

A SURVIVAL GUIDE

for Teaching
High School Mock Trial

HIGH SCHOOL



MOCK TRIAL

COLORADO BAR ASSOCIATION
Established in 1897

Chapter One

Introduction to the Colorado High School Mock Trial Program

Welcome to the Colorado State High School Mock Trial Program! The Colorado Bar Association is proud to provide a unique opportunity for high school students to learn what it is like to prepare and present a legal case before the court. There are many ways, positive and negative, to resolve a dispute and it is important that students are made aware of the positive venues for dispute resolution. When dispute resolution becomes impossible, the next step is taking the matter to court.

Students who participate in mock trial learn many things including:

- the importance of team work and collaboration
- oral presentation skills
- the importance and value of setting goals
- the value of planning
- productive argument or persuasion skills
- critical thinking skills
- the ability to face challenging obstacles with enthusiasm, professionalism and confidence

To the teachers, lawyers and parents of your school's program, thank you for contributing your time and talent. By doing so, you are making a wealth of educational opportunities available to your school's youth.

Goals of the Colorado High School Mock Trial Program

1. To promote and to further an understanding of and appreciation for American judicial system and court procedures;
2. To build and improve basic life skills such as critical thinking, public speaking, reading, reasoning, team collaboration, persuasive argument, and advocacy;
3. To increase communications and cooperation between the legal and educational communities;
4. To heighten the awareness of current social and legal issues; and
5. To provide an educational event that supports communication, cooperation and respect for students with diverse abilities, backgrounds and interests.

Teacher/Attorney Coaches' Responsibility as Role Models/Mentors

Not only the students, but the teachers and attorneys should have a comprehensive understanding of all the mock trial rules and procedures prior to beginning their work on the case materials. The Colorado Bar Association strives to conduct all mock trials fairly. Students, teachers and attorneys should avoid tactics that they know are wrong, unethical, or in violation of the rules, including the use of unfair extrapolations.

The Realities of Any Competition

The majority of the educational focus of this mock trial experience is in the hands of the teachers, lawyers and parents who assist in preparing the teams for the mock trial experience. It is up to these individuals to prepare the students for the mock trial experience, which includes taking the time to explain that with any dispute settled by trial, there will be a “winner” and there will be a “loser”, and sometimes the results are difficult to understand and may seem unfair or arbitrary.

Teachers and lawyers must take the time to prepare students for both possibilities and stress that both winning and losing are learning experiences. Accepting defeat with dignity, restraint and professionalism should be a component of all mock trial preparation and training. In doing so, you are preparing them for the many challenges they will face in their lives.

Remember, it is important to think of high school mock trials as a distinctive way to learn about the legal process used to remedy some disputes in Colorado. The actual mock trial presentation is a means to showcase team achievement. While “winners” are announced, it is important that the goals of the program are to provide an opportunity for students to learn, and to meet with others to show what has been learned. One weekend’s performance should not be the “be-all” and “end-all” of the mock trial experience. If students have achieved and met the goals set forth by their teachers, parents and themselves, then they have achieved an extraordinary level of success in their high school careers.

Mock Trial v. Real World – The Realities and Spirit of the Program

It is impossible to predict how a team will perform or how the scoring panelists will perceive individual presentations. In real life, judges and jurors may or may not have prior knowledge of the case; however, mock trial scoring panelists and presiding judges are sent case materials prior to the mock trial event and are asked to become familiar with the materials. It is our hope that familiarity with the rules and the case materials will help the panelists, and especially the presiding judges, in making determinations as to how students present the case with a solid understanding of these rules. Please remember that this is a voluntary educational program sponsored by the Colorado Bar Association with the assistance of volunteer lawyers and judges who donate their time and expertise in an effort to provide an educationally stimulating exercise for the students. Again, challenges come up in

the real world, and students must be prepared for, and prepared to deal with the reality of challenges in the Mock Trial Program and presentations.

The Purpose of this Information Packet

The Colorado Bar Association encourages new schools and teams to participate in this educational program each year. The purpose of this packet is to assist a new team's teachers, attorneys and students in the recruitment, planning, learning and preparation of the mock trial process; however, this packet is not intended to be the "be all, end all" of information. The rules of evidence and procedures outlined in the Colorado High School Mock Trial case materials override any information provided within this document. When preparing your teams, be sure that teacher and attorney coaches, as well as students, become familiar with and understand the Colorado program's rules of evidence and procedures. Information contained within this document is provided as teaching information and an educational guide only and does not take precedent over the Colorado program case materials.

Included in this packet is information about the various roles of mock trial team members, including students and coaches. Also included is educational information for teachers about the trial process, as well as student handouts and teaching tools. Suggested strategies on teaching the mock trial process are also provided for use by both the attorney and teacher coaches. Finally, there are several sample timelines and schedules to use as a model for planning and preparing your mock trial team.

The Colorado Bar Association is a resource to all teams, and is interested in the success of your team's learning experience and participation in this educational program. Video rentals of national championship performances are available for your team to view, as well as a two-hour performance workshop.

Our goal in providing this information is to assist in the organization and preparation of your mock trial team. We hope you'll find this packet helpful as you begin to prepare your mock trial team!

Colorado High School Mock Trial Program History

The Colorado Bar Association sponsors the Colorado High School Mock Trial Program annually. Colorado is one of over 40 states with a competitive high school mock trial program that is only three years younger than the national competition. For twenty eight years, Colorado's program has grown to include over 100 high school teams with over 1000 students involved. Hundreds of attorneys, judges, teachers and other community leaders volunteer their time to help students in their local communities learn about the justice process through this competitive educational program.

The mock trial program offers Colorado students a hands-on trial experience through preparation and presentation of a legal case to a scoring panel. Additionally, team members develop and test critical thinking, persuasive argumentative, team collaborative, strategy and planning skills. They also learn about the judicial system court procedures and the legal profession.

Trial cases may be civil or criminal, and concern issues that are both challenging and topical. Past cases have addressed domestic violence, murder, physician assisted suicide, sexual harassment, drug abuse, police violence and constitutional rights. The Colorado Bar Association prepares cases, either based on Colorado history or on topical Colorado issues, or cases made available from other states from which Colorado obtains permission for our program. Each case generally includes a fact pattern, complaints/charging documents, stipulated facts, six witness statements (three on each side of the case), exhibits, law (statutory and case law) and jury instructions.

Colorado teams compete in regional tournaments where students are given the opportunity to present both sides of their case before a scoring panel. Top finishers of the regional tournaments advance to compete with other schools from across Colorado at the state tournament that is held in March.

The Colorado State Championship team then goes on to participate in the National High School Mock Trial Championship tournament. Colorado teams have an outstanding record at the national tournament, capturing the championship in 1990 (Evergreen High School). Other teams have represented Colorado well in the national tournament, and include Regis Jesuit High School (2nd place, 1999), Glenwood Springs High School (3rd place in 2002, 2nd place in 2003 and 8th place in 2004), and Kent Denver High School (4th place in 1995). In 2008, George Washington High School from Denver advanced to the National Championship and took 5th place.

Chapter Two

Getting Started to Participate in the Mock Trial Program

This section is designed to help you get a handle on all that you need to do to engage student interest, offer an informative meeting to educate potential mock trial students about the program and the opportunity, and to assist you in getting other key players involved in developing and supporting your mock trial team.

Getting students interested in mock trial depends on your enthusiasm for the program. Enthusiasm is contagious and if students can clearly understand what they will be doing as a member of the mock trial team, their interest will be peaked and their fears of uncertainty (about the task, their ability, etc.) will be lessened.

Getting other non-students involved in mock trial will make your jobs as a teacher coach easier. It's important that you don't try to be the Lone Ranger in this task, but recruit the help of other teachers, local attorneys and even parents to assist with the smaller tasks over the time you prepare your team. People volunteer to help because someone asked them.

Developing a Mock Trial Team - What First?

If your school is interested in developing a mock trial team, it may be developed as an in-class project or an extracurricular activity. The Mock Trial Program addresses a number of Colorado's Model Content Standards for Reading and Writing, including elements from Standard 1, Standard 2 and Standard 3. Contact your school principal to discover what options you have for setting up a team, and in doing so, what support will be offered in enticing student participation with incentives.

Most schools provide grades for in-class teams; others are able to provide extra credit for their involvement in the extracurricular activity. Other schools offer a letter for their involvement; some offer no credit or incentive whatsoever, but students get involved, as if they would with a school club, for a number of reasons. They may have an interest in pursuing a legal career or their parents are already involved in the legal community. Students may be seeking an alternative and non-traditional way to be involved at their school. They enjoy performing or simply just want something fun and different to do. Many students who become involved in the mock trial program go on to take school more seriously, have successful college careers, and, in some cases, even go on to pursue legal careers. Students have become more socially involved in this school activity take away a new level of self confidence, and a wealth of learning experiences that will be beneficially applied in all facets of their lives.

Recruiting Students to Join your Mock Trial Team

You've got the green light to plan a team, now you need interested students and attorney coaches. Where do you start?

START EARLY – as soon as school is back in session, if possible. You’ll need to promote and announce the decision throughout the school, informing as many students as possible.

The Mock Trial program isn’t going to be for everyone; however be open-minded when inviting students to consider participation in your Mock Trial program. You’d be surprised by what some students are capable of doing, if they are given the opportunity!

If you narrow your student recruitment to Speech and Debate or theater students, you may experience scheduling conflicts for practices and even the Tournament! Think outside of the box when recruiting students. Look for students with hidden talents. Consider students who don’t have the strongest grades; this hands-on learning experience may be what they need. Invite students who aren’t involved in other after-school programs. Don’t rule out the quiet or bashful students. Many teachers, and attorneys, report that these students, who hardly say a word in the first few meetings, became their best, and most committed mock trial team members!

Below are a few ideas on how to generate school-wide interest in the mock trial team:

- Announce the decision to develop a mock trial team to the school. Use your school newsletter, posters, and PA announcements to invite students to an information meeting.
- If you’ve identified a few students who want to be involved, encourage those students to talk about the opportunity with and recruit their friends. Peer to peer word of mouth is extremely effective.
- Do a lunchtime demonstration of a mock trial. The CBA has many scripted mock trials (elementary school level) that could be used for this purpose, for example, *Humpty v. All the Kings Men* or *The Three Bears v. Goldilocks*. Yes, these are fairy tales, but they are short, and easy to read and perform. Invite students who’ve expressed interest to participate in the demonstration. Another idea is to present a lunchtime video showing of a mock trial tape, or a famous legal movie such as *Time to Kill* or *A Few Good Men*. No matter the demonstration, be sure you are available to be there to explain what a mock trial is, to answer questions and issue the invitation to become involved.
- When preparing flyers, posters, etc., jazz it up to peak the students’ interest using well known court room dramas, for example, *The Practice* or *Law & Order*. Use the theme music for your PA announcements.
- Talk up the mock trial program in all opportunities with students – at lunch, in classrooms, etc. Engage your fellow teachers to make announcements or to identify students that might have an interest in the program, then follow up with an invitation to those students to participate.

Regardless of what recruitment methods you use, your enthusiasm for the program will generate the most interest from students, first and foremost. Your enthusiastic efforts, and that of your fellow teachers, will be the deciding factors in whether you have enough students or not for a team, as well as the level of excitement and commitment they have.

The Information Session

This meeting needs to be an event! If you aren't incorporating mock trials into a class curriculum, this meeting will most likely be after school. We recommend hosting this meeting as early in the school year as possible (ideally mid- to late-September). But be sure you have some planning in place before you host this meeting:

- Have a general idea of your practice/meeting schedule (how often and when), if possible, so students have an understanding of the commitment.
- Have information on your regional tournament (if available) dates so students know when they are expected to be where as part of their commitment. **IT IS VERY IMPORTANT** that students come away from this meeting understanding that if they decide to participate, they are making a commitment that affects the entire team; bailing a few weeks before a tournament or even at the last minute could and may affect the entire team's ability to participate.
- Have Mock Trial Team application forms for the students ready to fill out. See Teacher Attachment #8 for a sample form.
- Provide information on what, if any, incentive (grade/credit/etc.) is available to them for their participation, if appropriate.

Once you're armed with information, then you're ready to hold the informational meeting. **Make it fun!!** Here are some suggestions on how other teachers make it interesting and exciting for the students:

- Offer pizza, refreshments, and soda for those who attend.
- If you already have an attorney coach lined up to assist with your team, invite him/her to meet the students and talk up the program.
- Have a CBA mock trial video of a national tournament performance to show; or a scene from a popular movie video about the legal system that shows a trial, for example, *A Few Good Men* or *Time to Kill*.
- Things to consider incorporating into the informational meeting include
 1. A fun example of mock trial (using elementary fairytale scripts) for the students to perform.

2. Explain the many parts of a trial - get students talking about the script, who does what, etc. Even set up the classroom into a courtroom.
3. Get the students involved by giving them a simple trial sample (available from the CBA) and have them break into groups to discuss how they will argue their points for the prosecution/plaintiff and defense. Regroup and have them “argue” their case with the opposing side.

Whatever you do, make sure it’s fun, engaging and informational, and that it peaks their interest. Don’t allow your first impressions of the students’ reaction or interest discourage you. Teens need time to warm up to new ideas, and often are interested but reserved in showing it.

A WORD ON SELECTING TEAM PARTICIPANTS

The decision on how you organize your team will be directly related to how many team members you have and how they decide to divide the duties/roles. If you plan on competing in local (and possibly state) tournaments, students should be willing to devote at least two-four hours a week from November until your regional tournament date in February to this mock trial program. Depending on if your team wishes to be competitive (meaning they want to really win) or simply wants to represent its school well and have a fun educational experience, the former goal may require a bigger commitment of time at some point before the tournament. This commitment also applies to attorney and teacher coaches as well.

Team Member Assignments

When developing your best strategy for making team role assignments, you may want to consider a few things when recruiting interest: Most students want to play attorneys, mainly because they believe the role is more glamorous; however, the witness roles are just as crucial as the attorney roles to a successful team performance. **Emphasize this!** Witness performances often make the difference in a team’s trial success in the tournaments. Having the students act as witnesses opens up the opportunity for you to bring in those students who are not specifically interested in the law or debate, but are interested in acting.

Preparation for witnesses is a little simpler than the duties of preparing to be attorneys; however, witnesses must master the facts in their affidavit statements, and study their profiles intensely to discover effective ways to highlight their characters’ strengths and downplay their weaknesses. Attorney will need to prepare for direct examinations of their one witness, and either a cross of one opposing party’s witness, or an opening statement or closing argument. Students have a great deal more preparation as attorneys than do witnesses. And many times, students who act as witnesses often want to play attorneys the next time.

To Audition Or Not To Audition. . . ?

Many schools will conduct try-outs – especially if there is an overwhelming interest in the mock trial team. You could proceed to make initial role assignments, and then allow students who feel they could play a different role better challenge the person in that role to a try-out, much like band instructors do, or athletic coaches so, when the third chair or string team member wants to move up to the next level.

Finally, you can develop more than one team although, if considering this, it's recommended that there is another teacher coach involved to work with that additional team. Each team can only have a maximum of twelve members; at minimum, it's recommended that each team have a minimum of eight or nine students since you need three student attorneys and three witnesses during any given mock trial round. Having two or three extra students as role alternates is a good back up plan if someone becomes ill; but these alternates would still need to learn a great deal about each of the parts. For example, having nine students would allow a team to have three student attorneys that try both sides of the case, and six different witnesses, three for each side. Regardless of the team's makeup, be sure to have more than six students on your team, and that you have alternates or understudies so in the event of an emergency, your team isn't left short-handed.

Non-student recruitment

Involving other community, school and student members to be involved with your mock trial team will help broaden the educational opportunities that the mock trial program offers, as well as assist you and your team with support, encouragement and enthusiasm for your efforts.

Recruiting Attorney Coaches

As the Teacher Advisor/Coach, your role as a mentor and a leader is critical to the success of your team. You and your attorney coach(es) will need to decide between you who will take on what responsibilities when coaching your team. Please see *The Attorney Coach/Teacher Coach Partnership* section in this packet for more information.

While the Colorado Bar Association is available to help locate an attorney to coach a team entered into the program, you, as the local teacher, are often the best judge of a suitable person to assist your team. Possible attorney resources include the following: parents or relatives of students, alumni, acquaintances, local law firms, county attorney's office, school board members or local judges.

While a team can be prepared with only one attorney coach, we recommend having at least two attorney coaches to assist your team. If you find one interested attorney, he/she may know of another attorney to invite to participate. If you have more than one team, we strongly recommend that each team have its own teacher coach and attorney coach. Both

teams can meet and prepare together, but when it comes to the teacher's responsibilities, it's best if each team has its own teacher coach.

Since attorneys have time limitations, they should be used as a consultant in their expertise as attorneys when needed. For example, an attorney coach is better utilized when students begin to discuss the case problem, and begin preparations for their opening statements or developing direct or cross examination questions. **THEY ARE THE EXPERTS** so be sure to allow them to take that lead when time comes to prepare the case! Attorney coaches do not need to be present at all team activities or practices, unless they wish to do so. For example, you may work with the students to understand the participants of a trial, courtroom setup, legal terms, etc. without the assistance of an attorney. Some attorney coaches may wish to be involved in the entire process, or certain portions of the preparation in order to begin establishing relationships and trust with the students. Once you've identified attorney coach(es) to assist your team, collaborate with the attorney volunteer(s) on how involved they can, and want to be and when.

