

Michigan Youth In Government Model Judiciary Program



2011-2012
Mock Trial Rules



Overview of the Model Judiciary Program

Please read this information carefully. It summarizes the organization and rules for participating in MJP. It is important that all participants (teams, members, advisors, coaches, parents, etc.) understand this information for they are responsible for any violation to the trial procedures and rules.

All teams are composed of only four members. The members are expected to change roles from witness to attorney and attorney to witness as the schedule dictates. Each team is expected to be able to argue both sides of the case; one side for one round and the other side for another round, etc.

Each team will be assigned a team number upon registration at their respective conference. During the conference any and all references to the respective team will need to be by that assigned number.

Witness statements have been stipulated to as far as signatures and dates. Each witness statement was appropriately signed and dated.

All witnesses' affidavits have been signed and sworn to by the affiant before a notary public three weeks before trial.

Any and all evidence, witness statements etc. will be provided and prepared by the MYIG office. Use of any other pieces of evidence is prohibited and will be penalized. This will be left to the discretion of the MJP Executive Board.

Judges have been and may be asked to take judicial notice of statement of stipulated facts and mock trial statutes.

Motions may be made (i.e. directed verdicts, etc) to demonstrate that the attorneys know when and how to make them. However, judges have been instructed to overrule them in order that a full trial occurs. All witnesses are to remain in the courtroom, at the table for their respective side, provided the table seats four.

Trial Procedures and Rules

- 1. The failure to follow any of the foregoing rules may result in: Team Point Reduction; Individual Point Reduction; Disqualification; or any other penalty that the MJP Executive Committee deems appropriate.**
- 2. The trial judge(s) has no authority to waive, cancel, modify, suspend (or add) any rule, or portion(s) of a rule. Any change to any rule (or portion thereof) must be granted by the MJP Executive Committee, in writing, and is only good for the duration of the round for which the modification was granted. The modification (if granted) must be provided to both the opposing team for round requested and to the presiding judge BEFORE the commencement of the trial. Failure to do so will result in one of the aforementioned penalties. Written waivers will not be posted, however, they will be maintained in the MJP office and are available for review upon request.**
3. Teams shall consist of four members each. During any one trial, only two attorneys and two witnesses may participate. Team member's responsibilities (i.e. attorney or witness) will change during the competition but not the trial. Witnesses will testify for only their own team. Although the witness statements are written in the male or female gender, gender changes are appropriate as the situation warrants.
4. During a trial, each team must evenly divide its duties. Each attorney must conduct one direct-examination and one cross-examination. The attorney who conducts direct-examination on the witness is the only one allowed to object to questions during the opposing team's cross-examination, and the opposing attorney who subsequently conducts cross-examination is the only one allowed to object during the direct examination. One attorney must make the opening statement; the other attorney must then make the closing argument.
5. The two team members who act as the attorneys for the Prosecution must become the witnesses when their team represents the Defense. Likewise, the two witnesses for the Prosecution subsequently become the attorneys when their team represents the Defense.
6. Only two members may serve as attorneys during any one trial and the remaining two members as witnesses during the same trial. No member may be subbed once a trial has commenced without prior approval of the MJP Director. Each team is expected to be able to argue both sides of the case. The team members may assign the attorney/witness roles for the Prosecution side and Defense side as they please, provided no member plays an attorney role for both sides nor a witness role for both sides.
7. Each team must call BOTH of its witnesses. The witnesses will not actually take an oath, but will be treated as having been sworn.
8. Teams are responsible for keeping track of the time, and staying within the total time limit. The suggested time limits on each phase of the trial are listed below. The bench will keep the official time. It is absolutely necessary that these trials remain limited to two hours each. Teams will aggregate their time to 52 minutes for the Prosecution and 49 mins for the Defense.

Suggested breakdown of the times for competition:

Opening Statements:	4 mins per competitor	8 mins total
Prosecution-Direct Exam 1 st Witness:	10 mins for examination	10 mins total
Defense-Cross Exam 1 st Witness:	10 mins for examination	10 mins total
Prosecution-Direct Exam 2 nd Witness:	10 mins for examination	10 mins total
Defense-Cross Exam 2 nd Witness:	10 mins for examination	10 mins total
Defense-Direct Exam 1 st Witness:	10 mins for examination	10 mins total
Prosecution-Cross Exam 1 st Witness:	10 mins for examination	10 mins total
Defense-Direct Exam 2 nd Witness:	10 mins for examination	10 mins total
Prosecution-Cross Exam 2 nd Witness:	10 mins for examination	10 mins total
Closing Arguments:	5 mins per competitor	10 mins total
Plaintiff's Rebuttal:	3 mins	3 mins total
Judge's Critique	19 minutes minimum	

