators are wearing hats.

i. Ensure neither team members nor spectators are chewing gum.

3. **Remember Your Posture**

    a. Participants should remember that from the elevated bench the judge has a good view of the entire courtroom. Your seating posture has a definite impact on the judge's impression of you. Attorneys especially need to be conscious of how they are seated. Sit straight but not so stiff as to be uncomfortable. Put your feet flat on the floor or cross your legs in a professional manner. Avoid nervous mannerisms, such as shaking your leg or tapping your pencil.

4. **Speak Effectively**

    a. All participants should speak clearly and carefully enunciate each word, as microphones are not usually available.

    b. For attorneys, all speaking is done from a standing position. For witnesses all speaking is done in a seated position from the witness stand.

5. **If you are an attorney and you are addressed by the Court, stand promptly before responding.**

6. **Deliver Your Best Opening Statement or Closing Argument**

Since these are extemporaneous speeches, attorneys should employ effective speech-making techniques. Do not assume you are allowed to move around the courtroom; instead, request the presiding judge's permission to move away from the podium. If permission is granted, be extremely cautious of getting too close to the jury box; you must avoid violating the "personal space" of those in the jury box.

a. Organize any materials before beginning.

b. Rise slowly.

c. With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the opening or closing.

d. Get your body ready by assuming a good speech-making posture. Your feet should be set apart a bit and your weight balanced on the balls of your feet.

e. Before your first word, look the judge directly in the eyes saying, "May it please the court" and then begin to speak directly to the members of the jury (the scoring judges).

f. Try for a conversational tone in your voice. Speak to the judges in a clear voice that is slow enough and loud enough for the them to follow your ideas without straining.

g. Avoid using slang, and always use your very best vocabulary.

h. Use variety in your delivery. You can emphasize major points in several different ways, i.e., pause before an important idea; raise your volume slightly to accentuate an important idea; or slow down to draw attention to an important idea.

i. If you concentrate on communicating directly to the judges, gestures should be no problem. Natural gestures are always good to emphasize ideas. They will come

instinctively if your focus is on talking to the judges. Don't force gestures and always avoid repetitive or unnecessary gestures.

j. Movement is often dictated by the courtroom situation. If you are at a podium with a microphone, don't move away from the podium. In cases where there is no podium, well-timed movement can help punctuate a point or help you release nervous energy. Be sure not to pace. Keep your focus on directing the speech to the judges.

k. Never move so that you are in front of the opposing counsel's table. This applies when giving openings/closings and when you're questioning a witness. Opposing counsel may object on the grounds that you are obstructing their view.

l. Be aware that judges may interrupt during your closing statement and ask you a question. Pause. Listen carefully to the question. Then answer to the best of your ability. The most important thing is to maintain your poise.

m. When you have concluded your presentation, say, "Thank you, Your Honor," while looking directly at the presiding judge. Pause briefly and then take your seat. Show no signs of relief and don't immediately turn to speak to co-counsel. Always maintain that aura of poise and confidence.

7. Question Witnesses Skillfully

a. Always rise to do the questioning.

b. You may have questions written out, but be ready to adapt when objections are made or when a witness doesn't respond as you had expected.

c. Speak slowly!!!

d. Listen to the witness' response. S/He may not say what you had anticipated and thus you may have to insert or reword questions for clarification.

e. If opposing counsel makes an objection, stop speaking and give them the floor.

f. Be prepared to respond to an objection. Do so as articulately and confidently as you possibly can. Do not ramble. Not all judges will expect you to respond, and, in fact, sometimes you'll have to ask if the judge will allow you to do so.

g. If the judge rules against you on an objection, show no signs of dismay. Simply proceed with another question. The key is to maintain your poise.

h. If you honestly don't know how to proceed, ask the judge if you may confer with your co-counsel. Make the conference brief. Use this conference technique only when absolutely essential. Judges may become frustrated if you hold up the trial too often. Remember: this conference counts as part of your time allotment.

i. Never ask a question to which you don't know the answer.

j. When you have finished your questioning, say "No further questions, Your Honor," and take your seat in a confident manner.

8. Be a Convincing Witnesses

a. Generally, all witnesses will be sworn at the beginning of the trial as one group.

b. When you are called, go to the witness stand. When the judge indicates that you may take your seat, respond by saying, "Thank you."

c. Seat yourself in the witness box in a professional manner.

d. Position yourself so that you can comfortably give your responses to the scoring judges, who are seated in the jury box.

e. Speak loudly and clearly and in a manner best fitting the character you are portraying.

f. Stay in character!

g. Don't allow any unnecessary movement or gestures to distract from your testimony.

h. When an objection is made, immediately stop talking.

i. Wait until the objection is decided and even then don't respond until the attorney doing the questioning indicates that you should do so.

j. Do not attempt to answer a question that you don't understand. Ask for clarification to be sure that you understand the question that is being asked.

k. Never argue with the judge or the opposing counsel. Leave that to your attorney. Keep a cool head!

l. Do not leave the witness box until the judge directs you to "step down." In an instance where a judge might forget, wait a bit and then ask, "May I step down, Your Honor?"

m. Walk slowly and confidently back to your seat.

n. Do not speak to anyone along the way or when you are seated.