After You Have Identified Your Attorney Coach(es)

1. Provide him/her with a copy of the mock trial materials, (the case problem, if available, or if not available, direct him/her to the CBA website to access the past year's problem, and this Information Packet) so s/he can become familiar with the program, the case problem, and the rules of competition, evidence and procedure. Discuss meeting times and places with students so s/he can plan their calendar.
2. Discuss how you both want to work together and when to prepare the team for the mock trial program.
3. Discuss the case and the attorney's suggestions regarding strategic ideas on how to introduce it and begin work on it with the students

More information is available in this packet on sample schedules (see section called *Sample Preparation Schedules*), an outline of the roles and responsibilities of the Teacher and the Attorney Coach (see section called *The Attorney Coach/Teacher Coach Partnership*), and strategies in working together in preparing your team for mock trial participation (see section *Introducing Mock Trial to Your Students*).

Involving Other Participants

Non-performing students: Do you have a student who has performance anxiety? Invite him/her to participate in the team as a timekeeper. Each school team has to provide its own timekeeper for the mock trial tournaments. It's good to train one or two students who understand how to keep time during the mock trial rounds. Have a backup plan because sometimes those stage frightened students often change their minds about their level of participation when they learn more about what's involved!

Involve an art student at your high school to be the team's official "Courtroom Artist". This student can draw pictures of the practices and/or the trials for use in your school's newsletter, the school system's communications publication, or the local community newspaper.

Team Parents: Once you have students involved in your mock trial program, get their parents involved! Here are a few suggestions on how to get them involved.

- Create a schedule in which a parent attends practice meetings to assist students when they break out into group discussions
- Invite parents to participate by providing a snack for each practice meeting.
- Participation in the mock trial program involves costs – such as copies, trial notebook binders, refreshments, awards and certificates, travel to the local tournament, etc. With the tight school budgets, encourage parents to get involved in fundraising events, such as a breakfast burrito event, making calls to local businesses for sponsorships, car washes (which can involve students!), coordinating a student letter writing campaign for donations, etc. Find one or two parents to spearhead the parent group so you can focus your energy on the teams' preparations.
- Recruit parents to coordinate a "pep rally" for the team(s) before their regional tournaments. Parents can prepare posters and signs to tape to students' lockers, in the hallways, all that wish the student's support and luck in their mock trial tournament.
- Get parents to assist with chaperoning students on a field trip to a courthouse, or to the regional tournament. Ask them to consider preparing lunches and snacks for the students for the road trip or after rounds (if courthouse polices allow.)
- Ask one or more parents to be the team's historian by taking photos of practices, team events (such as team outings, meals, etc.) and put together a scrapbook for the team to be shared at the end of the school year.
- Invite parents to attend and support your team during their regional tournament performances.
- Ask parents to plan a mock trial banquet (potluck, barbecue, etc.) for the team after they complete their mock trial program participation.

Parental support can be most helpful to you as the teacher when you need to be focusing on the students and their learning.

Media Support: Other participants may include journalists from your school’s newspaper, your community newspaper and local television stations. Invite a journalist or a news reporter to your mock trial practice meetings to learn about their involvement in the state program, get footage or photos of your team in action, and interviews with the students and/or attorney coaches.

Legal Community Support: Invite a local judge to speak to the students about the courtroom and the legal trial proceedings. Be sure to work with the judge in advance to ensure that s/he understands what you hope to achieve with his/her visit, and so they may be prepared as a speaker. Also invite a local judge to preside over an inter-squad scrimmage or a scrimmage with another school (see below); your attorney coach can assist with this invitation.

School Community Support: Invite another participating school in the mock trial program from within or outside your school’s regional tournament to scrimmage against your team as a ‘trial run” or dress rehearsal. Scrimmaging another team can really help your students overcome nervousness and jitters, as well as give them a sense of how running a mock trial feels. The Colorado Bar Association can assist you in connecting you with another mock trial team in your area.

Local Community Support: When your team begins scrimmaging, invite community people (judges, attorneys, school principal, parents, friends, other teachers) to watch and offer feedback to students about their mock trial performances.

Chapter Three

The Teacher Coach & Attorney Coach Partnership

Once attorney coaches are identified to help with your mock trial team, it's important that you sit down with your attorney coaches to discuss how to plan for the preparation of your students and the mock trial team. Also important is the discussion about the schedule for the weeks/months ahead that your mock trial team will be meeting to learn about trial proceedings and prepare for the case.

This section discusses the role and responsibilities of both the teacher and the attorney coach, provide information on how to best utilize your attorney coach, and suggestions on how to work together as partners when working with your teams.

How/When To Utilize the Attorney Coach

There are many different ways in which an attorney coach may work with the teacher coach. Some attorney coaches don't come into the process until the case has been released, and only then begin working with the students to plan their presentation of their case. Some attorneys enjoy the educational process and want to be involved early in the meetings to assist in teaching students about the legal system. Other attorney coaches may also want to be involved in "casting" students as members on the team. Then there are teacher coaches who only handle the administrative side of mock trial such as the registrations, coordination of schedules and practice dates, student handouts, etc.

Whatever roles the attorney and teacher decides to play in this process of developing a mock trial team, its important that you both sit down to communicate to each other and define your respective responsibilities during the preparation of the mock trial team. The CBA encourages that a mutual partnership in which all parties are actively involved (including not only teachers and attorneys, but additionally any parents or other teachers who wish to assist) to the benefit of the students. This program is about the students, not the teachers or the attorneys. Please work together to develop a plan of action to educate and prepare the mock trial team members that facilitates a fun and beneficial experience.

Included in this packet are sample schedules (see section titled *Sample Preparation Schedules*) as a reference when creating your own team's schedule. In this section, you'll find the roles and responsibilities, as well as guidelines for the Teacher Coach and the Attorney Coach. Please review this section carefully as how both parties work together will greatly impact the success of your team.

ROLES & RESPONSIBILITIES FOR THE ATTORNEY COACH

As a mentor and a role model, you are critical to the success of the team. Of primary importance is your ability to impart to the students that we are a society governed by the rule of law. By the end of the mock trial season, it is our hope that the students will have a keen understanding and an abiding respect for the law and the legal system. We realize this is not an easy charge, but who better than you – the attorney – to help them develop that understanding and respect? Naturally, they will look to you for guidance in both their performance and their courtroom decorum. As a result, it is critical that you demonstrate for them professional and ethical behavior.

And, as much as you will want to help the students, that is, to point them in the right direction, and to give them the benefit of your experience, remember that the students and teachers will develop a better understanding of the case and learn more from the experience if the attorney coaches do not dominate the preparation phase of the competition. To achieve the educational goals of the mock trial program, the preparation phase of the program must be to a cooperative effort of students, teachers and attorney coaches. Remember it is critical to avoid (even the appearance of) “talking down” to students and/or stifling conversation through the use of complicated “legalese”.

Finally, below are descriptions of how attorneys work with mock trial teams – these suggestions are how you, as an attorney coach, can be most effective. You and the teacher coach should approach the tasks in whatever order and manner you both deem appropriate, *provided that all of them are covered*. Many attorney coaches begin working with their teams before the case problem is released. Others join the team later after the case problem has been released. You and your teacher coach can discuss how you wish to proceed.

Stage I

- Work with the teacher coach to discuss schedules, practice times and dates, and how you both want to work together to prepare the mock trial team. Some attorney coaches only work on the case problem; others are involved sooner in assisting the teacher coach with the lessons on trial components and sequence.
- If working with the team once the case problem is released, prior to meeting with the team, confirm that the teacher has already distributed the case materials among the team members and they have read it and become familiar with it.
- Confirm with the teacher that the sequence of a trial has been explained to them. When initially meeting with the students, confirm that they understand the sequence of a trial, the steps in each sequence, the layout of the courtroom and the participants of the mock trial. If the team members are not clear on these concepts, review them prior to moving forward on the case problem.
- Discuss the Rules of Evidence (mock trial simplified version) included in the case materials. Ensure that the team members know the hearsay rule and all its exceptions, as well as all the objections.

Stage II

- Examine and discuss the factual basis of the case, witnesses' testimony and the strengths and weaknesses of each side of the case. Remember – your team must prepare to present both sides! Key information might be listed on the blackboard as the discussion proceeds so that it can be referred to at some later time. (See *Introducing Mock Trial to Your Team* section for strategy ideas.) **Categorize facts:** Important, Damaging, Conflicting
- Discuss the law involved in the case (as provided in the case problem) and the burden of proof.
- Put the students on the stand with notes and then as the attorney coach, proceed with an example of direct and cross-examinations.
- Determine 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. (See *Working Together* later in this section.)
- Emphasize that team members should not completely memorize their roles (ex. exam questions, etc.) since in a real trial 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.

Stage III

- Walk students through the trial from beginning to end, ensuring all the follow steps are covered.
- Work with 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.
- Have witnesses called to the stand to be examined by student attorneys. Work with students to develop questioning techniques that will elicit testimony to support either side of the case. Have the other team members make suggestions to both witnesses and attorneys.
- Work with witnesses to develop their characters and on the knowledge of their facts. Many teams recruit a drama coach to come in and work on the witness personalities – these students earn points for their team too!
- Have the attorneys practice making objections, and discuss both the style and substance of the objections thoroughly.
- Have attorneys practice responding to objections. This is one of the most difficult skills for students to master, and it can only be achieved through knowing the rules inside and out.

- Consider scheduling a 1½-hour workshop on mock trial performances offered by the Colorado Bar Association. The State Mock Trial Coordinator can come to your school during one of your practices and present video clips of national mock trial performances and engage the students in discussion about preparing for their roles.

Stage IV

- Conduct cross-examinations 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.
- Practice opening statements and closing arguments, how to lay a foundation of exhibits, what to do when the opposing team objects to your questions.
- Discuss appropriate courtroom decorum and etiquette. This includes appropriate dress, and sportsmanship-like behavior with other school teams.
- Consider a scrimmage with other school teams in or out of your region. After the experience, regroup to tweak presentations and discuss the learning opportunities that presented themselves. (These can be done during the actual scrimmage too.)

Stage VI – Prior to Regional's

- Conduct a final run-through of the entire trial. Allow team members, attorney coaches and the teacher coach to act as the presiding judges and opposing team's attorneys.
- Enlist the support of community members, especially attorneys or judges, to sit in and offer suggestions.
- Attend the regional tournament. Your participation will not only bolster the team's courage, but it will also demonstrate to them your commitment and your interest in their achievements.

If Your Team Advances to State Finals

- If your team is among those that advance, the time between Regional and State tournament is the team's opportunity to improve its performance. The ballots from the Regional tournaments are usually provided to the teacher coach, and can be used to identify potential areas for improvement.

If Your Team Does Not Advance to State Finals

- First and foremost, let your team know you are aware of and respect the work they have invested to prepare for Regional. Naturally, if they didn't really work hard, that sentiment should be down played. But, any student who shows up for practices and learns his or her role and actually works hard should be congratulated regardless of the outcome.
- Consider attending the state tournament, and/or the state championship round with your team. From the experience, your team members will have an accurate perception

of the level of expertise that must be achieved to advance to the championship round, and they may feel better about not advancing when they have the opportunity to view the presentations of those who did and compare it with their own performances at Regional. Additionally, viewing state trial rounds may motivate them for the next year in their level of commitment to mock trials.

Working with Teacher Coaches

All involved in this program recognize that as attorneys, you are volunteering a great deal of time to help your community school prepare a mock trial team. You may only want to join the practices once the case problem is released; you may be willing to work with the teacher in advance in educating the students about the sequence of a trial, the steps of a trial and the participant of a trial.

It's very important that when you are working with teacher coaches that you both discuss in advance how the teacher envisions you as the attorney coach being involved. Offer options to the teacher to consider, and develop between you an outline of the partnership you'll have during this process. More importantly, maintain an open communication with each other throughout this process so there are no misunderstandings that could ultimately affect the team's progress or preparation schedule.

Ideally, the teacher coach and the attorney coaches work together in partnership. Both need to recognize each other's areas of expertise and allow each other to put that expertise into use when needed during the preparation of the case problem. Please be sure to respect your teacher coach's responsibilities to his/her students as their school advisor, and remember that this is an educational program first, and the students' positive educational experience is of the utmost importance. The teacher coach and the team are seeking your experience with trials and litigation – commit to that task as fully as possible and allow the teacher coach to work with you and assist you as appropriate and mutually agreed upon.

ROLES & RESPONSIBILITIES OF THE TEACHER COACH

Your role as a mentor and a leader is critical to the success of your team. Your general responsibilities include assisting your team members with the following:

1. Educational and Sportsmanship

Learning about the law and the legal system, as well as the substantive issue around which the case is based, is the primary goal of the mock trial program. Healthy competition helps to achieve this goal; however, teacher advisors must remember their responsibility to keep the competitive spirit at a reasonable level.

The reality of the adversary system is that one party wins and the other loses, and teacher advisors must prepare their teams to accept graciously either outcome in a mature manner. Teacher advisors can help prepare students for either outcome by placing the highest value of excellent preparation and presentation, rather than on winning or losing the trial.

2. Rules of the Competition and Procedure

Please ensure that you and your team members have read the rules thoroughly several times. You are expected to help your team members learn and adhere to them, as well as to the Code of Ethical Conduct.

3. Role Assignments

Team members should be strongly encouraged to select roles based on their interests and abilities, not on the basis of any gender or cultural stereotypes, which might be drawn from the characterizations in the fact pattern. Note that all witnesses, unless otherwise noted, are gender neutral and may be played by males or females.

4. Team Preparation

Teams must learn and prepare to present both sides of the case. Once your team has done this, you are strongly encouraged to arrange and conduct practice mock trials (scrimmages) prior to regional and state final competitions. Scrimmages require only one attorney to act as a presiding judge because it is not necessary to award points to teams during these practice rounds (unless you wish to do so). Your attorney coach may be able to help you obtain the use of a courtroom, but classrooms or other facilities may also be used.

Working with an Attorney Coach

Recognize that attorneys from your community are volunteering their time to help you prepare your mock trial team. Some attorneys may only want to join the practices once the case problem is released; others may be willing to work with you in advance to assist in educating the students about the sequence of a trial, the steps of a trial and the participants of a trial. It's very important that when you are recruiting attorney coaches (while one would work, it's easier for you and the team if you have at least two) that you discuss how they can be involved, giving them options and developing between you an outline of the partnership you'll have during this process.

Ideally, the teacher coach and the attorney coaches work together in partnership. Both need to recognize each other's areas of expertise and allow each other to put that expertise into use when needed during the preparation of the case problem. Please be sure to respect your attorney coaches' responsibilities to the students as a volunteer, and remember that this is an educational program first, and the students' positive educational experience is of the utmost importance. Please be sure to utilize your attorney coaches to the fullest as mutually agreed upon between you. The attorney volunteer is lending his/her experience with trials and

litigation to your team – utilize the attorney coaches and their time to work with your team as fully as possible.

While the Colorado Bar Association is available to help locate an attorney to coach a team after you've exhausted all other resources, you, as the local teacher, are often the best judge of a suitable person to assist your team. Possible sources include the following: parents or relatives of students, alumni, acquaintances, local law firms, county attorney's office, school board members, local bar members, or local judges. (If after exhausting all possible avenues, you are still unable to find an attorney to work with your team, contact the State Mock Trial Coordinator by writing to cgravit@cobar.org.)

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

Finally, below are suggestions of how to work with your team and utilize attorney coaches during the preparation of your mock trial performance. You and the attorney coach should approach the tasks in whatever order you deem appropriate, *provided that all of them are covered*. Many attorney coaches begin working with their teams before the case problem is released. Others join the team later.

After You Have Identified Your Attorney Coach(es)

1. Provide him/her with a copy of the mock trial materials (if available) so s/he can become familiar with the case problem and rules of competition, evidence and procedure.
2. Discuss meeting times and places with students, after mutually agreeing upon a schedule with the attorney coaches.
3. Discuss the case and the attorney's suggestions regarding strategy and arguments for both sides.

Before Meeting with (or Working with) Your Attorney Coach

1. Educate your students about the sequence of a trial, the steps of a trial and the participants of the mock trial.
2. Utilize the enclosed educational materials, student handouts and suggested strategies to teach the students the basics of a trial proceeding and its components.
3. Once the case problem is available, have the students learn the statement of facts and witness statements (in affidavits) as thoroughly as possible. You might try having the students quiz one another – one student looks at the facts and affidavits and asks the other student(s) questions; then reverse roles.

4. Try brainstorming with your students to elicit factual arguments for both the P/P and the defense; i.e., which facts support the P/P's case, and which facts support the defendant's case?
5. Have the students try to string facts together to make a logical assumption about the case.
6. Have the students read through the mock trial procedures for trial of civil/criminal cases, the simplified rules of evidence, and the mock trial rules. Discuss with your students and be sure to write down any questions they may have for your attorney coaches. For rules clarification, contact the State Mock Trial Coordinator at the Bar Association.
7. Familiarize yourself with the tournament procedures and rules of the competition.

WORKING TOGETHER:

THE ATTORNEY COACH, TEACHER COACH AND TEAM MEMBERS

1. ***Develop a case strategy.*** The entire team should work together on this process.

Attorney Coaches: Be sure to understand that your role is to serve as a consultant to the students, not as a director or decision-maker for the team. For the educational goals of the mock trial program to be achieved, it is the team members who must be the ones who actually prepare their own presentations, which should be consistent with the strategy that has been established.

