YMCA Youth Judicial Program

Rules of the Competition

www.alyig.org/judicial

Each team will require the assistance of practicing lawyers who will be primarily responsible for the education process that will enable the students to conduct a successful mock trial and prepare the necessary pleadings and briefs. Although the actual trial preparation should be done by the students themselves with as little first-hand work by the attorney-advisors as possible, a substantial amount of the advice and guidance from attorney-advisors will be required.

RESPONSIBILITIES OF ADVISING ATTORNEYS

The following are the basic responsibilities of attorneys who serve as advising attorneys to youth teams:

1) Personally meet your teams prior to local mock trials.
2) Advise youth teams how to prepare their case for trial.
3) Help youth teams understand rudimentary aspects of trial procedure, rules of evidence, and courtroom decorum.
4) Attend local mock trial competition, as a spectator only.
5) Critique youth teams' performance following trial and offer suggestions for improvement.

Adult Supervision. One responsible adult must accompany each pair of teams selected to argue during State Judiciary Competition. Although arrangements will be made in Montgomery for conducting the Program, the students' learning experience can be heightened if they are also accompanied to Montgomery by the member of the local bar association with whom they have been working throughout the school year.

Student attorneys and witnesses will be required to invest substantial time in the Program. Accordingly, careful consideration should be given to selecting students with the time, ability and interest to benefit from the Program.

Teams should be registered as soon as they are formed. Delegations must bring a balanced set of teams in regards to Plaintiff and Defense (for example 2 Plaintif and 2 Defense teams. If a team has an odd number, including 1, they shall contact the state office to determine if their team will be Plaintiff or Defense.

STEPS IN YOUTH JUDICIAL PROGRAM

STEP 1 -- Registration and Organization

Students interested in participating in the Youth Judicial Program should register through their YMCA staff advisor or high school government club sponsor. Conference Registration can be found at www.alyig.org. Each team will consist of three (3) lawyers and three (3) witnesses. Teams may also have 1 or 2 alternates. Some students may wish to run for the position of judge. In order to qualify as a judicial candidate, potential student judges must have participated one (1) year previously in the Youth Judicial Program as a lawyer, a witness, a bailiff, or a judge. Registration material should be available to all adult advisors with the Hi-Y Program, Student YMCA, or participating high school government clubs.

STEP 2 -- Pre-Judicial Training

All participants in the Youth Judicial Program should attend district Pre-Judicial meetings. At these sessions, practicing attorneys will provide a helpful and educational program for the various roles involved in the trial process. Student judges and nominees for Chief Justice are elected at the pre-judicial sessions.

STEP 3 -- Case Preparation

Following the Pre-Judicial meetings, student attorneys and their witness are to prepare for the trial of the case. The witnesses should become very familiar with the contents of their written statement in the trial program material. Attorneys should prepare opening statements, direct examination for their teams' witnesses, cross examination for the opposing team's witnesses, and a closing argument. (Please see the trial manual.)

STEP 4 -- Officer Training

All elected judges and their bailiffs will attend an officer training session to be held at Camp Chandler in Wetumpka, Alabama.
At this time, the elected judges will be trained on the proper method for scoring the attorneys and witnesses. Each judge will appoint their own bailiff after elected. All bailiffs must attend this session with their respective judges.

STEP 5 – Local Mock Trial

Each school or city participating in the Youth Judicial Program should make arrangements for at least one (1) mock trial, or ‘scrimmage’ prior to State Competition. Local attorneys may be utilized in advance to make arrangements for the use of local courthouses. It is also suggested that local attorneys arrange to have "real" Judges preside at these local mock trials. It is recommended that the local mock trials be held at least two (2) weeks before the final competition.

STEP 6 -- State Competition

All teams will meet in Montgomery for the three day competition program. Each team will participate in at least four (4) trials. A tournament style bracket of competing trial teams will lead to the ultimate round of competition. The preliminary rounds of competition will be held in the Montgomery County Court House.
In addition to the trial competition, Student participants will enjoy social events such as a dance and final awards banquet.

RULES OF THE YMCA YOUTH JUDICIAL PROGRAM

All information contained in this document shall be considered a rule of the competition even if it is listed as advice, suggestions, etc.

I. TEAM PRESENTATIONS

1. All teams shall consist of six members--three attorneys and three witnesses.

2. Teams may make gender changes in the witnesses. However, no gender change will be allowed of a witness that would materially alter the demeanor of the case.