9. Maintain Your Demeanor During Recess and Debriefing

a. Rise when the judges leave the courtroom; maintain order and quiet while they are out; and, rise when the judges reenter the courtroom.

b. Listen quietly and respectfully during the debriefing. When all the judges have concluded their comments, feel free to applaud, not only for them but also for your opponents and yourselves.

10. Exhibit Good Sportsmanship

a. You now have the opportunity to meet the other team. Walk over to the other team members. Shake hands, and introduce yourself. It's always appropriate to congratulate them on a good aspect of their performance. Remember, good sportsmanship is part of being a winner.

B. Master the 10 Most Difficult Things

The numbered items below, which appear in no particular order, have been identified from watching countless mock trials, as well as dozens of national championships. If you can master these, you will do well as a member of your mock trial team.

1. Determining which points are the most necessary in order for you to prove the elements of your case, and then making sure that you do, indeed, prove them.

2. In the opening statement, telling clearly what you intend to prove, and in the closing argument arguing effectively that the facts and evidence you have presented has proved your case.

3. Learning, understanding and recalling in court the rules of evidence and being able to use them to introduce documentary or physical evidence.

4. Following the formality of the court, e.g., standing up when the judge enters or when addressing the judge, calling the judge "Your Honor," etc.

5. Phrasing questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions).

6. Refraining 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. Pointless questions should be avoided! Questions should require answers that will make only good points for the side.

7. Thinking quickly on your feet. Times that you'll need to be quick include when a witness gives an unexpected answer, when an attorney asks an unexpected questions or makes an unexpected objection, or, when the presiding judge decides to question an attorney or a witness.

8. Making objections and responding to objections.

9. Refraining from reading opening statements and closing arguments.

10. Learning and understanding the hearsay rule and all its exceptions.

C. Exhibit Appropriate Courtroom Decorum

A critical aspect of trial procedure, often overlooked in teaching about mock trial, is the courtroom decorum of the participants. The following hints are intended to help mock trial team members understand the nuances of appropriate courtroom behavior.

1. Be polite and courteous to the judges, both presiding and scoring. The role of the presiding judge is to make rulings on the procedures and objections. Remember that this is the most powerful person in the courtroom and act accordingly. ALWAYS refer to

the presiding judge as “Your Honor,” and accept decisions gratefully and politely (yes, Your Honor), even if they are not in your favor.

The role of the scoring judges is to evaluate the performance of each participant. You should refer to the scoring panel as “members of the jury.” Use extreme caution if you choose to refer to them as “ladies and gentlemen” – often panels are all female or all male.

2. Courtroom etiquette also demands that you behave courteously and respectfully toward the opposing team before, during and after the trial! To demonstrate your good sportsmanship, shake hands and congratulate your opponents at the conclusion of the judges’ debriefing.
3. Be prepared to deal with the unexpected. Remember, something may arise for which you are totally unprepared. If you believe the rules were violated, object and be prepared to explain your objection. Maintain your composure, even if you feel the rug has been “pulled out from under” you. (You may want to watch the movie “Suspect” for a good example of how unpredictable things in a trial can be.
4. Emotions are not banned from the courtroom; however, they must be controlled. It is okay (and may even be part of your trial strategy) to be appropriately indignant, puzzled, etc., but uncontrolled outbursts or wild theatrics are not appreciated by the judging panels and may cost you valuable points.
5. Hats, gum, food or beverages of any kind are prohibited in the courtroom for both participants and spectators. The only exception is water at the trial table.