Consider the following when developing the team strategy:

- What are the strengths of the case? These are the points and issues you will want to emphasize.
 - What are the weaknesses of your case? These are the points and issues for which you must prepare a counter-argument.
 - Are your strategies integrated? That is, are the witnesses and attorneys all promoting the same "theme" and "theory?" You need to work as a team during the course of the trial, and each team member must always be certain about where the entire team is headed.
 - Where are the possible holes in your strategy? You don't want to be confronted with surprises at trial, and you must be prepared to cope with the unexpected.
 - Is there a particular key witness whom you will want to exploit during cross-examination?
 - Will we need to use all our time? If your strategy has been achieved, before you have used all your allotted time that is fine.
2. ***Other considerations when preparing your case:***
 - In which order to call your witnesses
 - Physical position in the courtroom

- What information should be contained in your opening statement and closing argument. (Again, remember that the coaches may give the students ideas, but should not write the statements for them.)
- What questions to ask on direct and cross-examination of each of the six witnesses
- How to avoid asking objectionable questions and what to do if one of your questions is objected to.
- How and when to object to the opposition's questions.
- How to introduce exhibits and offer them into evidence.
- How to exhibit proper courtroom decorum and good sportsmanship

3. Assign mock trial roles. Depending on how many students you have interested in participating on the mock trial team, it's wise to gauge commitment level before assigning roles. Below are a few examples on how other attorney coaches decide on role assignments.

1. Make students and their parents aware of the tournament dates and ensure that they all understand that a commitment to the mock trial team is a commitment and a responsibility (to their other team members) to availability on those dates. Teams have dropped at the last minute before competition because a student unexpectedly "had" to go on vacation with their family. Involving the parents is helpful in supporting that commitment.
2. For those students who want to be student attorneys, give a homework assignment to them that has them prepare an opening statement with which to "audition" for the part. Attorney and Teacher coaches can ascertain the level of effort put forth in the homework, and the level of comprehension of the role of student attorney.
3. "Audition" several candidates over a few weeks in the student attorney roles. Be sure they understand that they are being considered based on their commitment to the assignments, their active participation during practices, their adeptness to the responsibilities, and any other criteria you feel appropriate.
4. When assignments are made, consider using those students who didn't "get the part" as understudy or alternates, allowing the student to learn the roles in addition to their other assignments, if any.

Other Preparation Strategies for Consideration:

1. Observe, if possible, a real trial in county or district court.
2. Consider asking a speech or drama teacher to observe your team in action and offer suggestions for improving the students' performances.
3. Practice the trial in full, including direct and cross-examinations, in front of your attorney coaches or another local attorney or judge who is willing to sit in and offer suggestions. Your team should have performed its entire case several times prior to the regional tournament in February.

4. Set up a scrimmage among your own team members, if there are enough students participating. Have one group perform the P/P's side and the other group perform the defense. If you do not have enough students on your team, set up a scrimmage 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, if at all possible, conduct the trial in a courtroom setting.

Chapter Four

Mock Trial Sample Preparation Schedules

This section offers sample preparation schedules that may be used to prepare your team for their regional tournament.

The preparation schedule will depend on a number of factors: your students' availability, the team's goals for participation in this program, and the availability of volunteer resources.

Each mock trial attorney and teacher coach has a specific process for preparing a mock trial team for program participation. No team prepares for competition day in the same way. The following sample schedules are not intended to take the place of a successful method a team has already developed; but new teams may use these as a starting point to develop their own preparation process and schedule that will work best for your team.

SUGGESTED SCHEDULE FOR MOCK TRIAL PARTICIPATION

AUGUST:

- Call a meeting of the mock trial team from the previous season during the first week of school (unless there was not team at that school during the last season) or call a meeting of all students interested in being a part of a new mock trial team
- Talk to the students about the Colorado Mock Trial Program and about the deadlines for registering a team, pass out Colorado Mock Trial Program brochures to interested students

SEPTEMBER:

- Put out posters in prominent places such as in the school hallways (with the permission of your administration, of course!) announcing an informational meeting about Mock Trial (also use school intercom and teacher peers to make these announcements)
- Hold an informational meeting around the middle to end of the month to tell interested (new and veteran) students about the program (contact your attorney coaches and invite them to join you or call the state mock trial coordinator to visit your school to speak about mock trial)
- Have students fill out an application form at this time
- Announce the try-out date(s) (if you plan on doing auditions) or dates of the first practice
- Consult other teachers of the interested students and their sponsors in other extra-curricular activities to determine whether they will be a good addition to your team
- Remind interested students of the deadline for student applications for participation

OCTOBER:

- Hold try-outs (if applicable and/or necessary) late in the month (in Colorado, a mock trial team consists of a maximum 12 members, at minimum 6-8. If you have more students interested, consider developing additional teams.)
- Contact your attorney coaches to assist in try-outs or your first practice, if you'd like, or when the final team is set
- Begin holding weekly meetings (before, during a class or after school) to go over the basics, especially with new students (the rules, how to do an opening, closing, direct and cross, objections and entering evidence) — Practice these skills with past mock trial cases and use this teaching packet.
- Contact the State Mock Trial Coordinator if you are not successful in finding your own attorney coach

NOVEMBER/DECEMBER:

- Teams receive their case materials for the competition season at the beginning November.
- Begin applying lessons learned about openings, closings, directs and crosses to the current competition case.
- Give any assignments for students to work on over holiday break.
- CBA Coaches College

JANUARY:

- Continue with weekly practices — many teams hold 2 or 3 practices/week during this month as tournaments near.
- Attempt to get into a courtroom to practice — your attorney coach can assist in accessing a courtroom. Contact the State Mock Trial Coordinator for information about other teams within or outside of your region with whom to scrimmage.
- If you haven't already, begin assigning attorney, witness and timekeeper roles
- Meet with Plaintiff/Prosecution and Defense squads separately
- Discuss dress for the competition with your team — you may find you'll need to make arrangements for some of your team members. Also a good time to begin discussing code of ethical conduct and courtroom decorum, if you haven't already.
- Scrimmage other teams/schools.

FEBRUARY:

- Increase the number of practices/week as needed.
- Begin run-through practices of the current mock trial case from start to finish, with objections; many attorney coaches “bench” these rehearsals
- Try to practice in a courtroom, if one is available to you, for your dress rehearsal — your attorney coach can set up access to a courtroom. Contact the State Mock Trial Coordinator for information about other teams within or outside of your region with whom to scrimmage.
- Ask your attorney coach if he or she knows someone (an attorney or judge) in your community (that will not be a judge or evaluator at your regional competition) that would be willing to “bench” a rehearsal session for your team (or several!) — exposing

your team to different judges will prepare them for the different rulings a presiding judge may make on tournament day

- Make sure your team understands what they are expected to wear before competition day!
- Finalize all tournament details team needs before entering competition (see *Preparing You and Your Teams for Tournament*)
- Hold a dress rehearsal the week before your competition with a guest “judge;” and require your team to dress appropriately; let them know that this rehearsal will be straight run-through, just like at tournament.

MARCH

- For regional advancing teams, make sure you meet all deadlines for state tournament, including hotel reservations, transportation, etc.
- Step-up the intensity of your rehearsals in the 2-3 weeks before state tournament
- Consult with your administration about transportation to the state tournament
- Participate in State Tournament

APRIL

- State Championship team receives national case April 1st and prepares for Nationals
- Work with State Mock Trial Coordinator on all details for registration, etc. for National Mock Trial Tournament
- Work with State Mock Trial Coordinator on scheduling Wyoming scrimmage before national tournament
- Schedule scrimmages with other states at national tournament

MAY:

- State Championship Team attends National Tournament

SAMPLE TEACHING SCHEDULE FOR MOCK TRIAL
AFTER CASE IS RELEASED

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 P/P's or Defendant's case. Students should read all trial materials as homework in advance.

Day 3: Using an overhead projector, chalkboard or flipchart, discuss the relevant facts in the case and possible theories for each side. Discuss purpose and format of opening statements. Assign (temporarily or permanently) 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 to the team. 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 exhibits submitted) (See *Student* and *Teacher Handouts*)

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 through 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, have each student present hers/his in front of the class (use of note cards only).

Day 16: Court visit or review a videotape of a mock trial (contact State Coordinator for more info).

Day 17: Students review the case and rehearse their parts

Day 18: Scrimmage the case (either against another school team or against each other if there are enough team members)

Day 19: Debrief the scrimmage. 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 and the process of the American court system to the students. 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 composition) that 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?
- Were the witnesses effective against the cross-examinations?
- Did the witnesses misrepresent any important facts of their testimonies?
- What changes could be made to improve the performance?

Day 20: Students review the case and rehearse their parts.

Day 21: Trial – Regional Tournament

SAMPLE SCHEDULE FOR PREPARATION – A “TO DO” LIST

Teachers: Before meeting with your attorney coach:

- Conduct lessons designed to familiarize students with the court system and civil procedure. Meet with your attorney coach as soon as possible. (If assistance is required in obtaining coaches, please contact your state coordinator. Two coaches are ideal for a team so one may work with P/P and the other with Defense. Your attorney coaches may also wish to be involved in conducting the lessons of the court system and civil procedure.)
- Have students read through the procedures for trial of a civil/criminal case, the simplified rules of evidence, and the mock trial rules. Discuss with your students and be sure to write down any questions they have for your attorney-coach. For rules clarification, contact your attorney coaches and/or state coordinator

Teachers/Attorneys: After the case problem has been released:

- Have the students learn the statement of facts and witness statements as thoroughly as possible. You might try having the students quiz each other—one student looks at the facts and asks the other student(s) questions; then reverse roles.
- Try brainstorming with your students to elicit factual arguments for both the plaintiff and the defense (i.e., what facts support the plaintiff’s case and what facts support the defendant’s case?)

- Have students try to string facts together to make a logical assumption about the case.
- Discuss the case and the attorney's suggestions regarding arguments for both sides.

With your attorney-coach, work on:

- Knowledge of the facts, procedures, and mock trial rules.
- How to present an opening statement and what information it should contain.
- Questions to ask on direct and cross-examination of all plaintiff and defense witnesses.
- How to present a closing argument and what information it should contain.
- How to avoid asking objectionable questions and what to do if one of your questions is objected to.
- How and when to object to the opposition's questions.
- How to introduce exhibits and offer them into evidence.

Before your regional tournament:

- Conduct the trial in full, several times if possible, in front of local attorneys or judges who are willing to sit in and offer suggestions.
- Observe a real trial in a county or district court. Contact the clerks or judges regarding trials scheduled.

THE TEN-SESSION SAMPLE SCHEDULE

Suggested Preparation Time: Ten two-hour sessions prior to competition (minimum).

Suggested Place for Meeting: Meet in the local courtroom to help students feel comfortable in a courtroom setting. Other sites may include your law office, the school, or student homes.

Props: Easel or blackboard for visual aids that explain trial procedure concepts. Go easy on providing lengthy essays (or lectures) on trial steps or courtroom demeanor. The mock trial manual provides all the material you will really need.

FIRST SESSION

- Distribute mock trial handouts and copies of the Mock Trial Case Problem. Some students will come to you better prepared than others. Stress that *everyone* is to read all the materials, or some portion thereof, between the first and second meeting
- Explain trial procedures (i.e., opening statements and closing arguments, direct examination, cross-examination, calling witnesses, and objections).

SECOND SESSION

- Determine the factual basis of the case.
- Put the students on the stand with their notes; then have the attorney-coach(es) proceed with an example of direct examination.
- Define the division of the students into plaintiff and defense teams. From this point forward, attorney-coaches may prefer to work with their separate teams in developing strategy and reaching role assignment decisions.

THIRD SESSION

- Students should be assigned roles and understudy (alternate) roles, establishing who will act as witnesses and student attorneys.
- Emphasize that team members should not memorize their roles, since, in a real trial, they would have to play it by ear. Rather than memorizing his/her role, each student should concentrate on knowing all the facts of the case. Reinforce this knowledge by more exercises that test the students' knowledge of the facts and get them more comfortable with the role playing challenges.

FOURTH SESSION

- Go through the trial in outline/summary fashion. Review the case law.
- Work with the student attorneys, concentrating on what should be covered in an opening statement and closing argument. Give them ideas, but do not write the statements for them.
- Ask other members of the team what they think should be included in the opening statement and closing argument.
- Call witnesses to the stand and have them examined by the student attorneys. Have other team members make suggestions to both witnesses and attorneys.

FIFTH SESSION

- Concentrate on Rules of Evidence, especially the raising of objections. Refer to the *Student* and *Teacher Attachments* in this packet. Then have the students use material from the case, raising objections and defending against them.
- Review the fact pattern of witnesses by having student attorneys examine them while attorney coaches challenge with objections.

SIXTH SESSION

- Step back from the case facts and review other important parts of the rules:
 - Time limitations and timekeeper duties (see Colorado Mock Trial Rules of Evidence and Procedure)
 - Extrapolations—how these relate to objections and impeachment
 - Review the score sheet and performance rating explanation and evaluate student performance to date (found in Case materials).

SUBSEQUENT SESSIONS

- 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.
- Review the use of evidence in trial—how to lay a proper foundation, how to introduce the exhibits, how to object to problems with exhibits or procedure.
- Challenge the opposing team within the school or school district to a practice round, preferably at a local courtroom. If possible, recruit another attorney or judge to preside over the trial, and other attorneys or law school students to sit in the jury box as evaluators. Run through the trial without help from the coaches, and allow the evaluators to complete score sheets. Then debrief the performance thoroughly.
- Hold a mock trial session before a school assembly, following the same format as above. If possible, videotape the trial for further evaluation of student performance. Critically evaluate the presentations.
- Enlist the support of community members, especially other members of the legal profession, to observe and offer suggestions at practice rounds.

A SUGGESTED TRAINING CALENDAR

This schedule is designed to move an entire class along the mock trial process. Team assignments are made much later in the study process. This plan also assumes the students have already studied the mock trial, all its components, and the Rules of Evidence.

DAY 1: Discuss trial procedure generally and the applicable burden and standard of proof in your case. Divide the group in half, assign each half the P/P's or defendant's case. Students should read all trial materials as homework.

DAY 2: Using an overhead projector, a flipchart or the black board, 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 all students prepare a draft of an opening statement for their side as homework.

DAY 3: Review opening statements with students individually and let them practice presenting them.

DAY 4: Each student presents an opening statement, while teacher keeps list on board of important facts/ideas raised on each side. Retain list for future use.

DAY 5: Rules of evidence worksheets and practice in class (especially getting exhibits submitted).

DAY 6: Rules of Evidence continued.

DAY 7: Rules of Evidence continued.

DAY 8: Direct and cross examination, working on and reinforcing student understanding of rules of evidence at same time. Students should prepare direct questions of one of their side's witnesses. Practice when questions are complete.

DAY 9: Direct and cross-examination continued.

DAY 10: Direct and cross-examination continued.

DAY 11: Direct and cross-examination continued.

DAY 12: Direct and cross-examination continued.

DAY 13: 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 14: Review students' closing statements with them individually, then have each student present his/hers in front of class (use of note cards only).

DAY 15: Field trip: court visit.

DAY 16: Debrief the court visit; review what was seen and discuss.

DAY 17: Make final decision on attorney and witness roles for plaintiff and defense teams.

DAY 18: Practice trial and debriefing.

DAY 19: Practice trial and debriefing.

DAY 20: Practice trial and debriefing.

MOCK TRIAL LESSON PLANS

*A sample 4-week calendar offered by the Illinois State Bar Association's Mock Trial Competition
They were designed for a civil case but may be adapted to any criminal case.*

DAY 1: INTRODUCTION TO FACTS AND ISSUES OF THE CASE OBJECTIVES

As a result of this day's activities, the students will be able to:

1. Read the "Statement of Facts" aloud.
2. Identify new vocabulary words.
3. Define new vocabulary words.
4. Identify the parties in the case.
5. Describe the stipulated facts on a timeline.
6. Define "custody."
7. Describe the process by which a judge decides which parent should be awarded custody.
8. Summarize what each party in a case problem wants (sample cases available from CBA)
9. Write one sentence describing the parties and legal issue in the case.

ACTIVITIES:

1. Make a brief introductory statement, e.g., "*Today we're going to begin to learn about a very interesting case involving separated parents who both want custody of the children. We are going to be working on this case for the next three weeks, and at the end of that time, we are going to participate in our regional mock trial tournament. Today, we're going to learn the facts of the case.*"
2. Distribute packets.
3. Open to page one. Ask a student to read the party identifications in the Statement of Facts. Stop reading.
 - a. What is a plaintiff? Who is the plaintiff in this case?
 - b. What is a defendant? Who are the defendants?
4. Call on another student to continue reading. Stop reading. Write the names of any persons mentioned in the statement of facts. Ask the class to identify each person.
 - a. What was the relationship between the case players?
 - b. Ask other factual questions that are appropriate to stimulate discussion about the case, the facts, etc.
5. Factual Summary: Ask class to summarize the sequence of events that led up to the case before us. Ask the class:
 - a. What happened at each point?
 - b. Do we know what happened in between?
 - c. Do we need to know that information? Why?
 - d. How can we get that information?
6. Tell students to take out a piece of paper and write one sentence telling who is suing whom and why. Collect papers.

ASSIGNMENTS:

Reading:

1. Review Statements of Facts and Issues.
2. Read statements of plaintiff's witnesses.

Written:

1. Identify five new vocabulary words; list them; go to dictionary and find definitions; write definitions.
2. Make a timeline, from the reading, listing the important facts in the case and what events are particularly relevant

Evaluation:

1. Student participation in discussion.
2. Sentences students write at end of class.
3. Vocabulary and timeline written homework.
4. Review activities on Day 2's class.

