ALASKA
HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP

MANUAL FOR TEACHERS AND ATTORNEY COACHES

Sponsored by the Anchorage Bar Association, Young Lawyers Section.

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The Alaska High School Mock Trial Championship competition is sponsored each year by the Anchorage Bar Association, Young Lawyers Section, and seeks the participation of teams of high school students from throughout the state. The winning team is eligible to compete in the National High School Mock Trial Championship. If you would like additional information on the competition, including case materials, complete competition rules and a registration packet for the current academic year, please write to the following address:

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ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP

Mock Trial General Information

A mock trial is a simulation of a judicial proceeding, that is, the enactment of either a civil or criminal trial.

Participation in mock trials provides students with an insider's perspective from which to learn about courtroom procedures. Mock trials also:

- Help students gain a basic understanding of the legal mechanism through which our society resolves many disputes;
- help students develop critical-thinking skills, oral advocacy skills, and understanding of a substantive area of law;
- help students better understand the roles of persons in the judicial system; and,
- provide a vehicle for the study of fundamental law-related concepts such as justice and equality.

Participating with judges, lawyers and teachers in mock trials not only helps students bridge the gap between simulated activity and reality, but also gives them more empathy for those 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 and understanding of our system of justice.

In mock trial competitions, the cases are usually tried to a panel of judges, one of whom serves as the presiding judge. 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 three-judge panel.

PROGRAM OBJECTIVES

For students

- Increase proficiency in basic skills such as listening, public-speaking, reading and critical thinking.
- Further student understanding of the philosophy and content of the law as applied by our courts and the legal system.
- Provide a forum for high school students who want to pursue law-related activities on an extracurricular basis.

For schools

- Promote cooperation among students of various abilities and interest.
- Demonstrate to the community the achievements of high school students.
- Provide a competitive event set in an academic environment.
- Recognize those students who have devoted significant time, energy and enthusiasm to achieving and learning objectives of the mock trial program.

For the legal community

- Enrich law-related high school classes by providing accurate and practical information about law and the legal system.
- Provide an opportunity for positive interactions between young people and role-players in the legal system.
- Demonstrate to the community a model for public/private partnerships in education.

SUGGESTIONS FOR TEACHER COACHES

This outline will provide you with some suggested guidelines for use in helping your student team prepare for the mock trial experience.

SUGGESTED PREPARATION TIME: 4-8 weeks of meeting several times/week

A. Find an attorney coach to work with your team:

1. You, as a local teacher, are often the best judge of a suitable person to assist your team. Possible sources include: parents or relatives of students, alumni, acquaintances, local law firms, municipal attorney's office, local prosecutors' and public defenders' offices, school board members or local judges. In Alaska, efforts to help provide educational experiences to school students are among the most popular outreach programs of the various bar associations. (If you are unable to find an attorney to work with your team, contact us or a local bar association for possible assistance.)

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

3. Contact your attorney coach as soon as possible to:

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

   b. Provide him/her 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.

   c. Discuss meeting times and places with students.

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

   e. Determine the level of involvement to be provided by the attorney, and that to be assumed by the teacher.

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 conducting a trial, the applicable rules of evidence, and the mock trial rules. Discuss them with your students and be sure to write down any questions they have for your attorney coach. For rules clarification, contact the Mock Trial Coordinating Committee in writing.

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 competing. Contact the clerk of the court in your area to find out when a Superior or District Court trial is scheduled at the courthouse near you. The public is invited to attend these trials.

C. Work with your attorney coach (to the extent possible) on:

1. Knowledge of the facts, procedures, and mock trail rules.

2. Establishing a case strategy. The entire team should work together on this process. You should be sure that the attorney understands that his/her role is to serve as a consultant to the students, not as a director or decision-maker for the team. The team members must be the ones who develop their own strategy for presenting the case.

The following are some points to consider when developing your team strategy:

a. identify strengths of your case. These are the points and issues you will want to develop.

b. Identify critical weaknesses of your side and prepare a counter-argument for them.

c. Be sure all of your team's strategies are integrated. Teamwork is important during the course of the trail. Your team must always know where it is headed.

d. Brainstorm to identify possible holes in your strategy so that there are no surprises. Each participant must be prepared to cope with the unexpected.

e. Identify a key witness that you will want to exploit during cross-examination.

f. Realize that you don't necessarily need to use all of your allotted time if your strategy has been achieved.

g. Although use is restricted for mock trail purposes, you may wish to further research the cited law in order to foster a better understanding of the trial.

h. Other considerations:
-Which order to call witnesses
-Physical position in the courtroom
-How to use time wisely
-How to handle surprises

3. How to present the opening statement and closing argument, and what information each should contain. (Again, remember that the coaches may give the students ideas, but should not write the statements for them.)

