



CHAPTER SEVEN

*PREPARING
STUDENT
WITNESSES*

PREPARING STUDENT WITNESSES

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

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

Guidelines for Student Witnesses

General Suggestions

- If you are going to testify about records, familiarize yourself with them before coming to trial.
- Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (based on your affidavit).
- If you have been summoned by a subpoena, bring it to court with you. The subpoena will provide information on when and where to appear. (Not typical in the Colorado Mock Trial Program to have a subpoena.)
- When you are called to the stand, do not be nervous. There is no reason to be.
- You will be asked to take an oath to tell the truth. Remember the seriousness of this oath during the entire time you are testifying. In the real world, if you willfully fail to tell the truth while testifying, you are subject to penalties. (Oaths typically are administered during pre-trial proceedings.)
- If asked whether you have discussed the case with anyone, you should indicate any occasion when you have talked with the prosecutor, the defense attorney, or anyone else.
- When answering questions, speak clearly so you will be heard. The judge must hear and record your answer; therefore, do not respond by shaking or nodding your head only.
- Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that the question be repeated.
- Do not give your personal opinions or conclusions when answering questions unless specifically asked. Give only the facts, as you know them, without guessing or speculating. If you do not know, say you do not know.
- If you realize you have answered a question incorrectly, ask the judge if you may correct your mistake.
- If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to continue.
- Be polite while answering the question. Do not lose your temper with the attorney questioning you.
- Always be courteous to other witnesses, other attorneys and the judge.
- Always stand when the judge enters or leaves the room.
- Dress appropriately (this may mean coat and tie for males, and dresses or equivalent for females).
- Always say, "Yes, your Honor" or "No, Your Honor" when answering a judge's question.
- If the judge rules against you in this case, take the defeat gracefully and be cordial to the judge and the other side.

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

- Witnesses are scored on their performances: how well they respond to attorney questions, how well they handle their examinations, how well they present their answers, and how well they present their witness character. For example, if a witness is an eighty-year old man, how you present yourself physically and answer the questions will affect your performance score? You want to also present an appropriate personality or character traits.
- If your character could be considered a hostile witness, your presentation of your witness would project some sense of resistance to questions being asked. For example, if you are a police officer that helped build the prosecution's case against the defendant, but you've been called by the Defense to testify on the defendant's behalf, you may be considered a hostile witness. So when under direct exam by the Defense, you may present, within reason, a sense of resistance to the line of questioning; however, under cross by the Prosecution, you may demonstrate less resistance.
- The witness' statements should not be read verbatim in the trial. They serve merely as a point of departure for oral testimony. However, testimony must not be inconsistent with facts set forth in the witness' statements.
- Credibility of witnesses is very important; therefore, students portraying witnesses should be encouraged to "get into" the roles and to attempt to think like the person they are playing. These students should read over their statements many times and have other people ask them questions about the facts until they know them "cold."
- The witnesses are not permitted to refer to their statements during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their affidavits, they may respond with creative inferences as long as they are not unfairly introducing new facts that would alter the case fact pattern (unfair extrapolation). (See the Colorado Mock Trial Rules and Procedures.)
- Research your witness and, if applicable, his/her profession. Often questions may be asked as to a witness' background that are creative inferences (relevance or unfair extrapolation must be discerned by witness attorney for objections); for example, a news director may be asked about the news van's set up, job responsibilities, techniques. While, in this example, this information may not be in the affidavit or statement of facts, these questions aren't considered unfair extrapolation because they do not significantly change the fact pattern of the case, nor introduce new facts that would alter the strategies of the case. In doing research, students are better prepared in dealing with these unexpected questions if they understand their witness characters.

- Whatever witness you portray, be sure to incorporate some personality and character traits into your presentation. It makes the mock trial more interesting, and challenges the attorneys that are questioning you.

WITNESSES DURING DIRECT EXAMINATIONS

Advice on preparing:

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

Advice on presenting:

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

WITNESSES DURING CROSS EXAMINATION

Advice on preparing:

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

Advice on Presenting:

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