DAY 2: ANALYSIS OF THE PLAINTIFF/PROSECUTION'S CASE OBJECTIVES

As a result of this day's activities, the students will be able to:

1. Recall and plot facts on a timeline.
2. Orally state the parties and issues in the case.
3. Summarize the plaintiff's case.
4. Identify the witnesses for the plaintiff.
5. Describe the role of each witness.
6. List the strong points and weak points in the plaintiff's evidence.
7. Write a two-paragraph statement describing the facts in a manner most favorable to the plaintiff, and summarizing the evidence the plaintiff will produce at trial.

ACTIVITIES:

1. Collect homework papers.
2. Review:
 - a. Ask: Who is suing whom and why? What is the name of the case? Where is this suit being brought?
 - b. Call student to board. Direct student to draw a timeline, plot important events, and verbally describe to the class what happened at each important time; ask another student to make any additions necessary.
 - c. Erase board. Direct students to take out paper, draw timeline of the case, make brief notation about important occurrences. Collect papers.
3. Write names of two plaintiff witnesses on board. Ask class to identify each.
4. Call on a student to be the attorney. Ask that student to take a seat in the front of the room. Proceed to ask the attorney questions about the facts he has gathered. Invite other students to ask questions as well. *Of course, the attorney is not questioned at trial.
5. After spending about five minutes summarizing the attorney's role as described in #4 above, do the same for the witness' role. You can demonstrate responses by asking students to play the witness while teacher and students ask fact questions from the affidavits.
6. Summarize: Based on what we've read and heard from the witnesses, what facts are in dispute in this case? List disputed facts on board.
7. Small Group Directions: Discuss and List:
 - a. What are the strong points of the P/P's case?
 - b. What are the weak points of his/her case?

- e. As each group agrees upon a list, recorder should go to the blackboard where teacher has made this chart:

	Strong Points	Weak Points
Group 1		
Group 2		
Group 3		
Etc.		

Or, lists could be made on butcher-block paper. Teacher should retain lists to start next class.

8. After groups have concluded, teacher should review the strong point/weak point list and instruct students to retain copy for future reference.

ASSIGNMENTS:

Reading: Read defense witness statements.

Written: Write a two-paragraph essay that describes the facts in a manner most favorable to the plaintiff.

Evaluation:

1. Student participation in class on Day 2.
2. Fact essay.
3. Student participation in review on Day 3.

DAY 3: ANALYSIS OF THE DEFENSE CASE OBJECTIVES/ACTIVITIES: Same as **Day 2**, substitute "defense" for "plaintiff."

ASSIGNMENTS:

Reading: Review facts and witness statements in preparation for a quiz.

Evaluation:

1. Student participation in-class activities.
2. Written homework.
3. Student performance on written quiz on Day 4.

DAY 4: REVIEW OBJECTIVES: Review student accomplishment of all objectives from Days 1-3. Also, the student will be able to recall steps in a trial and describe what occurs in each step.

ACTIVITIES:

1. Written quiz on facts and witness identification. To get immediate feedback on student performance, have students exchange papers and grade each other while going over the answers to the quiz. Collect papers.
2. Small Group Activity: Witness and Attorney role-play. Divide class into six small groups. Assign one witness role to each group. Each group chooses one member to be the witness, one to be a recorder. The other students act as attorneys. Attorneys take turns asking the witness

direct exam questions, in logical order. Recorder notes the questions. At the end of allotted time, teacher should collect recorded questions to save for future use in designing witness examinations.

3. Review: Steps in a Trial.

- a. Teacher asks class to recall steps in order; teacher lists on board as students respond.
- b. Teacher asks students to describe what happens at each-step.
- c. Teacher gives examples from case and asks students to make additional examples.

4. Summarize.

ASSIGNMENTS:

Written: Write Opening Statement for (P or D).

Evaluation:

1. Quiz results.
2. Student participation in small groups and class discussion.
3. Written homework assignment.

DAY 5: CASE PREPARATION OBJECTIVES: As a result of this day's activities, the students will be able to:

1. Identify the role each will play in the Mock Trial and summarize the purpose of the role at trial.
2. Analyze the strengths and weakness of P or D case (whichever side they're assigned to represent).
3. Analyze the strengths and weaknesses of each witness with regard to P or D case in chief.
4. Develop a strategy for presentation of the case.
5. Begin to develop questions for witness examination.

ACTIVITIES:

1. If the class is large enough to have both a plaintiff and defense team, divide the class into two groups. Have students pick the roles they want to play (teacher may have a form for team captain to fill out), or teacher assigns roles. (Re: captains? teams should elect one or two students to be captains responsible for managing the team's work on the case.) If the class is not large enough to have both sides of the case, whole class group then operates as one team, with all other directions remaining the same.

2. Captains lead groups in team discussion*+

- a. What does our side want to achieve in this case?
- b. How will we achieve this?
- c. What evidence will help us?
- f. What evidence will hurt us?
- g. What is important to include in the opening statement?
- h. What testimony should be emphasized/de-emphasized with regard to each witness?
- i. What evidence is useful or hurts our case?
- j. What kind of legal argument should we make in the closing statement?

*For this discussion, the team should focus on its own case. The other side's case will be discussed next session.

+Teachers may want to give out questions on a form for students to take notes.

ASSIGNMENTS:

Written: Students write one paragraph stating their role, purpose, and how they intend to accomplish that goal.

Evaluation:

1. Student participation in team discussions.
2. Written homework.

DAY 6: CASE PREPARATION OBJECTIVES: As a result of this day's activities, the student will be able to:

1. Draft an opening statement, or a direct examination, or a cross examination, or an outline of a closing argument, or
2. Recall facts and witness statements from memory when interrogated.

ACTIVITIES:

Depending upon the number of students in the class, divide the students in each team into working groups. This configuration is recommended:

PLAINTIFF TEAM	DEFENSE TEAM
Witnesses	Witnesses
Examining Attorneys	Examining Attorneys
OS and CA Attorneys	OS and CA Attorneys

OS = Opening Statement CA = Closing Argument

Groups should proceed as follows:

Witnesses: In small group, each witness takes a turn being interrogated by the other two. Direct and cross examination questions may be asked. This drilling should continue until the witness can answer without looking at the witness statement. Once each witness can answer any question cold, then the witnesses should begin to critique each other on style and characterization. After such critique, witnesses resume drilling each other and practicing responses with appropriate characterizations.

Examining Attorneys: In small group, attorneys responsible for questioning begin to develop questions with the advice and assistance of their colleagues. The time devoted to developing the basic pattern of questions for each witness should be allocated equally, with each attorney responsible for continuing to develop question patterns outside the group process.

OS and CA Attorneys: Those students responsible for making opening statements and closing arguments should meet in small group to assist each other with the basic outline of the statements. This helps to ensure that the statements will be congruent. After the outline is planned together, the students write the statements on their own. Once the statements are written, the students meet again to hear and critique each other's statements.

ASSIGNMENTS:

Written: Student attorneys write out their questions or statements.

Oral: Student witnesses practice reciting facts from memory. Friends can help by drilling witnesses after school and at home.

Evaluation:

1. Student participation in class discussion.
2. Written work.
3. Ultimately, student participation in the Mock Trial.

DAY 7: CASE PREPARATION OBJECTIVES: Same as Day 6. In addition, students will be able to define and give an example of a leading question, a hearsay statement, and a non-allowable opinion.

ACTIVITIES:

1. For the first part of the class, ask the students to resume their small group work as in Day 6.
2. For the second part of class, working with the whole group, introduce concept of rules of evidence and procedure to the class. (Save impeachment and introduction of physical evidence for another day.) This procedure is recommended:
 - a. What are rules of evidence? (As in a game, rules that help ensure fairness in the way the trial is conducted).
 - b. Brainstorm: Who can give an example of a rule of evidence? (List on board.)
 - c. Lecture: For this trial, we're going to be very concerned about the following rules. Discuss each briefly, and give an example. Ask students to give an example.
 1. leading questions
 2. hearsay
 3. opinions
 - d. What happens when a rule of evidence is violated? Give an example. Ask a student attorney how he/she would respond if an opponent asked a particular question. After discussion, talk about making objections, and demonstrate the proper manner in which to make an objection. Demonstrate some other examples, with the class making appropriate objections. It would be a good idea to get your attorney-coach to help-explain the Rules of Evidence and give some examples.
3. Summarize

ASSIGNMENTS:

Written/Oral: Continue to work on questions, statements, and witness recall.

Reading: Read Mock Trial Simplified Rules of Evidence. Be ready to answer questions on a written quiz.

Evaluation:

1. Class participation.
2. Written questions, statements.
3. Witness recall demonstrated.
4. Quiz performance

DAY 8: CASE PREPARATION OBJECTIVES: Same as Days 6 and 7. In addition, students will be able to explain the concept of witness impeachment, and to demonstrate an example using correct procedure for introduction of documentary evidence.

ACTIVITIES:

1. For the first half of class, arrange students to meet In these groups:

Plaintiff	Defense
OS and CA Attorneys	OS and CA Attorneys
W#1 attorney	W#1 attorney
W#2 attorney	W#2 attorney
W#3 attorney	W#3 attorney
Cross-Examining Attorneys	Cross-Examining Attorneys

OS and CA Attorneys hear each other's statements, critique, practice interrupting and asking questions as if the judge.

Witness-Attorney Groups (whole group or one-on-one, as time allows) practice with each direct examination attorney drilling his or her witness on questions. Whole group should meet at some point to be sure that everyone is on target with strategy. Individual attorney-witness pairs should make plans for individual practice outside of class.

Cross-Examining Attorneys should review each other's potential questions, practice each other by role-playing opposing witnesses and attorneys making objections.

2. For the second half of class, using same method as in Day 7 for rules of evidence, introduce, demonstrate, and drill impeachment, use of documents.

ASSIGNMENT: Prepare for Mock Trial Rehearsal

Evaluation: Mock Trial Rehearsal and Mock Trial

DAY 9: MOCK TRIAL REHEARSAL OBJECTIVE: Students will demonstrate achievement of all previous objectives through participation in the Mock Trial rehearsal.

ACTIVITY: Mock Trial Rehearsal

ASSIGNMENT: Based on problems discovered in the Mock Trial rehearsal, students are assigned to revise questions, statements, and responses.

Evaluation: Student trial participation.

DAY 10: TEAM MEETINGS OBJECTIVE: Teams meet in whole group, and later in small groups, to work out problems in their case presentation, and to continue rehearsal.

DAY 11: COMPETITIVE MOCK TRIAL

DAY 12: MOCK TRIAL DEBRIEFING

OTHER SUGGESTIONS FOR ATTORNEY AND TEACHER COACHES

This educational opportunity demands quite a bit of time from teachers and attorneys, but we know the benefits will make it worthwhile. Some of the educational benefits for students are the following:

- Acquisition of knowledge of practical law and trial procedure;
- Increase in student motivation and participation;
- Development of research, organization, and preparation skills;
- Development of advocacy skills;
- Enhancement of communication skills: speaking, listening, writing;
- Enhancement of reasoning skills;
- Development of self-confidence and self-esteem;
- Knowledge of strategies for conflict resolution;
- Experience in team effort;
- Career education in legal fields.

The following are tips for teachers and attorneys in the joint efforts that will take place in case preparation.

- Attorneys should try to participate in 2-3 in-class sessions during initial preparation.
- Attorneys can be of assistance to the teacher by participating in discussions of the following:
 - Procedures in civil/criminal trials; burden of proof
 - Rules of evidence (explain only simplified rules of evidence'. Included in the mock trial manual.)
 - The roles of each participant, i.e., attorney, witness;
 - Law relevant to the competition case given in the manual. (This last point is an example of training that must be extracurricular.)
- Brainstorming is a good teaching technique to use for case preparation. Attorneys should avoid lecture. Attorneys and teacher should elicit ideas from students rather than spoon-feed them. Use the brainstorming technique in reviewing steps of a trial, identifying important Issues, developing arguments, deciding what should be included in opening and closing statements, and questioning techniques.
- During group work, attorneys can take one group and the teacher can work with the other group.
- Teachers and attorneys must be thoroughly familiar with the rules of evidence and rules of competition.
 - It is important to de-emphasize the competitive aspects of the experience and stress the educational benefits and enjoyment.

KEY POINTS TO REMEMBER

- All participants should speak loudly and clearly; practice this by having each student attorney stand at the far end of the room while interrogating the student witness.
- As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should rehearse their testimony; student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial.
- Leading questions are not allowed on direct examination, but can and should be asked on cross-examination.
- Courtroom etiquette and decorum should be stressed at practice and observed at trial (e.g., standing when addressing the court, calling the judge, "Your Honor").
- Cross-examination should be short and to the point; questions on cross-examination are designed to elicit a particular response from the witness, asking open-ended questions which call for a narrative or explanation (e.g., "how," "why," or "could") may result in testimony which is unexpected and harmful to the cross examiner's case.
- Each attorney should be prepared to state the reasons for overruling an objection raised by the opposing counsel during questioning of the witnesses.
- The witness' statements should not be read verbatim in the trial. They serve merely as a point of departure for oral testimony. However, testimony must not be inconsistent with facts set forth in the witness' statements.
- Credibility of witnesses is very important; therefore, students acting as witnesses should be encouraged to "get into" the roles and to attempt to think like the person they are playing. These students should read over their statements many times and have other people ask them questions about the facts until they know them "cold."
- The witnesses are not permitted to refer to their statements during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their affidavits, they may respond with creative inferences as long as they are not unfairly introducing new facts that would alter the case fact pattern (unfair extrapolation). (See Rule 6.5 and all its subsections of the Mock Trial Rules and Procedures.)
- During practice rounds, you may wish to get students from another class to constitute the jury. The "jury" should not be allowed to read the statement of facts or witness statements prior to the trial in order to avoid predisposition, to simulate more precisely an actual trial, and to determine more adequately your team's effectiveness.
- Students should write opening and closing statements with editing assistance from the attorney and teacher coaches. Coaches should not tell students to incorporate legal or non-legal language that the students do not understand. Closing arguments should not be totally composed before trial as they are supposed to highlight the important developments for the P/P and D that have occurred during the trial.
- It should be made clear to students that material or relevant facts that significantly alter the case fact pattern cannot be changed from their witness' statement. If they contradict this statement on the witness stand, the opposing attorney may use it to

impeach the witness. Students also may not "invent" relevant material facts or incidents that are not in the statements. However, when an attorney on cross-examination asks a question, the answer to which is not included in the statement of facts, the witness will be forced to respond with an answer consistent with his character and the facts. This should be a warning to cross-examiners to avoid asking questions that are not included in the statement of facts or witness statements, as the responses will be accepted (see Rules of Competition involving Extrapolations).

- Always conduct a debriefing session after a practice round in order to identify and correct possible deficiencies. Include questions such as:
 - Was the opening statement an accurate picture of what the trial actually produced?
 - Did the examining attorneys elicit all the necessary facts from the witnesses?
 - Were the witnesses convincing and adequately prepared?
 - Did the closing statements-effectively summarize the main points the witnesses made which helped his side of the case and identified deficiencies of the opposing side's case?
- Some of the things most difficult to learn are:
 - To phrase questions on direct examination that are not leading;
 - To introduce documentary or physical evidence;
 - To follow the formality of court;
 - Not ask so many questions on cross-examination that well-made points are lost. When they have contradicted a witness or made him/her otherwise look bad, student attorneys tend to ask additional questions that often lessen the impact of points previously made. Students should be encouraged to recognize what answers to questions make good points so that they know when to stop;
 - To tell what they intend to prove in an opening statement and to argue that the facts and evidence presented have proven their case.

Chapter Five

Introducing Mock Trial to Your Team

This section is designed to help you introduce your students to the trial process and the participants of a trial, basic mock trial procedures, including preliminary trial matters, and the trial order.

In this section, the function of the judicial system and all its elements are introduced, alternatives to resolution between two parties, and how the preparation for the trial takes place. This overview of the trial process will build a foundation of understanding for your students as they begin to build their mock trial cases.

Mock Trial Basics

“Equal Justice Under Law” are words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person living in this country has the freedom and security to enjoy the benefits of life in a democratic society.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society. The solution might be a clarification of the rights of the parties; a determination of right and wrong, or guilt and innocence; a direction to one individual to take certain actions to make up for harming another’s rights; or even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes, although going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication, or with a third person, such as a mediator. Three common ways of settling disputes without going to court are 1) negotiation, in which the parties talk face to face; 2) mediation, in which the parties talk through a third person called a “mediator” who helps them find a common ground on which they can agree to a solution; and 3) arbitration, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an “adversary process”, which means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute, who then renders a decision. The “impartial” third party that renders the decision can be a judge or a jury. The judge or jury functions as the “trier of fact”.

The Parties

A trial involves around an argument involving two or more people. The people who bring their argument to the trial are called the “parties” to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the “plaintiff”, and the person who is the object of the complaint is the “defendant.”

In a criminal trial, a person is accused of a particular act that the law calls a crime, such as a murder, robbery or fraud. The person who does the accusing is the “prosecutor.” The prosecutor speaks on behalf of the government, which in turns represents the people of the state or nation. The person who is accused of the crime is the “defendant.”

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

The Facts of the Case

Long before a trial actually takes place, some argument or incident occurs. Perhaps it’s a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the “case”. Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial “trier of fact,” a judge or a jury. The job of the trier of facts is to decide which facts are correct.

The Evidence

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called “evidence”.

Evidence may take several forms including:

- a. Testimony: A person, called a “witness” tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
- b. Documents: Letters, notes, deeds, bills, receipts, etc., that provide information about the case.
- c. Physical Evidence: Articles such as weapons, drugs, clothing, etc. that can provide clues to the facts.
- d. Expert Testimony: A professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence and the way the judge or jury considers the evidence and make a decision.

One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the “burden of proof.”