VII. APPENDIX 1: FOUR-WEEK TEACHING SCHEDULE FOR MOCK TRIAL

DAYS 1 and 2
Discuss trial procedure generally, the substantive law involved in the mock trial being enacted and the applicable burden and standard of proof in your case. Divide the class in half and assign each half the plaintiff's (prosecution's) or defendant's case. Students should read all trial materials as homework.
DAY 3
Using an overhead projector or the chalkboard, talk about the relevant facts in the case and possible theories for each side. Discuss purpose and format of opening statements. Assign roles on each side. Have students prepare a draft of an opening statement for their side.
DAY 4
Review the opening statements with each student individually while the others practice presenting their opening statements.
DAY 5
Have each student present her/his opening statement. List on the board important facts/ideas raised on each side. Retain the list for future use.
DAY 6
Rules of evidence worksheets and practice in class (e.g., getting writings and exhibits submitted).
DAYS 7 and 8
Rules of evidence continued.
DAY 9
Direct and cross-examination, working on and reinforcing student understanding of rules of evidence at the same time. Students should prepare direct questions of one of their side's witnesses. Practice when questions are complete.
DAYS 10 through 13
Direct and cross-examination continued.
DAY 14
Study closing arguments, their purpose and how they differ from opening statements. Students should start work on a closing statement for their side in class and finish a rough draft as homework.
DAY 15
Review student closing arguments with them individually, then have each student present hers/his in front of the class (use of note cards only).
DAY 16
Field trip: Court visit

DAY 17
Debrief the court visit. Review and discuss what was seen.
DAY 18
Students review the case and rehearse their parts.
DAY 19
Trial
DAY 20
Debrief the trial. After all mock trials, it is important to discuss the proceedings with the class. This is referred to as "debriefing;" it is designed to put the whole mock trial experience into perspective by relating the mock trial to the actors and process of the American court system. The discussion should focus on a review of the legal issues in the trial and courtroom procedure, as well as broader questions about our trial system. Questions (and topics for short compositions) which may be pertinent include: Were the procedures used fair to both parties? Were some parts of the trial more important than others? Did either side forget to introduce any important evidence? Could either side have been more effective or successful in its direct or cross-examinations of the witnesses? Was the Court's decision a fair one? What changes could be made to improve the trial procedures?

VIII. APPENDIX 2 - GLOSSARY OF LEGAL TERMS

acquittal A finding of "not guilty," certifying the innocence of a person charged with a crime.

adversary system The trial methods used in the U.S. and some other countries, based on the belief that the trust can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.

alternative dispute resolution Processes that people can use to help resolve conflicts rather than going to court. Common ADR methods include mediation, arbitration and negotiation.

Amicus curiae A friend of the court; one not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

appeal A request by the losing party in a lawsuit that the judgment be reviewed by a higher court.

appellant The party who initiates an appeal. Sometimes called a petitioner.

appellate court A court having jurisdiction to hear appeals and review a trial court's decision.

appellee The party against whom an appeal is taken, sometimes called a respondent.

bar The whole body of lawyers. The "case at bar" is the case currently being considered.

brief A written argument prepared by counsel to file in court setting forth both facts and law in support of a case.

burden of proof In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point–the burden of proof–is not the same as the **standard of proof.** "Burden of proof" deals with which side must establish a point or points; "standard of proof" indicates the degree to which the point must be proven. For example, in a civil case the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as "a preponderance of evidence" or "clear and convincing evidence."

case law Law based on previous decisions of appellate courts, particularly the Supreme Court.

certiorari "To make sure." A request for certiorari is an appeal which the higher court is not required to grant. If it does, then it agrees to hear the case, and a writ of certiorari is issued commanding officials of inferior courts to convey the record of the case to the higher court.

civil case A case involving disputes between two or more people, between people and companies, or between people and government agencies.

common law The term generally refers to the "judge-made law" (case law or decision law). The common law originated in England in the rulings of judges based on tradition and custom. These rulings became the law common to the land. Common law is distinguished from statutes (laws enacted by legislatures).

complaint The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

criminal case A case brought by the government, through a prosecutor, against a person thought to have broken the law. (Criminal law is a broad field of the law involving action taken by the state against a person accused of committing a crime.)

crime An act, or failure to act, forbidden by law and designated a crime in the statutes.

decision The judgment reached or given by a court of law.

decree An order of the court. A **final** decree is one which fully and finally disposes of the litigation; an **interlocutory** decree is one that often disposes of only part of a lawsuit.

defendant In a civil case, the person being sued. In a criminal case, the person charged with a crime.

dispute A conflict of claims or rights for which a legal suit may be brought.

dissent The disagreement of one or more judges with the decision of the majority.

due process of law Law in its regular administration through the courts of justice; the guarantee of due process requires that every person be protected by a fair trial; i.e., the right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.

enjoin To issue an injunction, i.e., to issue a court order prohibiting an act.

equal protection of the law The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restriction in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than such laid upon others; and that no different or greater punishment is enforced against them for a violation of the laws.

federalism or federal system As applied to the United States, a division of powers between the federal or U.S. government and the governments of the fifty states. The states have powers of their own, such as power to create a public school system. The federal government has powers such as the control over coinage and the regulating of foreign trade. Both have concurrent powers in such areas as taxation and public health and welfare.

felony A most serious crime with penalties of imprisonment ranging from a year and a day to life, or, in some states, punishable by death.