TOTAL TIME: 52 mins Prosecutor/49 mins Defense/19 Judges = 120

9. Teams may prepare trial notes and trial notebooks, but submission of trial briefs/written motions/etc. will not be permitted. Teams may not cite statutes or case law or use exhibits unless provided as part of the competition packet.
10. Instructors and observers shall not talk to, signal, communicate with, or coach their teams during trial. Additional team members and coaches should remain with the team members presently competing. **Scouting other teams is strictly prohibited.**
11. Observe the following rules in the courtroom: do not smoke, eat or drink during the trial. If the courtroom facility allows for water, a pitcher of water and cups may be at the tables. Remain seated at the counsel table or standing behind the lectern during questioning, except when granted permission to approach the witness or bench; rise when addressing the judge; direct all remarks to the judge, jury or witness (never to opposing counsel).
12. Remember the judge has final authority over courtroom decisions not affected by these rules. This means rulings on: objections, pre-trial motions, construction sequestering, evidence, courtroom seating, allocation of points scored, determination of team win/loss, critiques and decorum. Seating is provided for observers behind the bar only. In order to minimize disruption, please plan to attend the entire trial.
13. Under no circumstance should judges speak to team members, advisors, parents, students, teachers, principals, or family members of said individuals *regarding discussions between the judge(s) and the MJP Executive Committee* without prior approval from the Executive Committee. The team members and their advisor(s) are responsible for the enforcement of this rule. **Any violation of this rule by the judge, a team member, advisor(s), etc. is grounds for immediate disqualification, against the team, for that round.**
14. Team members, advisors, parents, teachers should have as little contact as possible with judges when NOT conducting a trial. This avoids the appearance of impropriety between teams and judges. Any team who wishes more communication with any one specific judge should submit their request in writing to the Program Director and any communication should be in front of a neutral third-party.
15. Teams are limited to the facts in the record and any reasonable inferences there from. Points may be deducted from teams if facts are exceeded in the opinion of the judge.
16. ALL team members, advisors, coaches, parents in a courtroom who are either participating in the trial or not, are subject to the rules for proper courtroom decorum. The attorneys are to dress professionally. If the presiding judge feels an individual's attire is not appropriate, the judge will have the discretion to penalize the individual

and/or the team accordingly. Failure to maintain this decorum, in the opinion of the presiding judge, may cause points to be subtracted from a team's score.

17. To determine team positions in the semi-final rounds, conference final round and state final round, a flip of a coin will take place between the teams involved, **unless both teams agree beforehand to stipulate to a specific side.**
18. Trial rounds 1-6 are closed to students not immediately involved in that trial. Guests will be admitted BY PERMISSION ONLY and at the discretion of the Program Director. The Program Director will provide the guest with a "guest pass" which must be clearly identifiable to everyone in the courtroom. Guests at these rounds will be limited to: the team's advisor(s), the team's coach, parents of a team member immediately involved with that specific trial, and members of the MI Youth In Government press (press will be credentialed for identification).
19. The use of cameras (still or video) inside the courtroom will be allowed only by MYIG Press members and the official MYIG photographer. The MYIG Press will videotape the semi-final rounds, conference final round and state final round. Copies of these DVD's will be made available. **No other operating electronic devices** are allowed in the courtroom, with the exception of the timekeeper's device. Violators associated with the team (no matter how remote) will cause point reduction, or possibly disqualification, for that team.
20. Only licensed attorneys will be permitted to judge the semi-final rounds, conference final round and state final round.
21. In the event a team drops out of the competition or is disqualified from the competition, at the discretion of the MJP Executive Committee, the next highest ranking team (based on win/loss count) may be permitted to replace the absent team.
22. A team may substitute a team member prior to the commencement of a trial, provided the team's advisor gets prior approval from the Program Director and the replacement is a student from the team's school.
23. The MJP Executive Committee reserves the right to add/delete/amend these rules as necessary, potentially even during a conference. In the event the MJP Executive Committee were to make any changes to these rules, the new/amended rule would be provided to the team's advisors via e-mail, fax, public posting or hand delivery (as the situation dictates).

Appeals Method

Complaints/Appeals & The MJP Executive Committee

Any complaint or appeal concerning the conduct of each round must be addressed immediately after the round and before the competition continues. Appeals and/or complaints shall be reported immediately to the MJP Program Director and will be considered by the members of the MJP Executive Committee that are present at the conference.

Discussion amongst the Executive Committee members is privileged to the committee and will NOT be shared with advisors, team members, or anyone else not on the committee. The Executive Committee may, at its sole discretion, invite advisors/team members/the Program Director/the MYIG Executive Directors (or others with a vested interest [as determined by the Executive Committee] in the complaint) into the discussions of the Executive Committee. The Executive Committee is in NO WAY OBLIGATED to invite anyone into the committee's discussions.

