Carolina Center for CIVIC EDUCATION

PRESENTS THE

North Carolina Advocates for Justice High School Mock Trial Program: A Resource for Teacher Coaches

NORTH CAROLINA ADVOCATES for JUSTICE

Protecting people's rights.

The **Carolina Center for Civic Education** is a 501(c)(3) organization created by the ***North Carolina Advocates for Justice*** to organize and operate the statewide high school mock trial program in North Carolina. For the last twenty-four years, the mission and purpose of this program has remained the same: to educate North Carolina High School students about our system of justice and trial by jury by turning courtrooms into classrooms and connecting students with attorneys and judges in the hands-on learning laboratory of the courthouse. The impact of this program far exceeds the courtroom, however, building analytical, writing, and public speaking skills which go hand in hand with confidence, teamwork, leadership and other building blocks for success in whatever vocation students choose to pursue.

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The success of this program has always been due to the support and commitment of the members of the North Carolina Academy of Trial Lawyers, now known as the **North Carolina Advocates for Justice.**

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This resource manual is designed to help teachers and team leaders coach a high school mock trial team. The suggestions included are meant to serve as a useful guide, but teacher coaches should feel free to modify their approach depending upon the needs of their particular students and the direction of their attorney advisor.

While it offers an overview of the program, this document is *not* a substitute for the Competition Rules booklet, which contains detailed information on specific procedures for the actual competition.

For additional support, please contact CCCE Program Coordinator Sue Johnson (SueHeathJohnson@gmail.com, 919-360-0848) or CCCE Vice-President Rebecca Britton (rebecca@brittonlawfirm.com, 910-339-6603). Also, please visit our website, http://ncmocktrial.org/, for case materials, the Competition Rules booklet, and other important information.

Updated August 2015

NOTE: Most information in this handbook was written by members of the CCCE and NCAJ. Some material was adapted from information on the Massachusetts Bar Association website, found at: http://mocktrial.massbar.org/mock-trial-tips.

What is Mock Trial?

Mock Trial is a competitive forensic debate activity which teaches students about our justice system and trial-by-jury. Students are given all the materials they need to enact a civil or criminal trial based on a specific fictional scenario. By analyzing the given case law, sworn witness statements ("affidavits"), and exhibits, students determine the critical facts to present to a panel of scoring jurors in order to argue the case for the plaintiff / prosecution or defense. Students learn about evidence and burdens of proof as they make objections and seek to have evidence admitted or excluded. Taking on the roles of witnesses or attorneys and competing against other teams teaches students how to think on their feet, communicate clearly, and remain calm under pressure. Through mock trial, students develop a deeper understanding of the legal system and the importance of becoming engaged citizens to maintain our rights in the future.

Mock Trial Team Structure and Roles

<table>
<tr><td colspan="2"><u>Team Structure</u>

Teams must have a minimum of 7 students and a maximum of 8 students.

The 7-8 students have 14 roles to fill:</td></tr>
<tr><td><u>7 roles when playing prosecution:</u>

3 attorneys, 3 witnesses, 1 bailiff/timekeeper</td><td><u>7 roles when playing defense:</u>

3 attorneys, 3 witnesses, 1 timekeeper</td></tr>
<tr><td colspan="2">▪ All teams will play each side at least once during competition.
▪ All 3 witnesses per side must be called to testify. All witness roles are gender neutral.
▪ The 3 attorneys per side must share roles evenly. Example: The attorney who provides the opening statement cannot provide the close argument during that round.
▪ A student attorney who conducts a direct exam of a witness is the only person who may object to the opposing attorney's questions during cross examination.
▪ Most students will have to play two roles (but they are limited to only 1 role per side).</td></tr>
</table>

Teams will consist of a minimum of 7 students and a maximum of 8 students. A student **cannot** have ***more*** than **one** role per round. Each side of the case has 1 timekeeper, 3 attorneys, and 3 witness roles. All witnesses must be called during the trial. The prosecution / plaintiff timekeeper also serves as the court bailiff who swears in the witnesses.

Roles must be evenly divided on each side of the case. For example, an attorney who gives the opening statement cannot close for his/her team on the same side of the case. A student attorney cannot conduct more than one cross or direct examination on

each side of the case. The attorney who conducts the direct exam of a witness is the only person who may object to the opposing attorney's questions during cross examination.

If a team does not follow this rule regarding assignment of roles and the other team objects or the judge notes the violation, the team which broke the rule will get a zero for that phase of the trial. For example, if John conducts two cross-examinations on the same side of the case, then the opposing team can object during the second cross-examination and John will receive a zero from all three judges for that second cross-ex.

How are Team Roles Determined?

Teams may assign roles in any manner that works for them as long as the teams follow the restrictions noted above. Some teams hold tryouts for the different roles; other teams ask each student to write down their top 2-3 choices of roles and the teacher coach assigns roles based on those preferences and the students' abilities. Some teams allow the students to discuss their preferences and vote on roles among themselves, while other teams give the teacher coach the sole responsibility for assigning roles. Each team is free to use the method that works best for their situation to determine the student role assignments.

A Quick Overview of the Steps in a Mock Trial

<table>
<tr><td colspan="3">(Note: "Plaintiff" initiates the lawsuit in a civil case. Wherever the word "plaintiff" appears below, substitute "Prosecutor" in a criminal case)</td></tr>
<tr><td colspan="3">A number of events occur during a trial, and most happen according to a particular sequence, outlined below.

<u>Note re Mock Trial Program</u>: The competition's sequence follows the standard trial process; however, our competition does not involve the reading of jury instructions or the issuance of verdicts after both sides rest their case.</td></tr>
<tr><td>1. Judge enters and takes the Bench

2. Bailiff calls the case and swears in witnesses

3. Plaintiff makes an opening statement

4. Defense makes an opening statement</td><td>5. Plaintiff presents case:

a. Calls first witness and conducts direct exam
b. Defense cross-examines witness
c. Steps a & b are completed for the two remaining Plaintiff witnesses

6. Plaintiff rests case</td><td>7. Defense presents case: (same manner as P, with P cross-examining witnesses)

8. Defense rests

9. Plaintiff makes closing argument

10. Defense makes closing argument

11. Plaintiff can offer rebuttal if time was reserved

12. Trial is complete. Judge and Jurors retire to jury room to complete ballots.</td></tr>
</table>

Understanding the Basics of a Trial: A General Guide

Certain key concepts must be understood when preparing a case for trial. First, the students must comprehend the difference between a **civil** case and a **criminal** case. In a **civil** case, an individual (the plaintiff) lodges a complaint against another individual (or company, which is also considered a "person" in this legal sense) in order to seek compensation for damages which the plaintiff has suffered. Most often the plaintiff is seeking monetary damages as compensation for harm ("compensatory damages"); the plaintiff may also seek to punish the defendant ("punitive damages") if the defendant's actions are proven to be willful or malicious. Examples of civil lawsuits include personal injury, medical malpractice, libel, and negligence cases. Before the plaintiff can recover damages, they must prove that the defendant is at fault and liable for the damage.