finding Formal conclusion by a judge or regulatory agency on issues of fact; also a conclusion by a jury regarding a fact.

grand jury A jury of inquiry that hears evidence and, if satisfied that there is a probable cause that a crime was committed, presents an indictment. A petit jury is the jury in a criminal trial that decides the guilt or innocence of the accused.

grievance A legal dispute.

grounds The basis or foundation for some action; legal reasons for filing a lawsuit.

homicide The killing of one person by another.

impartial Objective; provision of the Sixth Amendment to the U.S. Constitution requiring the judge or a jury not to favor one party over another or to prejudge the merits of the case.

indictment A formal charge or accusation of criminal action.

injunction A court order prohibiting a threatened or continuing act.

judicial review The power of the Supreme Court to declare an act of Congress unconstitutional. *Marberry v. Madison* is the classic case of judicial review.

legislative history Background of action by a legislature, including testimony before committees, written reports and debates on the legislation.

litigation The process of resolving a dispute over legal rights in court.

misdemeanor Less serious crime; in Minnesota punishable by 90 days in jail and/or $500 fine. **Gross misdemeanor** is a less serious class of crime with penalties of imprisonment from 91 days to one year or a fine greater than $500 or both. A **petty misdemeanor** is a minor offense for which one may be fined.

moot A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy which has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing which would be affected by the court's decision.

motion An application for a rule or order, made to a court or judge.

opinion A written statement of a judge setting forth the reasons for a decision and explaining his or her interpretation of the law applicable to the case. A **majority** opinion represents the views of more than half of the judges who participated in the case. A **plurality** opinion represents the view of the greatest number of judges, but less than half of those who hears the case. For example, suppose nine judges hear a case and decide it by a five-to-four vote. If all five agree in their reasons for the decision and join in an opinion stating those reasons, it would be a majority opinion. However, if three of the five agree on the reasoning and the other two agree with the decision but not with the reasoning, the opinion of the three would be a plurality opinion. A **dissenting** opinion is one which disagrees with the decision of the majority. A **concurring** opinion agrees with the decision of the majority, but differs from the reasoning of the majority opinion.

ordinance The laws passed by city government.

overrule To overturn; as, for example, when a court of appeals decides that a previous decision in a different case, by that court or by a lower court, was incorrect. After a case has been overruled it can no longer be referred to as a precedent.

perjury Lying under oath.

plaintiff The complaining party to litigation; one who initiates the court action.

precedent A prior judicial decision that serves as an example or rule to authorize or justify another.

prosecutor A public officer who conducts criminal proceedings on behalf of the people (i.e., the government's attorney in a criminal case).

public defender A public officer who provides Constitutionally-guaranteed defense for those who are accused of criminal offenses but cannot afford to hire an attorney.

ratification The process of approving an amendment to the U.S. Constitution, which is spelled out in Article 5 of that document.

relief Deliverance from oppression, wrong, or injustice; a general designation of the assistance, redress, or benefit which a plaintiff seeks at the hands of the court.

remand To send back to a lower court, a higher court can remand a case to a lower court with instructions to carry out certain orders.

remedy Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

reverse To overturn the ruling of a lower court.

standard of proof The level of evidence necessary to prevail in a legal case. It varies depending on the nature of the case. The standard is **"beyond a reasonable doubt"** (the jury has a higher degree of certainty about the defendant's guilt although need not be 100% convinced) in criminal cases, and **"preponderance of the evidence"** or **"clear and convincing evidence"** (the majority of the evidence) in most civil cases.

statutory law Law enacted by the legislative branch of government, as distinguished from **case law** or **common law**. A statute is an act of the legislature declaring, commanding or prohibiting something. Regulation refers to rules made by government agencies that carry out the intent of a statute.

stay To stop or hold off. To stay a judgment is to prevent it from being enforced.

subpoena A process which requires a person to appear as a witness and give testimony in court.

supreme court The highest court of most states; the highest court of the United States. The U.S. Supreme Court is made up of a chief justice and eight associate justices appointed by the president. Supreme Court decisions must be followed by lower courts in similar cases. However, the Supreme Court itself need not abide by its earlier decisions if it becomes convinced that circumstances demand a new approach. After a major decision by the Supreme Court, legislatures often revise laws to bring them into accord with the Constitution as interpreted by the decision

supremacy clause Article 6, clause 2 of the Constitution, which declares the federal Constitution and laws to be binding over the state constitutions and laws.

trier of fact The judge or jury when deciding the events that actually happened as proven in a trial. A **court trial** is a type of trial where the judge is the trier of fact as well as law. A **jury trial** is a type of trial where the jury is the trier of fact.
voir dire The process of selecting a jury.
warrant A court order calling for the arrest of the person named for a specific charge or the search of a specified area.