The decision of the MJP Executive Committee will be final and will terminate discussion of the issue. The Executive Committee is under no obligation to discuss the reasoning, rationale or what aspects of the complaint/rebuttal were relied upon for their decision-making. The adherence to the rules and the spirit of the competition will be the sole motivation for the committee's decisions.

Any ambiguity in the procedures or rules must be brought to and determined by the Executive Committee.

Definitions

- **Round:** a competition trial.
- **Semi-Final Rounds:** refers to the two trials which take place after the completion of Rounds 1-6.
- **Conference Round:** refers to the trial consisting of the two winners from the previous semi-final rounds.
- **State Final:** refers to the trial consisting of the winning team from the first conference competition and the winner of the second conference competition competing for the right to move on to the national competition.
- **Win/Loss:** refers to number of rounds a team won & lost during Rounds 1-6.
- **Member:** refers to any one of the four individuals on a team.
- **Team:** a group of 4 students who will share the responsibility of serving in the capacity of an attorney or witness (depending on which side they represent during any given trial).
- **Side:** refers to when the team acts as the Prosecution or the Defense in any given trial.
- **Presiding/Scoring/Critiquing Judge:** the person responsible for running the trial, ruling on objections/motions, providing point scores and team win/loss scores, giving feedback to the team members. These roles may be wrapped into one, or divided between two or three individuals.
- **Modification/Waiver:** refers to any additions, deletions, or changes in the MJP Procedures & Rules.
- **MJP Program Director:** the designated individual responsible for the administration and supervision of the Model Judiciary Program as established through the YMCA Michigan Youth In Government.
- **MJP Executive Committee:** refers to the Model Judiciary Program board of advisors established for the purposes of forming the competition's procedures and rules, mediate disputes or enforcing sanctions for violations against the procedures, rules or general spirit of the competition. They work separate from the Program Director, who has no vote on the MJP Executive Committee.

Margin of Victory

- Margin of victory means the number of points a team won a round by or a team lost a round by. For example, if Team A's score was 100, and Team B's score was 95 in round one, Team A's margin of victory is 5 points, and Team B's margin of victory is -5 (that's negative 5) points. If in Round Two Team A's score is 90 and Team C's score is 80, Team A's margin of victory over team C is 10 points (and Team C's margin of victory is -10). Team A's total margin of victory is now 15 points. If, in Round Two, Team B's score is 90 and Team D's score is 80, Team B's margin of victory is 10, and Team D's is -10. Team B now has a total margin of victory of 5 points (that's -5 + 10, which = +5 points).
- If two teams were tied in the win/loss column after the preliminary rounds, the team with the highest margin of victory would move on to the quarterfinal rounds. So if after the preliminary rounds, Team A's win/loss record is 3-1, and if Team B's win/loss record is also 3-1, Team A would move on to the quarter-final rounds because Team A has the higher margin of victory, 15 points, over team B, whose margin of victory is 5 points.

Scoring Guidelines

How The Process Works

- Judge's score sheets and critique sheets are enclosed for the team members to become familiar with.
- Six rounds will be set up on a round robin basis. Decisions will be win/loss based on numerical scores for each trial. Participants will be judged on opening statements, direct examination, cross-examination, closing statements, evidence and objections and demeanor.
- The four teams with the best winning record at the completion of the sixth round will move on to the semi-final rounds. In the event there is a tie between two teams for fourth place the tie-breaking decision is based upon the "Margin of Victory".
- There will be no posting of scores at any point in the competition.
- Score sheets will be available after the competition is completed at each conference. Critique sheets will be available at the conclusion of each round. At no point will the conference semi-final rounds, the conference final round or the state final score sheet be available for review.

**MICHIGAN YOUTH IN GOVERNMENT
MOCK TRIAL COMPETITION**
Guidelines for Each Trial Component

Opening Statement

- Tells a story
- Establishes LOVID (Location, Offense, Venue, ID, Date)
- Previews own witnesses
- Burden of Proof
- Theme/Theory
- Asks for verdict

Direct Examination

- Develops a conversation with witness
- Uses open-ended questions
- Sets the scene for testimony
- Obtains necessary information for claim/defense

Cross Examination

- Tells their own story through witness
- Asks leading questions
- Can tell what they want out of the witness and accomplish it
- Uses witnesses words against them

Closing Argument

- Argues the evidence
- Does not just restate it
- Reestablishes LOVID
- Relates back to theme of opening
- Connects the dots of testimony of all witnesses
- Argues elements and burden of proof
- Asks for verdict

Evidentiary Issues

- Shows knowledge of Federal Rules of Evidence
- Lays proper foundations
- Makes timely and appropriate objections
- Responds to objections directly
- Asks for or responds to directed verdict/judgment of acquittal, including standard of review

Demeanor/Procedure

- Professional attire
- Respectful to the court and opposing counsel
- Does not make frivolous objections