In a **criminal** case, the government (state or federal) is charging the defendant with committing a crime by violating a societal law. Thus, criminal cases involve harms against society as a whole, rather than damages to an individual. The prosecutor will try the case on behalf of the state, and the defendant could face a fine, imprisonment, or even death if found guilty.

Two additional concepts which the students should understand are the Burden of Proof in civil and criminal cases, and the job of the Defense team.

The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence and the way the judge or jury considers the evidence and makes a decision. In a **civil** case, the **plaintiff** has the burden of proof. Plaintiffs must convince the judge or jury that their facts are correct "by a preponderance of the evidence." Some refer to this as meaning that 51% or more of the evidence supports the plaintiff's side.

In a **criminal** case, the **prosecutor** has the burden of proof. Because the defendant may go to prison if convicted, the burden of proof is much higher. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some state that "beyond a reasonable doubt" means that the trier of fact (jury) must be at least 95% sure that the prosecutor is correct.

The Defense

As described above, the complaining (plaintiff) or accusing (prosecution) parties usually have the burden of proving their particular versions of the facts. The job of the defense team is to present evidence which prevents the plaintiff or prosecutor from meeting their burden of proof. Defense evidence should explain, disprove or discredit the evidence presented by the other party. The defense can weaken the plaintiff's case by presenting an alternative explanation for the incident.

The Role of Legal Professionals in the Mock Trial Program

If you've never coached a mock trial team before, it may appear to be a daunting task. Don't worry; you are not alone! This resource manual will provide you with a good deal of information to get you started. In addition, legal professionals in the community are a key part of the program, mentoring the students by serving as attorney advisors, presiding judges, and scoring jurors.

Presiding Judge:	**Scoring Juror:**	**Attorney Advisor:**
▪ Takes on Role of Trial Judge. ▪ Rules on Motions, Objections. ▪ Designates Best Witness and Attorney Awards for round (their designation is <u>not</u> based on ballot points). ▪ Offers critique at end of trial.	▪ Members of the jury. ▪ Scores students on their presentation. ▪ Completes scoring sheet (ballot). Sample found in Competition Rules Book. ▪ Offers oral critique. ▪ Does NOT offer verdict.	▪ Meets with team an average of 2-6 hrs/month in the months prior to competition. ▪ Arranges visit to courthouse before competition. ▪ Trains team on trial procedure.
At Regionals, all teams compete in a morning and afternoon round. The two top placing teams compete in a third round to identify a Regional winner that will advance to State Finals.		

Attorney Advisors are volunteers who invest their own time with a student team to help prepare that team for competition. They work directly with a teacher coach to mentor the students. Many teacher coaches have local contacts and arrange for an attorney to support their team. If that's not possible, however, the Program Coordinator for the Carolina Center for Civic Education (CCCE) and Co-Chairs of the NCAJ Mock Trial Committee will recruit a local attorney advisor to work with your team.

At all competition rounds, the **Presiding Judge** serves as the "referee" of the trial. The Presiding Judge's job is to see that the trial runs smoothly, the round finishes on time, and the students abide by the Mock Trial NCHSMT Rules of Evidence and Procedure and the Rules of the Competition. The Presiding Judge rules on objections. During jury deliberations the Presiding Judge fills out the form designating the Best Attorney and Best Witness for the round. The Presiding Judge also participates in offering an oral critique of the students at the end of the trial.

Scoring Jurors are seated in the jury box, serving as mock jurors. Scoring Jurors complete a scoring form (ballot) which determines the winner of the round. Scoring Jurors are NOT scoring the students on the merits of the case they are presenting, but, instead, they are scoring students on their presentation. They evaluate and score the students' speaking and presentation skills, critical thinking ability, teamwork, ability to make and defend against objections, realistic portrayal of witnesses – all issues that are performance-based.

Your Role as a Teacher Coach

It is not necessary for you to have knowledge of the legal system or public speaking in order to coach a mock trial team. Many mock trial coaches teach Civics or U.S. History, but others teach English, mathematics, music, or science. Primarily you need a willingness to supervise and encourage the students, organizational abilities to handle the team logistics, and an ability to help students learn to think critically and communicate clearly. As a brief overview, your role as a teacher coach involves several tasks:

- You will be the main contact person between your team and the CCCE. Please pay attention to all deadlines, and please communicate any questions or concerns to the CCCE Program Coordinator in a timely fashion.
- Make sure to submit your team participant list, Deadlines sheet, release forms for all students on the roster, and a completed code of ethics form **by the deadline**. Arrange the payment of the team registration fee.
- You will help identify and select students for the program. You will also work with the attorney advisor to prepare those students for competition.
- If you do not have an attorney advisor, let CCCE Program Coordinator Sue Johnson know and we will work to match you with an attorney in your area.
- Make sure that all team members understand and agree to adhere to the Competition Rules and all other materials provided in the NCAJ Mock Trial competition. Prior to Regional competition, make sure that all team observers are familiar with the rules regarding proper courtroom decorum and prohibiting scouting.
- Arrange your team's transportation to the competition(s). Be sure to arrive at the competition(s) on time!
- Remember that the primary goal of the mock trial program is educational. Healthy competition is a part of the program, but you should help students and observers place their highest value on excellent preparation and presentation rather than on winning and losing the trial. We work very hard to recruit and train qualified judges and jurors, but one team will win, and one will lose, in every trial, even when both teams are outstanding. Focusing on improvement and doing their best will help teams to keep the competitive spirit at a reasonable level.

Initial Strategies to Teach Students about Mock Trial Procedures

Before the students begin working with the case materials, it is important to make sure they understand general trial procedures. These tips can help you give all of the students the foundation they need to prepare effectively for competition.

1. Have students brainstorm and list the general order of events in a trial. Then list the steps in a mock trial as they actually occur, noting any errors or omissions in the students' list as you do so.

2. Once the whole trial process has been introduced, have students brainstorm and write on the board all the steps in a trial, first from the plaintiff/prosecution's point of view, (e.g., opening statement, direct examination of P/P's witnesses, cross-examination of defense witnesses and closing arguments), then from the defense perspective.

3. Have students check newspapers and magazines for articles that mention a trial that is currently being conducted. Paste the articles to a large sheet of paper with the trial step that is mentioned in the article written in large letters at the top of the sheet. Have students post these around the classroom in their proper order.

4. Have students become familiar with the physical layout of a courtroom.

5. A courtroom visit is a good idea at this point (or after the group has begun working on the trial). Hold a debriefing session after the visit and/or have students write: What part(s) of the trial did you observe? What happened before the part(s) you observed? What happened in the trial after your left? List these on the board with the step of the trial that your group observed in the middle, and the "before" and "after" lists on either side.

