



# *CHAPTER NINE*

*PREPARING YOU  
AND  
YOUR TEAM  
FOR TOURNAMENT*

## **PREPARING YOU AND YOUR TEAMS FOR TOURNAMENT**

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

### **SUCCEEDING IN MOCK TRIAL**

#### **A. Making the Most of your Team's Performance**

##### **1. Dress Appropriately**

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

##### **2. Prepare the Courtroom**

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

- h. Ensure neither team members nor spectators are wearing hats.
- i. Ensure neither team members nor spectators are chewing gum.

### **3. Remember Your Posture**

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

### **4. Speak Effectively**

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

### **5. Deliver Your Best Opening Statement or Closing Argument.**

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

- a. Organize any materials before beginning.
- b. Rise slowly.
- c. With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the opening or closing.
- d. Get your body ready by assuming a good speech-making posture. Your feet should be set apart a bit and your weight balanced on the balls of your feet.
- e. Before your first word, look the judge directly in the eyes saying, "May it please the court" and then begin to speak directly to the members of the jury (the scoring judges).
- f. Try for a conversational tone in your voice. Speak to the judges in a clear voice that is slow enough and loud enough for them to follow your ideas without straining.
- g. Avoid using slang, and always use your very best vocabulary.

- h. Use variety in your delivery. You can emphasize major points in several different ways, i.e., pause before an important idea; raise your volume slightly to accentuate an important idea; or slow down to draw attention to an important idea.
- i. If you concentrate on communicating directly to the scoring panel, gestures should be no problem. Natural gestures are always good to emphasize ideas. They will come instinctively if your focus is on talking to the scoring panel. Don't force gestures and always avoid repetitive or unnecessary gestures.
- j. Movement is often dictated by the courtroom setup. If you are at a podium with a microphone, don't move away from the podium. In cases where there is no podium, well-timed movement can help punctuate a point or help you release nervous energy. Be sure not to pace. Keep your focus on directing the speech to the judges.
- k. Never move so that you are in front of the opposing counsel's table. This applies when giving openings/closings and when you're questioning a witness. Opposing counsel may object on the grounds that you are obstructing their view.
- l. Be aware that judges may interrupt during your closing statement and ask you a question. Pause. Listen carefully to the question. Then answer to the best of your ability. The most important thing is to maintain your poise.
- m. When you have concluded your presentation, say, "Thank you, Your Honor," while looking directly at the presiding judge. Pause briefly and then take your seat. Show no signs of relief and don't immediately turn to speak to co-counsel. Always maintain a sense of poise and confidence.

## **6. Question Witnesses Skillfully**

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

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

## **7. Be a Great Witness**

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

## **8. Maintain Your Demeanor During Recess and Debriefing**

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

## **9. Exhibit Good Sportsmanship**

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

## **B. Master the 10 Most Difficult Things**

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

1. Determine which points are the most necessary in order for you to prove the elements of your case, and then make sure that you do, indeed, prove them.
2. In the opening statement, tell clearly what you intend to prove, and in the closing argument arguing effectively that the facts and evidence you have presented has proved your case.
3. Learn, understand and recall in court the rules of evidence and being able to use them to introduce documentary or physical evidence.
4. Follow the formality of the court, e.g., standing up when the judge enters or when addressing the judge, calling the judge "Your Honor," etc.
5. Phrase questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions.)
6. Refrain from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessens the impact of points previously made. Pointless questions should be avoided! Questions should require answers that will make only good points for the side.
7. Think quickly on your feet. Times that you'll need to be quick include when a witness gives an unexpected answer, when an attorney asks an unexpected