In a civil case, the person who brings the case to court and does the complaining (the plaintiff) has the burden of proof. Plaintiffs must convince the judge or jury that these facts are correct “by a preponderance of the evidence, “ meaning that their evidence is slightly more convincing than the defendant’s. Some refer to this as meaning that 51 percent or more of the evidence supports the plaintiff’s side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state’s case. Therefore, the prosecutor must convince the judge or jury “beyond a reasonable doubt” that the accused committed the crime. Some state that “beyond a reasonable doubt” means that the trier of fact (judge or jury) must be at least 95 percent sure the prosecutor is correct.

The Defense

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence that prevents the plaintiff or prosecutor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the plaintiff presents a witness who testifies that the defendant was speeding just prior to hitting the plaintiff’s car in an intersection. The defense could then present a witness who tells the court that the plaintiff, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the plaintiff’s case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways, including: 1) presenting evidence to show that the defendant was not present at the scene of the crime (called an “alibi”); 2) showing that the defendant was acting to protect him/herself (self-defense); 3) presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

Preparation for Trial

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney’s job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief and TV) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorney for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called “discovery”. Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make “affidavits,” which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a “deposition,” which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions are contained within this section. And these steps are part of your preparation for participation in the mock trial program.

All information is from the perspective of preparing your team for participation in the Colorado High School Mock Trial program.

Mock Trial Courtroom Participants

1. **Presiding Judge:** The person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of the law which apply to the case or, in a bench trial, serves as the finder of fact.
2. **Scoring Panelists (“Jury”):** Typically a two-three person panel, these are the volunteer adjudicators of the mock trial presentation; they do not render verdicts but score each team’s performance and knowledge of trial proceedings, rules of evidence, procedures and the passion of advocacy and persuasion in their respective roles.
3. **Attorneys (3 per team):** May give his/her opening statements for his/her side of the case, cross examines the opposing side’s witnesses and objects to improper questions asked by the opposing attorney. Also examines own witnesses in order to build a strong case. Tries to show that there is not enough evidence to justify judgment against the defendant.
4. **Witnesses (3 per team):** Gives his/her account of what he or she believes to be the facts in the case. Is asked questions by attorneys from both sides.
5. **Timekeeper (1 per team):** Keeps time for their own team, and notes time records so that each teams’ members doesn’t go over time for their opening statements, closing arguments, and for their direct examinations or cross examinations of the witnesses.
6. **Courtroom Monitor:** Provided by the tournament coordinator (at State), serves as the bailiff who calls the court to session and serves as a clerk/runner for the presiding judge when the round needs assistance from the state coordinator. Also collects score sheets and oversees after chat critiques.

Introduction to the Trial Process

Basic mock trial procedures

Beginning the Trial

1. The parties in the 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 Colorado vs. Doe) and the defendant (one who is accused of the crime).
2. Courtroom Monitor (acting as Bailiff) announces: “All rise. Court is now in session. The Honorable _____ presiding. “ Everyone remains standing until the presiding judge enters and is seated.

Preliminary Mock Trial Matters (may vary at regional tournaments)

The presiding judge will handle the following pretrial matters by:

1. Asking each side if it is ready for trial.
2. Asking each side to provide the judge and the scoring panel with copies of its Trial Rosters with the school tournament code, not the school name, listed at the top.
3. Confirming that if video recorders are present, and asking that both teams have approved the taping of the round.
4. Informing teams, as well as gallery members, that the Colorado Bar Association may be taking historical photos during the mock trial, and that team participation in the state tournament grants automatic permission and use of these photos by the CBA.
5. Asking if anyone in the gallery connected with other schools (other than the schools competing in the trial round) is present in the courtroom (See the Colorado Mock Trial Rules for more information and its one exception.) If so, the presiding judge will ask them to leave and report to the registration desk, where they can be informed of trial locations involving their school teams.
6. Reminding the teams that no recesses will be allowed with the exception of those for a health emergency, and especially not between the end of witness examination and the beginning of closing arguments.
7. Asking the scoring panelists if they recognize either team or any of the team members. If any panelist or team recognizes a team (or a team member) or a scoring panelist, the judge will hold further proceedings and notify the tournament coordinator so arrangements will be made to replace the panelists. (Team members and team coaches may raise an objection regarding a particular scoring panelist at this time as a preliminary matter. The objection is deemed waived if it is not made as a preliminary matter.)
8. Reminding the teams and their coaches that any disputes arising out of this competition must be reported in accordance with the Rules of the Competition.
9. Reminding the teams that their compliance with time requirements will be considered in scoring individual performances.

10. Confirming that no coach or team member (other than the timekeeper, if a timekeeper is not provided by the tournament committee) is seated in the jury box or inside the bar.
11. Asking each team to introduce themselves, both student attorneys and witnesses.
12. Swearing in the witnesses, the gallery and the scoring panelists.

The teams may also request in preliminary matters permission to move about the courtroom during opening and closing arguments, as well as direct- and cross- examinations.

The Trial Order

1. Plaintiff/prosecution (P/P) opening statements.
Rising, “May it please the court,” then deliver the Opening Statement.
2. Defense (D) attorney opening statements.
Rising, “May it please the court,” then deliver the 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. Re-cross by D of P/P witnesses.
 - e. P/P rests its case.
 - f. Direct Examination of D witnesses.
 - g. Cross Examination by P/P of D witnesses.
 - h. Redirect Examination of D witnesses.
 - i. Re-cross by P/P of D witnesses.
 - j. 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 deem the mock trial over, congratulate the teams and call a brief recess; the scoring panel and presiding judge will leave the room to complete their score sheets. When the judge and panel return, they will offer a 15-minute critique to the teams about their performances.

Strategies for teaching about mock trial

1. Have the 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 of the mock trial as they actually occur, noting any errors or omissions in the students' lists as you do so. Explain the differences between the two lists.
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 P/P'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 the 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 that is mentioned in the article written in large letters at the top of the sheet. Have students post these around the classroom in their proper order.
4. A courtroom visit is a good idea at this point (or after the class has begun working on the case problem). If you can arrange for the group to visit a courtroom during a trial, hold a debriefing session following the visit and/or have the 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? Have the students list these answers on the board in class with the step of the trial that your group observed in the middle, or the "before" and "after" lists on either side.

If you can't arrange to hear a real trial, arrange for the students to visit a courtroom so they may become comfortable with the setup and environment. Quiz the students on where participants of the trial are positioned in the courtroom. If you've not begun work on the case problem, consider giving the students a scripted (elementary) mock trial case (available through the Colorado Bar Association) to read and play out their parts in the courtroom setting.

In setting up a visit to the courthouse, contact your attorney coach for assistance OR your local bar association OR the local courthouse administrator.

5. Students could be assigned to watch a television program or see a movie having to do with a trial, then write a 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.

6. Invite your attorney coach, or a trial attorney or local judge to the class to review basic trial procedure and describe different types of litigation, such as arbitration hearings, worker's compensation hearings, school board hearings and juvenile proceedings. How and why do they differ from the basic civil and criminal trial procedure?

7. After general trial procedure has been covered in class, distribute the mock trial case problem and have the students read them thoroughly. At this point, you can assign or "audition" the various roles of the attorneys and witnesses, though you may wish to wait until you've covered the rules of evidence. (This also helps ensure that the students have read all of the trial materials, instead of just reading those for their parts or sides of the case.)

Chapter Six

Preparing Student Attorneys

This section provides the basic introductory information that your students will need in order to successfully present a mock trial as attorneys. It covers the trial components, such as opening statements, direct and cross-examinations, and closing statements. Also covered is information about objections, questioning tactics and rules of evidence.

The purpose of this section is to assist teacher and attorney coaches in the preparation of your students as attorneys; however, this section is not intended to be the “be all, end all” of information. The rules of evidence and competition outlined in the Colorado High School Mock Trial case materials override any information provided within this document. When preparing your student attorneys, be sure that you, as well as your students, become familiar and understand the Colorado program’s rules of evidence and competition. Information contained within this document is provided as teaching information and an educational guide only and does not take precedent over the Colorado program rules of evidence and competition.

Finally, there are instructional quizzes and activity suggestions, and student handouts that may be copied for distribution to students (see sections titled *Teacher Attachments and Student Attachments*). We recommend educating your students on these trial components before the case problem is released (November 1). In doing so, your students will be positioned to focus on their trial strategies for presenting both sides of the mock trial case.

Understanding and Teaching the Trial Components

While selected students will have differing roles and responsibilities on the team, in the spirit of this educational program we strongly encourage that ALL students be involved in the introduction of the mock trial components. Some references will be made regarding the Rules of Evidence and Procedures. Please be sure to direct students to this section of their case materials for references as related to a given trial component.

By incorporating all team members in each of these trial component discussions, you broaden their understanding of all facets of the trial process rather than limiting them to their one assigned task. Additionally, you will want to consider assigning understudies or alternates for team members who can “understudy” in the event a primary team member becomes unavailable. Together, the primary player and the alternates/understudies can work together on their task assignments, and all members, including witnesses benefit from a greater understanding of what’s happening in the courtroom during their trial rounds.

The below information is for attorney and teacher coach information use, and includes questions for discussion to facilitate the learning process via dialogue, and strategies for working on each component. Student information handouts each of these trial components are also available in the Student Attachments section of this packet. Since the mock trial case problem isn’t released until November 1, teaching the students about these trial

components in the preceding weeks will create a solid foundation to understanding what they will be doing. Also, working with other sample mock trial problems (available through the Colorado Bar Association) in advance will assist you in identifying those students who'll serve as strong attorneys and witnesses, and in making trial assignments.

Opening Statements

The opening statement is the introduction to the case, the very first time the attorneys for each side tell the judge and jury about what happened to their clients. The first impression is very important; it "paints a picture" of the case that will be presented for each side. Opening statements should include:

- 1) a summary of the facts according to each party;
- 2) a summary of the evidence that will be presented at the trial; and
- 3) a statement regarding what the party hopes to get out of the trial.

A test of a good opening statement is this: If the jurors heard the opening statement and nothing else, would they understand what the case is about and would they want to decide in your favor?

Objective: To acquaint the judge and jury with the case and outline what you are going to prove through witness testimony and the admission of evidence.

General Purpose:

Prosecution/Prosecution (P/P)—

- explaining the steps in a civil/criminal trial and the jury's role therein
- outlining the charge or complaint against the defendant, which may include reading the indictment
- outlining the case to be presented, not overstating a case or claiming to prove what cannot be proven
- creating a positive first impression on the judge/jury
- acquainting the jury with something personal about the case favorable to your side (i.e., sympathy for the victim/plaintiff; paint the victim/plaintiff as a "good person," or the "wronged person"; impersonalize the defendant by referring to that person as "the defendant")
- downplaying the "burden of proof"

Defense (D)—

- casting the jury's role in the trial in terms involving the fundamental principles of American justice:
 - indictment is NOT evidence
 - presumption of innocence; stress the "burden of proof"
 - rule of reasonable doubt
 - effect of circumstantial evidence
 - character of defendant

- outlining the case to be presented, not overstating a case or claiming to prove what cannot be proven
- creating a positive first impression on the judge/jury
- acquainting the jury with something personal about the case favorable to your side (i.e., sympathy for the defendant; paint the defendant as a "good person"; stress the defendant's belief in the American system of justice to acquit him in open court—"But for the grace of God," any juror could be in the defendant's shoes; refer to the defendant by name)

Key Rules of Opening Statements:

Remember the proper decorum for court behavior:

- stand to address the court
- refer to the judge as "Your Honor"
- never talk directly to the opposing attorney
- direct your comments to the jury only in opening and closing statements

In all statements and questioning:

- "paint a clear picture"
- "keep it simple"
- "never promise what you can't prove"

Advice in Preparing: *What should be included?*

- Short summary of the facts
- Mention of the burden of proof (the amount of evidence needed to prove a fact), and who has it in this case
- The applicable law
- A clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case

Other Suggestions:

- Frequently, attorneys introduce themselves and their colleagues by saying, "*Your Honor, my name is _____ . My colleagues are _____ .*" Or "*Your Honor, Ladies and Gentlemen of the Jury, my name is _____ and along with my co-councils, _____ and _____ we represent _____ .*" Consult with the attorney coach working with your team to determine what type of introduction your team should use.
- Learn your case thoroughly (facts, law, burdens, etc.)

Advice in Presenting:

- Know your case inside and out.
- It is essential that you appear confident in your case.
- Eye contact with the judge is recommended.
- Use the future tense in describing what you will do (e.g., "the facts will show," "our witnesses' testimony will prove," etc.)

- Some teams memorize their opening statements, others use note cards; if using note cards, do not read statement all the way through. Look up occasionally at the judge. Avoid reading if at all possible.
- Use proper phrasing, including:
 - the evidence will indicate...
 - the facts will show...
 - witnesses will present evidence to show...
 - witness A will testify on the state's/plaintiffs behalf that...
 - witness B will tell you...

DO's AND DON'Ts OF AN OPENING STATEMENT

DO	DON'T
1. Paint a clear picture of the facts of the case as your side interprets them	1. Don't talk directly to the opposing council
2. Keep it simple	2. Don't promise what you can't prove
3. Stand to address the Court	3. Don't use argument in your opening statement

A. Style Points

- **P/P's Attorney:** Since this attorney speaks first, it is very important for the plaintiff's opening statement to include a good summary of facts, presented in a light most favorable to the P/P. If the opening statement presents a very convincing picture of the P/P's case, the defense team will have a much harder time changing the minds of the judge and jury. It's the opportunity to make the strongest first impression!
- **D's Attorney:** The defense team always has the task of showing that the P/P's version of the facts is not correct. In preparing an opening statement, the defense attorney will have to guess how much detail and what kind of emphasis the P/P's attorney will make in the P/P's opening statement. The defense attorney should be ready to make adjustments in his or her prepared statement while the P/P's attorney speaks. The defense attorney should highlight the facts that are in dispute, and emphasize the kinds of evidence the defense will present to show that the P/P is wrong.
- Both attorneys should practice making eye-to-eye contact with the judge and jury while speaking.

B. What To Include

- The opening statement on behalf of the P/P may include:
 - 1) An introduction of yourself and your client;

Example: *“May it please the court, ladies and gentlemen of the jury, my name is _____, counsel for _____, the plaintiff/prosecution in this action.”*

2) A cohesive summary or outline of what your evidence will be presented in chronological order or any other orderly sequence of events;

Example: “*The evidence will indicate that*” or “*The facts will show. . .*”, or *Witness X will be brought to testify that. . .*” or *Witness Y will be called to tell you that . . .*”

3) An acknowledgement that the burden of proof rests with you and the degree of that burden.

4) The P/P’s opening statement should not include any references to evidence whose admissibility is doubtful or to anticipated defense evidence.

➤ The opening statement on behalf of the defendant may include:

1) an introduction of yourself and your client;

2) a reminder that opening statements are not evidence;

3) a cohesive (but non-argumentative) reference to anticipated deficiencies in your opponent’s evidence, plus a summary of what your evidence will be; and

4) a reminder that the burden of proof rests with your opponent, and a conclusion which indicates that in closing you will return and request the jury to find in favor of the defendant.

5) The defendant’s opening statement should not include references to evidence whose admissibility is doubtful.

TEACHER/ATTORNEY COACH DISCUSSION QUESTIONS

1. How is an opening statement similar to a road map?

The opening statement is like a road map in that it outlines for the jury the facts as each side wishes the jury to perceive them. It gives the listener an idea of what each side believes the evidence will show.

2. How can an attorney attempt to get the attention of the jurors at the beginning of his/her opening statement?

Answers will vary. Examples might include using a pertinent quote from the case itself (witness affidavits), a well-known quote citing its originator, tone of voice, compelling opening sentence, etc.

3. How might you outline the facts and issues in your own words?

Answers will vary.

Strategies for Teaching about Opening Statements

1) Ask students to articulate the purpose of the opening statement, then brainstorm with the students how they think it differs from a closing argument. (We suggest reviewing and teaching them together so they understand the subtle differences between the two components.)

2) The best way to teach the purpose and format of opening statements is for each student to prepare one and present it to the class. Preparation of an opening statement is an exercise in writing, critical thinking, and oral skills at the same time, and since this activity requires familiarity with the case (i.e., a full review of the fact and witness' statements and an understanding of the "theory" of the case), it is a very useful introductory assignment in a mock trial unit.

There are a variety of excellent mock trial cases of varying lengths available from the Colorado Bar Association, as well as materials available from the internet. For a nominal fee, the CBA can duplicate and mail a copy of the case from previous years.

- 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 P/P 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 Defendant so that the rest of the class hears and compares the statement 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?

Direct Examinations

After the opening statements, the process of “witness examination” begins. First, the P/P’s team presents its witnesses, then the defense team. Each time a witness is called to the stand, the attorney who called the witness asks a series of questions called the “direct examination.” These questions are designed to get the witness to tell a story, reciting what he or she saw, heard, experienced or knew about the case. The questions must ask only for facts, not for opinions (unless the witness has been declared to be an “expert” in a particular subject, such as a doctor or a police detective). In addition, the attorney may only ask questions and may not make any statement about the facts, even if the witness says something wrong. When the direct examination is completed, an attorney for the other side then asks questions to show weaknesses in the witness’ testimony, a process called “cross examination.”

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

- Before you write your questions for direct examination, list the objectives you wish to obtain from each of your witnesses
- You should make at least one major point for your case from each witness during direct examination.
- The purpose of the direct examination is to have your witness give testimony relating directly to what he perceived through the use of his senses.
- The witness may not give opinions, conclusions, or speculations. Only a qualified expert may offer opinions and conclusions where the subject of the testimony is in his/her area of expertise.
- Procedural restrictions upon methods of receiving testimony are designed to insure that the jury does not receive objectionable material. (See *Teaching the Rules of Evidence and Procedures* section of this packet.)
- If physical evidence is to be produced, it must have a witness to identify it and testify to its relevancy.
- Physical evidence is introduced during the course of regular testimony and is subject to the judge’s approval as to its admissibility.