4. Questions to ask on direct and cross-examination of all plaintiff/prosecution and defense witnesses.

5. How to present a closing argument and what it should contain.

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

7. How and when to object to the opposition's questions.

8. How to introduce exhibits and offer them into evidence.

9. Understanding and practicing courtroom decorum and good sporting behavior.

D. Before your first scheduled trail in the mock trail competition:

1. 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.

2. Set up an invitational scrimmage round with another school, to give teams the full flavor of participating in a mock trial. Arrange for a local attorney or judge to preside, and conduct the trial in a courtroom setting, if possible.

3. If feasible, observe a real trail in Superior or District Court.

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

SUGGESTIONS FOR ATTORNEY COACHES

This outline will provide you with some suggested guidelines for use in preparing your student attorneys and witnesses for the mock trail competition.

SUGGESTED PREPARATION TIME: At least five or six 2-hour sessions before first trail date.

SUGGESTED MEETING PLACE: Meetings can take place at the school or at a home or office. If possible, one meeting should take place in a local courtroom to help students feel comfortable in a courtroom setting.

PROPS: Easel or blackboard for visual aids in explaining trial procedure concepts.

First Session

1. If the teacher has not already done so prior to the first meeting, distribute case materials and instruct the team to read them before the next meeting.

2. Explain trial procedures, i.e., opening statements and closing arguments, voir dire, direct and cross-examination, calling witnesses, objections (e.g., hearsay, improper foundation, leading the witness).

3. Review the Simplified Rules of Evidence included in the case materials.

Second Session

1. Examine and discuss the factual basis of the case, witnesses' testimony, and the points for each side. 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.

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

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

4. Define 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.

Emphasize that team members should not memorize their roles since, in a real trail, 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.

Third Session

Go through the trial:

1. 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

2. Witnesses are called to the stand and student attorneys examine them. Work with students to develop questioning techniques which will elicit testimony to support either side of the case.

Have other team members make suggestions, to both witnesses and attorneys.

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

Subsequent Sessions

1. 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.

2. Practice opening statement and closing argument, how to lay foundation for exhibits, what to do when the opposing team objects to your questions.

3. Discuss appropriate courtroom decorum and etiquette.

Final Session

1. Have at least one practice run of the entire trial. Allow team members, attorney coach(es), and the teacher coach(es) to act as the presiding judges and the opposing team's attorneys.

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

REMEMBER THAT TEAMS MUST PREPARE BOTH SIDES OF THE CASE.

BASIC MOCK TRIAL PROCEDURES

A. Pre-trial Preparation

1. Information gathering and research
2. Case analysis
3. Attorney and witness preparation
4. Learning of rules and courtroom procedures

B. Courtroom Participants

1. Judges
2. Attorneys
3. Witnesses
4. Timekeeper

C. Beginning the trial

1. The parties in a **civil case** are the plaintiff (one who brings a complaint to the court) and the defendant (against whom the complaint is brought); and in a **criminal case**, the prosecution (the government, e.g., State of Alaska vs. Doe) and the defendant (one who is accused of a crime).

2. Attorney panel judge announces:
   "All rise. The Court of _____ is now in session. The Honorable _____ presiding." Everyone remains standing until the judge enters and is seated. Next, the presiding judge asks the attorneys for each side of the case if they are ready to proceed.

D. The Trial

1. Plaintiff/prosecution (P/P) introduction and opening statement

   Rising, "May it please the court, my name is _____, my co-counsel is/are _____. We are counsel for _____ in this action." Deliver opening statement.

2. Defense (D) attorney introductions and opening statements

   Rising, "May it please the court, my name is _____, my co-counsel is/are _____. We are counsel for _____ in this action." Deliver opening statement.

3. Testimony of witnesses

   a. **Direct examination** of P/P witnesses.
   b. **Cross-examination** by D of P/P witnesses.
   c. **Redirect examination** of P/P witnesses.
   d. P/P rests its case.
   e. **Direct examination** of D witnesses.
   f. **Cross-examination** by P/P of D witnesses.
   g. **Redirect examination** of D witnesses.
   h. D rests its case.

4. Closing arguments

   a. P/P closing arguments
   b. D closing arguments
   c. P/P rebuttal of D closing arguments (**if time has been reserved**)

5. Deliberation

   The presiding judge will call a recess; the judges will leave the room to complete their score sheets. When the judges return, they will offer a critique to the teams about their presentations.

STRATEGIES FOR TEACHING ABOUT MOCK TRIAL PROCEDURES

1. Have students brainstorm the order of events in a mock trial and list them on one side of the blackboard. On the other side of the board, list the steps in a mock trial as they actually occur, noting any errors or omissions in the students' list as you do so.

2. Once the whole trial process has been introduced, have students make a list or brainstorm and write on the board the steps in a trial, first from the plaintiff/prosecution's point of view (e.g., opening statement, direct examination of P/P's witnesses, cross-examination of defense witnesses and closing arguments). Do the same from the defense perspective.