6. Students could be instructed to watch a television program or a movie that features a trial. Then they can discuss what the case was about, what parts of the trial they observed and whether the depiction of the trial procedure was accurate and realistic.

7. After general trial procedure has been covered, distribute the mock trial case materials and have the students read them thoroughly. At this point you can either assign the roles of the various trial participants or wait until you have covered the Rules of Evidence. (This also helps ensure that students will read all of the trial materials, instead of just reading those for their parts or sides of the case.)

8. Distribute the Competition Rules and have the students read and discuss their understanding of the Rules of Evidence. Make note of questions to cover when you meet with your Attorney Advisor.

Suggested Guidelines to Prepare for Competition

After you have distributed the case material and Competition Rules and begun to work with the students on their case, what are the next steps in preparing for the competition? You will want to consider how to best use your meeting times with and without the attorney advisor. The following guidelines can help you make sure to cover all of the important aspects as you prepare for Regionals.

Find an Attorney Advisor to work with your team (the CCCE can help):

1. While the Carolina Center for Civic Education can help locate an attorney to advise a team entered in the competition, you, as a local teacher, are often the best judge of a suitable person to assist your team. Possible sources include: parents or relatives of students, alumni, acquaintances, local law firms, county attorney's office, school board members or local judges. If you are unable to find an attorney to work with your team, contact CCCE Program Coordinator Sue Johnson.
2. Since attorneys have time limitations, they should be used as consultants when their expertise is needed. They do not need to be present at all team activities or practices. Teams should be flexible and prepared to work with or without their attorney advisor, understanding that some attorney advisors may have more time to devote to practices than others due to commitments to their clients and office.
3. Contact your attorney advisor as soon as possible to:
   - Invite him/her to attend a teacher's orientation if one is scheduled in your area.
   - Provide him/her with a copy of the mock trial materials and "Guidelines for Attorney Advisors" handout (Appendix A) so s/he can become familiar with the case problem and Competition Rules (including rules of evidence and procedure).
   - Discuss meeting times and places with students.
   - After the attorney has had an opportunity to read through the case materials, discuss the case and the attorney's suggestions regarding strategy and arguments for both sides.

Before meeting with your Attorney Advisor:

1. Have the students learn the statement of facts and witness statements (in affidavits) as thoroughly as possible. You might try having the students quiz each other - one student looks at the facts and affidavits and asks the other student(s) questions; then reverse roles.
2. Try brainstorming with your students to elicit factual arguments for both the plaintiff/prosecution and the defense; i.e., which facts support the plaintiff's/prosecution's case and which facts support the defendant's case?
3. Have students string facts together to make a logical assumption about the case.
4. Have students read through the NCHSMT Rules of Evidence and the Competition Rules. Discuss with your students and be sure to write down any questions they

have for your attorney. For rules clarifications, contact CCCE Program Coordinator Sue Johnson, who will pass your questions on to the Executive Committee and will contact you with their answers/clarifications.

5. Conduct lessons designed to familiarize students with the court system and civil or criminal procedure. It will help your team if they observe a real trial before the mock trial. Contact the clerk of the district court in your county to find out when a trial is scheduled at the courthouse. The public is invited to attend these trials.

With your Attorney Advisor, work on:

1. Knowledge of the facts, mock trial procedures, and Rules of Evidence. The Attorney Advisor can help the students understand the legal principles involved in the case, as well as how to apply the Rules of Evidence to the facts of the case.
2. Establishing a case strategy. The entire team should work together on this process. Input and support from your Attorney Advisor will be helpful here.
3. Try to develop a "theme" for each side of the case, which will help explain your case strategy to the jurors and which can help guide the direction of your questions on Direct and Cross Examination.

Points to consider when developing your team strategy:

1. Identify strengths of each side of your case. These are the points and issues you will want to develop.
2. Identify critical weaknesses of each side and prepare a counter-argument for them.
3. Be sure all of your strategies are integrated. Students should work as a team during the course of the trial. You must always know where you are headed.
4. Brainstorm to identify possible holes in your strategy so that there are no surprises. Students must be prepared to cope with the unexpected.
5. Determine the best order to call your witnesses on each side in order to achieve your case strategy. Witnesses may be called in any order.
6. Identify key weaknesses of each witness that you will want to exploit during cross-examination.
7. Remember that students are under strict time constraints during competition: they are allotted a total of 20 minutes for Direct Examination and 15 minutes for Cross Examination on each side of the case. Make sure that students are aware of these limitations as they develop their Direct Examination and Cross Examination questions. Realize that they don't necessarily need to use all of their allotted time if their strategy has been achieved.

Items to address when developing the student presentations:

1. How to present the opening statement and closing argument, and what information each should contain. (Remember that the attorney advisors may give

the students ideas, but should not write the statements for them.)

2. Questions to ask on direct and cross-examination of all plaintiff/prosecution and defense witnesses. Make sure students understand the differences between the formats of direct and cross-examination questions.
3. How to avoid asking objectionable questions and what to do if one of your questions is objected to.
4. How and when to object to the opposition's questions.
5. How to introduce exhibits and offer them into evidence.
6. Understanding and practicing courtroom decorum and professional behavior.

Before your first scheduled trial in the mock trial competition:

1. Practice the trial in full, including direct and cross-examinations, in front of your Attorney Advisor and/or another local attorney or judge who is willing to sit in and offer suggestions. Conduct this "dress rehearsal" in an actual courtroom setting if possible (the Attorney Advisor may be able to arrange this).
2. Consider asking a speech or drama teacher to observe your team in action and offer suggestions for improving the students' presentations.
3. Consider having your team perform a practice trial before their peers, such as a government or history class at school.

Additional Tips for Success

- The credibility of the witnesses is very important to a team's presentation of its case. In trial enactments, close decisions often hinge on individual differences in witness performances. Students acting as witnesses really need to "get into" their roles and attempt to think like the persons they are playing. They should read over their affidavits many times until they know them cold.
- Students should prepare their own questions, with the teacher-coach and Attorney Advisor giving the team continual feedback and assistance during practice sessions. Based on these sessions, student attorneys should revise their questions and witnesses should restudy the parts of their witness statements where they are weak. Often the questions will be better structured if the student witnesses and attorneys work together on developing the order and actual wording of the questions.
- Opening statements also should be prepared by team members. Legal language should be avoided if its meaning is not completely understood by the students.
- Closing arguments can be composed before trial, but it is best to be prepared to vary and adjust a closing argument to highlight the important developments for both sides which occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Effective closings will tie in the theme of the case that was introduced during the opening statement and carried through the questions.

