

Oklahoma High School Mock Trial Program

SUGGESTIONS FOR STUDENT PARTICIPANTS

- I. Opening Statements
- II. Presenting Evidence
 - A. Direct Examination
 - B. Cross Examination
- III. Objections
- IV. Physical Evidence/Exhibits
- V. Redirect/Recross
- VI. Closing Arguments
- VII. Witness Statements
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This outline provides various techniques and tips to be followed in preparing for a mock trial. Included are suggestions for both the preparation before trial and the presentation at trial. These are general guidelines and are not to be interpreted as rules of the competition, unless otherwise designated.

I. Opening Statements

- Purpose:** To introduce yourself and your client.
To acquaint the audience with the nature of the case.
To outline what you are going to prove through witness testimony and the admission of evidence.
- Preparation** Write a short summary of the facts.
Determine the burden of proof (the amount of evidence needed to prove a fact and who has it in this case).
Develop a clear and concise overview of each witness and the physical evidence you will present.
Judge how each will contribute to proving your case.
Learn your case thoroughly.
- Presentation** Stand before the scoring panelists.
Introduce yourself and your colleagues.
Make eye contact with the presiding judge and scoring panelists.
Appear confident in what you are saying.
Outline the case from your point of view.
Use the future tense in describing what you will do (e.g., "The facts will show...")
Mention testimony of key witnesses.
Tell what relief you are requesting.

Avoid: Too much narrative about witness testimony.
Exaggeration and overstatement of facts that may not be proven.
Promising to prove something you will not or are not able to prove.
Reading your whole statement.
Repeating undisputed facts.

II. PRESENTING EVIDENCE

DIRECT EXAMINATION:

Purpose: To obtain favorable information from your witnesses to prove your case facts.

Preparation: Learn the case inside out. Study your witness statements. Look for all the good points that are favorable to your case.
Prepare a series of questions based on these good points. Know the questions that your attorney will ask you on direct examination and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
Avoid leading questions (except for questions that pertain to name, address, etc.).
Regarding expert witnesses, do not ask questions until you have laid the proper foundation to qualify the witness as an expert.
Practice questioning your witnesses until they respond spontaneously.

Presentation: Stand behind the podium except when introducing evidence.
Attorney & Witness An appearance of confidence and trustworthiness is important.
Be sure the testimony is consistent with the facts set forth in witness statements.
Avoid annoying distractions such as attorneys leaning on the podium or witnesses rocking back and forth. while questioning or testifying
Be relaxed and clear in the presentation of your questions and answers.
Keep to simple questions and answers that you have practiced with your witnesses.
Listen to the complete questions and answers.
Keep eye contact between attorney and witness, but also occasionally look at the presiding judge and scoring panelists.
Don't be afraid to be a little animated. Speak as though you believe what you are saying.
Be able to think quickly if the witness gives you an unexpected answer and ask another short follow-up question to be sure you obtained the testimony you wanted.
When your facts are in, cease questioning.

Avoid: Wasting time asking questions that are not pertinent.
Complex and verbose questions.
Redundant and monotonous questions.
Eliciting conclusions.
Too much narrative which can be dangerous if you lose control of witness testimony.

CROSS-EXAMINATION:

Purpose: To discredit the witness, and to make the other side's witness less believable.
To discover flaws in his/her testimony.
To secure admissions which help your case.

Preparation Study all opponent's witness statements. Look for all the points that are not favorable to your case and consider them when formulating your questions.
Prepare a series of questions based on these points.
Try to anticipate how each witness will answer your questions so that you can adapt your questions during trial according to what is actually said.

Witnesses should anticipate what will be asked on cross examination and prepare answers accordingly.

Isolate all the possible weaknesses, inconsistencies and problems in your testimony and be prepared to explain them.

Prepare short questions using easily understood language.

Attorneys must only ask questions to which the attorney already knows the answer.

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

Attorney & Witness

Listen with care to the answers of the witness. Witnesses must be sure that testimony is consistent with the witness statement.

Attorneys should only ask leading questions that require only a "yes" or "no" answer whenever possible.

Ask questions on important points that will raise doubts about the credibility of a witness. If a witness has not been truthful, ask the witness to identify his/her statement and then read that portion of the statement which is contrary to what he/she just said.

Pose questions that weaken the testimony of the witness by showing his/her opinion is questionable such as a witness with poor eyesight claiming to have observed all the details of a fight that took place 500 feet away in a crowd.

Ask questions that show that a witness who has testified to an opinion is not competent or qualified due to lack of training or experience such as a psychiatrist testifying to the need for dental work or a high school graduate testifying that in his/her opinion the defense/defendant suffers from a chronic blood disease.

If witnesses make an incorrect statement during direct examination that was not caught, the witness should not be afraid on cross to admit the mistake.

Witnesses must not volunteer information. If a question calls for a simple answer, give the answer and stop, even if there is an uncomfortable silence before the next question. Do not feel that as a witness it is your duty to explain away testimony that the opposing counsel has made to appear bad for your side, that is the job of your attorney on redirect. The attorney will come back on redirect and clear up any areas that need further explanation or clarification.

Witnesses must remember that cross examination can be tough, so do not get flustered. A witness who can respond well during cross can give the team some well earned points.

Avoid: Attorneys should not give the witness the opportunity to reemphasize the strong points made during direct examination.

Quarreling, harassing, intimidating or showing hostility toward the witness, judges usually resent it.

"Fishing" expeditions which give the witness a chance to clarify damaging statements. When you have a favorable answer, drop the matter and wait for closing arguments to emphasize it.