3. 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 construction paper with the trial step which is mentioned in the article written in large letters at the top of the sheet. Have students discuss them and post them around the classroom in their proper order.

4. Attachments 1, 2 and 3 (pages 25 through 29), to be completed and discussed in the classroom, are designed to familiarize students with the steps in a trial, the physical layout of a courtroom and the participants in a trial.

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

6. Students should be instructed to watch a television program or see a movie having to do with a trial. Then assign a written composition and/or report to the class on what the case was about, what parts of the trial they observed and whether the depiction of the trial procedure was accurate and realistic.

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

8. 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.)

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 usually must convince the fact finder by only a **preponderance of the evidence** (that it is more likely than not likely) 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 actual rules and know the numbers assigned to them so that they may cite the rules with specificity in the competition. The student packet contains the full text of the applicable rules.

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, the witnesses should not be allowed to give long, uncontrolled responses to direct questions.

   Examples of direct questions:
   - Mr. Bryant, when did you first meet Angela?
   - Mr. Bryant, how long have you been employed by the factory?
   - Directing your attention to Saturday, October 25, could you please tell the court what you observed?

   Examples of leading questions:
   - Mr. Hayes, isn't it true that you dislike Manuel Garcia?
   - You were not in the building that day, were you?
   - 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.

Example: 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.

Example: 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).

Examples of leading questions:
- Ms. Bryant, you considered marrying George Hayes, didn't you?
- Isn't it true that you are hard of hearing, Ms. Sanchez?
- Mr. Yazzi, don't you generally prefer to avoid loud, crowded taverns?

b. **What questions may be asked:** Cross-examination is usually 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:

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

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?"

- 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;

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

- prior statements made by the witness which contradict her/his testimony at trial and point out the inconsistencies in her/his story;

  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?"

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

  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?"

- the accuracy of her/his sensory perceptions, which is the witness' ability to see, hear or smell, or the accuracy of the witness' memory.

  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

NOTE: Any out of court statement that is offered to prove the truth of the contents of the statement is hearsay. These statements are generally inadmissible in a trial.

Examples:

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

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

- Sandy says, "I've heard that Jack has a criminal record."

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

1. 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."

2. 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.'"

3. 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.

4. 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.'"

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.

Examples:

- 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."
- A psychiatrist could testify that, "Roy has severe eating problems," but only after the attorney had qualified the psychiatrist as an expert through a series of questions about her/his background and experience in a particular field.
- 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 which 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.

Examples:

- 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.
- 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 attorney panel 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.

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:

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

Witness: Yes.

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

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

(Counsel now shows the exhibit to opposing counsel.)

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.

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

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?

Witness: Yes, I would say it is.

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 standard mock trial objections.

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

STRATEGIES FOR TEACHING ABOUT OPENING STATEMENTS

Review Attachment 10. 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.

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. 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.

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? Repeat this procedure using other fact patterns available to you.

DIRECT EXAMINATION

Direct examination is the heart of most trials. Except for those criminal cases where the defendant calls no witnesses and does not take the stand (where cross-examination, objections, and argument are all the defense attorney does), direct examination is more important than cross-examination, the opening statement or the closing argument. For, unless the outlook is so dismal that the only hope for one side in the trial to win is to create confusion, a coherent statement of the facts by the witnesses is essential to the jury's understanding and acceptance of your position.

The rules governing direct examination are fairly simple. First, leading questions are not permitted. 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 questions are objectionable, as are repetitious ones.

A well conducted direct examination must be carefully prepared in advance by the attorney and is usually best when practiced with the witness beforehand. 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.

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

- "What happened then?" or "What did you see?"
- "How long have you worked for Ms. Smith?"
- "What happened after you saw the yellow car?"

- "How far away was the other car when you first saw it?"
- "How long did you stand there?"

STRATEGIES FOR TEACHING ABOUT DIRECT EXAMINATION

Review Attachment 11. Ask students to articulate the purpose of direct examination, then brainstorm with the class how it differs from cross-examination and list their responses on the board.

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.

The most difficult part of presenting a good direct examination comes about from the fact that witnesses will not necessarily answer the intended questions exactly as the attorney has predicted. In such cases, the attorney must listen to the answers being given, and must ask additional questions to elicit the necessary response or clarify vital points before moving on to other topics.

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.

CROSS-EXAMINATION

The law governing cross-examination is, for the most part, quite simple. First is the right to do it at all. This right is so firmly entrenched in our law that a denial by the court of this right is usually a reversible error, and a witness' refusal to submit to cross-examination usually results in the direct examination of that witness being excluded from evidence.

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.

The cross-examiner has the right to ask leading questions, which is an important advantage in dealing with adverse witnesses.

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. Generally, they fall into two broad categories: 1) reducing the effect of direct examination; and, 2) developing independent evidence on behalf of your side. There are a number of ways to meet these objectives which are listed in the impeachment part of the "Rules of Evidence" section of this unit.