Advice in Preparing: What should be included?

- Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information
- Be sure all items you need to prove your case will be presented through your witnesses.

Other Suggestions:

- Avoid asking leading questions. (There are, of course, a few generally accepted exceptions to this rule; i.e. questioning on matters such as name, address, occupation.) See *Teaching the Rules of Evidence and Procedures* section of this packet.
- Practice with your witnesses.
- Don't ask questions requiring opinion testimony, unless witness has been certified as an expert by the court.

Advice in Presenting

- Try to keep to the questions you've practiced with your witnesses and ask a limited number.
- Be able to think quickly if the witness gives you an unexpected answer and add a short follow-up to be sure you obtain the testimony you wanted.
- Be relaxed and clear in the presentation of your questions.
- Listen to answers.
- If you need a moment to think, ask the judge if you may have a moment to refer to your notes, or to discuss a point with your co-counsel for a moment. NOTE: Time does not stop. Refer to your case materials for more information about this rule.
- If you can, memorize your questions so you're not referring constantly to notes.
- Watch where you stand: Don't position yourself between the witness and the jury, or the witness and opposing counsel.

Forming Questions for Witnesses:

- You must "establish" your witness – who s/he is, background, etc.; "qualify" any experts.
- Establish a "foundation" – the court does not know anything; start from scratch.
- Questions should be "open-ended" – allow the witness to make your case. DO NOT LEAD.
- Questions should follow a logical order and build on one another. (Ex: Before you ask a witness what s/he saw, you must establish s/he was on the scene.) This is similar to second item above.
- Make a "train" of questions to prove each issue/point you are making.
- Listen to your witness and make sure s/he is answering the questions. Be flexible. Be able to ask extra questions if necessary.

DOs AND DON'Ts OF DIRECT EXAMINATION

DO	DON'T
1. Identify exactly what information each witness can contribute to your case.	1. Don't use leading questions.
2. Prepare a series of questions to obtain the information you need from the witness you will examine.	2. Don't use questions that call for an opinion from the witness, unless the court has recognized the witness as an expert.
3. Be relaxed and clear in the presentation of your questions.	3. Don't use questions that require the witness to draw a conclusion or speculate.
4. Listen to the answers to your questions.	4. Don't testify yourself, through your questions or in your objection responses – just ask the questions.
5. Practice with your witnesses.	

A. Style Points

- **Attorney Conducting Direct Examination:** Questions should be designed to get the witness to tell the story in a logical manner. Avoid lengthy or complicated questions. Leading questions cannot be used on direct examination. (See *Teaching the Rules of Evidence & Procedure* section.) 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 and repetitious questions are objectionable, too. A well-conducted direct examination must be carefully prepared in advance by the attorney and practiced with the witness. The direct examination is most effective when questions are put to the witness in plain language, rather than legal or technical jargon that may seem unduly long, stilted or unnatural. Be prepared to rephrase questions in case the witness does not understand a question or fails to remember facts accurately, or in case the other side objects to a question. (Grounds for objections are discussed in *Teaching the Rules of Evidence* section.)
- **Opposing Attorney:** Listen carefully to the questions and the answers, since cross-examination must be limited to subjects discussed in the direct examination. Listen for violations of the Rules of Evidence, and be prepared to make good objections.
- **Witnesses:** The most important factor is the believability (often called “credibility”) of the witnesses. Witnesses should tell their stories clearly with as little hesitation as possible. It's important for witnesses to know the facts thoroughly.

NOTE: At the close of the cross-examination, the attorney who conducted the direct exam may do a “redirect” at the discretion of the presiding judge. (See below.) A redirect examination follows the same rules as direct. However, the questions are limited to subjects discussed in the cross-examination.

What to Include: 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?”

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 with permission from and at the discretion of the presiding judge. 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. If the redirect examination is permitted, the cross-examining attorney will also be allowed to conduct a re-cross of the witness.

Teacher/ Attorney Coach Discussion Questions

1. Why is it important that leading questions be prohibited in direct examination?

Leading questions should be avoided on direct examination because in the interest of justice, the court does not want the attorney to put words into the mouth of his own witness. The court wants to know what the witness remembers – not what the attorney wants him to say.

2. What essential elements would the P/P want to establish when s/he asks the questions for each P/P witness of this year's case problem? The Defendant when s/he asks the questions for each Defendant witness?

Answers will vary based on case problem. This discussion can be the beginning stages of brainstorming the team's case strategy.

3. What would be examples of proper direct examination questions for the witness _____ . (For this exercise, pick any one or more witness affidavits to work on and write questions on black board or flipchart for students to see. Discuss why or why not these would be appropriate.)

Answers will vary.

Strategies for Teaching Direct Examinations

- 1) 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. (We suggest reviewing and teaching them together so they understand the subtle differences between the two components.)
- 2) 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 witness statements of the mock trial problem, 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 witness 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.

- 3) 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 the witnesses for their side.
 - Collect and comment on all of their papers and select one student from each group to conduct his or her direct examination in front of the class (with another student acting as the witness).
 - The rest of the class could act as opposing attorneys and make objections to any improper questions or answers. (Refer to the section on objections in *Teaching the Rules of Evidence and Procedures*.)

Cross Examinations

The purpose of the cross examination is to show the judge and jury that a given witness should not be believed because that witness:

- 1) can not remember the facts;
- 2) did not give all of the facts in the direct examination;
- 3) told a different story at some other time;
- 4) has a reputation for lying;
- 5) has a special relationship to one of the parties (maybe a relative or close friend); or
- 6) bears a grudge toward one of the parties.

The cross-examination questions are designed to bring out one or more of the above factors.

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

- Attempt to establish that a witness is lying (or at least, not telling the "whole truth").
- Attempt to show prejudice on the part of the witness.
- Attempt to show that the testimony was improbable.
- Get the witness to admit certain prejudicial facts.
- Show that the witness gave questionable opinions because of inability to see, hear, etc.
- Show the incompetence of expert witness.
- Attempt to uncover contrary statements that may have been made.

Notes on Conduct

- Use the natural fear of the witness as an ally.
- Be fair to the witness
- Hold the eye of the witness (study his/her gestures for any clues)
- Roll with the punches (keep your composure!)
- Do not "beat a dead horse" (this will arouse sympathy for the witness)
- Make sure the jury keeps up with your questions
- Don't resort to making unnecessary objections when the cross examination of your witness is going poorly.

Advice (for Attorneys) on Preparing:

Types of Questions to Ask:

- Questions that establish that the witness is lying on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there.)
- Questions that show the witness is prejudiced or biased (e.g., the witness testifies that he has hated the defendant since childhood.)
- Questions that weaken the testimony of the witness by showing his opinion is questionable because of poor lighting (e.g., the witness with poor eyesight claims to have observed all the details of a fight that took place 500 feet away in a crowded bar.)
- Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or unqualified due to lack of 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 opinion the defendant suffers from a chronic blood disease.)
- Questions that reflect on the witness' credibility by showing that he has given a contrary statement at another time. (e.g., the witness testifies to the exact opposite of what he testified to during the pre-trial hearing. This may be done by asking the witness, "Did you make this statement on June 1st?" then read it, or show a signed statement to the witness and ask, "Is this your statement?" Finally, ask the witness to read part of it aloud or read it to the witness yourself and ask, "Did you say that?")

Other Suggestions:

- Anticipate each witness' testimony and write your cross-examining questions accordingly. Be ready to adapt your questions at trial depending on the actual testimony.
- Never ask anything but a leading question (questions that suggest the answers and normally only require a "yes" or "no" answer.)
- Be brief. Don't ask so many questions that well-made points are lost.
- Prepare short questions using easily understood language.
- Ask only questions to which you already knew the answer.

Advice in Presenting:

- Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
- Always listen to the witness' answer.
- Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.
- Don't quarrel with the witness.
- Never try to allow the witness to explain anything. Keep to the lies or "no" answer whenever possible. Try to stop the witness if his/her answer or explanation is going on and hurting your case by saying, "You may stop there, thank you," or "You answered the question, thank you."
- Don't harass or intimidate the witness by the questions you ask them.

Forming Questions for Witnesses:

- Questions should be “closed.” Never ask open-ended questions and limit your witness to “yes” and “no” responses as much as possible.
- You control what is said. LEAD the witness where YOU want through your questions.
- Have a question ready for each response possible: have a “flow chart” of questions for either a “yes” or “no” response for each of your questions.

Example: QUESTION

If “yes”: Question 2a If “no”: Question 2b

If “yes”: Q 3a If “no”: Q 3b If “yes”: Q 3c If “no”: Q 3d

- **HOWEVER, BE FLEXIBLE!** If a witness gives you an unexpected answer which helps your case, go with it and create new “yes” or “no” questions.
- Know the witness’ statement/record and be able to impeach the witness when s/he contradicts that statement.

Example: *“Do you recall making an affidavit in this case?”*

“Your Honor, may I approach the witness?”

Show affidavit; ask if it is the witness’ signature and for the witness to identify the document.

“Didn’t you say in your affidavit . . . ?” OR “Could you please read from . . . to?”

- Always make sure your line of questioning impeaches the witness or proves the issues of your case.

DOs AND DON'Ts OF A CROSS EXAMINATION

DO	DON'T
1. Prepare short questions using easily understandable language.	1. Don't ask so many questions that well-made points are lost.
2. Make sure questions are relevant to the case.	2. Don't ask questions that call for a narrative answer.
3. Ask only questions to which you already know the answer.	3. Don't beat a dead horse – once you've made your point, move on.
4. Ask only leading questions.	4. Don't resort to frivolous objections if the cross of your witness is going poorly for your side.
5. Listen to the answers.	

Styling Points:

- **Attorney Conducting Cross Examinations:** This attorney must know precisely what kind of weaknesses he or she wants to show in the witness, and then design the questions to point them out. Questions should be short; “leading” questions (see *Teaching the Rules of Evidence and Procedures* section) are allowed (for example the attorney may use questions with phrases like, “Isn't it true that. . .?”) Questions should not be long or argumentative, nor should they ask the witness “How,” “Why,” or “Could you explain.” Questions are best that call for a simple “yes” or “no” answer. Questions that give the witness a chance to make an explanation will usually not help the cross examiner's case.
- **Opposing Attorney:** Listen carefully for violations of the Rules of Evidence, and be prepared to make objections. Listen carefully to the kind of attack the cross examiner is making; decide whether the attack is successful. After the cross examination, the opposing attorney may conduct a “redirect” examination to give the witness a chance to explain or correct some points made in the cross-examination.
- **Witness:** Witnesses should try to give explanations whenever possible. Witnesses must pay close attention during the cross examination, since the attorney may try to confuse the witness. They should try to stick to the facts they recited on direct examination.

NOTE: Redirect and re-cross examinations are at the discretion of the presiding judge. If permitted, at the close of the redirect examination, the same cross-examining attorney may do a re-cross. The purpose is to reiterate a point made during cross examination following the opposing counsel's efforts to “rehabilitate” its witness. A re-cross examination follows the

same rules as the cross; however, the questions are limited to the subjects discussed on redirect.

What to Include:

- 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. A firm idea of your objectives at this point in the trial is just as important to an effective cross-examination as an understanding of the laws and rules of evidence.

Impeachment Sequence
 Produced by Marlene and Carson Melvin, teacher coaches (retired)
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Step	Action	Dialogue
1	Get a commitment from the witness on his/her present testimony	<i>“You testified on direct examination that _____, isn’t that correct?”</i>
2	Get an admission that s/he made the earlier testimony or statement	<i>“You testified on this case before the Grand Jury (in a deposition; in a statement to police, etc.) on [date], correct?”</i>
3	Confirm that the statement was under oath.	<i>“And that statement was made under oath, wasn’t it?”</i>
4	Show the statement to opposing counsel.	<i>“Your honor, I request that the record reflect that I am showing what has been marked as exhibit ___ to the opposing counsel.</i>
5	Ask permission to approach the witness.	<i>“Your honor, may I approach the witness?”</i>
6	Have the witness identify the statement	<i>“This is a copy of the statement you made on [date], isn’t that correct?”</i>
7	“Close the door”.	<i>“I direct your attention to line number ___; it says there _____, isn’t that correct?”</i>
8	Drop it and move on.	<i>“Thank you.”</i>

Attorney/Teacher Coach Discussion Questions

1. Why do attorneys use leading questions when they cross-examine a witness?

Leading questions are allowed on cross-examination to enable the attorney to conduct a thorough and sifting examination of the testimony of the witness.

2. What other techniques would an attorney use to create an effective cross?

Answers may vary. Responses may include:

Attorney could get the witness to admit certain prejudicial facts

Attorney could memorized questions and not depend solely on notes

Attorney could move about the courtroom, with permission of the court, and never in a manner that blocks opposing counsel or jury's view.

Attorney could ask succinct questions that got well made points across.

3. What are three major points that the defense attorney could make in this year's case problem against the P/P's case? The P/P against the defendant's case?

Answers will vary. Use this time to brainstorm among the group.

Strategies for Teaching About Cross -Examination

- 1) Ask the students to articulate the purposes of cross examination and how it differs from direct, then list their responses on the board or flip chart.
- 2) 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. Lawsuits 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. (Brown and Seckinger, *Problems in Trial Advocacy*, 1977). The purpose of the closing argument is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing.

Objective: To provide a clear and persuasive summary of: 1) the evidence you presented to prove the case and 2) the weaknesses of the other side's case.

- Outline your summation first; you should not presume that the testimony has stuck in the minds of the jury.
- Show appreciation to the jury for listening to the presentation of facts and evidence, but do not be too flowery.
- Review previous representations: review facts where no discord concerning them makes it possible for you to say the evidence has established facts you said you would prove.
- Issues – P/P should narrow down the issues completely; Defense should create as many issues as possible so that the jury will tend to feel that the P/P failed to prove them all.
- Cover the law in as favorable a manner as possible for your case.
- Look at any special problems (any poison) in your case and try to cover them up (i.e., your client has a horrible personality); remind the jury of the *voir dire* promises they made.
- Look at problems in your opponent's case, especially a failure to produce a key witness or present key evidence (both of which are usually controlled in mock trial cases, but still worthy of mention).
- Should be natural and convincing; dramatics should be within the range of the attorney's ability to perform convincingly and effectively and not look silly.

Advice on Preparing: What should be included?

- Thank the judge or jury for its time and attention.
- Isolate the issues and describe briefly how your presentation resolved these issues.
- Review the witness' testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses. (Remember to adapt your argument at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side.)
- Review the physical evidence. Outline the strengths of your evidence and also outline the anticipated weakness of the other side's evidence. (This section too must be adapted at trial.)
- State the applicable statutes and any cases to show it supports your side.
- Remind the judge or jury of the required burden of proof (the amount of evidence needed to prove a fact). If you are the P/P lawyer, you must tell and convince the court that you have met that burden. If you are the attorney for the defense, you must inform and convince the Court that the other side has failed to meet its burden.
- Argue your case by stating how the law applies to the facts as you have proven them.
- Don't forget to request the verdict/remedy you desire.

Other Suggestions:

- Be sure your closing argument is well organized.
- Rehearse as much as possible.

Advice on Presenting:

- You must always be flexible. Adjust your closing argument to the weakness, contradictions, etc., in other side's case that actually come out at trial. You cannot anticipate everything perfectly before the actual presentation of the case.
- Argue your side but do not appear to be vindictive. Fairness is important.
- Be relaxed and ready for interruptions by certain judges that like to ask questions during closing arguments. (Not typical for Colorado program.)
- Do not make objections during the other side's closing argument.
- Do not read all the way through your closing argument. Use notes as needed but deliver closing argument without dependency of notes and with confidence.
- Keep eye contact with jury or at least look up occasionally.

Style Points

- **P/P's Attorney:** Remember, the P/P has the burden of proving the facts in the civil case by a preponderance of the evidence. Therefore, the P/P's summary of the favorable evidence presented is extremely important. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack. Cite the law clearly and correctly, and make a clear argument regarding how the law requires the judge or jury to rule in the P/P's favor.
-
- **Defense Attorney:** Summarize all of the evidence presented to weaken the P/Ps case. Emphasize the inability of the P/P to meet the burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.

What to Include:

- A summary of the evidence presented that is favorable to the presenting attorney's side;
- A summary of the case;
- A legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing (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).
- New information **MAY NOT** be introduced in the closing argument.

Objections to Closing Arguments

Colorado Mock Trial Rule 6.6.2 states that no objections may be raised during closing arguments but that, afterwards, one of the opposing attorneys may rise to present objections that would have been made during the arguments if that had been allowed. The purpose of this note is to help you know what to watch out for.

Arguing matter outside the record. This is common in mock trials. Quite often the attorney has prepared closing arguments in advance on the basis of what s/he expected to be presented at the trial, but as it turned out some things did not get presented at trial. Make a note of these points and object.

Evidence misstated. Attorneys who write up their closing arguments in advance will again have assumed that the evidence would come up a certain way, when in fact it developed some other way. You need to bring them back to reality with an objection.

Misstating or introducing new law. The law is as presented in the case problem each year. Some attorneys do not read the case law before they prepare their closing arguments and often times come up with their own screwed up version of the law. Watch for this because sometimes their version might favor your client, but that's seldom the case. Also, attorneys are bound by the case problem to use the case law presented within the problem. On occasion, attorneys may introduce law that is outside of the scope of the case problem.

