

# Center for Civic Values

## New Mexico High School Mock Trial Program

*The mock trial program is cosponsored by IOLTA,  
the State Bar of New Mexico and the UNM School of Law*

### SUGGESTIONS FOR STUDENT ATTORNEYS

This outline 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 the presentation at trial of the opening statement, direct and cross-examinations, and closing argument.

#### General Suggestions

1. Always be courteous to witnesses, other attorneys, and the judge.
2. Always stand when talking in court and when the judge enters or leaves the room.
3. Dress appropriately.
4. Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
5. 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.

#### Opening Statement

1. Objective

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 permitted.

2. Advice for Preparing - What to Include

- Name of case
- Names of attorneys (you and your colleagues).
- Name of client (the State, if you are the prosecution; the defendant, if you are the defense)
- Name of opponent
- A short summary of the facts
- A clear and concise overview of the witnesses, testimony and physical evidence that you will present, stating how each will help prove your case.

- Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case
  - Conclusion and request for relief.
3. Advice for Preparing - What to Avoid
    - Too much detail, which can tire or confuse the court
    - Exaggeration and overstatement
    - 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. Advice for Presenting
    - Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.)
    - Do not read the opening; make eye contact with the jury tell your story, preferably without the use of notes.
    - First and last sentences should be the strongest, to capture the judges' attention and leave them with a lasting impression.
    - Be earnest, loud and clear
  5. Other Suggestions
    - Learn your case thoroughly (facts, law, burdens, etc.)
    - Never promise to prove anything that you will not or cannot
    - 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.

## **Direct Examination**

### 1. Objectives

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. Advice for Preparing - What to Include

- Isolate the information that each witness can contribute to your case and prepare a series of questions designed to elicit that information.
- Make sure all items that you need to prove your case will be presented through your witness.
- Use clear and simple questions.

- Elicit information through questions and answers.
3. Advice for Preparing - What Not to Include
    - Any question to which you do not know the answer
  4. Advice for Presenting
    - Be a "friendly guide" for the witnesses as they tell their stories. Let the witnesses be the stars.
    - 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.
    - 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.
    - Present your questions in a relaxed and clear fashion; be sure to listen to the answers.
    - If you need a moment to think, ask the judge if you can discuss a point with your co-counsel.
    - 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.
  5. Other Suggestions
    - Ask open-ended questions. These usually begin with "who," "what," "when," "where," "why," or "how," or by asking the witness to "explain" or "describe."
    - 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).
    - Practice with your witnesses.
    - Don't ask questions requiring opinion testimony, unless the witness has been certified as an expert by the court.
    - 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)
  6. What does the Opposing Attorney do during this Time?
    - Objects to testimony or introduction of evidence when necessary.
    - 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. Advice for Preparing:

- 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.
- 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.
- Use narrow, leading questions (ones that suggest the answers and normally require only a yes or no answer).
- Know your case materials thoroughly. It is essential that you appear confident in your case.

### 3. Types of Questions to Ask

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

### 4. Advice for Presenting

- Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
- Always listen to the witness' answer.
- Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.
- Be fair and courteous; don't quarrel with the witness.
- 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."
- Don't harass or intimidate the witness by the questions you ask. It may be useful not to insist on an answer.
- Save the ultimate point for closing.
- Eye contact with the witness is recommended.

#### 5. Other Suggestions

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

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

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

### **Re-Direct Examination**

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.

### **Closing Arguments**

#### 1. Objective

- 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.

## 2. Advice for Preparing - What to Include

- Thank the judge for his/her time and attention.
- Isolate the issues and describe briefly how your presentation resolved those issues.
- 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.)
- 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.
- 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.)
- State the applicable statutes, which support your side.
- 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.
- Argue your case by stating how the law applies to the facts as you have proven them.
- Don't forget to confidently request the verdict/remedy you desire.

## 3. Advice for Presenting

- 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.
- Argue your side, but don't appear to be vindictive. Fairness is important.
- Be relaxed and ready for interruptions by certain judges who like to ask questions during closing arguments.
- Do not make objections during the other side's closing argument.
- 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.

- Rehearse as much as possible (this will help you feel comfortable presenting your closing without reading it).
- Make sure your argument is well organized.