

Students

Courtroom Decorum

(Adapted from materials developed by the Center for Civic Values, Gene Franchini High School Mock Trial Program in New Mexico)

A critical aspect of trial procedure is the courtroom decorum of the participants. Here are hints to help mock trial team members understand the nuances of appropriate courtroom behavior.

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 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, in your favor or not.

The role of the **scoring judges** is to evaluate the performance of each participant. Refer to the scoring panel as "members of the jury."

Courtroom etiquette demands that you behave courteously and respectfully toward the opposing team before, during and after the trial.

1. To demonstrate your good sportsmanship, shake hands and congratulate your opponents at the conclusion of the judges' debriefing. This applies to students, teacher advisors, attorney coaches and observers.
2. Be prepared to deal with the unexpected. 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.
3. 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.
4. 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.

Make the Most of Your Presentation

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1. Dress Appropriately

- a. Your personal appearance affects the way people view you and your performance. Therefore, you should dress appropriately for the courtroom. That means business 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 to 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 videotaping the trial (allowed if both teams agree), put the camera 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 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, rules prohibit placing anyone at the trial table to "represent" that character.
- f. Attorneys should organize materials neatly on the tables. Get rid of unnecessary papers, briefcases and pencils.
- g. Witnesses should seat themselves in separate areas of the spectators' section.
- h. Ensure no team members are wearing hats or are chewing gum.

3. Remember Your Posture

- a. 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 must 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. Participants should speak slowly and clearly and carefully enunciate each word. Microphones usually are not available.
- b. Attorneys speak from a standing position. Witnesses speak from the witness stand, unless they have permission to testify out of the witness box.
- c. Attorneys who are addressed by the court should stand promptly before responding.

5. Deliver Opening Statement or Closing Argument

- a. These are extemporaneous speeches. Attorneys should employ effective speaking techniques. You must receive permission from the presiding judge to move around the courtroom, away from the podium. Be careful not to get too close to the jury box, which could violate the "personal space" of those in the jury box.
- b. Organize materials before beginning.
- c. Rise slowly.
- d. With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the opening or closing.
- e. Get your body ready by assuming a good speech-making posture. Set your feet slightly apart, weight balanced on the balls of your feet.
- f. Before your first word, look the judge in the eyes and say, "May it please the court." Then speak directly to the members of the jury (the scoring judges).
- g. Try for a conversational tone in your voice. Speak to the judges in a clear voice that is slow enough and loud enough so they can follow your ideas without straining.
- h. Avoid using slang, and always use your very best vocabulary.
 - i. Use variety in your delivery. You can emphasize major points in several different ways. Pause before an important idea; raise your volume slightly to accentuate an important idea; or slow down to draw attention to an important idea.
 - j. Concentrate on communicating directly to the judges and use natural gestures emphasize ideas. Don't force gestures and always avoid repetitive or unnecessary gestures.
- k. Movement is often dictated by the courtroom situation. If you are at a podium with a microphone, stay at the podium. Where there is no podium, well-timed movement may punctuate a point or help you release nervous energy. Don't pace. Keep your focus on directing the speech to the judges.
 - l. 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.
- m. Judges might 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 important thing is to maintain your poise.
- n. When you have concluded your presentation, look at the presiding judge and say, "Thank you, Your Honor." Pause briefly and take your seat. Show no signs of relief and don't immediately turn to speak to co-counsel. Always maintain poise and confidence.

6. Question Witnesses Skillfully

- a. Always stand.
- 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 must ask the judge for permission to respond.
- 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 that 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.

7. Be a Great Witnesses

- a. Generally, all witnesses will be sworn at the beginning of the trial as a 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 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 you don't understand. Ask for clarification to be sure 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." When 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.

8. Maintain Your Demeanor During Recess and Debriefing

- a. Rise when the judges leave the courtroom. Maintain order and quiet while they are out. 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.

9. 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.
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Suggestions for Student Attorneys

(Adapted from materials developed by the Center for Civic Values, Gene Franchini High School Mock Trial Program in New Mexico)

Courtroom decorum

- 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. Address the judge, "Yes, Your Honor" or "No, Your Honor."
- e. If the judge rules against you on an objection or other point, take the news gracefully and be cordial to the judge and other team. This is an opportunity to learn and have fun while participating in the project.