3. Each team may have two additional members to act as alternates. These alternates may be used in any fashion the coaches choose.

4. The Statement of Facts and any additional given stipulations may not be disputed at trial.

5. Certain witnesses are stipulated as experts and their expert qualifications for the purpose for which they are testifying may not be challenged or impeached by the opposing side. Their testimony concerning the facts of the case, however, may be challenged. There will be no voir dire of the expert witnesses allowed.

6. Each witness is bound by the facts in the given witness statement. All participants agree that the witness statements are signed and sworn affidavits.

   Witnesses will adhere to their written affidavits. No additional material may be included. No material changes have incurred since the giving of the sworn affidavits.

7. Invention of Facts: On direct examination, the witness is limited to the facts given. If a witness testified in contradiction of a fact in the witness statement, the opposition must show this on cross-examination through correct use of the affidavit for impeachment.

   Invention of Facts: If the attorney who is cross-examining the witness asks a question, the answer of which is not contained in the stipulated affidavit or in the direct examination, then the witness may respond to that question with any answer as long as it is not contrary to the affidavit.

   If the answer by the witness is contrary to the stipulated affidavit, the cross-examination attorney may impeach the witness.

   Attorneys should always feel free to request bench conference to clear up any procedural or factual questions.

8. Witnesses are not permitted to use notes in testifying during the trial.

9. Student attorneys must participate with a presentation in the trial as follows:

   A. Each attorney must examine one witness on direct examination and one witness on cross-examination

   B. The attorney giving the opening statement will not be allowed to give the closing statement.

   C. Attorneys are limited to calling only their witnesses.

   D. All witnesses must be called.

   E. Objections will be permitted by the direct or cross-examining attorney only.

10. Attorneys may use notes in presenting their cases.

11. To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examination and all objections. A judge may interrupt an attorney's opening or closing statement to ask questions. The judge may not, however, question the witnesses.

12. All participants are expected to display proper courtroom decorum and good sportsmanlike conduct. Appropriate dress is required.

13. No objections may be made during the closing arguments.

14. A team may choose to reserve time for a rebuttal on closing arguments.

15. There will be no props or visual aides whatsoever.

16. At the conclusion of each trial, the courtrooms may be cleared.

II. TIME LIMITS

1. The time guidelines should be used by all teams in preparing their cases. Judges will be notified of these guidelines, and will strictly hold the students to them.

2. Time for bench conferences and extensive questioning from the judge will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

3. Each judge will provide a bailiff to act as timekeeper during the trial. These persons will be responsible to notify the judges when time has expired. He/she will do so by saying once, "Time has expired."

   The students talking must stop whether in the middle of a question, answer or statement. The judge may then elect to allow the student to complete a question and answer, an answer, or sentence.

4. Bailiffs will use time cards displaying unused time segments. These may be in increments of "4 min", "3 min", "2 min", "1 min', "STOP."

III. TIME GUIDELINES FOR TRIALS

The trial sequences and time guidelines are as follows:

1. Opening statement – prosecution/plaintiff	…3 minutes
2. Opening statement - defense	…3 minutes
3. Direct examination of prosecution's witness #1	…5 minutes
4. Cross-examination of prosecution's witness #1	…3 minutes
5. Direct examination of prosecution's witness #2	…5 minutes
6. Cross-examination of prosecution's witness #2	…3 minutes
7. Direct examination of prosecution's witness #3	…5 minutes
8. Cross-examination of prosecution's witness #3	…3 minutes
9. Direct examination of defense's witness #1	…5 minutes
10. Cross-examination of defense's witness #1	…3 minutes
11. Direct examination of defense's witness #2	…5 minutes
12. Cross-examination of defense's witness #2	…3 minutes
13. Direct examination of defense's witness #3	…5 minutes
14. Cross-examination of defense's witness #3	…3 minutes
15. Prosecution/Plaintiff closing argument	…5 minutes
16. Defense's closing argument	…5 minutes
17. Jury Deliberation	…10 minutes

NOTE: Redirect and recross examination will be allowed for each witness. This is optional and is subtracted from direct and cross-examination time for each witness.

