

SUGGESTIONS FOR STUDENT ATTORNEYS

(See also Mock Trial Competition Rules)

This outline offers various “helpful hints” for preparing students to be attorneys in mock trials. Included are tips and techniques for both the preparation before trial and the presentation at trial of the opening statement, direct and cross-examinations and closing argument.

GENERAL SUGGESTIONS

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

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

Dress appropriately.

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

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 STATEMENTS

Objective: To acquaint the judge with the case and outline what you are going to prove through witness testimony and the admission of evidence. Argument, discussion of law, or objections by the opposing attorney are not permitted.

Advice in Preparing:

What should be included:

- Name of case.
- Names of attorneys (you and your colleagues).
- Name of client.
- Name of opponent.
- A short summary of the facts.
- A clear and concise view of the witnesses, testimony and physical evidence that you will present, stating how each will help prove your case; try to recount the story without naming which witnesses will tell what information.
- 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.

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).

Advice in 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 entire presentation; try to look at the judge and 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.
- 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.

DIRECT EXAMINATION

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.

Advice in preparing:

What should be included:

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

Advice in 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 A, etc. After you have finished using the exhibit; if it helps your case, ask the judge to admit it as evidence.
- 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 witness.
- Remember that in the event of your witness’ memory fails, you may refresh his/her memory by the use of the written statement. (Refer to The Simplified Rules of Evidence.)

What does the opposing attorney do during this time?

Makes objections to testimony or introduction of evidence when necessary.

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

CROSS-EXAMINATION

Objectives: To make the other side’s witnesses less believable in the eyes of the trier of fact; to negotiate your opponent’s case; to discredit the testimony of your opponent’s witnesses; and to discredit real evidence that has been presented.

Advice in 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 a yes or no answer).
- Know your case materials thoroughly. It is essential that you appear confident in your case.

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).

Advice in 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.
- Anticipate each witness' testimony and write your question 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.

What does opposing counsel 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 most often is done to re-establish a witness' statement that was made during the direct examination.

CLOSING ARGUMENTS

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.

Advice in Preparing:

What should be included:

- 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.

Advice in 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 statement is well-organized.

OPENING STATEMENTS

Objective:

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

DIRECT EXAMINATION

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

Advice in Preparing:

- Learn the case inside and out, especially your witness statement (or affidavit).
- 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.
- Practice with the attorney.

Advice in Presenting:

- Be as relaxed and in control as possible. An appearance of confidence and trustworthiness is important.
- Don't read or recite your witness statement verbatim. You should know its contents beforehand.
- Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or affidavit).
- Don't panic if the attorney or judge asks you a question you haven't rehearsed.

CROSS-EXAMINATION

Objective:

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

Advice in Preparing:

- Learn the case thoroughly, especially your witness statement.
- 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.
- Practice.

Advice in Presenting:

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

HOW TO MAKE THE MOST OF YOUR ORAL PRESENTATION

Dress

- Your personal appearance affects the way people view you and your performance; therefore, always dress appropriately for the courtroom.

Getting the courtroom ready

- Arrive at the courtroom at least 15 minutes early so that you can acquaint yourself with the layout, make any necessary adjustments for a mock trial situation and be ready to start the trial exactly on time.
- If you are filming, put the camera and operator in the jury box. Note: you need to seek permission from the Court and follow the courthouse policy for videotaping. (Be unobtrusive – draw no attention to selves.) Timekeepers should also be in the jury box with a good view of the judge.
- The attorneys' tables need to 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.
- Attorneys should neatly organize their materials on the tables. Get rid of all unnecessary papers, briefcases and pencils.
- Witnesses should seat themselves in separate areas of the spectators' section. That action will eliminate unnecessary conversation during the trial.
- Be sure that you have removed your hat.
- Remove any gum from your mouth.

Seating Posture

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.

Speaking

- All participants should speak loudly and enunciate each word as microphones are not usually available.
- Presenting opening and closing statements
- Since these are extemporaneous speeches, attorneys should employ speech-making techniques:
- Organize any materials before beginning.

- Rise slowly.
- With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the speech.
- Get your body ready by assuming a good speech-making posture. Your feet should be set a bit apart and your weight balanced on the balls of your feet.
- Before your first word, look the judge directly in the eyes and then begin to speak directly to him or her.
- Try for a conversational tone to your voice. Speak to the judge in a clear voice that is slow enough and loud enough for the judge to follow your ideas without straining.
- Avoid using slang. Always use your best vocabulary.
- 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.
- If you concentrate on communicating directly to the judge, 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 judge. Don't focus gestures and always avoid repetitive or unnecessary gestures.
- 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 you punctuate a point or help you release nervous energy. Be sure not to pace. Keep your focus on directing the speech to the judge.
- Never move so that you are in front of the opposing counsel's table. This applies to when giving opening/closings and when you are questioning a witness. Opposing counsel may object on the grounds that you are obstructing their view.
- 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.
- When you have concluded your speech, say "Thank you, Your Honor," while looking directly at the 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.

Attorney questioning witnesses

- Since much of the scoring is done on presentation, rise to do the questioning.
- 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.
- Speak slowly!!!
- 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.
- If opposing counsel makes an objection, stop speaking and give them the floor.

- The judge may ask you to respond to their objection. Do so as confidently as you possibly can.
- Sometimes you may want to ask the judge if you may respond to the objection.
- If the judge rules against you on an objection, show no signs of dismay. Simply proceed with another question. The key again is to maintain your poise.
- 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.
- Never ask a question to which you don't know the answer.
- When you have finished your questioning, say "No further questions, Your Honour," and take your seat in a confident manner.

While the judge deliberates

- Rise when the judge is leaving the courtroom.
- You now have the opportunity to meet the other team. Walk over to the other team members. Introduce yourself. It is always appropriate to congratulate them on a good aspect of their performance. Remember that they're just teenagers just like you. You are all young people experiencing a courtroom situation. Certainly you want to win the trial, but a potential friendship can mean a lifetime of winning.