Key Competition Rules and Procedure

The Competition Rules booklet contains detailed information on numerous aspects of the competition, including administrative matters, the case problem, team composition, the trial itself, judging and team advancement, and dispute resolution. It is ***crucial*** for team coaches and team members to be familiar with these rules as you prepare for Regionals. In addition, the Competition Rules booklet contains the NCHSMT Rules of Evidence which are based upon the actual Federal Rules of Evidence used in federal courtrooms all across the country. Finally, the Competition Rules booklet contains copies of team documents which must be completed and returned to the CCCE, as well as the Bailiff/Timekeeper duties and script, time cards, a sample ballot, a review of the Steps in a Mock Trial, courtroom setup, tips and hints as you prepare, and charts to use as you analyze the case materials. Be sure to read carefully through all of this information, and contact Program Coordinator Sue Johnson if you have any questions. Below are a few key rules which are worth highlighting here.

Key Rules

**** Students are limited to the case materials. No outside resources are permitted to be used in competition, although students could consult other resources to help them understand case concepts during their preparations. Any such resources *cannot* be used or referenced in trial.**

- Witnesses are bound by facts of their statements (Rule 3.4). They cannot invent material facts (Rule 3.5), nor can they deny knowledge of facts which are in their specific affidavits. The use of notes by witnesses is not permitted during trial rounds (Rule 4.10.a).
- Stipulations are considered admitted into evidence – no reading of stipulations into the record is allowed (Rule 4.12).
- Students are NOT allowed to wear costumes or enlarge the provided 8.5”x11” exhibits (Rule 3.4). Time does NOT stop during the introduction of exhibits (Rule 4.7.e). Time DOES stop during objections (Rule 4.7.d).
- At Regionals, attorneys are permitted to move around the courtroom ***only*** during opening statements and closing arguments (Rule 4.8). At State Finals, attorneys are also permitted to move about the courtroom during direct examination and cross-examination with the permission of the Presiding Judge.

IMPORTANT: The Competition Rules describe procedures for all aspects of the competition. Teams are responsible for this information, so please read through the booklet very carefully.

Information and Suggestions for Each Phase of Mock Trials

A mock trial proceeds through several distinct phases: pre-trial introductions, opening statements, plaintiff/prosecution "case-in-chief," defense "case-in-chief," and closing arguments. Within each side's case-in-chief, attorneys for each side will call their own witnesses and conduct the direct examinations; opposing attorneys will conduct their cross-examinations of each opposing witness. Objections may be made throughout the cases-in-chief, and exhibits may be entered into evidence. This section provides information and tips on preparing for each phase of a mock trial; be sure to check the Competition Rules booklet for specific rules and information regarding time limits and other constraints.

Opening Statements:

The opening statement is the introduction to the case, the very first time the attorneys for each side get to tell the judge and jury what happened to their clients. The first impression is very important; it "paints a picture" of the case that will be presented for each side. Often teams will use a theme – a short descriptive phrase or sentence – to help the jury understand the case from their perspective. Opening statements should include: 1) a summary of the facts according to each party; 2) a short summary or forecast of the evidence that will be presented at the trial through the testimony of each witness; and 3) a statement regarding what the party hopes to get out of the trial (acquittal; guilty verdict; liability for damages, etc.). A test of a good opening statement is this: If the jurors heard the opening statement and nothing else, would they understand what the case is about and would they want to decide in your favor? Do remember, however, that the opening statement is ***not an argument***; deliver the facts, but do not draw or argue conclusions!

Style Points: Eye contact, vocal inflection, and good pacing are crucial!!

a. Prosecution/Plaintiff's Attorney: Since this attorney speaks first, it is very important for the prosecution/plaintiff's opening statement to include a good summary of the facts, presented in a light most favorable to their side. If the opening statement presents a very convincing picture of the prosecution/plaintiff's case, the defense team will have a much harder time changing the minds of the judge and jury. NOTE: both teams' timekeepers will be seated in the jury box throughout the trial.

b. Defense Attorney: The defense team always has the task of showing that the plaintiff's version of the facts is not correct. In preparing an opening statement, the defense attorney will have to guess how much detail and what kind of emphasis the prosecution/plaintiff's attorney will make in their opening statement. The defense attorney should be ready to make adjustment in his or her prepared statement while the prosecution/plaintiff's attorney speaks. The defense attorney should highlight the facts that are in dispute, and emphasize the kinds of evidence that defense will present to show that the prosecution/plaintiff is wrong.

c. Both attorneys should practice making eye contact with the jurors while speaking.

Direct Examinations:

During Direct Examination ("DX"), an attorney will ask questions of the witness who is testifying for his/her own side. The focus of the jurors should be on the witness; the attorney is there to guide the witness in telling a compelling story by relating the crucial facts in his or her affidavit.

Form of DX questions: Witnesses may not be asked leading questions by the attorney who calls (or "directs") them. A leading question is one that prompts the witness to give the answer desired by the examiner, usually suggesting either a "yes" or "no" answer. Appropriate DX questions are usually phrased to evoke a more substantive answer without straying into long, uncontrolled narrative responses.

Examples of appropriate DX questions:

- Mr. Bryant, when did you first meet Jill?
- Mr. Bryant, how long have you been employed by the factory?
- Directing your attention to Saturday, October 25, could you please tell the court what you observed?

Examples of leading questions (not allowed on direct examination):

- Mr. Hayes, isn't it true that you dislike Manuel Garcia?
- You were not in the building that day, were you?
- Mr. Hayes, didn't you see Jack put the money into the briefcase?

Refreshing a witness's recollection: If during direct examination, a witness cannot recall a statement that s/he made in his/her affidavit, the attorney may help the witness to remember. The attorney must first ask the witness if it would help to refresh his/her memory if s/he could see the witness statement. The attorney would then ask the judge for permission to approach the witness with the affidavit; show the affidavit to opposing counsel before approaching the witness; show the affidavit to the witness; and ask the witness to identify the document. Then the attorney could ask the witness to look at the appropriate line(s) in the affidavit to help refresh the witness' recollection.

Example: A witness sees a purse-snatching, offers to testify, and gives a statement of events to the attorney. At trial, the witness has trouble remembering the events s/he saw. The attorney may help the witness remember by showing him/her the statement.

Cross-Examinations:

During Cross-Examination ("CX"), the attorney has the opportunity to question the witnesses for the opposition. The attorney wants to draw the jurors' attention to himself/herself, maintaining control of the witness and not allowing the witness to hedge on

his/her answers. The attorney should not become belligerent or rude, but the attorney's demeanor will be more forceful than during direct examination.

Form of questions: Attorneys should ask leading questions when cross-examining the opponent's witnesses (i.e., questions should be phrased to evoke a specific "yes" or "no" answer, rather than a narrative).

Examples of appropriate CX questions:

- Ms. Bryant, you considered marrying George Hayes, didn't you?
- Isn't it true that you are hard of hearing, Ms. Sanchez?
- Mr. Yazzi, don't you generally prefer to avoid loud, crowded taverns?

