

## **Carolina Center for Civic Education Suggestions for Student Witnesses**

Witnesses play a key role on the mock trial teams. While many students may consider the attorneys' roles as more important, mock trial jurors report that their decision depends as much on the witness's performances as on those of the attorneys. Many a trial has been won or lost on the witness stand.

### **1. General Suggestions**

- Familiarize yourself thoroughly with the case materials. Know what you should testify to and what other witnesses know. Witnesses may *not* use notes while being questioned.
- Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (i.e., play the role as if you are the person whose identity you are assuming). You must establish your credibility as a witness by accurately portraying the character. Demonstrate knowledge and understanding of the person (both their strengths and weaknesses).
- Go over your testimony repeatedly with your attorneys. Have them cross-examine you on the weaknesses in your testimony. Be prepared to handle hostile questions.
- You are not allowed to make up testimony on direct examination. If asked a question during cross-examination to which the case materials supply no answer, you may give only an answer which will not be inconsistent with your previous testimony. (See Competition Rule 3.4.)
- Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that a question be repeated. If you realize that you answered a question incorrectly, ask the judge if you may correct your answer.
- When answering questions, speak clearly so you will be heard. The judge must hear your answer; therefore, do not respond by shaking your head "yes" or "no."
- Do not give your personal opinion or conclusions when answering questions unless specifically asked. Give only the facts as you know them, without guessing or speculating. If you do not know, say so.
- Be polite while answering questions. Do not lose your temper with the attorney questioning you. Remember that you are there to tell what you know, and not necessarily to be an advocate for your side. In particular, experts should appear to be unbiased.
- Always be courteous to witnesses, other attorneys, and the judge.
- Always stand when the judge enters or leaves the room. Always say "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
- Dress professionally (to show respect for the court). No costuming is allowed.
- Be sure you understand what it means if an objection is sustained or overruled. If the judge has sustained an objection against your side and not allowed some of your planned testimony to come into evidence, do not restate the inadmissible testimony in your next answer.

## 2. Opening Statements

Objective: To acquaint the judge with the case and outline what your attorneys are going to prove through witness testimony and the admission of evidence. Jurors may look at you as your witness is being described during opening statement, so remember to remain in character in your demeanor at all times.

## 3. Direct Examination

- Objective: To obtain information from favorable witnesses your attorneys call in order to prove the facts of your case.
- Advice in Preparing:
  - Learn the case inside out, especially your witness statement (or affidavit) and any documents that your witness is familiar with.
  - Know the questions that your attorney will ask; prepare clear and convincing answers that contain the information the attorney is trying to elicit from your testimony.
  - Practice with the attorney.
- Advice in Presenting:
  - Speak clearly and at a good pace. Appearing confident and trustworthy is crucial.
  - Don't read or recite your witness statement verbatim.
  - Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or affidavit).
  - Don't panic if the attorney asks you a question you haven't rehearsed.
  - Look at the attorney when s/he asks you a question, but look at the jury for most of your answer. The jury needs to hear what you are saying.

## 4. Cross-Examination

- Objective: To make the other side's witnesses less believable in the eyes of the jury.
- Advice in Preparing:
  - Learn the case thoroughly, especially your witness statement and relevant exhibits.
  - Remember that you can only be "forced" to admit to the facts contained in your own affidavit. If a different witness reports that you said or did something, but your own affidavit does not mention it, you need *not* admit to it on cross examination.
  - Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, problems, and inconsistencies in your testimony, and be prepared to explain them.
- Advice in Presenting:
  - Be as relaxed and in control as possible. Try to appear confident and truthful.
  - Be sure that your testimony is never inconsistent with the facts in your affidavit.
  - Don't read or recite your witness statement word for word.
  - Cross-examination can be tough, so don't get flustered.
  - Your job as a witness is to tell the truth, as you know it, about what happened. It is not your job to be an "advocate" for your side or to argue with opposing counsel.