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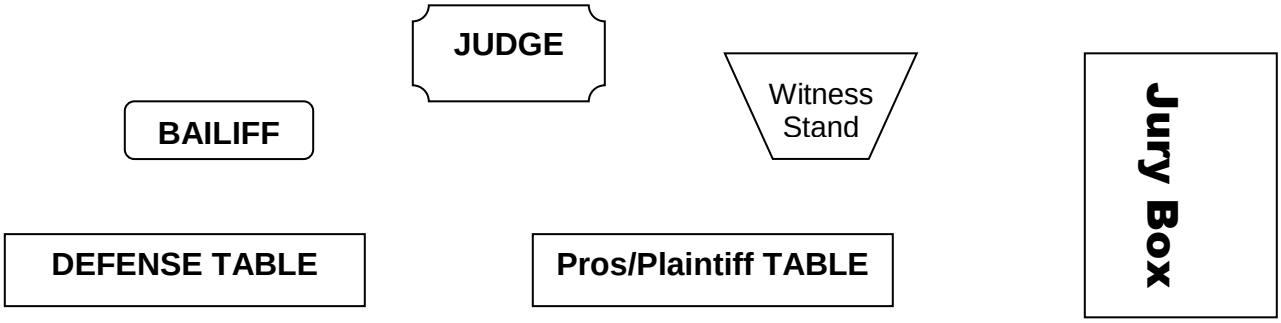
TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the exercise and the order in which they occur. This section outlines the usual steps in a "bench" trial - that is a trial without a jury.

Courtroom Layout



Participants:

The Judge
The Bailiff
The Attorneys: Prosecutor - Defendant (Criminal Case)
Plaintiff* - Defendant (Civil Case)
The Witnesses: Prosecution - Defendant (Criminal Case)
Plaintiff* - Defendant (Civil Case)
*also called the petitioner - respondent
The Jury (Composed of 1 or 2 teams)

The Opening of the Court

- Either the Bailiff of the Court or the Judge will call to order.
- When the Judge enters, all participants should remain standing until the judge is seated.
- The case will be announced, i.e., "The Court will now hear the case of _____ versus _____."
- The judge will then ask each side if they are ready.

Opening Statements Prosecution/Plaintiff followed by Defense

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

After introducing himself/herself and colleagues to the judge, each side summarizes the evidence which will be presented to prove the case.

Advise in Preparing:

What should be included?

a. a short summary of facts
b. mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in the case
c. the applicable law
d. a clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case
e. know your case inside and out
f. it is essential that you appear confident in your case
g. eye contact with the jury is recommended
h. use the future tense in describing what you will do (e.g., "the facts will show", "our witnesses' testimony will prove" etc.)

Other Suggestions:

a. frequently attorneys introduce their colleagues by saying, "Your Honor, my name is _____. My colleagues are _____."
b. don't ever promise to prove something you won't or aren't able to
c. write a clear, concise and well organized statement

Direct Examination Prosecution/Plaintiff witnesses followed by Defense witnesses

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

Rules:

Every person listed as a witness in the mock trial is deemed competent to be a witness. However, a witness may not testify to a matter unless the materials supply evidence sufficient to support a finding that the witness has personal knowledge of the subject matter of the testimony. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. There is an exception to this concerning opinion testimony by expert witnesses which will be addressed below.

Procedure:

The prosecutor or plaintiff's attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution's or plaintiff's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

The attorneys for both sides, on both direct and cross-examinations, should remember that their own function is to ask questions: attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

a. Form of questions: Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

   Example of a direct question:
   "Mrs. Dillon, what was your impression of Mr. Taylor's appearance on the job?"
   Example of a leading question:
   "Mrs. Dillon, did Mr. Taylor ever come to work in sloppy clothes?"

b. Narration: While the purpose of direct examination is to get the witness to tell a story, the question must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

   Example of a narrative question:
   "Mrs. Gray, what happened when Mr. Taylor came to work at Lance?"

   Narrative answers: At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question asked. Such answers are subject to objection on the grounds of narration.

c. Scope of witness examination: Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

d. Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny.

   Similarly, a person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

e. Refreshing Recollection: If a witness is unable to recall a statement made in the affidavit, or if the witness contradicts the affidavit, the attorney on direct may seek to introduce into evidence that portion of the affidavit that will help the witness to remember. (See Part B.5 on introduction of evidence).

Advise in Preparing (for Attorneys):

a. isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain the information
b. be sure all items you need to prove your case will be presented through your witnesses
c. try to keep the questions you've practiced with your witnesses and ask a limited number

d. 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
e. be relaxed and clear in the presentation of your questions
f. listen to the answers
g. if you need a moment to think, ask the judge if you can discuss a point with your co-counsel for a moment
h. exceptions to this rule, i.e., questioning on matters such as name, address, occupation)
i. practice with your witness
j. don't ask questions requiring opinion testimony, unless witness has been certified expert by the court
k. avoid asking leading questions (there are of course a few generally accepted
l. be sure to have all documents marked for identification before you refer to them at trial. Then refer to them as exhibit A, etc. After you have finished using it, if it all helps your case, ask the judge to admit it as evidence. Each courtroom will have an authentic set of evidence and witness statements. These are the only ones that are allowed to be shown to the witness, judge, jury, etc. during trial.