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

### **C. Exhibit Appropriate Courtroom Decorum**

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

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

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

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

## PREPARATION OF A TRIAL NOTEBOOK

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

1. Purchase a trial notebook that is at least a 2-inch three-ring binder.
2. The typical trial notebook contains sections, which usually include:
  - Tab 1: Team Information** - a directory of Team Members and Coaches
  - Tab 2: Case Materials** – this includes the introduction to the problem, witness statements, exhibits, legal authorities, and the charge of the court. This section may be subdivided with additional tabs for ease in locating case materials.
  - Tab 3: The Rules of the Competition**
  - Tab 4: Notes**
3. Before you start to read the case, begin the first page of your "Notes" section with the label: *Chronology of the Case*. These notes you will form as you read the case, indicating in one column the date/time of an event important to the case, and describing that event in the second column (i.e., who did/said what). This will get messy in the first draft, so spread your entries out with several lines of space in between entries. You will note that some witnesses will add to the chronology, and it is almost never in neat order. Now, read the case, building your chronology as you go. When you finish, re-write your chronology so it is neater and easier to read, or enter your chronology in a word processor, possibly creating a table.
4. Now that you have knowledge of the facts of the case, you can begin to evaluate the case. In a mock trial, you will need to think like an attorney for both the P/P and defense. Now, create a note page with the title, *Theory of the Case*. If you were representing the state, how would you prosecute the defendant (criminal case) or support your cause of action (civil case)? What is your theory of how you would try the case? Write this down. Now, flip sides. What is your theory of the case from the defense perspective? Write this down. Remember, in a criminal case the prosecution is trying to present facts that will prove that the defendant is guilty of the charge(s) "beyond a reasonable doubt." The defense must present facts that raise a reasonable doubt. In a civil case, the weight of the evidence from each side should determine the verdict using the "preponderance of the evidence" standard. The plaintiff must present facts that support the cause of action, and the defendant must present evidence that refutes liability. Your understanding of this distinction is critical. To avoid confusion below, we will use **P** or **D** in referring to the two sides of the case. You fill in the correct term for the case you are studying.
5. Now, you are ready to analyze the case further by building witness lists. Your chronology will be helpful here. Using your theory of the case, determine the order in which your witnesses should testify. In determining the order of your witnesses, you must be aware that neither the judge nor the jury knows any details of the case;

therefore, it is best to inform the court of the facts of your case through a strong fact witness as early as possible in your case. Expert witnesses usually testify after all the other witnesses, because an expert's opinion is predicated on the facts of the case. Under Direct Examination, list the essential points (facts) that would help the side for which the witness will testify. These are the things the direct examiner will want to bring out through questioning. Here, you'll have to switch hats, first working on the P, then on the D. Under Cross Examination, list the key points (facts) that would hurt the side for which the witness will testify. These are the questions that would poke holes in the direct testimony, thus weakening the witness in the eyes of the jury. Again, you will be switching hats from D to P, but remembering the theory of the case you've already developed will help you keep on track. A chart is provided as a guide for this activity. You may adjust the chart in your notes according to your wishes.

6. Now comes the most vital part of your trial preparation. Create a *Sources of Proof* chart. Chart the P's accusations (in a criminal case, see the indictment; in a civil case, see the complaint) and the D's rebuttals (in a civil case, see the answer). Next to each statement, note the facts necessary to prove them. Then, along side your list of facts should be the witnesses and/or evidence you will use to prove those facts. Before you begin the *Sources of Proof* chart, you may find it necessary to determine the testimony of each witness, considering likely objections (see the Rules of Evidence). One of the best ways to determine what witness can testify to is to chart each witness' testimony. A chart is provided as a guide for this activity. You may adjust the chart in your notes according to your wishes.
7. Once all these charts are completed, you will be ready to prepare your opening statements and closing arguments, which, upon completion, should be included in your trial notebook. In addition, you should utilize these charts to help you to formulate both direct and cross-examination questions for each witness, which of course, can be included in your notebook.

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

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

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

<b>P’s witnesses</b>	<b>Direct Examination</b>	<b>Cross Examination</b>	<b>Object</b>
<b>D’s Witnesses</b>	<b>Direct Examination</b>	<b>Cross Examination</b>	<b>Object</b>

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

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

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

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

**“SOURCES OF PROOF” CHART**  
D (Defense)

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

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

## THINGS TO REMEMBER

Modified from *Student Materials*  
Produced by Claude Y. Paquin, Esq., Fayetteville

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

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

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

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

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

**5. Exhibits.** Be sure each lawyer has (a) the exhibits s/he plans to introduce into evidence, (b) the statements of the witnesses s/he'll examine directly, and (c) the statements of the witnesses s/he'll cross-examine. (To be safe, have one extra copy of each document, in case you put your copy in evidence and it doesn't come back to you at the end of the trial.) **IMPORTANT! Be sure to recollect your exhibits from the scoring panelists/presiding judge/opposing counsel after each round so you may have them to publish in subsequent rounds.**

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

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

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

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

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

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

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