Appropriate topics for CX questions: Cross-examination is not limited and may cover the subject matter of the direct examination, matters affecting the credibility of the witness, and additional admissible matters that were not covered on direct examination.

Attacks on witness credibility: On cross-examination, the attorney may want to show that the witness should not be believed. The witness's credibility can be attacked by asking questions about the following:

1) Prior bad conduct that makes her/his credibility (trustworthiness) seem doubtful and shows that the witness should not be believed;

Example: "Isn't it true that you have had your credit cards revoked for failure to pay your bills"; or "Isn't it true that you were fired from your job for 'stretching the truth' in the stories that you wrote?"

2) Prior criminal convictions of the witness, if within the past ten years for a felony or a crime involving moral turpitude, *and* the court determines that the value of this evidence outweighs the prejudicial effect;

Example: "Isn't it true that you were recently convicted of armed robbery?"

3) Bias or prejudice of the witness, that is, showing that the witness has reason to favor or disfavor one side of the case;

Example: "Isn't it true that you resent my client for firing you from your job?" or "Isn't it true that if my client is convicted, you will become sole owner of the company?"

4) Accuracy of the witness's sensory perceptions, which are the witness's ability to see, hear or smell, or the accuracy of the witness's memory.

Example: Ms. Block testifies that she saw Sam, who was a block away, take a bag of marijuana from his briefcase and hand it to Joe. On cross-examination, the attorney asks Ms. Black, "Isn't it a fact that you didn't have your glasses on when you claim to have seen Sam and Joe?"

5) Prior statements made by the witness that contradict her/his testimony at trial and point out the inconsistencies in her/his story (impeachment);

Example: Bill Jones testifies at trial that Joe's car was traveling 90 mph. The opposing attorney asks, "Isn't it a fact that before this trial you gave a statement to the police saying that Joe's car was only traveling 50 mph?"

Know when to stop: Don't ask so many questions on CX that well-made points are lost. When a witness has been contradicted or discredited, asking additional questions 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.

Redirect Examination:

If the witness' credibility or reputation for the truthfulness has been attacked on cross examination, the attorney whose witness has been damaged may wish to ask a few more questions. These questions should be limited to the damage the attorney thinks was done by the opposing attorney on cross examination, and should be phrased so as to try to save or "rehabilitate" the witness' credibility. (See Rule 611(d) of the Rules of Evidence).

Hearsay Evidence:

Hearsay can be a difficult concept for students to grasp. According to Rule 801 of the 2015 Federal Rules of Evidence:

"Hearsay" means a statement that:

(1) the declarant [the person making the statement] does *not* make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Prior versions of the Federal Rules of Evidence described hearsay as "an out-of-court statement offered to prove the truth of the matter asserted [in the statement]." These statements are generally inadmissible in a trial. Several exceptions to the hearsay exclusionary rule exist, and it is important to know and understand them. Please see Rules of Evidence 801 – 805 for more information. Your Attorney Advisor will be a good resource to help the students understand statements which may or can be excluded as hearsay, as well as statements that meet one of the exceptions to being excluded.

Hearsay Examples (the following statements are hearsay and are not admissible):

--Joe is being tried for murdering Henry. The witness, Juan, may *not* testify, "Ellen was there, and she told me that Joe killed Henry." This statement is hearsay because the statement was made by Ellen outside of court, and the statement is being used to prove that Joe is guilty of murdering Henry.
--In a civil trial arising from an automobile accident, a witness may *not* testify, "I heard a bystander say that Joe ran the red light."

Opinion Testimony:

As a general rule, "lay" witnesses can testify to events they have observed with their five senses but may not give opinions. However, Rule 701 clarifies that lay witnesses may give opinion testimony about what they saw or heard at a particular time, if such opinions are relevant to the facts at issue and are helpful in explaining their stories. A lay witness may not, however, testify to any matter of which s/he has no personal knowledge.

In contrast, experts who have special knowledge or qualifications may give opinion testimony based upon their expertise in addition to testimony based on personal experience. To do so, an expert must first be qualified by the attorney who calls him or her. Before an expert may be asked and may give such an opinion, the questioning attorney must bring out the expert's qualifications and experience. The attorney must do this by asking a series of questions such as "Please tell the jury about your educational background." "Have you conducted research or published papers in your field?" "Have you received any specialized training in that area?" etc. See Rules of Evidence 701 – 705 for specific information.

Examples:
The (lay) eyewitness may say, "Roy had slurred speech; he staggered and smelled of alcohol." The witness may not add, "Roy was incapable of driving a car."

A psychiatrist could testify that, "Roy has severe eating problems," but only after the attorney had qualified the psychiatrist as an expert in eating disorders. The attorney must demonstrate that the psychiatrist is an expert in this field by asking a series of questions about her/his education and experience in that particular field.

The witness works with the defendant but has never seen the defendant with her/his children. The witness may not testify that the defendant has a bad relationship with her/his children because the witness has no personal knowledge of this.

Objections:

Objections can be made by student attorneys when they believe an attorney or witness has violated the Rules of Evidence during either side's case-in-chief. The attorney wishing to object should stand up and do so at the time of the violation. For example, the objection should be made as soon as the improper question is asked by the other attorney and before the witness answers, whenever possible.

When an objection is made, the judge will ask the objecting attorney the reason for the objection. Then the judge will turn to the attorney who asked the question and give her/him a chance to explain why the objection should not be accepted (sustained) by the judge. Then, if the objecting attorney would like to be heard further on the reasons for the objection, s/he should politely ask the judge, "Your Honor, may I be heard?" The judge will usually allow both attorneys to speak twice before making a ruling, but students should not ask to speak a second time if they have nothing further to add. Finally, the judge will rule on the objection, deciding whether an attorney's question or witness' answer must be disregarded ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

The following are some common mock trial objections (additional objections are based upon the Rules of Evidence):

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.

2. **Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

3. **Assuming Facts Not in Evidence:** Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.

6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Objections by Category

Schools are permitted to raise any objection falling within the NCHSMT Rules of Evidence, which closely track the Federal Rules of Evidence. Listed below are the most commonly used objections with corresponding rule numbers (when applicable). This list, however, is not exhaustive and cannot be used to bar an opponent from raising an objection otherwise grounded in the NCHSMT Rules of Evidence.