Scoring Guidelines Scale

5 Excellent

- Creative
- In role
- Passionate about client
- Uses opposing client's arguments against them
- Has clear theory and/or theme

4 Very Good

- Understands issues
- Uses theory throughout case and analyzes facts well

3 Good

- Recognizes key issues
- Makes and responds to objections
- Has clear theory

2 Fair

- Prepared
- Able to perform, but misses key facts and issues
- Unable to lay a proper foundation without assistance

1 Poor

- Not prepared
- Inarticulate
- Stumbling
- Not learning from mistakes



Michigan Youth In Government Judges Ballot For Mock Trial Competition

PROSECUTION

DATE _____ ROUND _____ PRESIDING JUDGE (print) _____

Scoring: Circle the appropriate number below for each student attorney and witness. Be sure each category is scored for each student.

SCORING KEY: 1 = poor 2 = fair 3 = good 4 = very good 5 = excellent

Team Number: _____

Student Name (Attorney #1)

Student Name (Attorney #2)

1 2 3 4 5 ← open/close statement → 1 2 3 4 5

1 2 3 4 5 ← direct exam → 1 2 3 4 5

1 2 3 4 5 ← cross exam → 1 2 3 4 5

1 2 3 4 5 ← evidence & objections → 1 2 3 4 5

1 2 3 4 5 ← demeanor → 1 2 3 4 5

Individual Total (Attorney #1) _____

Individual Total (Attorney #2) _____

Student Name (Witness #1)

Student Name (Witness #2)

1 2 3 4 5 ← direct response → 1 2 3 4 5

1 2 3 4 5 ← cross response → 1 2 3 4 5

1 2 3 4 5 ← overall character → 1 2 3 4 5

1 2 3 4 5 ← originality → 1 2 3 4 5

Individual Total (Witness #1) _____

Individual Total (Witness #2) _____

Team Total _____

In my opinion, the _____ Prosecution _____ Defense _____ presented the BETTER OVERALL CASE in form, presentation, and preparedness.

Judge's comments (optional):

Judge's signature



Michigan Youth In Government Judges Ballot For Mock Trial Competition

D E F E N S E

DATE _____ ROUND _____ PRESIDING JUDGE (print) _____

Scoring: Circle the appropriate number below for each student attorney and witness. Be sure each category is scored for each student.

SCORING KEY: 1 = poor 2 = fair 3 = good 4 = very good 5 = excellent

Team Number: _____

Student Name (Attorney #1)

Student Name (Attorney #2)

1 2 3 4 5 ← open/close statement →	1 2 3 4 5
1 2 3 4 5 ← direct exam →	1 2 3 4 5
1 2 3 4 5 ← cross exam →	1 2 3 4 5
1 2 3 4 5 ← evidence & objections →	1 2 3 4 5
1 2 3 4 5 ← demeanor →	1 2 3 4 5

Individual Total (Attorney #1) _____

Individual Total (Attorney #2) _____

Student Name (Witness #1)

Student Name (Witness #2)

1 2 3 4 5 ← direct response →	1 2 3 4 5
1 2 3 4 5 ← cross response →	1 2 3 4 5
1 2 3 4 5 ← overall character →	1 2 3 4 5
1 2 3 4 5 ← originality →	1 2 3 4 5

Individual Total (Witness #1) _____

Individual Total (Witness #2) _____

Team Total _____

In my opinion, the _____ Prosecution _____ Defense _____ presented the BETTER OVERALL CASE in form, presentation, and preparedness.

Judge's comments (optional):

Judge's signature

MICHIGAN YOUTH IN GOVERNMENT

Mock Trial Critique Sheet

Round: _____ **Evaluator:** _____

PROSECUTION TEAM NUMBER: _____

Opening Statement

Factors to consider: Tells a story; Establishes LOVID (location, offense, venue, ID, date); Previews own witnesses; Burden of proof; Theme/theory; Asks for a Verdict; Ends strong.

Direct Examination

Factors to consider: Develops a conversation with witness using a logical progression of questions; Uses open-ended questions; Sets the scene for testimony; Obtains necessary information for claim/defense.

Attorney #1

Attorney #2

Cross Examination

Factors to consider: Tells their own story through witness; Asks leading questions; Can tell what they want out of the witness and accomplish it; Uses witnesses' words against them.

Attorney #1

Attorney #2

Closing Argument

Factors to consider: Argues the evidence; Does not just restate it; Relates back to theme of opening; Reestablishes LOVID; Connects the dots of testimony of all witnesses; Argues elements and burden of proof; Asks for verdict.

Evidentiary Issues

Factors to consider: Shows knowledge of Federal Rules of Evidence; Lays proper foundations; Makes timely and appropriate objections; Responds to objections directly; Asks for or responds to directed verdict/judgment for acquittal, including standard of review.