Appeal to prejudice. That may not come up often in mock trials. Beware of arguments that may inject prejudice through reference to race, religion, ethnicity, place of origin or wealth. Wealth is the most likely to come up, but whether the P/P or defendant is rich or poor ought not to matter when doing justice and thus should generally not be commented on.

Counsel's personal opinion or attack. An attorney may not express a personal opinion on who or what to believe. Nor may he engage in personal attacks against opposing counsel or a party or witness.

The Golden Rule. Asking the jurors to put themselves in the place of the P/P or defendant (and to do unto them as they would have done unto themselves, which is the Golden Rule) is improper.

This is not an exhaustive checklist of objections, but it will give you a very good start. Put it in front of you as you listen to the other side's closing arguments, and take notes.

Attorney/Teacher Coach Discussion Questions

1. Why are attorneys not allowed to address issues in closing arguments that were not covered during the trial?

Attorneys are not allowed to address issues in closing argument that were not covered during the trial because there is no chance for the other side to present its own evidence on the issue.

2. What are the main elements of an effective closing argument?

- a. *Thank the judge or jury for their time.*
- b. *Highlight the strengths of your evidence and the weaknesses of the opponent's evidence.*
- c. *If you are the P/P, remind the jury you have met the burden of proof. If you are the defendant, point out that the burden of proof has not been met.*
- d. *Explain how the law applies to the facts you have proved.*
- e. *Request a verdict in your favor.*

3. Why is it important for student attorneys not to memorize a set closing argument?

Students should not memorize closing arguments, for they may need to address issues brought up by opposing counsel, which were not anticipated beforehand.

Strategies for Teaching About Closing Arguments

1) Ask students to articulate how they differ from opening statements in purpose and style, and list their responses on the board.

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

CONGRATULATIONS! You have gone through all the components of the trial, responsibilities that your student attorneys will take on as a member of the mock trial team.

ATTORNEY/TEACHER COACHES: When coaching your team, some of your students will face challenges as they prepare for their roles as attorneys. Below are some of the things most difficult for team members to learn or do are:

- To decide which are the most important points to prove their side of the case and to make sure such proof takes place.
- To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case.

- To follow the formality of court (e.g., standing up when the judge enters; or when addressing the judge, to call the judge “Your Honor”, etc.)
- To phrase questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
- Not to ask 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 lessen the impact of points previously made. (Stop. Recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!)
- To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

Being mindful of these challenges will help you as an attorney and/or a teacher in coaching students out of and away from these pitfalls. **REMEMBER!** The students need to do the work; your role is to coach them through these challenges while helping them understand their roles and responsibilities on the team.

Chapter Seven

Preparing Student Witnesses

While student attorneys are very important in the performances of the mock trials, attorney/teacher coaches need to ensure time is spent preparing students for their roles as witnesses. Do not underestimate the importance of witnesses! Mock trial success have often hinged on the performances of witnesses and their scores.

This section outlines various techniques and tips for preparing students to be witnesses in mock trials. Included are suggestions for both the preparation before the trial and the presentation at the trial during the direct examination and cross-examination.

Guidelines for Student Witnesses

General Suggestions

- If you are going to testify about records, familiarize yourself with them before coming to trial.
- Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (based on your affidavit).
- If you have been summoned by a subpoena, bring it to court with you. The subpoena will provide information on when and where to appear. (Not typical in the Colorado Mock Trial Program to have a subpoena.)
- When you are called to the stand, do not be nervous. There is no reason to be.
- You will be asked to take an oath to tell the truth. Remember the seriousness of this oath during the entire time you are testifying. In the real world, if you willfully fail to tell the truth while testifying, you are subject to penalties. (Oaths typically are administered during pre-trial proceedings.)
- If asked whether you have discussed the case with anyone, you should indicate any occasion when you have talked with the prosecutor, the defense attorney, or anyone else.
- When answering questions, speak clearly so you will be heard. The judge must hear and record your answer; therefore, do not respond by shaking or nodding your head only.
- Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that the question be repeated.
- Do not give your personal opinions 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 you do not know.
- If you realize you have answered a question incorrectly, ask the judge if you may correct your mistake.
- If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to continue.

- Be polite while answering the question. Do not lose your temper with the attorney questioning you.
- Always be courteous to other witnesses, other attorneys and the judge.
- Always stand when the judge enters or leaves the room.
- Dress appropriately (this may mean coat and tie for males, and dresses or equivalent for females).
- Always say, “Yes, your Honor” or “No, Your Honor” when answering a judge’s question.
- If the judge rules against you in this case, take the defeat gracefully and be cordial to the judge and the other side.

With the above suggestions outlined, please consider the following as you prepare your witness character.

- Witnesses are scored on their performances: how well they respond to attorney questions, how well they handle their examinations, how well they present their answers, and how well they present their witness character. For example, if a witness is an eighty-year old man, how you present yourself physically and answer the questions will affect your performance score? You want to also present an appropriate personality or character traits.
- If your character could be considered a hostile witness, your presentation of your witness would project some sense of resistance to questions being asked. For example, if you are a police officer that helped build the prosecution’s case against the defendant, but you’ve been called by the Defense to testify on the defendant’s behalf, you may be considered a hostile witness. So when under direct exam by the Defense, you may present, within reason, a sense of resistance to the line of questioning; however, under cross by the Prosecution, you may demonstrate less resistance.
- The witness’ statements should not be read verbatim in the trial. They serve merely as a point of departure for oral testimony. However, testimony must not be inconsistent with facts set forth in the witness’ statements.
- Credibility of witnesses is very important; therefore, students portraying witnesses should be encouraged to “get into” the roles and to attempt to think like the person they are playing. These students should read over their statements many times and have other people ask them questions about the facts until they know them "cold."
- The witnesses are not permitted to refer to their statements during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their affidavits, they may respond with creative inferences as long as they are not unfairly introducing new facts that would alter the case fact pattern (unfair extrapolation). (See the Colorado Mock Trial Rules and Procedures.)

- Research your witness and, if applicable, his/her profession. Often questions may be asked as to a witness' background that are creative inferences (relevance or unfair extrapolation must be discerned by witness attorney for objections); for example, a news director may be asked about the news van's set up, job responsibilities, techniques. While, in this example, this information may not be in the affidavit or statement of facts, these questions aren't considered unfair extrapolation because they do not significantly change the fact pattern of the case, nor introduce new facts that would alter the strategies of the case. In doing research, students are better prepared in dealing with these unexpected questions if they understand their witness characters.
- Whatever witness you portray, be sure to incorporate some personality and character traits into your presentation. It makes the mock trial more interesting, and challenges the attorneys that are questioning you.

Witness During Direct Examinations

Advice on preparing:

- Learn the case inside out, especially your witness affidavit.
- Know the questions that your side's attorney will ask direct examination and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
- Practice with the attorney.
- Develop your witness' character traits and practice performing those traits as soon as possible. Seek assistance from your school's drama teacher if necessary.

Advice on presenting:

- Be as relaxed and in control as possible. An appearance of confidence and trustworthiness is important.
- Do not read or recite your witness statement verbatim. Answer the questions naturally as if in conversation.
- Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or deposition).
- Do not panic if the attorney or judge asks you a question you have not rehearsed. Listen to the question carefully, and ask that it be repeated if you need to hear it again.

Witnesses During Cross Examination

Advice on preparing:

- Learn the case thoroughly, especially your witness statement.
- Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies problems in your testimony and be prepared to explain them.
- Practice, practice, practice!

Advice on Presenting:

- Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- Be sure that your testimony is never inconsistent with the facts set forth in the witness' statement.
- Do not read or recite your witness' statement word for word.
- Cross-examination can be tough; so do not get flustered. If you need a question to be repeated, ask that it be repeated. If you don't understand the question, state that fact.

Chapter Eight

Teaching the Rules Of Evidence and Procedures

This section is designed to give an overview of common mock trial rules of evidence and procedures. It is not, in any way, a comprehensive overview. The mock trial case problem includes an outline of the Rules of Evidence for the Colorado program and should be followed as the guideline for conducting your team's mock trial performance.

The purpose of this section is to assist teacher and attorney coaches in teaching students the basics of the rules of evidence; however, this section is not intended to be the "be all, end all" of information.

The rules of evidence and competition outlined in the Colorado High School Mock Trial case materials override any information provided within this document. When preparing your teams, be sure that you, as well as students, become familiar and understand the Colorado program's rules of evidence and competition. Information contained within this document is provided as teaching information and an educational guide only and does not take precedent over the Colorado program case materials.

Students need to familiarize themselves with all the Rules of Evidence in order to be fully prepared for performance of their roles and their case.

RULES OF EVIDENCE

In a trial the party who initiates the lawsuit has the "burden of proof" of his or her case; that is, he or she 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 must only convince the fact finder by a "preponderance of evidence" that it is more likely than not 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 rules by the numbers assigned to them in the Colorado's case problem's Rules of Evidence section, and in the form in which they appear in the mock trial packet so that they may cite the rules with specificity in the competition.

Student Attachment #8 may be used to as a student informational handout.

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" and "no" answer. However, the witnesses should not be allowed to give long, uncontrolled and narrative responses to direct questions.

Examples of direct questions:

- *Mr. Bryant, when did you first meet Amanda?*
- *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 Daryl Bryant?*
- *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 he or she 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 opposing counsel 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 he or she saw. The attorney may help the witness remember by showing him or her 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. Short?*
- *Mr. Jones, don't you generally prefer to avoid loud, crowded taverns?*

- b. **What questions may be asked:** 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 the direct examination.

- c. **Impeachment:** On cross-examination, the attorney may want to show that the witness should be believed. This is called impeaching the witness. It can be done by asking the witness questions about

- Prior bad conduct that makes his or her credibility (trustworthiness) seem doubtful and shows that the witness should not be believed;
- 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;
- Prior statements made by the witness which contradict his or her testimony at trial and point out the inconsistencies in his or her story;

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

Examples:

- Prior bad conduct: *“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?”*
- Past conviction: *“Isn't it true that you were recently convicted of armed robbery?”*
- Prior inconsistent statement: 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?”*
- Bias or prejudice: 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?”*
- 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 bystander say that Joe ran the red light.”
- Sand 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 his or her side (e.g., in a murder case, the defendant told someone that he or she committed the murder.);
2. the statement describes the then-existing state of mind of a person in the case, and that the person's state of mind is an important part of the case;
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,
4. the statement is a present sense impression, describing an event or condition while the witness was perceiving it, or immediately afterwards.

Examples:

- Joe is being tried for murdering Henry. The witness may testify, "*Joe told me that he killed Henry.*"
- 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.*"
- In the same case, an accounts receivable ledger is kept by Henry, Joe's wholesaler, is admissible to show the size of Joe's debts to Henry.
- In the same case, an eyewitness to the murder may testify, "*I heard Joe say, 'Oh! I've killed him.'*"

Please refer students to Student Attachments #9, #10 & #11 for more information about hearsay.

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 to 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 he or she 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 his or her 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 his or her children. The witness may not testify that the defendant has a bad relationship with his or her children or that he or she 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 that 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.

Introduction of Physical Evidence

There is a special procedure for introducing evidence during a trial. Below are the basic steps to use when introducing a physical object or document into evidence in a court.

NOTE: In Colorado’s mock trial program, mock trial case exhibits are pre-marked.

1. “*Your Honor, I ask that this letter be marked for identification as Plaintiff’s Exhibit 1.*” After the presiding judge marks it, ask 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 Plaintiff’s Exhibit 1 for identification, into evidence.*” Offer the letter to the judge for his/her inspection.
5. After opposing counsel has an opportunity to object (presiding judge will ask), 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:

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

A. Yes.

Q. At this time, Your Honor, 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.

Q. 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.

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

Q. 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?

A. Yes, I would say it is.

Q. Thank you. Your Honor, (handing the exhibit to the judge), we offer what has been marked as Defendant's Exhibit 1 into evidence.

Refer students to Student Attachment #12 & #13 for an outline of the procedure.

Attorney/Teacher Coach Discussion Questions Introduction of Physical Evidence

1. List the four steps the attorney goes through in introducing physical evidence in a trial?

The four steps for introducing physical evidence:

- 1. Ask permission to approach the judge to show him pre-marked evidence*
- 2. Show the evidence to the opposing attorney*
- 3. Ask permission of the judge to approach the witness*
- 4. Show the evidence to the witness and ask the witness if s/he can identify it.*

2. Is it better trial procedure for the attorney to "tell" the witness what s/he is handing him or to ask him if he can identify it himself?

It is better procedure for the attorney to ask the witness what she is handing him.

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. Then the judge will ask the other attorney who asked the question under objection to give to respond. The judge may allow a response from the objecting attorney. (Some judges may not request a response; however, the objecting attorney may politely request, “*Your Honor, may I respond?*” then do so only after the judge grants permission.) 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:

Type of Objection	How to phrase the Objection
Relevancy	<i>“Objection, Your Honor. This testimony is not relevant to the facts of this case.”</i>
Leading question on direct examination	<i>“Objection, Your Honor. Counsel is leading the witness.”</i>
Improper character testimony	<i>“Objection, Your Honor. Counsel is eliciting improper character evidence.”</i>
Hearsay	<i>“Objection, Your Honor. Counsel’s question (or the witness answer) is based on hearsay”.</i>
Opinion Testimony	<i>“Objection, Your Honor. Counsel is asking the witness to give an improper opinion.”</i>
No Personal Knowledge	<i>“Objection, Your Honor. The witness has no personal knowledge to answer the question.”</i>

Strategies for Teaching the Rules of Evidence

1. Distribute Student Attachment #8 and Colorado Mock Trial Rules of Evidence and Procedure (if available). Review the rules in class, answering any questions that arise.
2. Teacher Attachment #3A is hypothetical scenarios designed to test and reinforce student understanding of the rules of evidence. (Teacher Attachment #3B provides the activity answers.) These handouts can be used in a variety of ways, such as pre- and post-tests for evaluation purposes, in-class activities, or homework assignments.
3. Teacher Attachment #4A are hypothetical scenarios designed to test and reinforce student understanding of objections. (Teacher Attachment #4B provides the activity answers.) Teacher/Attorney Coaches can ask the students to stand and formally present any objections that they have to the hypothetical scenarios. The teacher or a law student or attorney could act as judge and rule on the objections. Student Attachments #14 & #15 will also help students with this exercise.
4. Students should practice admitting physical evidence. Teacher Attachment #5A gives fact patterns students may use as starting points to develop questions to get physical evidence admitted. (Teacher Attachment #5B provides the activity answers.) Do these in class with students acting as attorneys and witnesses, and the teacher acting as judge. Student Attachment #13 will be helpful to the students during this exercise.
5. Students should practice refreshing witness' recollection. Break the students into groups of two and have each group prepare a brief fact pattern and the statement of one would-be witness to the case. Each team should then perform its scene in front of the class. Start by quickly summarizing the case, then have the student attorney in each group direct some questions to the witness. After a few questions, the witness should "blank out" and be unable to recall the rest of the facts. The attorney should then use the statements that they wrote to refresh the witness's recollection.
6. Students should practice qualifying a witness as an expert. First, brainstorm with students what facts would be best to establish that a person is an expert (e.g., place and degree of education, years of experience and/or employment in some field, and anything the person has researched and written about.) Next, list on the board the questions an attorney might ask to qualify the following people as experts in their fields:

Ballistics expert	Scientist	Doctor
Waiter	Ski Instructor	Veterinarian

Break students into pairs and let them create a "character summary" of some expert witness, then develop appropriate questions to qualify that witness as an expert. Each team should qualify its expert in front of the class, followed by a short discussion of whether the attorney's questions and witness' answers made the witness appear to be an expert in the eyes of the other students.

7. Use Teacher Attachment #6A as an overview discussion exercise. (Teacher Attachments #6B provide the activity answers.)

Chapter Nine

Preparing You and Your Team for Tournament

This section is designed to offer a few tips, information and considerations for preparing your students for mock trial competition, as well as the teacher and attorney coaches.

SUCCEEDING IN MOCK TRIAL

A. Making the Most of your Team’s Performance

1. Dress Appropriately

Your personal appearance affects the way people view you and your performance, and, therefore, you should dress appropriately for the courtroom. What does appropriately mean? It means business dress, not casual dress. For young women, this could be a dress, a skirt and jacket or slacks and a jacket. (If you wear a skirt or dress, be conservative in your choice of hem length.) For young men, it could be slacks and a shirt and tie, or slacks with a jacket and tie or a suit. Costumes of any kind, including uniforms, are prohibited under the mock trial rules.

2. Prepare the Courtroom

- a. Arrive at the courtroom at least 15 minutes early so that you can acquaint yourself with the layout, make any necessary adjustments and be ready to start the trial exactly on time.
- b. The prosecution team sits at the table closest to the jury box, and the defense sits at the other table. You may not rearrange the room.
- c. If you are videotaping the trial (allowed only if both teams agree), put the camera and the person who will be filming in the jury box, if feasible. (Be unobtrusive – draw no attention to yourself.)
- d. If you are representing the P/P, ensure your timekeeper is seated where all participants, including the presiding judge, can easily see the time cards as they are being held. Typically, the jury box is used.
- e. Confirm the trial tables seat three attorneys comfortably. Be sure that there is adequate room to rise from your chair and adequate passageway to approach the podium, bench or the witness stand. If the mock trial case includes a defendant who is testifying, s/he may also be seated at the table with the attorneys. If the defendant will not be testifying, the rules prohibit placing anyone at the trial table to “represent” that character.
- f. Witnesses should seat themselves in separate areas of the spectator’s sections, preferably behind their respective attorney tables.