When conducting a cross examination, it is important to remember that the witness's testimony is intended to hurt and not help your side. Because of this fact, many attorneys faithfully adhere to the old adage that you should never ask a question at trial if you don't already know the answer.

STRATEGIES FOR TEACHING ABOUT CROSS-EXAMINATION

Review Attachment 12. 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.

Repeat activities contained in the direct examination strategies section.

CLOSING ARGUMENTS

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.

Closing arguments may include:

- An address to the judge and jury, if present;
- an explanation of your purpose - to summarize the facts and relate them to the issues in the case; and,
- 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).

The attorney should argue but not shout or attack personalities. The testimony of each witness should not necessarily be repeated in chronological order since the judge or jury has already heard all of the witnesses. Instead, the attorney, by referring to the witnesses' testimony, should focus on putting the whole story together.

STRATEGIES FOR TEACHING ABOUT CLOSING ARGUMENTS

Review Attachment 13. Ask students to articulate how closing arguments differ from opening statements in purpose and style, and list their responses on the board.

As described in the strategies section for opening statements, have each student prepare a closing argument and present it to the class.

ORGANIZING A MOCK TRIAL - A FOUR WEEK SCHEDULE

DAYS 1 - 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 - 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 -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.

DAYS 19-20 Trial and debriefing.

AFTER 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?

ATTACHMENT 1

QUICK QUIZ

THE STEPS IN A TRIAL

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

Facts of the Case: 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. Ms. 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.