I. Objections to the Form of the Question

Leading	Vague
Asked & Answered	Compound Question Argumentative/Badgering
the Witness	Assumes Facts not in Evidence

II. Objections to the Substance of the Question

Relevance [401]	Lack of Foundation
Lack of Personal Knowledge [602]	Calls for Speculation [602]
Calls for Improper Opinion [701/702]	Ultimate Issue [704]
Calls for Hearsay [801]	Improper Character Evidence [404]
Cumulative [403]	More Prejudicial than Probative [403]
Calls for a Narrative Answer	Outside Scope of Re-Direct/Re-Cross [611(d)]

III. Objections to the Witness's Answer

Relevance [401]	Lack of Foundation
Lack of Personal Knowledge [602]	Speculation [602]
Improper Opinion [701/702]	Ultimate Issue [704]
Hearsay [801]	Hearsay within Hearsay [805]
Improper Character Evidence [404]	Improper Bolstering [608(a)]
Cumulative [403]	More Prejudicial than Probative [403]
Narrative	Outside Scope of Re-Direct/Re-Cross [611(d)]
Non-Responsive	

Motions

As stated in Rule 4.11, most motions in mock trial are prohibited. No *voir dire* of witnesses or *motions in limine* are permitted (see glossary of legal terms). No exclusion of any witnesses from the courtroom ("sequestering") is permitted.

As stated in Rule 4.12, bench conferences are allowed. However, for educational and scoring purposes, they should be held from counsel table so that scoring judges can hear the student arguments and take them into account in their scoring.

Exhibits

All permissible exhibits are included with the case materials, and all are stipulated as authentic and accurate in all respects. No objections to the authenticity of exhibits will be honored. Appropriate foundation must still be laid through witness testimony before an exhibit can be introduced, and objections on lack of foundation may be honored if appropriate. The proper procedure for introducing exhibits is detailed in the appendix.

Closing Arguments:

Lawsuits are usually won during the course of the trial, not at the conclusion. They are won by witnesses, exhibits and the manner in which the attorney paces, spaces, and handles them. Sometimes, however, lawsuits have been lost by fumbling, stumbling, and incoherent closing arguments. This observation is not intended to minimize the importance of closing arguments, but rather to emphasize its proper position as a summation of the evidence and a relation of that evidence to the issues in the case.

The purpose of the closing argument is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for the side the attorney is representing. Remind the jury again of your side's "theme" as a lens through which to view the evidence to convince the jury that the facts support your theory of the case. The best closings are outlined ahead of time, not completely pre-written. An effective closing must restate the evidence that was actually presented in each particular trial. Rulings in each trial as to the admission or exclusion of evidence may vary. Students must be prepared to adapt their closing arguments accordingly and not reference any evidence which was not admitted in that particular trial.

Style Points: Again, eye contact, vocal inflection, and good pacing are crucial!!

a. Prosecution/Plaintiff's Attorney: The prosecution/plaintiff will present closing arguments first. S/he has the option to reserve up to half of the allotted time for rebuttal after the defense closing, but s/he must ask the judge for permission to reserve this time before starting his/her closing argument. The attorney may ask to reserve a specific length of time or ask to reserve "all remaining time."

Remember, the prosecution in a criminal trial has the burden of proving the facts beyond a reasonable doubt, while plaintiff has the burden of proving the facts in a civil case by a preponderance of the evidence. Therefore, the closing attorney's summary of the favorable evidence presented is extremely important. Be sure to avoid arguing evidence that was not, in fact, admitted in trial; similarly, do not emphasize evidence that the defense successfully attacked except to give a firm response to such an attack. Cite the law clearly and correctly and make a clear argument regarding how the law requires the judge or jury to rule in your favor.

b. Defense Attorney: Summarize all of the evidence presented to weaken the opposition's case, which can include evidence presented by the defense witnesses as well as admissions made by prosecution/plaintiff witnesses during cross-examination. Be careful not to argue evidence that was not actually admitted in trial. Emphasize the inability of the prosecution/plaintiff to meet their burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.

An Effective Closing Will Include:

a. A summary of the evidence presented that is favorable to the attorney's side;

b. A summary of the case;

c. A legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing (i.e., tell what the verdict should be and why).

NOTE: New information may **NOT** be introduced in the closing argument.

Scoring

A sample ballot can be found at the back of your Competition Rules book; scoring procedures are detailed in Rule 5.3. In reviewing the ballot, you will note that all aspects of the trial are scored. Opening statements and closing statements are scored, as are the performances of each witness and the presentations of the attorneys during each direct and cross-examination. Ballot scores will be used to power-match teams for the second round of preliminary competition. The top two teams at each Regional competition will advance to the regional championship round.

After the jurors and presiding judge have completed their ballots, they will return to the courtroom to give brief (10 minutes) oral feedback to the students, in order to encourage the students and help them improve their performances in subsequent rounds. The focus of these oral critiques should be primarily on the teams as a whole, rather than on individual students. A second ballot is provided to include room for brief written comments on individual student performances.

Final Notes

This Teacher Resource Manual was developed to provide you with a strong foundation as you embark on the adventure of high school mock trial! Please refer to the Glossary of Legal Terms for definitions. Also, see the Appendices for information for student attorneys, witnesses, and Attorney Advisors, as well as additional tips on oral presentations and proper courtroom behavior. If you have more questions, please contact CCCE Program Coordinator Sue Johnson at SueHeathJohnson@gmail.com.

Glossary of Legal Terms

Acquittal: A finding of "not guilty" for a person charged with a crime.
Adversary system: The trial methods used in the U.S. and some other countries, based on the belief that the truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination, the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.
Alternative dispute resolution: Processes that people can use to help resolve conflicts rather than going to court. Common ADR methods include mediation and arbitration.
Amicus curiae: A friend of the court; one not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.
Appeal: A request by the losing party that the judgment be reviewed by a higher court.
Appellant: The party who initiates an appeal. Sometimes called a petitioner.
Appellate court: Has jurisdiction to hear appeals and review a trial court's decision.
Appellee: The party against whom an appeal is taken, sometimes called a respondent.
Bar: The whole body of lawyers. The "case at bar" is the case being considered.
Brief: A written argument prepared by counsel to file in court setting forth both facts and law in support of a case.
Burden of proof: In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point – the burden of proof – is not the same as the **standard of proof.** "Burden of proof" deals with which side must establish a point or points; "standard of proof" indicates the degree to which the point must be proven. For example, in a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as "a preponderance of evidence."
Case law: Law based on decisions of appellate courts, particularly the Supreme Court.
Certiorari: "To make sure." A request for certiorari is an appeal, which the higher court need not grant. If it does, then it agrees to hear the case, and a writ of certiorari is issued commanding officials of inferior courts to convey the case record to the higher court.
Civil case: A case involving disputes between two or more people, between people and companies, or between people and government agencies.
Common law: The term generally refers to the "judge-made law" (case law or decision law). The common law originated in England in the rulings of judges based on tradition and custom. These rulings became the law common to the land. Common law is distinguished from statutes (laws enacted by legislatures).
Complaint: The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