Attorney #1

Attorney #2

Demeanor/Procedure for Entire Team

Factors to consider: Professional attire; Respectful to the court and opposing counsel; Does not make frivolous objections; overall presentation of the case.

Witnesses

Factors to Consider: Knowledge of statements, ability to work with their attorney and opposing attorney, overall attitude, willingness to answer questions

Witness #1:

Witness #2:

MICHIGAN YOUTH IN GOVERNMENT

Mock Trial Critique Sheet

Round: _____ **Evaluator:** _____

DEFENSE TEAM NUMBER: _____

Opening Statement

Factors to consider: Tells a story; Previews witnesses; Includes elements of crime/defense; Burden of proof; Theme/theory; Asks for Verdict; Ends strong.

Direct Examination

Factors to consider: Develops a conversation with witness using a logical progression of questions; Uses open-ended questions; Sets the scene for testimony; Obtains necessary information for claim/defense.

Attorney #1:

Attorney #2:

Cross Examination

Factors to consider: Tells their own story through witness; Asks leading questions; Can tell what they want out of the witness and accomplish it; Uses witnesses' words against them.

Attorney #1:

Attorney #2:

Suggestions for Student Attorneys

A. GENERAL SUGGESTIONS

1. Be professional at all times.
2. Stand when you address the court, speak up, or make an objection.
3. Dress professionally.
4. If the judge asks you a question, always respond with “your honor” after your answer.
5. If the judge rules against your objection, don’t get defeated. Say, “thank you”, and sit down. Just because they overrule your objection doesn’t mean you lost or you’re losing.
6. Try not to read your opening or closing statements, do your best to have as much as you can memorized.
7. Cross-examination is HARD, even for law students and attorneys in practice. It is the hardest skill to master, so don’t feel defeated or frustrated if you believe you are having issues with it. It can be the most fun part of a trial, but the most stressful.
8. Don’t be afraid to object! If your gut tells you that something is an objection, make it! You won’t be penalized for trying!
9. Have a legal pad at counsel table for you to write notes or comments to your co-counsel. You should not be whispering or talking during the competition at counsel table.
10. Be CONFIDENT! You have worked very hard on this and you know what you’re doing! Walk into the rounds confident, ready to compete, and most importantly, HAVE FUN!

B. OPENING STATEMENTS

1. Objective: To present to the court the evidence you plan to produce during the course of your trial. This is NOT argumentative, but just previewing evidence. If a party is argumentative in an opening statement, you are allowed to object to argumentative—but this is rare and should be cautioned to only do if you are sure it is being done.
2. How to write your opening statement if you are the prosecution:
 - i. Theme
 - ii. Introduction
 - iii. LOVID (Location of the offense, offense, venue, identify the suspect in the courtroom, date of the offense)
 - iv. Witness #1
 - v. Witness #2
 - vi. Elements of the Crime
 - vii. Burden of Proof
 - viii. Theme

3. How to write your opening statement if you are the defense:

- i. Theme
- ii. Introduction
- iii. Counter-Theme
- iv. Witness #1
- v. Witness #2
- vi. Prosecution Witnesses (optional)
- vii. Burden of Proof
- viii. Theme

4. Parts of Opening revisited:

- i. Theme: A theme is also called a “hook” to bring the jury or judge into your theory of the case. You need to be creative here and make up either one word or a short phrase that would coincide with your case and would be seen through the testimony. For example, if there was a murder case where the defendant was angry or aggressive by nature, you could use “The Color Red” which would represent anger, aggression, rage. Then once you state your Theme, you should briefly explain it to the jury/judge. If your theme is good, it should be easily seen throughout the trial. Also, make sure you mention your theme three times in your opening at logical points. This is called the rule of three, and it helps the hook of your case.
- ii. Introduction: Introduce yourself and your co-counsel, along with your witnesses. Make sure that your teammates stand up when you introduce them to the court.
- iii. LOVID: This is a mnemonic, Location, Offense, Venue, I.D., Date. As prosecution, you have to present this in order for your case to be even heard in court. If you don’t state LOVID in your opening, in real life, your case could be dismissed. You have to state the Location of the offense, usually the city where it occurred. The Offense is what you are charging the defendant with. Venue is usually the county of the crime, or the state—depends on the facts of your particular case. I.D. means you have to say the defendant did this crime/being charged with this crime. Date means you need to state the date the crime occurred. You don’t have to state these in order or even at the same time, as long as you state them all before you end your opening.
- iv. Counter-Theme: If you are the defense you can opt to do a counter-theme. This means you take the theme the prosecution used and twist it to make it positive for your case instead. Be careful though; don’t get too argumentative with it. If you used “The Color Red” example from above, you could do a counter-theme like this: The prosecution is right, the color red applies here. But they have tried to tell you that the color red only represents rage, aggression and anger. But it also represents love and affection, very non-aggressive characteristics. These characteristics apply to the defendant, and you will hear that through the evidence today.”
- v. Witness: Preview the witnesses you will be calling. Just state what the evidence will show, what the jury/judge is going to hear through testimony. Don’t make promises here because you never know what could happen. Just preview the parts of the story that your witnesses will be presenting. If you are the defense, when you talk about the defendant make sure you discuss how he/she has a 5th amendment right to not present a case—but he wants to because he/she has nothing to hide.

- vi. Prosecution Witnesses: As the defense, you can preview what holes are in the prosecution's case by telling the judge/jury what to listen for during your cross-examination of the witness. Prosecution is NEVER allowed to preview or discuss the defendant's witnesses or case in the opening statement.
- vii. Elements: Prosecution needs to tell the jury/judge the elements of the crime the defendant is being charged with and to explain them. Defense can choose to address them if they want, but it's not recommended unless you're not contesting the elements have been met for another argument (such as self-defense).
- viii. Burden of Proof: The burden is "Beyond a Reasonable Doubt." The prosecution needs to present this burden like it is an easy burden met every day—common sense for example--, in the alternative, the defense needs to say how hard a burden it is. In reality, it is somewhere between 95-100% sure that the defendant is guilty, but no one ever really puts a percentage on it because no one in the legal field really knows what it is. A good way to present it after you explain it is by an analogy. Many prosecuting attorneys use the idea of a puzzle, that you may be missing a few pieces but you can still make out the picture. The counter to that from defense in their opening could be that those pieces that are missing include the piece that shows who did the crime or some other part of the case that you are arguing is missing. Both sides need to address the Burden of Proof in their opening.
- ix. Theme: Bring up your theme again and briefly re-explain it, then you want to state something like "at the conclusion of this case, my co-counselor will come up here and speak with you and ask you to render a verdict of _____, and based on all the evidence that you will be presented with, you will have no other choice but to render that verdict."

C. DIRECT EXAMINATIONS

1. Objective: You are NOT the focus of a direct exam, the witness is. So you want to put all the attention on the witness. You need to guide the witness through their testimony with open-ended questions.
2. How to write/prepare directs:
 - i. Open-ended questions: who, what, where, when, why, how. If you state a question with this, it is open ended. You need to be aware of objectionable questions however, such as leading. That will be addressed in the evidence section.
 - ii. Exhibits: If you are going to try to admit an exhibit through a witness testimony, you must use the following procedure for proper *authentication*:
 - a) State that you are offering Proposed Exhibit ____, for identification.
 - b) State you are showing proposed exhibit ____, to opposing counsel. (show them the exhibit, but don't hand it to them).
 - c) Ask to approach the witness.
 - d) State "let the record reflect that I am handing the witness proposed exhibit__"
 - e) Ask the witness any or all of the following, or any other questions you want to ask to identify the exhibit:
 1. Do you recognize it?
 2. How do you recognize it?
 3. Has it changed substantially since last time you saw it?
 4. Is it a fair or accurate representation of __(whatever it is)___?
 5. Do you generally rely on this for your opinion? (for expert or lay opinion)
 - f) State "let the record reflect I am retrieving proposed exhibit __ from the witness."
 - g) Then ask the court to enter the proposed exhibit ____ into evidence as exhibit ____.

iii. Remember, once its admitted you don't have to authenticate it anymore, you can refer to it anytime you want during testimony or closing.

3. Expert Opinion testimony

i. Expert: You have to lay foundation by questions of the expert's knowledge, skills, experience, education, or any other credential that shows they should be an expert. Once you ask those questions, you can ask to have the witness entered as an expert pursuant to Rule 702 in whatever field you want them entered as.

C. CROSS EXAMINATION

1. Objective: You are in the spotlight; the witness should just go along with it (in a perfect world). You have to ask close-ended questions that paint the picture you want or to question the witness with holes in their testimony based on perception, memory, or any other factor you find.

2. How to write/prepare:

i. Close-ended questions: NO open-ended questions. So you have to ask questions that elicit a yes/no response. Also, you need to write questions that are building blocks on each other. Remember, NEVER ask a question you don't know the answer to! Examples: You went to the scene, correct? Saw the dead body on the floor? There was a gun? On the floor? Next to the body? But no blood on the floor, correct? Isn't it true that you didn't secure the scene?

ii. Exhibits: Please refer to the explanation in the direct section. In cross, you can also admit exhibits through testimony.

D. CLOSING STATEMENTS

1. Objective: You want to be persuasive here, so you want to use the evidence, testimony, and what happened during the trial to your benefit.

2. How to write/prepare:

i. Usually a closing is NEVER finished until you sit down from giving it. That means that you should argue your side without notes and go with it since you need to apply what happened in the trial to your stance.

ii. Optional (write it how you want to argue it!) outline how to write your closing if you are prosecution:

- a) Theme
- b) Counter-Theme
- c) Prosecution witness 1
- d) Prosecution witness 2
- e) Defense witness 1
- f) Defense witness 2
- g) Elements
- f) Burden of Proof
- h) Theme and Conclusion

iii. Optional outline how to write your closing if you are defense:

- a) Theme
- b) Counter-Theme
- c) Defense witness 1
- d) Defense witness 2

- e) Prosecution witness 1
 - f) Prosecution witness 2
 - g) Elements that are faulty
 - h) Burden of Proof
 - i) Theme and Conclusion
- iv. Parts of Closing revisited
- a) Theme: You use the SAME theme you used in the opening, but now you use it as an argument more than anything to convince the judge/jury of your side
 - b) Counter-Theme: Use the theme of the opposing side against them and/or to your benefit. Be creative with it and twist it!
 - c) Witnesses: You need to highlight argumentatively the parts of your witnesses that prove your case and are positives
 - d) Opposing Witnesses: You need to highlight argumentatively all the holes you attacked on cross-examination of the other side's witnesses. Also address any impeachment or inconsistent statements, lies, or any other bad thing that the other side did that you could use to your benefit.
 - e) Elements: If you are the prosecution you need to bring up the elements again, explain them again, and now apply testimony to each element to show that it was met. If you are the defense you want to pick elements that you could make an argument that the prosecution did not meet and back it up with testimony or evidence, or lack of evidence as it may be, to support your argument.
 - f) Burden of Proof: You want to explain it again and use the same analogy as was used in the opening to show consistency. You also want to argue why it was/was not met depending on which side you are.
 - g) Theme and Conclusion: You want to bring up your theme that you have been using this whole case again, and you want to use it in your conclusion for your request for either conviction or acquittal.
- v. Don't forget the rule of three! Mention your theme three times in your closing (at least).

E. EVIDENCE

1. This is an ALL-INCLUSIVE list of evidence and relating objections, if it isn't listed here you cannot use it!
 - i. Leading: This is only when you are directing a witness, when your question suggests an answer. FRE 611
 - ii. Speculation: When the question is asking the witness to guess or would have no foundation for the opinion. FRE 611
 - iii. Compound: When the question involves two questions put together. FRE 611
 - iv. Confusing: When the question makes no sense or hard to understand. FRE 611
 - v. Hearsay: An out of court statement that was made by someone else other than the person testifying being offered through testimony. FRE 801
 - a) Exceptions: Here is a list of the only FOUR exceptions you can use:
 1. Party-Opponent: When the statement being offered was made by a party to the case (so only the

defendant for your case) FRE 801(d)(2)

2. Excited Utterance: When the statement being offered was made during an exciting event or when the person who made the statement was still excited from the event. FRE 803(2)
 3. Present Sense Impression: When the statement being offered was made based on an event while the person who made the statement was perceiving the event or immediately after. FRE 803(1)
 4. Then existing mental, physical, emotional state: When the statement being offered was made that describes either the person who made the statement or another person's mental, physical or emotional state. FRE 803(3)
- vi. Lack of Personal Knowledge: When the witness is trying to make a statement without personal knowledge of the facts to be able to make the statement. FRE 602
 - vii. Relevance: When the question or an answer to the question has no relevance to the case, or is wasting the court's time. FRE 401.
 - viii. Argumentative: When the attorney is being too aggressive with the witness or the questions are argumentative. You can also object to an opening statement if there is argument, but this is rare, so do it with caution. FRE 611
 - ix. Foundation: You must lay foundation for opinions, exhibits, or ultimate questions to be able to inquire, or admit evidence. If an attorney does not lay proper foundation for an exhibit or for a question in testimony, you can object to lack of foundation. FRE 901
 - x. Impeachment: When you are crossing a witness and they made an inconsistent statement, you need to follow the following procedure in order to impeach a witness:
 - a) First make sure that the witness made an inconsistent statement from what was written in their statement
 - b) Once you know they have, then you have to ask these questions:
 1. You gave a statement for this case?
 2. You were being truthful and honest when you gave that statement?
 3. You were under oath for that statement?
 4. You had a chance to review that statement before you signed it?
 5. And you signed it on __(date)___.
 - c) Once they say yes to all those questions (if they say no to any of them, then move on from it and use it to your benefit in your closing statement) ask this question:
 1. Would you agree with me that in your statement you had said "(say what they said)"
 - a) If they don't agree, then you need to do the following:
 - i. I draw the court's attention to (cite the page/paragraph or line number)
 - ii. Ask to approach the witness
 - iii. Then hand the witness their statement and have them read the line that you referred to
 - iv. Then take back the statement

2. Then you move on, you properly impeached the witness.

d) If an attorney does not properly do the above, you can object to improper impeachment if it is your witness being impeached. FRE 607

xi. Memory Refresh: This is when a witness blanks on the stand, they don't remember what they were supposed to say or don't remember a part of their statement. If that is the case, MAKE SURE your witness says, "I don't remember." Once they do, do the following:

a) "Would reviewing the statement you gave under oath refresh your memory?"

b) Once the witness says, "yes", direct the court's attention to the page and paragraph or line number

c) Ask to approach the witness

d) Hand the statement to the witness and tell the witness to read the part you are directed the court to and to look up when they are done

e) Once they look up, ask the witness if their memory is refreshed. Once they say yes, re-ask the question that the witness forgot the answer to. FRE 612

SUGGESTIONS FOR STUDENT WITNESSES

Witnesses play a key role on the mock trial teams. While many students may consider the attorney's roles as more important, it should be remembered that in the competition, witnesses score as many points as the attorneys. Many a trial has been won or lost on the witness stand.

A. GENERAL SUGGESTIONS

1. Familiarize yourself thoroughly with the case materials. Know what you should testify to and what other witnesses know. Witnesses may not use notes while being questioned.
2. Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (i.e., play the role as if you are the person whose identity you are assuming.) You must establish your credibility as a witness by accurately portraying the character. Demonstrate the knowledge and understanding of the person (both their strengths and weaknesses.)
3. Go over your testimony repeatedly with your attorneys. Have them cross-examine you on the weaknesses in your testimony. Be prepared to handle hostile questions.
4. You are not allowed to make up testimony on direct examination. If asked a question during cross-examination to which the case materials supply no answer, you may make up an answer, which will be consistent with your previous testimony.
5. Listen carefully to the question. Before you answer, make sure you understand what was asked. If you do not understand, ask that a question be repeated. If you realize that you answered a question incorrectly, ask the judge if you may correct your answer.
6. When answering questions, speak clearly so you will be heard. The judge must hear and record your answer, therefore, do not respond by shaking your head, "yes" or "no."
7. Do not give your personal opinion or conclusions when answering questions unless specifically asked. Give only the facts, as you know them, without guessing or speculating. If you do not know, say so.
8. Be polite while answering questions. Do not lose your temper with the attorney questioning you. Remember that you are there to tell what you know, and not necessarily to be an advocate for your side.
9. Always be courteous to witnesses, other attorneys, and the judge.
10. Always stand when the judge enters or leaves the room. Always say "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
11. Dress appropriately (to show respect for the court.)
12. If the judge rules against you in the case, take the defeat gracefully and act cordially toward the judge and the other side.

A. DIRECT EXAMINATION

1. Advice in Preparing
 1. Learn the case inside out, especially your witness statement (or affidavit.)
 2. Know the questions that your side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
 3. Practice with the attorney.
2. Advice in Presenting
 1. Be as relaxed and in control as possible, an appearance of confidence and trustworthiness is important.
 2. Don't read or recite your witness statement verbatim. You should know its contents beforehand.
 3. Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or affidavit.)
 4. Don't panic if the attorney or judge asks you a question you haven't rehearsed.

B. CROSS-EXAMINATION

1. Advice in Preparing:
 1. Learn the case thoroughly, especially your witness statement.
 2. Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, and problems in your testimony, and be prepared to explain them.
 3. Practice.
2. Advice in Presenting:
 1. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
 2. Be sure that your testimony is never inconsistent with the facts set forth in the witness statement.
 3. Don't read or recite your witness statement word for word.
 4. Cross-examination can be tough, so don't get flustered.

HOW TO MAKE THE MOST OF YOUR ORAL PRESENTATION

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

Getting the courtroom ready

- Arrive at the courtroom at least 15 minutes early so that you can acquaint yourself with the layout, make any necessary adjustments for a mock trial situation and be ready to start the trial exactly on time.
- Timekeepers should be in the jury box with a good view of the judge.
- The attorneys' tables need to each seat three attorneys comfortably. Be sure that there is adequate room to rise from your chair and adequate passageway to approach the bench or the witness.
- Attorneys should neatly organize their materials on the tables. Get rid of all unnecessary papers, briefcases and pencils.
- Witnesses should seat themselves in separate areas of the spectators' section. That action will eliminate unnecessary conversation during the trial.
- Be sure that you have removed your hat.
- Remove any gum from your mouth.

Seating Posture

Participants should remember that from the elevated bench the judge has a good view of the entire courtroom. Your seating posture has a definite impact on the judge's impression of you. Attorneys especially need to be conscious of how they are seated. Sit straight but not so stiff as to be uncomfortable. Put your feet flat on the floor or cross your legs in a professional manner. Avoid nervous mannerisms, such as shaking your leg or tapping your pencil.

Speaking

All participants should speak loudly and enunciate each word, as microphones are not usually available.

Mock Trial Notes