1. _____ 4. _____ 7. _____

2. _____ 5. _____ 8. _____

3. _____ 6. _____ 9. _____

ATTACHMENT 1A

QUICK QUIZ ANSWERS

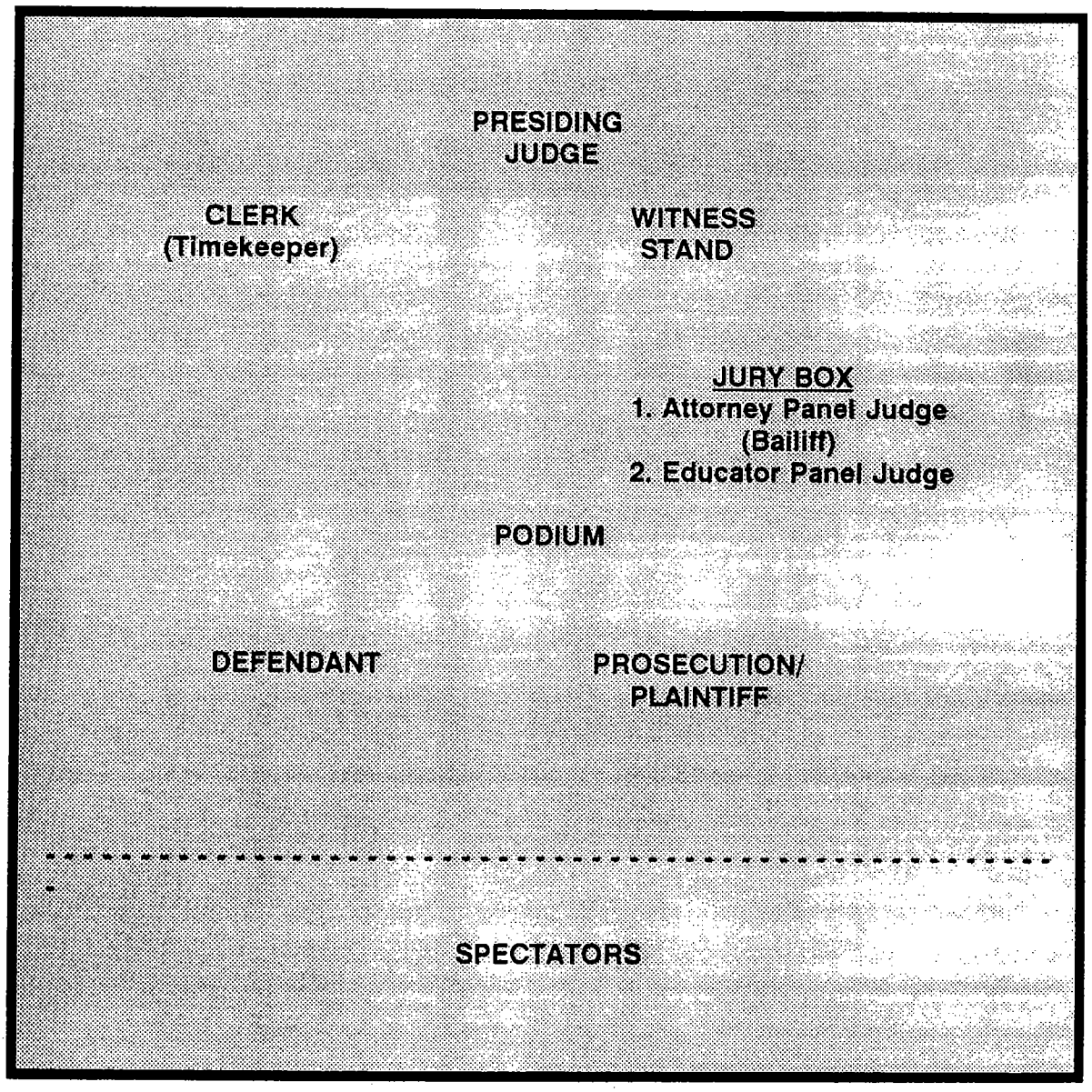
THE STEPS IN A TRIAL

STEPS IN A MOCK TRIAL
Answers

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

ATTACHMENT 2

LAYOUT OF A MOCK TRIAL COURTROOM



ATTACHMENT 3

QUICK QUIZ

WHO ARE THE CHARACTERS 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**
2. **Plaintiff Attorney / Prosecutor**
3. **Plaintiff (civil) or State / Municipality (criminal)**
4. **Presiding Judge**
5. **Clerk**
6. **Court Reporter**
7. **Defendant**
8. **Defense 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.

ATTACHMENT 3A

QUICK QUIZ ANSWERS TO

THE CHARACTERS IN A MOCK TRIAL

CHARACTERS IN THE MOCK TRIAL
Answers

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

ATTACHMENT 4

RULES OF EVIDENCE - A STUDENT GUIDE

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.

   Ways to impeach the other side's witness - the attorney asks the witness about those things which will discredit the witness, including:

- Prior bad acts of the witness that show s/he cannot be believed;

- 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;

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

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

- 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;

Example: In the same case, an accounts receivab wholesaler, is admissible to show the size of Joe's

d. the statement is a **present sense impression**, de while the witness was perceiving it, or immediatel

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

7. **Witnesses may not give opinions**, except for "opinio saw or heard.

Example

- The witness may say, "Roy staggered, slurred his s of alcohol." The witness may not add, "Roy was inc car."

Exception to the rule

- An expert may give an opinion if s/he first testif expert. For instance, a psychiatrist may say, "Roy problem" after the attorney has qualified the witn eating disorders.

8. **Witnesses may not testify about something of wh knowledge.**

Example

- The witness works with the defendant but has defendant's home or seen the defendant with her witness cannot testify that the defendant is a bad

9. **Only relevant evidence may be presented.** Relevai which helps to prove or disprove the facts in issue in the

Example

- The defendant is charged with running a red light. defendant owns a dog is not relevant and may not

Evidence which is relevant, but which is unfairly p jury, or wastes time, may sometimes be excluded.

Example

- In an auto accident case, both sides agree that t driving the red Ford that hit the plaintiff. Evidenc the defendant's car is relevant, but will be exclu waste of time if the parties have already agreed that driving the car in question.

10. **Physical evidence may be introduced.**

Steps that an attorney must follow:

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.

ATTACHMENT 5

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.

Standard mock trial objections.

Relevancy	"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 calls for hearsay" (or "the witness's answer is based on hearsay"). **If the witness has already given a hearsay answer** when the objection is made, 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" or "the witness has not been qualified to give an opinion in this area."
No personal knowledge	"Objection, Your Honor. The witness has no personal knowledge to answer the question."

ATTACHMENT 6

RULES OF EVIDENCE HYPOTHETICALS - PART A

Indicate the correct answer. If an objection should be raised, fill in the letter of the appropriate objection from the previous page.

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?
   Yes___ No___ [ ]

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?"
   Yes___ No___ [ ]

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

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?
   Yes___ No___ [ ]

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

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?
   Yes___ No___ [ ]
   Must the attorney introduce the statement into evidence?
   Yes___ No___ [ ]

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?
   Yes___ No___ [ ]

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?
   Yes___ No___ [ ]

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?
   Yes___ No___ [ ]

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

ATTACHMENT 6A

RULES OF EVIDENCE HYPOTHETICALS - PART A

ANSWER SHEET

1.	**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.	**No [B]**	Leading questions are not allowed on direct examination, so it will have to be rephrased (e.g., "Where were you on November 30?")
3.	**Yes**	See #2 above.
4.	**No [A]**	
5.	**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.	**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.	**Yes**	This is called impeaching a witness by pointing out a prior inconsistent statement.
8.	**Yes**	Debi was properly qualified as an expert in this area.
9.	**No [E]**	Michelle is not an expert in this area.
11.	**No [F]**	Sally has no personal knowledge of this.

ATTACHMENT 7

RULES OF EVIDENCE HYPOTHETICALS - PART B

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?"

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.

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!"

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

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

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

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

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?"

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."

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

ATTACHMENT 7A

RULES OF EVIDENCE HYPOTHETICALS - PART B

Answer Sheet

1. Objection, Your Honor. That's a leading question.

2. Objection, Your Honor. Counsel is asking the witness to give an opinion, and the witness is not an expert.

3. 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.)