Allowing the witness to explain anything. Try to stop the witness if his/her explanation is going on and hurting your case by saying, "Thank you. You've answered my question." If the witness continues and you have difficulty cutting the witness off, you may ask the judge to admonish the witness to not volunteer information not asked for.

III. OBJECTIONS

Purpose: To present to the presiding judge a rule of evidence which would bar an answer to the questions asked or result in striking the answer from the record, if already given.

Preparation: Practice both making and responding to objections.

Presentation: Rise to address the presiding judge. Upon the raising of an objection, opposing counsel should immediately be prepared to respond to the objection, arguing why it should be overruled.

IV. PHYSICAL EVIDENCE/EXHIBITS

- Purpose:** To provide information that may be referred to in detail and parts read in court.
- Presentation:** Ask the presiding judge if you can approach the bailiff so the exhibit can be marked for identification.
(Exhibits may be premarked -thereby allowing the attorney to refer to "What has been premarked as *Prosecutions Exhibit 1.*")
Show the exhibit to opposing counsel.
Request permission from the presiding judge to approach the witness.
Hand the exhibit to the witness and walk back to the podium.
Remind the presiding judge if any of the stipulations establish part of the necessary foundation for the exhibit.
Ask the presiding judge if you can approach the witness to retrieve the exhibit.
Request permission to approach the bench.
If permission is granted, do so and hand the exhibit to the bailiff and ask that it be admitted into evidence.

V. REDIRECT/RECROSS

- Purpose:** To rehabilitate a witness or repair damage done by your opponent.
- Presentation:** Standing at the podium.
- NOTE:** At the conclusion of evidence by both sides and in response to the judge's request for any additional evidence, the prosecution/plaintiff states "The prosecution/plaintiff rests its case Your Honor." The defense/defendant states "The defense/defendant rests its case Your Honor."

VI. CLOSING ARGUMENTS

- Purpose:** To summarize your case.
To put the pieces together for the scoring judges.
To point out credibility, bias, self-interest or prejudice of witnesses.
To be an advocate for your client.
- Preparation:** Organize in advance by anticipating your opponent's arguments.
- Presentation:** Stand facing the scoring panelists.
Make eye contact with the scoring panelists and the presiding judge.
Point out testimony which supports your case.
Point out testimony which damages your opponent's case.
Simply state your case until you are sure it is fully understood.
Discard the unimportant and only argue what you feel is important.
Correct any misunderstandings that the scoring panelists may have.
Be relaxed and ready for interruptions if a scoring panelists ask questions.
Always be flexible by adjusting your statement to the weaknesses, contradictions, etc., in the other side's case that actually came out at the trial.
Believe in your point of view.
Be dynamic. This is high drama. Take advantage of it.
- Avoid:** Assuming the scoring panelists have understood the impact of all of the testimony.
Using ridicule, except with caution; for while it can be effective, it is also dangerous.
Confusing or illogical arguments.
Weak words such as "We believe" and "We think."
Asking the scoring panelists to put themselves in your client's position.
Overt appeals for sympathy and prejudice of scoring panelists.
Reading the whole statement.
- NOTE.** The prosecution's/plaintiff's rebuttal is limited to the scope of the defense's/defendant's closing argument.

VII. WITNESS STATEMENTS

General If you are to testify about records, familiarize yourself with them before trial.

Suggestions: Do not memorize what you will say in court, but try to recall just what you observed at the time of the incident. (Picture it in your mind as if you were there!)

When called to the stand, be as relaxed and in control as you possibly can be.

If asked if you have discussed the case with anyone, indicate any occasion when you have talked with your attorney in preparation for trial.

Speak clearly so you will be heard. The judge and scoring panelists must hear your answer. Do not respond by shaking your head "yes" or "no."

Listen very carefully to questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that they be repeated.

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

If you answer a question incorrectly, ask the presiding judge if you may correct it.

If the presiding judge interrupts or an attorney objects to a question you answer, stop talking immediately.

Do not resume until the presiding judge tells you to do so. After the court hears arguments and rules on an objection, the presiding judge will instruct you to answer or not to answer the question asked.

Be polite while answering questions and do not lose your temper.

Be courteous to attorneys and the presiding judge.

When answering a question from the presiding judge say, "Yes, your Honor" or "No, your Honor."

If the presiding judge rules against you on an objection, take the ruling gracefully.

Argue the objection to the presiding judge, not the opposing counsel.

VIII. ROLE OF THE BAILIFF

The bailiff opens court by saying:

"All rise. Court of _____ County is now in session. The Honorable _____ (Judge's name) presiding." Typically the presiding judge will seat himself and then instruct the audience to be seated. The bailiff will announce "The Court will now hear the case of _____ v. _____."

The bailiff closes court by saying: "Court is now in recess."

The bailiff will swear in all witnesses by approaching the witness (who is in the witness box), holding up his/her right hand, and saying, "Please raise your right hand. Do you solemnly (swear) or (affirm) that the testimony you are about to give is the truth, the whole truth and nothing but the truth?"

The bailiff will mark all exhibits presented during the course of the trial. If an attorney asks that the bailiff mark the exhibit as "Exhibit 1," the bailiff will simply write "1" on the exhibit sticker if there is one, if not, simply write directly on the exhibit in the upper right corner.

IX. TIMEKEEPING

Each team must provide a student to serve as official timekeeper.

Each timekeeper is provided with a form to record time for each presentation during the trial.

Timekeepers should sit together in the jury box if the courtroom facilities allow, if not, they should be inside the bar (not in the spectators sections).