Advice in Preparing (for Witnesses):

a. learning the case inside and out, especially your witness statement (or deposition)
b. know the questions that your side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony
c. practice with the attorney that will direct you
d. be as relaxed and in control as possible, an appearance of confidence and trustworthiness is important
e. don't read or recite your witness statement verbatim
f. be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or deposition)
g. don't panic if the attorney or judge asks you a question you haven't rehearsed
h. look at the jury when answering questions

Cross-Examination

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

After the prosecutor's (or plaintiff's) attorney has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the jury through cross-examination.

Rules:

Cross-examination is the questioning by an attorney form the opposing side of the case. 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 available, that were not covered on direct examination. Leading questions are permissible on cross-examination.

Procedure:

a. Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided (these usually begin with "how", "why", or "explain").

   Example of a leading question: "Dr. Miller, isn't it true that you had reason to suspect that Nurse Dillon was treating Mr. Taylor unfairly?"

   Scope of witness examination: Attorneys may ask questions that are not part of the direct of that witness.

b. Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about their prior conduct that makes the witness's credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions. Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

   Example: (Prior Conduct): "Is it true that you beat your nephew when he was six years old and broke his arm?"

   Example: (Past Conviction): "Is it true that you've been convicted of assault?"

   (Note: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened, such as their witness statement or evidence that has been admitted.)

   The credibility of a witness may be attacked by any party, including under certain circumstances the party calling the witness. This is an attempt by an attorney to show the Court that the witness should not be believed. A witness's credibility may be impeached by showing evidence of the witness's character and conduct, prior convictions, and prior inconsistent statement.

   1. Evidence of Character and Conduct
   The credibility of a witness may be attacked or following an attack, supported, by evidence of opinion or reputation subject to two limitations. First, the evidence may refer only to the character for truthfulness or untruthfulness. Second, the evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

   2. Impeachment by Evidence of a Crime
   For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was: (1) punishable by death or imprisonment in excess of one year under the law which the witness was convicted, and the Court determines that the probative

value of admitting the evidence overweighs its prejudicial effect to the defendant or (2) involved dishonesty or false statements regardless of the punishment.

Advice on Preparing (for Attorneys):

a. 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)
b. Ask questions that show that the witness is prejudiced or biased (e.g., the witness testifies that he has hated the defendant since childhood)
c. 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)
d. Ask questions that show that an expert witness or even a lay witness who has testifies to an opinion is not competent or qualified 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)
e. Ask 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 testifies to during the pre-trial hearing). This may be done by asking the witness "did you make this statement on June 1st?" and then read it or show a signed statement to the witness to read part of it aloud or read it to the witness yourself and ask "did you say that?"
f. Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
g. Always listen to the witness's answer.
h. Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.
i. Don't quarrel with the witness.
j. Never try to allow the witness to explain anything. Keep to the yes or no answers whenever possible. Try to stop the witness if his answer or explanation is going on and hurting your case by saying "You may stop here, thank you", or "That's enough, thank you."
k. Don't harass or intimidate the witness by the questions you ask them.

Other Suggestions:

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

Advice on Preparing (for Witness):

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

b. Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, problems in your testimony and be prepared to explain them.
c. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
d. Be sure that your testimony is never inconsistent with the facts set forth in the witness statement.
e. Don't read or recite your witness statement verbatim.
f. Cross-examination can be tough, so don't get flustered.
g. Practice! Practice! Practice!

Re-direct examination

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness's truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination.

Re-cross examination

Opposing counsel can ask the witness clarifying questions after re-direct but they must be in the scope of the re-direct and should avoid repetition.

Closing Statements Prosecution/Plaintiff followed by Defense

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.