4. 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. This is hearsay, but it is admissible because it is an admission by the defendant.

6. 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 "seemed quite drunk.")

7. Objection, Your Honor. Counsel is asking the witness to give an opinion, and the witness is not an expert.

8. This is proper impeachment through the use of a prior inconsistent statement.

9. Objection, Your Honor. This is hearsay.

10. Joanne can testify about the defendant's good character since it is an issue in the case (because the defendant is claiming self-defense).

ATTACHMENT 8

RULES OF EVIDENCE HYPOTHETICALS - PART C

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?

2. Terry is on trial for murder. He says that he stabbed Jane in self-defense. You are the State's Attorney. Willie'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?

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?

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?

ATTACHMENT 8A

RULES OF EVIDENCE HYPOTHETICALS - PART C

Answers

1. 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. 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. Yes. See the explanation in #2 above.

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

ATTACHMENT 9

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?

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?

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?

ATTACHMENT 9A

INTRODUCING PHYSICAL EVIDENCE

Answer Sheet

1. 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. Same as #1 above.

3. The statement need not be introduced into evidence here but 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.

ATTACHMENT 10

THE OPENING STATEMENT

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

   - Outline the case - provide a framework to analyze the case;
   - state the facts of the case that you expect to prove;
   - explain facts which may seem to be against you;
   - (defense in criminal cases) stress the state's burden of proof, i.e., show guilt beyond a reasonable doubt;
   - not be argumentative;
   - not make any conclusions; and,
   - not refer to evidence if its admissibility is doubtful because it may violate one of the rules of evidence.

2. 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, may be presented in chronological order or another orderly sequence of events.

4. The following are uses of proper phrasing.

   - The evidence will indicate...
   - The facts will show...
   - Witnesses will present evidence to show...
   - Witness A will testify on the state's/plaintiff's behalf that...
   - Witness B will tell you...

ATTACHMENT 11

DIRECT EXAMINATION

1. Direct examination is conducted by the attorneys of their own witnesses. It should be designed to get facts from the witnesses which are understandable and, hopefully, to convince the Court to accept your position. Questions on direct examination should:

   - Make the witness seem like s/he ought to be believed;
   - keep the witness "in control" (prevent the witness from rambling since this might weaken the effect on her/his evidence); and,
   - not be leading (where the attorney is telling the story for the witness).

2. The attorney calls the witness for direct examination:

   - "Your Honor, we call _____ ."

   After the witness is sworn in by the bailiff or clerk, some introductory questions should be asked requesting:

   - Name, address and occupation;
   - length of residence or present employment, if this information is relevant in establishing the witness' credibility; and,
   - further questions about professional qualifications if you wish to qualify the witness as an expert.

3. The following are examples of proper questions on direct examination.

   - Directing your attention to (date), could you please tell the court what occurred?
   - What happened then? (or) What did you see?
   - How long did you see...?
   - Did John (the defendant) say anything about...?
   - How long have you worked with Ms. Smith?

4 Conclude your direct examination:

"Thank you, _____. That will be all, Your Honor." (The witness remains on the stand for cross-examination by the opposing attorney.)

ATTACHMENT 12

CROSS-EXAMINATION

1. Cross-examination follows the opposing attorney's direct examination of her/his own witness. The purposes of cross-examination are:

   - To test the witness' trustworthiness and believability in order to cast doubt on the validity of the witness' story; and,
   - to establish some of the facts of the cross-examiner's case wherever possible.

2. Cross-examination should:

   - use leading questions which are aimed at getting "yes" or "no" responses;
   - never include questions to which the attorney does not know the answer

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

   - Isn't it a fact...?
   - On (date), when you made a statement in your attorney's office, you said that...didn't you?

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

ATTACHMENT 13

CLOSING ARGUMENTS

Closing arguments for the plaintiff/prosecution should:

- Begin with a proper address to the court;
- persuasively and forcefully summarize the strong points from witness testimony;
- note flaws in the witnesses' testimony which support the claims of your side;
- be well-organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument);
- in criminal cases - emphasize 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;
- be presented so that notes are barely necessary and eye contact can be established; and,
- be emotional and strongly appealing (unlike the "neutral" opening statements).

Closing arguments for the defense should:

- Begin with a proper address to the court;
- persuasively and forcefully summarize the strong points from witness testimony;
- note flaws in the testimony which support the claims of your side;
- be well-organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument);
- raise questions about the weight of the evidence;
- be presented so that notes are barely necessary and eye contact can be established; and,
- be emotional and strongly appealing (unlike the "neutral" opening statements).

ATTACHMENT 14

SUGGESTIONS FOR MOCK TRIAL ATTORNEYS

This outline offers various "helpful hints" for preparing students to be attorneys in mock trails. 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.

A. 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.

B. PRETRIAL MOTIONS (IF INCLUDED IN MOCK TRIAL PROBLEM)

1. Save some time for rebuttal. Tell the judge at the beginning of your argument how much of your allotted time you plan to reserve.

2. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.

3. Arguments should be well-substantiated with references to any of the background sources provided with the case material and/or any common-sense judgments or social-interest policy analysis. Do not be afraid to use strong and persuasive language.

4. Use the facts of State v. Bell in conjunction with law and policy arguments. Compare them to the fact patterns of cases that support your position - or use the facts to distinguish a case that disagrees with the conclusion you desire.

5. When formulating your presentation, focus on the constitutional arguments (if any) first, then other legal arguments in order of their strength.

6. Your conclusion should be a very short restatement of your strongest arguments.

C. OPENING STATEMENTS

1. 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.

2. Advice in Preparing:

   a. What should be included:

      1. Name of case.
      2. Names of attorneys (you and your colleagues).
      3. Name of client.
      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; try to recount the story without naming which witnesses will tell what information.

      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.

   b. 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).

3. Advice in 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. Do not read the entire presentation; try to look at the judge and tell your story, preferably without the use of notes.

   c. First and last sentences should be the strongest, to capture the judges' attention and leave them with a lasting impression.

   d. Be earnest, loud and clear.

4. Other suggestions:

   a. Learn your case thoroughly (facts, law, burdens, etc.).

b. Never promise to prove anything that you will not or cannot prove.

c. Prepare and provide a clear, concise, and well-organized statement.

D. 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 in preparing:

   a. What should be included:

      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.

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

3. Advice in Presenting:

   a. Be a "friendly guide" for the 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 which are necessary to elicit the desired testimony; and 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; be sure to listen to the answers.

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

   f. 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.

4. 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. 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 Rule 302 on p. 96.)

5. 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.

D. CROSS-EXAMINATION

1. Objectives: To make the other side's witnesses less believable int he 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 in Preparing:

   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. It is essential that you appear confident in your case.

3. Types of Questions to Ask:

   a. Questions that establish that the witness is lying on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there).

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

   c. 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).

   d. 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).

   e. 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 in 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 (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."

   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. Eye contact with the witness is recommended.

5. Other Suggestions:

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

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

6. What does opposing counsel do during this time?

   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., by requesting that the judge instruct the attorney to stop arguing with the witness).

E. 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.

F. 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 in Preparing:

   a. What should be included:

      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 you 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 trail 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.

3. Advice in Presenting:

a. You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc. in the other side's case that actually 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 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.

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

g. Make sure your statement is well-organized.

ATTACHMENT 15

SUGGESTIONS FOR MOCK TRIAL WITNESSES

Witnesses play a key role on the mock trail 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.

A. GENERAL SUGGESTIONS

1. 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.

2. 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).

3. 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.

4. 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 Rule 4.)

5. 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.

6. 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."

7. 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.

8. 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.

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

10. 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.

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

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

B. WITNESS TESTIMONY ON DIRECT EXAMINATION

1. Attorney's Objective: To obtain information from favorable witnesses in order to prove the facts of your case.

2. Advice in Preparing:

   a. Learn the case inside out, especially your witness statement (or affidavit).

   b. 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.

   c. Practice with the attorney.

3. Advice in Presenting:

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

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

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

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

D. WITNESS TESTIMONY ON CROSS-EXAMINATION

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

2. Advice in Preparing:

   a. Learn the case thoroughly, especially your witness statement.

   b. 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.

c. Practice.

3. Advice in Presenting:

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

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

c. Don't read or recite your witness statement word for word.

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

e. 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.

ATTACHMENT 16

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 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 trail exactly on time.

- If you are filming, put the camera and operator in the jury box. (Be unobtrusive -- draw no attention to selves.) Team timekeepers should also be in the jury box with a good view of the judge.

- The attorneys' tables need to each seat three attorneys comfortably. Be sure that there is adequate room to rise from your chair and adequate passageway to approach the podium, the bench and 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, the attorney should employ effective 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 apart a bit with 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 force 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 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 when giving openings/closings and when you're 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 and clearly.
- Listen to the witness's 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 Honor," and take your seat in a confident manner.

Witnesses

- After you have been sworn in, the judge or bailiff will indicate for you to be seated. Respond by saying, "Thank you."
- Seat yourself in the witness box in a professional manner.
- Position yourself so that you can comfortably give your responses to the judge.
- Speak loudly and clearly and in a manner best fitting the character you are portraying.
- Don't allow any unnecessary movement/gestures to distract from your testimony.
- When an objection is made, immediately stop talking.
- Wait until the objection is decided and even then don't respond until the attorney doing the questioning indicates that you should do so.

- Do not attempt to answer a question that you don't understand. Ask for clarification to be sure you know what is meant.

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

- 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?"

- Walk slowly and confidently back to the spectators' section.

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

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's always appropriate to congratulate them on a good aspect of their performance. Remember that they're 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.