Opening Statement:

1. The objective is to acquaint the presiding judge and the scoring judges (the jury) with the case and to outline what you are going to prove through witness testimony and the admission of evidence. Arguments, discussion of law, or objections by the opposing attorney are not allowed.
2. What to Include:
 - a. Name of case
 - b. Names of attorneys (you and your colleagues).
 - c. Name of client (the State, if you are the prosecution; the defendant, if you are the defense)
 - d. Name of opponent
 - e. A short summary of the facts
 - f. A clear and concise overview of the witnesses, testimony and physical evidence that you will present, stating how each will help prove your case.
 - g. Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case
 - h. Conclusion and request for relief
3. What to Avoid:
 - a. Too much detail, which can tire or confuse the court
 - b. Exaggeration and overstatement
 - c. Argument, which violates the basic function of the opening statement (i.e., to provide the facts of the case from your client's viewpoint)
4. Presenting
 - a. Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.)
 - b. Deliver the opening from memory (do not read). Make eye contact with the jury and tell your story, preferably without the use of notes.
 - c. First and last sentences should be the strong, to capture the judges' attention and leave them with a lasting impression.
 - d. Be earnest, loud and clear. Speak slowly enough to be understood easily.
5. Other Suggestions:
 - a. Learn your case thoroughly (facts, law, burdens, etc.).
 - b. Do not promise to prove anything that you won't or can't.
 - c. Write a clear, concise, well-organized statement. After hearing your opening the jury should have a very clear idea regarding what the case is about.

Direct Examination

1. The objective is 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.
2. What to Include
 - a. Isolate the information that each witness can contribute to your case and prepare a series of questions designed to elicit that information.
 - b. Make sure all items you need to prove your case will be presented through your witness.
 - c. Use clear and simple questions.
 - d. Elicit information through questions and answers.
3. What Not to Include: Any question to which you do not know the answer
4. Presenting

- a. Be a "friendly guide" for witnesses as they tell their stories. Let the witnesses be the stars.
- b. Try to ask only the questions that you have practiced with your witnesses. Ask only the questions that are necessary to elicit the desired testimony. Stay within your time limits.
- c. 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.
- d. Present your questions in a relaxed and clear fashion. Listen to the answers.
- e. If you need a moment to think, ask the judge if you may discuss a point with your co-counsel.
- f. 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 finish using the exhibit, if it helps your case, ask the judge to admit it as evidence.

5. Other Suggestions

- a. Ask open-ended questions. These usually begin with "who," "what," "when," "where," "why," or "how," or by asking the witness to "explain" or "describe."
- b. 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).
- c. Practice with your witnesses.
- d. Don't ask questions requiring opinion testimony, unless the witness has been certified as an expert by the court.
- e. If your witness' memory fails, you may refresh his/her memory by the use of the transcript. (Refer to The Simplified Rules of Evidence)

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

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

Cross-Examination

1. Objective: 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.

2. Preparation

- a. 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.
- b. 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.
- c. Use narrow, leading questions (ones that suggest the answers and normally require only a yes or no answer).
- d. Know your case materials thoroughly. You must appear confident in your case.

3. Questions to Ask

- a. Questions that establish the witness is lying on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there)
- b. Questions to show the witness is prejudiced or biased (e.g., the witness testifies s/he has hated the defendant since childhood)
- c. Questions to weaken testimony of the witness by showing his/her opinion is questionable because of circumstances, for instance location or lighting (e.g., a witness with poor eyesight claims to have observed details of a fight 100 feet away in a crowded bar)
- d. Questions to show 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 who testifies to the defendant's need for dental work or a high school graduate who testifies the defendant suffers from a chronic blood disease)
- e. Questions to reflect on a witness' credibility by showing that s/he gave a contrary statement in the affidavit

4. Presenting

- a. Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
- b. Always listen to the witness' answer.
- c. Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.
- d. Be fair and courteous; don't quarrel with the witness.
- e. Use narrow, leading questions that suggest an answer to the witness (generally requiring 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."
- f. Don't harass or intimidate the witness by the questions you ask. It may be useful not to insist on an answer.
- g. Save the ultimate point for closing.
- h. Maintain eye contact with the witness.

5. Other Suggestions

- a. Anticipate each witness' testimony and write your questions accordingly. Be ready to adapt your questions at the trial depending on actual testimony.
- b. Be brief. Don't ask so many questions that well-made points are lost in the shuffle.