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a finding (verdict) of guilty (criminal case) or judgment for the plaintiff (civil case) or innocent (criminal case) or judgment for the defense (civil)

What should be included?

a. Thank the judge and jury for its time and attention.
b. Isolate the issues and describe briefly how your presentation resolved these issues.
c. 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 statement at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side)
d. 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)
e. State the applicable statues and any cases to show it supports your side.
f. Remind the judge or jury of the required burden of proof (the amount of evidence needed to prove a fact). If you are the plaintiff's lawyer, you must tell and convince the Court that you have met that burden. If you are the attorney for the defense, you must inform and convince the Court that the other side has failed to meet its burden.
g. Argue your case by stating how the law applies to the facts as you have proven them.

h. Don't forget to request the verdict/remedy you desire.

The Judge's Role and Decision (Verdict)

The Judge is the person who presides over the trial to ensure that the parties' are protected, and that the attorneys follow the rules of evidence and trial procedure. In trials held without jury, the judge also has the function of determining the facts of the case and rendering a judgment. Each round is scored by the presiding judge unless otherwise indicated at trial.

GENERAL GUIDELINES FOR TRIAL PROCEDURE

Presenting:

1. You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc., in the other side's case that actually come out at trial. You can't anticipate everything perfectly before the actual presentation of the case.
2. Argue your side but don't appear to be vindictive. Fairness is important.
3. Do not make objections during the other side's closing argument.
4. Do not read all the way through.
5. Keep eye contact with the judge, or at least look up occasionally.
6. Be sure your statement is well organized.
7. Rehearse as much as possible.

Some of the things most difficult for team members to learn to do are:

1. To decide which are the most important points to prove their side of the case and to make sure such proof takes place.
2. 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.
3. 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.
4. 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).
5. 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!!!)
6. 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.)

GENERAL SUGGESTIONS FOR ALL PARTICIPANTS

1. Always be courteous to witnesses, other attorneys and the judge.
2. Always stand when talking in court and when the judge enters or leaves the room.
3. Dress appropriately (if it's a formal competition trial this may mean coat and tie for men and dresses or equivalent for females).
4. Always say "Yes, Your Honor" or "No, Your Honor" when answering a questions form the judge.

5. Those acting as attorneys shouldn't make objections while the other side is asking questions unless you are relatively sure that the judge will agree with your objection (judge's don't like attorneys that constantly make objections or attorneys that make objections without being able to explain the reason for the objections).
6. If the judge rules against you on a point in the case, take the defeat gracefully and act cordially toward the judge and other side.

See "Tips for Participants" posted at www.alyig.org/judicial for more suggestions

ADDITIONAL RULES

1. The Hearsay Rule

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. "Hearsay" is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out of court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are: (1) prior statements made by the witness himself and (2) admissions made by a party opponent.

Some Examples of Hearsay are:

a) Present sense impression. A statement describing or explaining an event or condition made while the person making the statement was perceiving the event or condition made while the person making the statement was under the event or condition or immediately thereafter.

b) Excited utterance. A statement relating to a startling event or condition made while the person making the statement was under the stress of excitement caused by the event or condition.

c) Medical statements. Statements made for the purpose of medical diagnosis or treatment.

d) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly.

e) Records of a regularly conducted activity. Any type of data compiled in any form if kept in the course of a regularly conducted business activity and it was the regular practice of that business activity to make the data compilation.

Business activity includes any type of business, whether or not for profit, as well as the records compiled by public officers or agencies.

f) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or other expert testimony, or by judicial notice.

See the Federal Rules of Evidence for more exceptions to hearsay.

2. Opinions of Witnesses

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts". An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may offer opinions based on common experience of laypersons in the community and of which the witnesses have first-hand knowledge.

Examples:
"I think Taylor was clumsy." (allowed)

"I think Taylor was not qualified to be a nurse."
(not allowed unless made by nurse supervisor)

No witness may give an opinion about how the case should be decided. This is called the "ultimate issue" question.

Example:
"Ms. Gray, would you say that Vince Taylor was made a victim of sex discrimination?"

Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the judge or jury to understand the evidence or to determine a fact at issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion, and such testimony shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.

3. Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

Example: If Nurse Gray never observed Mrs. Dillon speak to Mr. Taylor, she could not say, "Mrs. Dillon always spoke to Vince in a rude and abrupt manner."

4. Relevance of Evidence

Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable that the fact would be without the evidence. Relevant evidence may, however, be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury or by considerations of undue delay, waste of time or a needless presentation of cumulative evidence.

Example:
The defense asks, "Mr. Taylor, how did you like working in the pediatrics unit?" This is irrelevant unless Taylor's satisfaction with that assignment somehow relates.

If an objection is made to relevant evidence, the trial judge will base his decision upon a balancing of the probative value of the offered evidence against the danger of unfair prejudice.