Criminal case: A case brought by the government, through a prosecutor, against a person thought to have broken the law. (Criminal law is a broad field of the law involving action taken by the state against a person accused of committing a crime.)
Crime: An act, or failure to act, forbidden by law and designated a crime in the statutes.
Decision: The judgment reached or given by a court of law.
Decree: An order of the court. A **final** decree is one which fully and finally disposes of the litigation; an **interlocutory** decree is one that often disposes of only part of a lawsuit.
Defendant: In a civil case, the person being sued. In a criminal case, the person being charged with a crime.
Dispute: A conflict of claims or rights for which a legal suit may be brought.
Dissent: The disagreement of one or more judges with the decision of the majority.
Due process of law: Law in its regular administration through the courts of justice; the guarantee of due process requires that every person be protected by a fair trial; i.e., the right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.
Equal protection of the law: The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law. Court decisions have established courts must be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restriction in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness which do not generally affect others; that persons are liable to no other or greater burdens than such laid upon others; and that no different or greater punishment is enforced against them for a violation of the laws.
Federalism or federal system: In the United States, a division of powers between the federal or U.S. government and the governments of the fifty states. The states have powers of their own, such as power to create a public school system. The federal government has powers such as control over coinage and the regulating of foreign trade. Both have concurrent powers in such areas as taxation and public health and welfare.
Felony: A most serious crime with penalties of imprisonment ranging from a year and a day to life, or, in some states, punishable by death.
Finding: Formal conclusion by a judge or regulatory agency on issues of fact; also a conclusion by a jury regarding a fact.
Grand jury: A jury of inquiry that hears evidence and, if satisfied that there is a probable cause that a crime was committed, presents an indictment. A petit jury is the jury in a criminal trial that decides the guilt or innocence of the accused.
Grievance: A legal dispute.
Grounds: The basis or foundation for action; legal reasons for filing a lawsuit.
Homicide: The killing of one person by another.
Impartial: Objective rather than subjective; provision of the Sixth Amendment to the U.S. Constitution requiring the judge or a jury not to favor one party over another or to prejudge the merits of the case.
Indictment:A formal charge or accusation of criminal action.

Injunction: A court order prohibiting a threatened or continuing act.
Judicial review: The power of the Supreme Court to declare an act of Congress unconstitutional. *Marbury v. Madison* is the classic case of judicial review.
Legislative history: Background of action by a legislature, including testimony before committees, written reports, and debates on the legislation.
Litigation: The process of resolving a dispute over legal rights in court.
Misdemeanor: Less serious crime; A **gross misdemeanor** is a less serious class of crime; A **petty misdemeanor** is a minor offense for which one may be fined.
Moot: A moot case or a moot point is one not subject to judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.
Motion: An application for a rule or order, made to a court or judge.
Motion in limine: A pretrial request that certain inadmissible evidence not be referred to or offered at trial.
Opinion: A written statement of a judge setting forth the reasons for a decision and explaining his or her interpretation of the law applicable to the case. A **majority** opinion represents the views of more than half of the judges who participated in the case. A **plurality** opinion represents the view of the greatest number of judges, but less than half of those who hear the case. For example, suppose nine judges hear a case and decide it by a five-to-four vote. If all five agree in their reasons for the decision and join in an opinion stating those reasons, it would be a majority opinion. However, if three of the five agree on the reasoning and the other two agree with the decision, but not with the reasoning, the opinion of the three would be a plurality opinion. The two remaining judges who joined in the decision would likely write a **concurring** opinion, which agrees with the decision of the majority, but differs from the reasoning of the majority opinion. A **dissenting** opinion is one that disagrees with the decision of the majority.
Ordinance: The laws passed by city government.
Overrule: To overturn; as, for example, when a court of appeals decides that a previous decision in a different case, by that court or a lower court, was incorrect. After a case has been overruled, it can no longer be referred to as precedent.
Perjury: Lying under oath.
Plaintiff: The complaining party to litigation; one who initiates the court action.
Precedent: A prior judicial decision that serves as an example or rule to authorize or justify another decision.
Principal: In criminal law, the main perpetrator of, or person who commits, a crime.
Prosecutor:A public officer who conducts criminal proceedings on behalf of the people (i.e., the government's attorney in a criminal case).
Public defender: A public officer who provides Constitutionally guaranteed defense for those who are accused of criminal offenses but who cannot afford to hire an attorney.

Ratification: The process of approving an amendment to the U.S. Constitution, which is spelled out in Article 5 of that document.
Relief: Deliverance from oppression, wrong, or injustice; a general designation of the assistance, redress, or benefit that a plaintiff seeks at the hands of the court.
Remand: To send back to a lower court, a higher court can remand a case to a lower court with instructions to carry out certain orders.
Remedy: Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.
Reverse: To overturn the ruling of a lower court.
Standard of proof: The level of evidence necessary to prevail in a legal case. It varies depending on the nature of the case. The standard is "**beyond reasonable doubt**" (the jury has a higher degree of certainty about the defendant's guilt, although jurors need not be 100% convinced) in criminal cases, and "**preponderance of the evidence**" (or greater than 50%) in most civil cases.
Statutory law: Law enacted by the legislative branch of government, as distinguished from **case law** or **common law**. A statute is an act of the legislature declaring, commanding, or prohibiting something. Regulation refers to rules made by government agencies that carry out the intent of a statute.
Stay: To stop or hold off. To stay a judgment is to prevent it from being enforced.
Subpoena: A process that requires a person to appear as a witness and give testimony.
Supreme Court: The highest court of most states; the highest court of the United States. The U.S. Supreme Court is made up of a chief justice and eight associate justices appointed by the president. Supreme Court decisions must be followed by lower courts in similar cases. However, the Supreme Court itself need not abide by its earlier decisions if it becomes convinced that circumstances demand a new approach. After a major decision by the Supreme Court, legislatures often revise laws to bring them into accord with the Constitution as interpreted by the decision.
Supremacy clause: Article 6, clause 2 of the Constitution, which declares the federal Constitution and laws to be binding over the state constitutions and laws.
Trier of fact: The judge or jury when deciding the events that actually happened as proven in a trial. A **bench trial** is a type of trial where the judge is the trier of fact as well as law. A **jury trial** is a type of trial where the jury is the trier of fact.
Voir dire A preliminary examination of a prospective juror by a judge or lawyer to determine if the juror is competent to serve; a preliminary examination to test the competence of a witness or evidence.

APPENDIX A
Suggestions for Attorney Advisors

Thank you for your willingness to serve as an advisor for a high school mock trial team! Your investment of time and energy is much appreciated, and by mentoring these students, you play a key role in creating tomorrow's leaders.

These suggested guidelines are meant to help while you prepare your student attorneys and witnesses for the mock trial competition. If the teacher coach has not already sent the case materials to you, you can access them on our website at http://ncmocktrial.org/competitions/case-materials.

As much as you will want to help the students, to point them in the right direction, and to give them the benefit of your experience, remember that the students and teachers will develop a better understanding of the case and learn more from the experience if the attorney advisors do not dominate the preparation phase of the competition. The preparation phase of the contest is intended to be a cooperative effort of students, teacher coach, and attorney advisor.