6. What the Opposing Attorney Does

- a. Listens carefully, objecting when appropriate and noting pertinent testimony to prepare for re-direct, if necessary
- b. Protects the witness from having his/her credibility threatened by the demeanor of the cross-examining attorney (e.g., ask the judge to instruct the attorney to stop arguing with the witness)

Re-Direct Examination

The attorney may conduct re-direct examination. This is done most often to "rehabilitate" a witness if the cross was effective or to reinforce a witness' statement that was made during the direct examination.

Closing Arguments

1. Objective: To provide a clear and persuasive summary of

- a. The evidence you need to prove the case, and
- b. The weaknesses of the other side's case.

2. What to Include

- a. Thank the judge for his/her time and attention.
- b. Isolate the issues and describe briefly how your presentation resolved those issues.
- c. Review the witness testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses. Remember to adapt your final statement to reflect what the witnesses actually said rather than relying on just the anticipated weaknesses of the other side.
- d. Closing arguments should not be composed entirely before trial since they should highlight the important developments for each side that occurred during the trial. Relaxed and informal statements are likely to be more effective.
- e. Review the physical evidence. Outline the strengths of your evidence and also the anticipated weakness of the other side's evidence. This section must be adapted at trial.
- f. State the applicable statutes that support your side.
- g. Remind the judge of the required burden of proof. On prosecution or plaintiff side, tell and convince the court you have met that burden. Defense attorneys inform and convince the court the other side has failed to meet its burden.
- h. Argue your case by stating how the law applies to the facts as you have proven them.
- i. Confidently request the verdict/remedy you desire.

3. Presenting

- a. 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.
- b. Argue your side, but don't appear to be vindictive. Fairness is important.
- c. Be relaxed and ready for interruptions by certain judges who like to ask questions during closing arguments.
- d. Do not make objections during the other side's closing argument.
- e. Do not read your presentation. You may use a brief outline/list of the important points you want to remember to cover. Make eye contact with the judge as often as possible.
- f. Rehearse as much as possible. This will help you feel comfortable presenting your closing without reading it.
- g. Make sure your argument is well organized.

Suggestions for Student Witnesses

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Witnesses play a key role on mock trial teams. 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.

General Suggestions

- Familiarize yourself thoroughly with the case materials. Know what you should testify to and what other witnesses know. Witnesses are not allowed to use notes while being questioned.
- 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). Establish your credibility as a witness by accurately portraying the character.
- Demonstrate knowledge and understanding of the person (strengths and weaknesses).
- Review your testimony repeatedly with your attorneys. Have them cross-examine you on the weaknesses in your testimony. Be prepared to handle hostile questions.
- You are not allowed to make up testimony on direct examination. If asked a question during cross-examination that cannot be answered from case materials, offer no answer or you might make up an answer that will contradict your previous testimony. (Refer to the Rules of the Mock Trial Competition.)
- Mock trial rules prohibit "unfair extrapolations," which is one of the most important rules of the competition. It makes sure students do not unfairly go beyond the bounds of the problem and beyond their witness affidavits.
- Listen carefully to 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 you answered a question incorrectly, ask the judge if you may correct your answer.
- When answering questions, speak up loud and clear. The judge must hear and record your answer. Do not respond by shaking your head "yes" or "no."
- 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.
- 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.
- Always be courteous to witnesses, other attorneys, and the judges.
- 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.

Dress appropriately to show respect for the court.

- If the judge rules against you in the case, take the defeat gracefully and act cordially toward the judge and the other side.
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The 10 Essential Things

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Key elements of scoring well in mock trial rounds:

- Determine which points are absolutely necessary to prove the elements of your case. Then make sure you prove them.
- Tell clearly in the opening statement what you intend to prove. Argue effectively in the closing argument that the facts and evidence you have presented have proved your case.
- Learn, understand and recall in court the rules of evidence and be able to use them to introduce documentary or physical evidence.
- Follow the formality of the court, e.g., standing up when the judge enters or when addressing the judge, addressing the judge "Your Honor," etc.
- Phrase questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions).
- Refrain from asking so many questions on cross-examination that well established points are lost. When a witness has been contradicted or otherwise discredited, avoid asking additional questions that could lessen the impact of points made previously. Avoid pointless questions. Questions should require answers that will make only good points for your side.
- Be prepared to think quickly on your feet and leave a script to react when, for instance: a witness gives an answer you don't expect, or when an attorney asks an unexpected question or makes an unexpected objection, or the presiding judges begins questioning an attorney or witness
- Know how to make objections and respond to objections.
- Deliver opening statements and closing arguments without a script.
- Learn and understand the hearsay rule and all its exceptions.

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