5. Introduction of Physical Evidence

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis.

Lack of proper predicate. Exhibits will not be admitted into evidence until they have been identified and shown to be authentic. Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.

Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence.

1. Your Honor, may I approach the witness?
2. Mrs. Edwards, I'm going to show you what has been pre-marked as Exhibit 2.
3. Do you recognize this document? (The witness should say yes and identify the document.)
4. If the attorney wishes to place the document into evidence, say, "Your honor, I offer this personnel file for admission into evidence as Plaintiff's exhibit 2, and ask the court to so admit it."
5. Get ruling form the court on admission and hand the document to the judge.

6. Objections

An attorney can object any time that the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the attorney who asked the question and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Following are standard objections:

1. Irrelevant evidence: " Objection. This testimony is irrelevant to the facts of this case."

2. Leading questions: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

3. Improper character testimony:
   a. "Objection. The witness's character or reputation has not been put in issue."
   b. "Objection. Only the witness's reputation/character for truthfulness is at issue here."

4. Beyond the scope of direct examination: "Objection. Counsel is asking the witness about matters that did not come up in direct examination."

5. Hearsay: "Objection. Counsel's question/the witness's answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

6. Opinion: "Objection. Counsel is asking the witness to give an opinion."

7. Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

7. Miscellaneous Rules of Procedure

1. Re-direct and re-cross examinations are permissible; re-direct is limited to the scope of cross; re-cross is limited to the scope of the re-direct.

2. For mock trial purposes, motions for dismissal at the end of the plaintiffs' case are not to be used.

3. Order of closing arguments: first-plaintiff/prosecution; second-defense; rebuttal by plaintiffs if permitted.

4. For mock trial purposes, a motion for a directed verdict or dismissal of the case at the end of the plaintiff's case will not be permitted. Neither shall a motion for a recess nor a motion to sequester witnesses be used during the competition.

GUIDELINES FOR JUDGES

Decisions Required

Judges are asked to decide the best team presentation. While the decision on the legal merits of the case lends realism to the competition, teams will advance in the competition only on the basis of the decision determining the better presentation. At the conclusion of the trial, the judges should take a short recess to consider these decisions.

A. With respect to the decision on the merits, the judge should consider only the evidence presented. No other cases, statues, etc. may be referred to by counsel during the trial.

B. Scoring Sheets

When deciding the best team's presentation, judges should consider the performance of all witnesses and attorneys for both sides. During the trial, judge's evaluations of each performance should be carefully recorded in each blank on the score sheets provided for this purpose.

There are no hard and fast criteria for judging the five areas of evaluation. However, the following general guidelines may be helpful:

Opening Statement

Did counsel generally confine statement to outlining the evidence to be presented? Clearly and persuasively present his theory of the case? Personalize self and client?

Direct Examination

Did counsel avoid use of leading questions? Develop testimony in interesting and coherent fashion? Follow up on witness' answer? Present witness in most favorable light, emphasizing strengths and minimizing weaknesses?

Cross-Examination

Did counsel appropriately use leading questions? Control witness? Follow up on witness' answers? Elicit helpful testimony? Use impeachment opportunities?

Evidence and Objections

Did counsel ask questions that provoke a minimum of valid objections? Make or fail to make objections of tactical or substantive merit? Have good response to objections? Show knowledge of Rules of Evidence? Make appropriate use of evidence?

Courtroom Demeanor

Did counsel establish a rapport with witnesses? Maintain a proper relationship with the court and other counsel? Show an ability to respond to situations or developments in the case?

Closing Argument

Did counsel present an organized and cohesive statement of case? Make effective treatment of opponents' strong arguments? Speak persuasively? Use facts to support his position? Ask for a verdict for their side?

Scoring Witnesses
Each round of competition represents a team effort. In this Mock Trial Tournament, the witnesses must also be effective in order for the team to win.

Again, there are no hard and fast criteria for judging the five areas of evaluation. However, the following general guidelines may be helpful:

Facts
Did the witness fully understand the facts provided by his/her statement? Stay within the facts in cooperation with opposing side?

Credible
Did witness provide a believable characterization? Was convincing during testimony?

Decorum
Was courtroom decorum observed?

Presentation
Did the witness speak clearly and distinctly?

Poise
Did the witness successfully rebut opposing attorney's attempt to confuse? Maintain the dignity of the occasion?

Remember, the highest score must win. Ties are not permissible.

Sample Scoring Sheet either attached to this packet or found at www.alyig.org/judicial