ATTACHMENT 17

COURTROOM BEHAVIOR

An important aspect of trial procedure, often overlooked in teaching about mock trials, is the courtroom decorum of the team. The following hints are intended to help mock trial participants understand some of the nuances of proper courtroom behavior:

1. It is extremely important to be polite and show extreme courtesy towards the judge(s). The role of the judge in mock trials is to preside (make rulings on the procedures and objections) and to evaluate the performance of each participant. Students should remember that this role is the most important one in the courtroom, and act accordingly. Refer to the judge as "Your Honor." Accept any decision of the judge gracefully and politely, even if it is not in your favor.

2. Courtroom etiquette also requires that you act courteously toward the opposing team before, during, and after the trial. Be sure to shake hands and congratulate the other team on their performance.

3. Be prepared to deal with the unpredictable, should something arise for which you are totally unprepared. If you are concerned that the rules may be violated, ask for a bench conference and be prepared to explain your concern. Always maintain your composure, even if you feel that the rug has just been pulled out from under you. (The movie, "Suspect" may be a good example for students of how unpredictable things in a trial may be.)

4. Emotions are not banned from the courtroom, however, they must be controlled emotions. It is okay (and may indeed even be part of your strategy) to be appropriately angry, indignant, puzzled, etc., but uncontrolled outbursts or wild theatrics are frowned upon by judges and may harm your case.

5. Be sure to dress appropriately and remember to avoid wearing a hat or eating (including gum chewing) while in the courtroom.

ATTACHMENT 18

SOME OF THE MOST DIFFICULT THINGS FOR TEAM MEMBERS TO MASTER

1. Deciding which points are the most important to prove the elements of the case and to make sure that proof takes place.

2. Telling clearly what they intend to prove in the opening statement and arguing effectively in their closing argument that the facts and evidence presented prove their cases.

3. Introducing 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 their feet when a witness gives an unexpected answer, an attorney asks unexpected questions or makes unexpected objections, or a judge throws questions at the attorney or witness.

8. Refraining for reading opening and closing statements.

ATTACHMENT 19

Elements of a Criminal Offense

The penal (or criminal) code generally defines two aspects of every crime. These are the physical part and the mental part. Most crimes specify some physical act, such as firing a gun in a crowded room, and a guilty, or culpable, mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are culpable mental states. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

A defendant may justify his/her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with the intent to steal. A person breaking into a burning house to rescue a trapped baby has not committed a burglary. In many jurisdictions, the mental state requirements also prevent the conviction of an insane person. Because such persons cannot form criminal intent, society often directs that they should receive psychological treatment rather than punishment.

The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, the prosecution bears a heavy burden of proof. Defendants are presumed innocent. The prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between a probability of guilt and a lingering possible doubt of guilt. Reasonable doubt exists unless the trier of fact can say that he or she has an abiding conviction, to a moral certainty, of the truth of the charge.

A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might have different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (the jury if there is one, otherwise the judge) applies his/her own best judgment in evaluating inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing towards guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable

ATTACHMENT 20

Procedures for Arguing Pretrial Motions

The Alaska High School Mock Trial Championship often requires that the students argue a pretrial motion at the initial phase of the trial. The following procedures will generally apply:

1. The hearing is called to order, and the judge asks the movant to summarize the arguments made in the motion. The movant has six minutes, including rebuttal time. The movant must determine how to allocate time between the main argument and the rebuttal. The judge may interrupt to ask clarifying questions.

2. The judge asks the opposing party to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the respondent.

3. The judge offers the movant an opportunity for rebuttal, if time is remaining. The rebuttal is only intended to directly respond to and counter the opponent's arguments. It may not be used to raise new issues.

4. At the conclusion of the oral argument, the judge will rule on the motion. The ruling may affect the scope or direction of the remainder of the trial.

Suggestions to participants:

1. Save some time for rebuttal if you are the movant. Tell the judge at the beginning of your argument how much of your allotted time you plan to reserve.

2. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.

3. Arguments should be well-substantiated with references to any of the background sources provided with the case material and/or any common-sense judgments or social-interest policy analysis. Do not be afraid to use strong and persuasive language.

4. Use the facts presented in your case materials in conjunction with law and policy arguments. Compare your specific facts to the fact patterns of cases that support your position - or use the facts to distinguish a case that disagrees with the conclusion you desire.

5. If there are constitutional arguments available to you, focus on them when formulating your presentation.

6. Your conclusion should be a very short restatement of your strongest arguments.

7. Remember, not only does the motion have a direct effect on the outcome of the trial, scores for the pretrial motion presentations will be included in the Mock Trial scores when determining the winner of the trial.

ATTACHMENT 21

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions which are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways.

ATTORNEYS: **DEMONSTRATED SPONTANEITY:**
- in response to witnesses and or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition. The attorney's questions:
- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Motion arguments, opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES: Testimony was **CONVINCING** and characterizations were **BELIEVABLE. PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS: Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.