Remember that these are high school students, and the mock trial case may be the first introduction to the legal system for many of them. Even so, you will want to strike a balance between "talking down" to students and stifling discussion through the use of complicated "legalese." While some of the students may plan to attend law school, the majority of them probably will not. Nonetheless, their critical thinking skills, enthusiasm, and ability to grasp legal principles may surprise you, so do not be afraid to "stretch" them and expect much of them!

SUGGESTED PREPARATION TIME: The time spent working with teams varies from team to team based on the attorney's availability. It is expected that attorney advisors will spend at least five or six 2-hour sessions with their team before Regional competition.

SUGGESTED MEETING PLACE: Meetings can take place at the school, or at a home or office. If possible, one meeting should take place in a local courtroom to help students feel comfortable in a courtroom setting.

First Session

1. The students and teacher should have read all of the case materials before your first meeting. Ideally, you should have as well, so that you can answer any questions which they have already jotted down to ask you.
2. Explain trial procedures, i.e., opening statements and closing arguments, calling witnesses, direct and cross-examination, objections (e.g., hearsay, improper foundation, leading the witness, etc.).
3. Review the NCHSMT Rules of Evidence included in the Competition Rules.

Second Session

1. Examine and discuss the factual basis of the case, witnesses' testimony, and the points for each side. Key information might be listed on the blackboard or on a large paper pad as discussion proceeds so that it can be referred to at some later time. Categorize facts: important, damaging, conflicting.
2. Discuss the law involved in the case and the burden of proof.
3. Put the students on the stand with the case materials, then you can proceed with an example of direct and cross-examinations.
4. Emphasize that team members should not memorize their roles since, in a real trial, they would have to play it by ear. Rather than memorizing his/her role(s), each student should concentrate on knowing all the facts of the case.

Third Session

1. Go through the different phases of the trial:
2. Work with the student attorneys, concentrating on what should be covered in an opening statement and a closing argument.
3. Remember that your role is that of a consultant, not an author. Give the students ideas, but don't write statements for them. Ask other members of the team what they think should be included in the opening and closing.
4. Witnesses are called to the stand and student attorneys conduct direct examinations of them. Work with students to develop questioning techniques that will elicit testimony to support either side of the case.
5. Have other team members make suggestions, to both witnesses and attorneys.
6. Have attorneys practice making objections, and discuss both style and substance of objections thoroughly.

Subsequent Sessions

1. Conduct cross-examination and define possible areas where objections could occur; look for other areas that your team's attorneys might want to focus on during cross-examination; have all team members make suggestions.
2. Practice opening statement and closing argument, how to lay foundation for exhibits, what to do when the opposing team objects to your questions.
3. Discuss appropriate courtroom decorum and etiquette.

Final Session

1. Have at least one practice run of the entire trial. You may choose to preside, or you may recruit another legal professional. Allow team members or the teacher coach(es) to act as the opposing team's attorneys, and/or conduct your own cross-examination of the witnesses to test them.
2. Enlist the support of community members, especially attorneys or judges, to sit in and offer suggestions.

APPENDIX B
Suggestions for Student Attorneys

This outline offers various "helpful hints" for preparing students to be attorneys in mock trials. Included are tips and techniques for both pre-trial preparation and the presentation at trial of the opening statement, direct and cross-examinations, and closing argument.

1. General Suggestions

- Always be courteous to witnesses, other attorneys, and the judge.
- Always stand when talking in court and when the judge enters or leaves the room.
- Dress appropriately and professionally.
- Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
- If the judge rules against you on an objection, take the adverse ruling gracefully and be cordial to the judge and the other team. Do not take rulings personally; accept them and move forward accordingly and adapt as you can. Learn as much as you can and have fun while participating in the project.

2. Opening Statements

- Objective: To acquaint the judge and jury with the case and to give a forecast of what you anticipate that the evidence will show. Argument is not permitted during opening. Objections are not permitted during opening.
- Advice in Preparing:

  ***What should be included**:*

  - Case theme: short memorable word or phrase to introduce the jury to your case theory
  - Names of attorneys (you and your colleagues)
  - Name of client
  - Name of opponent
  - A short summary of the facts: the “story” of the case from your side’s perspective
  - A clear and concise overview of the witnesses, testimony and physical evidence that you will present, stating how each will help prove your case; try to recount the story without naming which witnesses will tell what information
  - Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case
  - Conclusion and request for relief

  ***What to avoid**:*

  - Too much detail, which can tire or confuse the jury.
  - Exaggeration and overstatement.
  - Argument, which violates the function of the opening statement (ie, to provide a forecast of what the evidence will show from your client's viewpoint).

- Advice in presenting:
  - Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.)
  - Do not read the entire presentation; try to look at the jury and tell your story, preferably without relying on notes. If you can deliver it without notes at all, even better.
  - First and last sentences should be the strongest, to capture the jurors' attention and leave them with a lasting impression.
  - Be earnest, loud and clear.
- Other suggestions:
  - Learn your case thoroughly (facts, law, burdens, etc.).
  - Never promise to prove anything that you will not or cannot.
  - Write a clear, concise, and well-organized statement.

3. Direct Examination

- Objectives: To obtain information from favorable witnesses you call in order to prove the facts of your case; to present enough evidence to warrant a favorable verdict; to present facts with clarity and understanding; to present your witness to the greatest advantage; and to establish your witness's credibility.
- Advice in preparing:

  What should be included:
  - Isolate the information that each witness can contribute to your case and prepare a series of questions designed to elicit that information.
  - Make sure all items that you need to prove your case will be presented through your witnesses.
  - Use clear and simple questions.
- Advice in Presenting:
  - Be a "friendly guide" for the witness as s/he tells their story. Let the witness be the star.
  - Ask only the questions which are necessary to elicit the desired testimony; and stay within your time limits.
  - Be prepared to think and respond quickly to an unexpected answer from a witness and add a short follow-up to be sure you obtained the testimony you wanted.
  - Present your questions in a relaxed and clear fashion; be sure to listen to the answers.
  - If you need a moment to think, ask the judge if you can discuss a point with your co-counsel.
  - Refer to exhibits by their designation (“Exhibit 1”, etc.).
- Other suggestions:
  - Ask open-ended questions. These usually begin with "who," "what," "when," "where," "why," or "how," or by asking the witness to "explain" or "describe."
  - Avoid asking leading questions.
  - Practice with your witness.

- Don't ask questions requiring opinion testimony, unless the witness has been certified as an expert by the court.
- Remember that in the event your witness's memory fails, you may refresh his/her memory by the use of their witness statement. (Refer to the NCHSMT Rules of Evidence in your case packet).

- What does the opposing attorney do during this time?
  - Objects to testimony or introduction of evidence when necessary.
  - