

2009 Mock Trial Summer Camp Materials

General Camp Trial Instructions:

1. Students are instructed to bring their own video camera on day four to be record their trials for critiquing purposes.
2. Students will be assigned to teams prior to the start of the camp. Students will remain with their teams during the entire camp. A team mentor will be assigned to each team. Team mentors will contact the students on their respective teams prior to the start of camp.
3. All students must follow the general camp rules provided in the registration materials.
4. Each student must play the role of an attorney on one side of the case and a witness role on the other side of the case. During the competition on day five, each team will present both sides of the case, one side in each of two rounds.
5. All students are responsible for being thoroughly familiar with all case materials and all competition rules.
6. General Mock Trial Tips:
 - A. The Ten Rules of Mock Trial:
 1. be prepared
 2. be flexible
 3. keep the judges' attention
 4. use plain language
 5. be brief
 6. be respectful
 7. maintain your credibility
 8. hold your adversary accountable
 9. use the courtroom – all of the courtroom
 10. Theme – Theme – Theme
 - C. Creativity, imagination, simplicity, common sense
 - D. Ethics, professionalism, candor and fairness
 - E. Mock Trial is as much about acting as it is about legal reasoning. Being in character is important for witnesses including attitude, tone of voice, language, etc.
 - F. The attorney's job is to make sure all the important evidence is presented.

Trial Notebook: Preparing a trial notebook assists with organization and preparation for your trial. Contents should include:

1. case materials: copies of all reports, statements, diagrams and other exhibits
2. rules tabbed and marked for easy reference
3. opening statement
4. list of witnesses
5. direct examination: questions should be written out in full or in a closely structured outline form. The outline should contain legal references, correct answers and exhibits and possible objections with the rule supporting or opposing the objections. Have blank pages for notes.
6. Cross-examination: this should contain a full outline of the expected questions, and a short statement of what you intend to accomplish. The outline

should contain references to statements and exhibits and possible objections with the rule supporting or opposing the objections. Have blank pages for notes.

7. Exhibit chart
8. Outline of closing argument
9. list of common objections and the rule supporting and opposing the objection

2009 Mock Trial Summer Camp Materials
Additional Resources

- Elements of Trial Practice, by Peter Polanski, Lawyers and Judges Publishing Co., 2000.
- Modern Trial Advocacy, Law School Edition by Steven Lubet, National Institute for Trial Advocacy, 2000.
- Common Sense Rules of Trial Advocacy, by Keith Evans, West Publishing, 1994.
- Trial & Practice Skills, by Kenny Hegland, West Publishing, 1984.

2009 Mock Trial Summer Camp Materials Day One
Case Analysis and Theme

A. The Trial As Your Client's Story

1. Your story is told about people who have reasons for the way they act.
2. Your story accounts for or explains all of the known or undeniable facts.
3. Your story is told by credible witnesses.
4. Your story is supported by details.
5. Your story accords with common sense and contains no implausible elements.
6. Your story is organized in a way that makes each succeeding fact increasingly more likely.
7. Your story consists of admissible evidence.
8. Your story contains all the elements of a legal claim or defense.

B. Case Theory and Theme

1. Theory – the adaptation of your story to the legal issues in the case. What happened? Why did it happen? Why does this mean my client should win?
 - a. logical
 - b. speaks to the legal elements of your case
 - c. simple
 - d. easy to believe
2. Theme – the reason your verdict should be entered.
 - a. Appeals to moral force
 - b. Gives persuasive force to your legal arguments
 - c. Demonstrates shared values, civic virtues or common motivations; A good theme is a broad story with “moral force” that appeals to the communities shared values, civic virtues and common motivations. In other words, something that everyone can relate to.
 - d. The theme is the overall message or story you are telling.
 - e. Refine the case based upon your theme – focus.
 - f. In order to come up with a case theme you need to know the elements of the applicable laws and know the admissible evidence in the case.
 - g. Your theme MUST flow throughout the trial.

C. Pervasive Nature of Your Story: Tell your story beginning in opening statement. Carry it through the direct and cross-examination of witnesses. Hammer your story home in closing argument.

D. Tell an Ethical Story

1. Lawyers are bound to the truth and the facts.
2. Zealous representation permits the artful use of sequencing and emphasis.

E. Revisit Your Story Often: Constantly revise your story as you learn new facts, examine the other side's story, and reexamine information you already have in your possession.

2009 Mock Trial Summer Camp Materials Day Two
Opening Statements

The purpose of an opening statement is to inform the judge of the nature and facts of the case by generally outlining the facts from your side's standpoint. Argument, discussion of law or objections by other counsel are not permitted. The defense in its opening statement has an additional requirement of denying that the prosecution or plaintiff has a valid case.

Opening statements are the only part of the case that should be written entirely ahead of the trial. An opening statement should include:

1. name of the case
2. your name and co-counsel's names
3. client's name
4. general theory/theme
5. description or story of the facts and circumstances that led to the case
6. summary of the key facts each witness will bring out in testimony
7. summary of any important documents to be introduced both in your favor and that tend to weaken the other side's case and witnesses
8. conclusions

Things to Avoid:

1. too much detail may tire and confuse the trier of fact
2. exaggeration and overstatement. Don't use such phrases as "prove it to a mathematical certainty" or "prove it absolutely beyond question."
3. Argument. It violates the function of the opening statement, which is to provide the facts of the case from your client's viewpoint.
4. Anticipating what the defense attorney will say because you may be wrong.
5. Walking, pacing, fidgeting, playing with your script or notes or other distracting behaviors
6. speaking too quickly or saying "um"

An opening statement should accomplish the following:

- a. Organization/Structure: Outline everything you intend to prove
- b. Under promise and over deliver
- c. Get and hold the judges' attention at the beginning of your statement
- d. Theme: persuasive story telling that "tells them what you are going to say." Talk to them. Do not read to them.
- e. Tells facts not conclusions or opinion (opening statement buzz words: "The evidence will show. . ." "We'll be discussing . . ." "We'll be learning about . . .")
- f. Go through elements of the case.
- g. Addresses the strengths and weaknesses of your case
- h. Delivery
 - i. Clear, simple language
 - ii. Impact words and word images

- iii. Avoid argument
- iv. Do not overstate case
 - v. Avoid using notes
- vi. Eye contact
- vii. Voice
- viii. Avoid legalese
- i. Keep track of what you and your adversary are saying. Hold them accountable at closing (i.e. Over promise and under deliver)
- j. Always ask: What is my theme? Is it clear to the average person?
- k. Conclusion – end on an up tick
- l. Preparation - rehearse

2009 Mock Trial Summer Camp Materials Day Two
Direct Examinations

The purposes of direct examinations are:

- to present the evidence necessary to warrant a verdict favorable to your client (all the elements of a law or criminal charge must be brought into evidence by witness testimony or documents);
- to present the facts with clarity and understanding; to convince the judge of the soundness of your client's case;
- and to present your witnesses to the greatest advantage and to establish their credibility.

Steps in direct examination:

1. Introduce the witness.
2. Accredit the witness through background: establish credibility (address weak points – do not let your adversary be the first to do this on cross)
3. Set the scene: get the facts: Who, What, When, Where, How, And sometimes set up with, “Do you recall . . .”
4. Allow the witness to describe the action.
5. Use non-leading questions. Ask “open-ended” questions such as who, what, when, where or how by asking the witness to “explain” or “describe.”
6. FACTS: Open ended questions that do not suggest an answer and deal with facts (possible exceptions: expert witness (opinion), hostile witness (can be lead) And always support your THEME.
7. Put the spotlight on the witness.
8. Listen to the answer and ask follow-up questions when needed. Even though you have prepared your witness for direct, he/she may not remember the exact answer you are expecting so you need to listen to his/her answers and adjust your questions accordingly rather than just going through your script of prepared questions because if your witness misses something in an answer your next question may not make sense anymore.
9. Prepare a direct that includes all undisputed facts in ten questions or less.
10. Remember DO NOT LEAD.
11. Avoid long-winded or complex questions – questions should be clear and simple.
12. Be a “friendly guide” for the witnesses as they tell their stories. Let the witnesses be the stars.
13. Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.
14. End on an up tick. Never end on an objected question; have a safe final question ready to throw in to save the end of your examination.
15. Tie all examinations to your case theme and theory to tell your story.

Refreshing Recollection (forgetful witness)

- A. When a witness is unable to recall information you are entitled to refresh their recollection during both direct and cross-examination.
- B. You may use anything that refreshes the witness' recollection: exhibits, statements, etc.

C. Steps:

- i. Establish that the witness does not remember a certain issue or event;
- ii. Determine that the witness' memory would be refreshed by the use of a certain document or object;
- iii. Show the witness the document or object and give the witness time to examine it;
- iv. Inquire if the witness' memory has been refreshed;
- v. If the answer is yes, remove the document/object and ask the witness to continue the testimony.

Expert Witnesses

A. Direct examination

1. Provide an adequate foundation for the witness to be able to answer opinion questions as an expert through his/her qualifications and accreditations such as schooling, work experience, etc.
2. Only those with proper qualifications may offer their "expert" opinion
3. expert opinions (options):
 - a. have expert express opinion without giving basis for opinion
 - b. have expert give opinion and express basis for opinion
 - c. have expert give basis for and then express opinion
 - d. give expert a hypothetical question as basis for opinion
4. all expert opinion expressed to level of reasonable probability

2009 Mock Trial Summer Camp Materials Day Two
Direct Examinations Outline

The following worksheet is useful in preparing questions for your witnesses. Attorneys should collaborate with the witnesses to develop the direct examination questions.

Direct Examination

Witness Role: _____ Lawyer Role: _____

The Witness You Will Question: _____

To prepare direct examination questions of your witness:

1. Determine your theory of the case. Your theory consists of a simple, logical story explaining your version of “what really happened.” It must be consistent with the evidence that you have and with the judge’s common sense notions about how things occur. What is your theory of the case?
2. Carefully read the statement made by the witness you will be questioning.
3. What is the main point you want the jury to understand after hearing this witness testify?
4. How does that point support your theory of the case?
5. Read any other witness statements that discuss interactions with or observations of your witness to check for any inconsistencies in stories.
6. List all inconsistencies and potential weaknesses in your witness’ story/testimony.
7. Write a list of questions designed to address the weaknesses and inconsistencies in your witness’ testimony in a light most favorable to your case. Think of ways your witness can explain these weaknesses to the jurors in a truthful way that will generate empathy for the witness. Next to each question write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
8. Write a list of questions you will use to introduce your witness to the judge and provide background on the witness. Ask for only one small piece of information in each question. (NOT “What is your name, age, date of birth, address and dog’s name?”) Next to each question write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
9. Write a list of questions designed to establish your witness’ relation to the case. (for example, “Do you remember the night of December 7? Where were you that night? Do you recognize anyone in the courtroom? How do you know her?”) Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
10. Write a list of questions that will elicit from your witness a description of the “scene.” The questions should evoke only one small piece of information at a time. Write questions that provide a vivid description of what the witness observed about the place, the people and the atmosphere of the day/night that is the focus of the testimony. The judge should be able to visualize the scene. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
11. Write a list of questions about the actions your witness observed. Focus on open-ended questions, beginning with the words, *who, what, when, where, why and how.*

Start at the beginning. Avoid jumping around in time and instead design questions that get the witness to tell the story chronologically, one step at a time. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.

12. What is the information you want the judge to hear last, in order to make a lasting impression? Write a question designed to drive home the main thing you want the judge to learn from this witness.

2009 Mock Trial Summer Camp Materials Day Two
Use of Exhibits

Rule for introduction of evidence: All exhibits are stipulated to be admissible but are not yet admitted as evidence. All exhibits are previously marked for identification purposes only and will be in the possession of the judge(s). The only three steps required in mock trial are:

1. show the exhibit to the other side's counsel;
2. have the witness identify the exhibit;
3. offer the exhibit as evidence to the judge.

2009 Mock Trial Summer Camp Materials Day Three
Cross Examination

The purposes of cross-examinations are to secure admissions from opposing witnesses that will tend to prove your case and to negate your opponent's case by discrediting his/her witnesses. Witnesses may be cross-examined regarding their direct testimony. Cross-examination is used to explain, modify or discredit what a witness has previously stated.

1. Riskiest part of the trial
2. Dangerous witnesses that want to give you a hard time. They lie, they argue, they cry.
3. Fundamental Rules of Cross Examination:
 - A. Focus is on the examiner – not the witness
 - B. Controlling, confining, leading questions; Be respectfully fearless and in control at all times. Preparation. Use narrow, leading questions that suggest an answer to the witness. Ask questions that require a “yes” or “no” answer. Lead away. Every question you ask on cross should be a leading question. Always. Ideally, the answers will be yes or no.
CONTROL, CONTROL AND CONTROL
 - C. Ask clear simple questions calling for short simple answers. The wordier a question is the easier it is to lose control and allow a witness to give a non-responsive answer.
 - D. Keep cross-examination short. Do not attempt to develop complicated arguments through cross-examination.
 - E. Write your questions down verbatim before examining the witness. This will check your urge to ask questions that are not well thought out or to which you do not know the answer. Writing out each question will quell that urge to ask one too many questions. There is no guesswork to cross: it is completed before you arrive to the courthouse.
 - F. Avoid one question too many; If Fact A+ Fact B=Conclusion C. Get Fact A and Fact B from the witness and leave the conclusion for the closing.
 - G. Only ask questions to which you know the answer or do not care about the answer; NEVER NEVER NEVER ask a question that you do not absolutely 100000% know the answer to. Fishing trips may be expensive.
 - H. Do not argue with the witness. Be fair and courteous. It may be useful not to insist on a answer.
 - I. Do not restate direct examination
 - J. Listen to the witness' answers
 - K. Do not let the witness explain; Avoid: “Do you recall . . .” “Is it possible . . .” “Did you know . . .” Never ask “why?” It gives a well-prepared witness a chance to explain.
 - L. Short pointed questions that get ONE fact.
 - M. Know everything that witness has said in all prior statements (real life is a bit different, but in the closed universe of mock trial you have good control over this.)
 - N. Expose lack of sincerity or the existence of bias.

- O. If the cross examination does not support your theme, let it go (exception credibility; bias; interest; motive. These are always fair game.)
- P. Characterizations are dangerous. Characterizations of prior inconsistent statements or facts allow the witness to wiggle out of the question.
- Q. Characterizations of facts also subject the question to objection on the ground of argument.
- R. End on an up tick; Never end on an objected question or an answer from a witness that hurts your case; have a safe, final question ready to throw in to save the end of your examination.
- S. Tie all examinations to your case theme and theory to tell your story

2009 Mock Trial Summer Camp Materials Day Three
Cross Examination

10 Commandments of Cross-Examination

2. Be simple, short, succinct: Verbal, not visual communication; 3 points only on cross-exam; can't forget it, pick up and use in summation and repeat elsewhere.
3. Short questions, plain, simple words: don't speak like a lawyer.
4. Leading questions: stay in control, never ask an open-ended question.
5. Know the answer: never ask a question to which you do not know the answer.
6. Listen: you never know what they may say – use it; pick up on it.
7. Don't argue with the witness: detracts from impact
8. Don't let judge hear it twice: don't repeat on cross what is said on direct
9. Never permit a witness to explain: do not ask "why?"
10. Avoid one question too many – STOP!!
11. Save the ultimate point for closing argument.

Approach to a cross of a witness worth believing: Know in advance your arguments, credibility of other side's witnesses; cross-exam only to the extent necessary to attack credibility then STOP!

Impeachment and Rehabilitation:

A. Means of Impeachment

1. prior inconsistent statements;
2. motive, interest, bias or prejudice;
3. lack of perception or inadequate observation;
4. poor recollection, lack of memory;
5. inconsistent conduct;
6. conviction of a crime

B. Steps to Impeach for a Prior Inconsistent Statement – the 3 C's

1. CONFIRM – repeat direct examination, "You testified on direct that . . ."
2. CLOSE OFF – set up the prior statement and its reliability, "do you recall giving a statement in this case?"
3. CONFRONT – impeach with the prior inconsistent statement, read the prior statement and ask if they would like to change their answer.

C. Rehabilitation

1. discuss the statement made during direct examination (diffuse)
2. reestablish what happened
3. why inconsistency was not corrected or included

2009 Mock Trial Summer Camp Materials Day Three
Cross Examinations Outline

The following worksheet is useful in preparing questions for your witnesses.

Cross-Examination

Witness Role: _____ Lawyer Role: _____

The Witness You Will Question: _____

To prepare cross-examination questions of the other side's witness:

1. Determine your theory of the case. Your theory consists of a simple, logical story explaining your version of "what really happened." It must be consistent with the evidence that you have and with the judge's common sense notions about how things occur. What is your theory of the case?
2. Carefully read the statement made by the witness you will be questioning.
3. What is the main point you want the jury to understand after hearing this witness testify?
4. How does that point support your theory of the case?
5. Read any other witness statements that discuss interactions with or observations of your witness to check for any inconsistencies in stories.
6. Describe what you know about the witness you will be cross-examining.
7. How do you think the judge will want you to treat this witness?
8. List all inconsistencies and potential weaknesses in this witness' story/testimony.
9. List the two best ways you think you can attack this witness (perception, credibility, memory, bias, prejudice, interest, inconsistencies). Be specific about what aspect of perception, etc.
10. Why do you think those are your best methods of attack? What in the witness statement makes you think these are the areas you should focus on in cross-examination?
11. Write a list of LEADING questions (suggesting the answer and seeking only "yes" or "no" answers) focused on the first way you intend to attack the witness. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
12. Write a list of LEADING questions (suggesting the answer and seeking only "yes" or "no" answers) focused on the first way you intend to attack the witness. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
13. What is the information you want the judge to hear last, in order to make a lasting impression? Write a leading question designed to drive home the main thing you want the jury to learn from this witness.

2009 Mock Trial Summer Camp Materials Day Three
Objections

One of the hardest tasks is to master the “art” of objecting. What you are doing is translating your knowledge of the rules of evidence into action in the heat of the emotional courtroom scene. The first two rules:

1. Be alert at the edge of your seat during trial
2. Anticipate evidentiary problems as you prepare for trial

There is a finite list of generally used and accepted phrases in which your objections should be couched, which should in turn be grounded to a specific rule of evidence. They are directed either at what the witness is required to tell the judge or to the form of the question.

3. Basic common objections:
 - a. Relevance (credibility: bias, interest and motive are always relevant.)
 - b. Scope
 - c. Leading
 - d. Compound Questions (confusing)
 - e. Argumentative (bullying)
 - f. Asked and answered (harping)
4. Objections to the substance of the evidence:
 - a. Irrelevant
 - b. Hearsay
 - c. Inadmissible opinion
 - d. Inadmissible conclusion
 - e. Speculation
 - f. Improper impeachment
 - g. Beyond the scope of the prior examination
 - h. Invention of facts
5. Objections to the form of a question:
 - a. Leading on direct examination (in a crucial area)
 - b. Argumentative
 - c. Asked and answered
 - d. Assumes facts not in evidence
6. In descending order of importance, soundness and ethics, the reasons most offered for objections are:
 - a. To exclude prejudicial evidence that you believe is excludable
 - b. To prevent unfair treatment of the witness
 - c. To call attention of the court to unfair tactics of your opponent
 - d. To break up a narrative
 - e. To fluster your opponent
 - f. To help a witness give answers
 - g. To make helpful statements to the judge

2009 Mock Trial Summer Camp Materials Day Four
Closing Argument

The purpose of a closing argument is to summarize the highlights of the testimony and documents as they support your case and undermine your opponent's case. Use actual examples from the trial that you have written down. Tie the facts to the law. Be persuasive. Confidently request that the judge grant you the decision that you want.

1. Closing argument gets its name for a reason: this is the place to argue, draw inferences, and make conclusions. Here is where to talk about A+ B=C. And remember . . . THEME – THEME – THEME
2. Organization - Structure
3. Everything in your trial goes here and is supporting your theme. Take this opportunity to connect the dots and tie up loose ends. Your theme, or story line, should be crystal clear at the end of your close.
4. Go through elements of the case.
5. Warning: This is not a “free for all” – you cannot say whatever you want. You must stick to the evidence that was presented at trial. You can draw inferences, but you cannot talk about things that did not come in but you wish they did.
6. A good closing is not boring and shows the judges that you kept your opening promises. (Ex.: “Remember during my opening statement I told you that the evidence would prove X. Well, let’s look at the evidence. . . “)
7. A good closing also holds your adversary accountable and points out their broken promises and/or flaws and weaknesses in a respectful yet confident way.
8. Language and presence are key. Invite the judges to use their common sense. You need to hold the judges’ attention throughout the closing argument.
9. Delivery:
 - a. Clear, simple language
 - b. Impact words and word images
 - c. Argument
 - d. Do not overstate your case
 - e. Avoid using notes
 - f. Eye contact
 - g. Voice
10. Conclusion – end on an up tick
11. Preparation - rehearse