- g. Attorneys should neatly organize their materials on the tables. Get rid of all unnecessary papers, briefcases and pencils. (See below on *Creating a Trial Notebook*.)
- h. Ensure neither team members nor spectators are wearing hats.
- i. Ensure neither team members nor spectators are chewing gum.

3. Remember Your 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.

4. Speak Effectively

- a. All participants should speak clearly and carefully enunciate each word, as microphones are not usually available.
- b. For attorneys, all speaking is done from a standing position, and from the podium unless otherwise noted by the judge. (In pre-trial matters, a team may request permission to move about the courtroom during examinations, and only with the judge's permission.)
- c. If you are an attorney and you are addressed by the Court, stand promptly before responding.

5. Deliver Your Best Opening Statement or Closing Argument.

Since these are extemporaneous speeches, attorneys should employ effective speech-making techniques. Do not assume you are allowed to move around the courtroom; instead, request the presiding judge's permission to move away from the podium. If permission is granted, be extremely cautious of getting too close to the jury box; you must avoid violating the "personal space" of those in the jury box.

- a. Organize any materials before beginning.
- b. Rise slowly.
- c. With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the opening or closing.
- d. Get your body ready by assuming a good speech-making posture. Your feet should be set apart a bit and your weight balanced on the balls of your feet.
- e. Before your first word, look the judge directly in the eyes saying, "May it please the court" and then begin to speak directly to the members of the jury (the scoring judges).

- f. Try for a conversational tone in your voice. Speak to the judges in a clear voice that is slow enough and loud enough for them to follow your ideas without straining.
- g. Avoid using slang, and always use your very best vocabulary.
- h. 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.
- i. If you concentrate on communicating directly to the scoring panel, 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 scoring panel. Don't force gestures and always avoid repetitive or unnecessary gestures.
- j. Movement is often dictated by the courtroom setup. 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 judges.
- k. 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.
- l. 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.
- m. When you have concluded your presentation, say, "Thank you, Your Honor," while looking directly at the presiding 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 a sense of poise and confidence.

6. Question Witnesses Skillfully

- a. Always rise to do the questioning.
- b. You may have questions written out, but be ready to adapt when objections are made or when a witness doesn't respond as you had expected.
- c. Speak slowly!
- d. Listen to the witness' response. S/He may not say what you had anticipated and thus you may have to insert or reword questions for clarification.
- e. If opposing counsel makes an objection, stop speaking and give them the floor.
- f. Be prepared to respond to an objection. Do so as articulately and confidently as you possibly can. Do not ramble. Not all judges will

- expect you to respond, and, in fact, sometimes you'll have to ask if the judge will allow you to do so. ("Your Honor, may I respond?")
- g. If the judge rules against you on an objection, show no signs of dismay. Simply proceed with another question. The key is to maintain poise.
 - h. If you honestly don't know how to proceed, ask the judge if you may confer with your co-counsel. (Remember: this conference time counts as part of your time allotment!) Make the conference brief. Use this conference technique only when absolutely_essential. Judges may become frustrated if you hold up the trial too often.
 - i. Never ask a question to which you don't know the answer.
 - j. When you have finished your questioning, say "No further questions, Your Honor," and take your seat in a confident manner.

7. Be a Great Witness

- a. Generally, all witnesses will be sworn at the beginning of the trial as one group.
- b. When you are called, go to the witness stand. When the judge indicates that you may take your seat, respond by saying, "Thank you."
- c. Seat yourself in the witness box in a professional manner.
- d. Position yourself so that you can comfortably give your responses to the scoring panel, who are seated in the jury box.
- e. Speak loudly and clearly and in a manner best fitting your character you are portraying.
- f. Stay in character!
- g. Don't allow any unnecessary movement or gestures to distract from your testimony.
- h. When an objection is made, immediately stop talking.
- i. Wait until the objection is decided and even then don't respond until the attorney doing the questioning, or the presiding judge, indicates that you should do so.
- j. Do not attempt to answer a question that you don't understand. Ask for clarification to be sure that you understand the question that is being asked.
- k. Never argue with the judge or the opposing counsel. Leave that to your attorney. Keep a cool head!
- l. Do not leave the witness box until the judge directs you to "step down." In an instance where a judge might forget, wait a bit and then ask, "May I step down, Your Honor?"
- m. Walk slowly and confidently back to your seat.
- n. Do not speak to anyone along the way or when you are seated.

8. Maintain Your Demeanor During Recess and Debriefing

- a. Rise when the Presiding Judge and/or the scoring panel leaves the courtroom; maintain order and quiet while they are out; and, rise when the Judge and scoring panel reenter the courtroom.
- b. If the Judge calls for a brief recess during the trial round, do not engage in conversation with anyone outside of the bar; that is, anyone who is observing the trial round in the gallery seating area. You may converse with your team members only.
- c. Listen quietly and respectfully during the debriefing. When the Judge and scoring panel have concluded their comments, feel free to applaud, not only for them but also for your opponents and yourselves.

9. Exhibit Good Sportsmanship

You now have the opportunity to meet the other team. Walk over to the other team members, shake hands and introduce yourself. It's always appropriate to congratulate them on a good aspect of their performance. Remember, good sportsmanship is part of being a winner.

B. Master the 10 Most Difficult Things

The numbered items below, which appear in no particular order, have been identified from countless mock trials, as well as dozens of national championships. If you can master these, you will do well as a member of your mock trial team.

1. Determine which points are the most necessary in order for you to prove the elements of your case, and then make sure that you do, indeed, prove them.
2. In the opening statement, tell clearly what you intend to prove, and in the closing argument arguing effectively that the facts and evidence you have presented has proved your case.
3. Learn, understand and recall in court the rules of evidence and being able to use them to introduce documentary or physical evidence.
4. Follow 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. Phrase questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions.)
6. Refrain 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. Think quickly on your feet. Times that you'll need to be quick include when a witness gives an unexpected answer, when an attorney asks an unexpected

- question or makes an unexpected objection, or when the presiding judge decides to question an attorney or witness.
8. Make objections and respond to objections. Knowing the rules of evidence to reference when making objections and responding to them.
 9. Refrain from reading opening statements and closing arguments.
 10. Learn and understand the hearsay rule and all its exceptions.

C. Exhibit Appropriate Courtroom Decorum

A critical aspect of trial procedure, often overlooked in teaching about mock trial is the courtroom decorum of the participants. The following hints are intended to help mock trial team members understand the nuances of appropriate courtroom behavior.

1. Be polite and courteous to the presiding judge and the scoring panel. The role of the presiding judge is to make rulings on the procedures and objections. Remember that this is the most powerful person in the courtroom and act accordingly. ALWAYS refer to the presiding judge as “Your Honor, “ and accept decisions gratefully and politely (yes, Your Honor), even if they are not in your favor.

The role of the scoring panel is to evaluate the performance of each participant. You should refer to the scoring panel as “members of the jury.” Use extreme caution if you choose to refer to them as “ladies and gentlemen” – often panels are all female or male.

2. Courtroom etiquette also demands that you behave courteously and respectfully toward the opposing team before, during and after the trial! To demonstrate your good sportsmanship, shake hands and congratulate your opponents at the conclusion of the mock trial round as declared by the presiding judge.
3. Be prepared to deal with the unexpected. Remember, something may arise for which you are totally unprepared. If you believe the rules were violated, object and be prepared to explain your objection. Maintain your composure, even if you feel the rug has been “pulled out from under” you. (You may want to watch the movie “Suspect” for a good example of how unpredictable things in a trial can be.)
4. Emotions are not banned from the courtroom; however, they must be controlled. It is okay (and may even be part of your trial strategy) to be appropriately indignant, puzzled, etc., but uncontrolled outbursts or wild theatrics are not appreciated by the presiding judge or the scoring panel, and may cost you valuable points.
5. Hats, gum, food or beverages of any kind are prohibited in the courtroom for both participants and spectators. The only exception may be water at the

trial table. Check with your Tournament Coordinator for the courthouse policies.

Preparation of a Trial Notebook

The trial of a case, whether to a judge or to a jury, is an attorney's opportunity to create a masterful performance of his or her case through words, pictures, exhibits, and even body language. The more masterful the presentation, the more professional, and even credible, the attorney becomes. To aid you in your organization and presentation of this case, you should prepare your own trial notebook, which at least in part, has the same elements as the trial notebooks used by the most skillful attorneys in their trial presentations.

1. Purchase a trial notebook that is at least a 2-inch three-ring binder.
2. The typical trial notebook contains sections, which usually include:
 - Tab 1: Team Information - a directory of Team Members and Coaches
 - Tab 2: Case Materials – this includes the introduction to the problem, witness statements, exhibits, legal authorities, and the charge of the court. This section may be subdivided with additional tabs for ease in locating case materials.
 - Tab 3: The Rules of the Competition
 - Tab 4: Notes
3. Before you start to read the case, begin the first page of your “Notes” section with the label: *Chronology of the Case*. These notes you will form as you read the case, indicating in one column the date/time of an event important to the case, and describing that event in the second column (i.e., who did/said what). This will get messy in the first draft, so spread your entries out with several lines of space in between entries. You will note that some witnesses will add to the chronology, and it is almost never in neat order. Now, read the case, building your chronology as you go. When you finish, re-write your chronology so it is neater and easier to read, or enter your chronology in a word processor, possibly creating a table.
4. Now that you have knowledge of the facts of the case, you can begin to evaluate the case. In a mock trial, you will need to think like an attorney for both the P/P and defense. Now, create a note page with the title, *Theory of the Case*. If you were representing the state, how would you prosecute the defendant (criminal case) or support your cause of action (civil case)? What is your theory of how you would try the case? Write this down. Now, flip sides. What is your theory of the case from the defense perspective? Write this down. Remember, in a criminal case the prosecution is trying to present facts that will prove that the defendant is guilty of the charge(s) “beyond a reasonable doubt.” The defense must present facts that raise a reasonable doubt. In a civil case, the weight of the evidence from each side should determine the verdict using the “preponderance of the evidence” standard. The plaintiff must present facts that support the cause of action, and the defendant must present evidence that refutes liability. Your understanding of this distinction is critical. To

avoid confusion below, we will use P or D in referring to the two sides of the case. You fill in the correct term for the case you are studying.

5. Now, you are ready to analyze the case further by building witness lists. Your chronology will be helpful here. Using your theory of the case, determine the order in which your witnesses should testify. In determining the order of your witnesses, you must be aware that neither the judge nor the jury knows any details of the case; therefore, it is best to inform the court of the facts of your case through a strong fact witness as early as possible in your case. Expert witnesses usually testify after all the other witnesses, because an expert's opinion is predicated on the facts of the case. Under Direct Examination, list the essential points (facts) that would help the side for which the witness will testify. These are the things the direct examiner will want to bring out through questioning. Here, you'll have to switch hats, first working on the P, then on the D. Under Cross Examination, list the key points (facts) that would hurt the side for which the witness will testify. These are the questions that would poke holes in the direct testimony, thus weakening the witness in the eyes of the jury. Again, you will be switching hats from D to P, but remembering the theory of the case you've already developed will help you keep on track. A chart is provided as a guide for this activity. You may adjust the chart in your notes according to your wishes.
6. Now comes the most vital part of your trial preparation. Create a *Sources of Proof* chart. Chart the P's accusations (in a criminal case, see the indictment; in a civil case, see the complaint) and the D's rebuttals (in a civil case, see the answer). Next to each statement, note the facts necessary to prove them. Then, along side your list of facts should be the witnesses and/or evidence you will use to prove those facts. Before you begin the *Sources of Proof* chart, you may find it necessary to determine the testimony of each witness, considering likely objections (see the Rules of Evidence). One of the best ways to determine what witness can testify to is to chart each witness' testimony. A chart is provided as a guide for this activity. You may adjust the chart in your notes according to your wishes.
7. Once all these charts are completed, you will be ready to prepare your opening statements and closing arguments, which, upon completion, should be included in your trial notebook. In addition, you should utilize these charts to help you to formulate both direct and cross-examination questions for each witness, which of course, can be included in your notebook.

This version of the trial notebook is rather abbreviated and not as detailed as those attorneys' use for real trials. You will learn from experience some of the preparation that trial attorneys undertake to acquaint themselves with the witnesses and facts of the case. It is this preparation that assists attorneys in doing their best in representing their clients at the trial level.

Even if you are not playing the role of an attorney, a trial notebook is valuable because a) witnesses must know the entire case and b) witnesses are a part of a team and may participate in discussions about the theory of the case, how evidence should be handled, and the order of calling witnesses. You should be very aware of the Rules of Evidence as they affect your testimony, so that you know the likely objections and can best avoid getting trapped by working within the rules. Witnesses often make or break a mock trial case, and a team is stronger if its witnesses think like attorneys.

“WITNESS LIST” and “TESTIMONY CHART”
Order of Witness Testimony and Attorney Assignment

P’s witnesses	Direct Examination	Cross Examination	Object
D’s Witnesses	Direct Examination	Cross Examination	Object

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1. Determine the order of witnesses
2. Assign duties for team attorneys

“SOURCES OF PROOF” CHART
P (Prosecution/Plaintiff)

Accusations	Facts to Prove (See Jury Charge)	Witnesses/Exhibits Used to prove facts
1.	A. B. C. D.	1. 2.
2.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
4.	A. B. C. D.	1. 2.
5.	A. B.	1. 2.

	C.	
	D.	

1. Determine your accusations and/or rebuttals in the case (review documents)
2. Determine facts necessary to prove evidence (review the Jury Charge's discussion of law)
3. Determine which witnesses or exhibit will prove which fact to the court

“SOURCES OF PROOF” CHART
D (Defense)

Rebuttals (to each charge)	Facts to Present (See Jury Charge)	Witnesses/Exhibits Rebut accusations
1.	A. B. C. D.	1. 2.
2.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
4.	A. B. C. D.	1. 2.
5.	A. B.	1. 2.

	C.	
	D.	

1. Determine your accusations and/or rebuttals in the case (review documents)
2. Determine facts necessary to prove evidence (review the Jury Charge's discussion of law)
3. Determine which witnesses or exhibit will prove which fact to the court

THINGS TO REMEMBER

The mock trial team may or may not be divided into a prosecution/plaintiff squad, and a defense squad. Each squad should consider going through the following checklist as it heads for trial. **NOTE:** This is not intended to be a comprehensive checklist. Please be sure to review the Colorado Rules and Procedures in your case materials.

1. Team Roster sheet. A Team Roster Sheet includes the names of each team member, including the timekeeper, and all the attorney coaches and teacher coaches, along with their signatures. This document can be completed ahead of time. A copy is to be handed to the Regional or State Tournament Coordinator upon arrival at the tournament. The Team Roster sheet is a statement of understanding between the team participants and the Colorado High School Mock Trial program that the team will abide by and honor the Code of Ethical Conduct. It also certifies all participants of the team. This form does not need to be turned in to the presiding judge at trial.

2. Trial Roster sheets. Trial Roster sheets for each squad identify the students who are portraying lawyers, the students portraying the witnesses by their real name, and by their role name, and should be completed ahead of time if at all possible. Be sure the Trial Rosters only identifies the team by the Team Code (assigned upon arrival at tournament). Before each round during preliminary matters, a copy is handed to (a) the presiding judge, (b) the opposing team, and (c) each of the three scoring panelists. (Anticipate handing out 5 per trial.) Use the opposing squad's Trial Roster sheet to make a note of the sex of each of their witnesses.

3. Where to sit. The prosecution or plaintiff squad sits closest to the jury box.

4. Seating of the witnesses. The plaintiff (if any) and the defendant may sit with their counsel if space is available. The other witnesses may sit within the bar (behind the attorneys, if possible) where it is easy for them to walk up to the witness stand.

5. Exhibits. Be sure each lawyer has (a) the exhibits s/he plans to introduce into evidence, (b) the statements of the witnesses s/he'll examine directly, and (c) the statements of the witnesses s/he'll cross-examine. (To be safe, have one extra copy of each document, in case you put your copy in evidence and it doesn't come back to you at the end of the trial.)

6. Timekeepers. Prepare all necessary timekeeping cards and collect stopwatches needed for your timekeeper. Be sure your timekeeper understands the rules about their responsibilities by reviewing the Colorado mock trial materials. Remind your timekeeper not to count the time you take for (a) objections, or (b) questions from the judge. Have your timekeeper sit where you can be sure to see him when you present your case.

7. Objections to opening statement. No objections may be made during or after opening statements, as outlined in the Colorado Mock Trial Rules of Procedure.

8. Stipulations. The first lawyer to present evidence may begin by bringing to the court's attention the stipulations set forth in the Colorado case materials. These stipulations may not be disputed. They are considered part of the record and already admitted into evidence. They are not to be read.

9. Scoring Opportunities. The scoring panelists enter their scores for the examining attorney, the cross-examining attorney, and the witness, at the time the witness leaves the stand and when the next witness comes forward. Give the scoring panelists a chance to complete their scoring, if possible and at the presiding judge's lead, before you begin the examination of the next witness.

10. Rest your case. When the third witness your side has examined is ready to leave the stand, inform the court that "The State/plaintiff rests its case," or "The Defendant rests its case."

11. Timing of Closing Argument. The State/plaintiff goes first but you may reserve all or a portion of its 5 minutes for a rebuttal.

12. Objections to Closing Argument. After the other side's closing argument has been heard, you may rise to present what your objections would have been if you could have interrupted the other side's closing argument. Again, familiarize yourself with the Colorado Rules of Procedure. (Decide ahead of time which attorney for your team will do this, if you do it.)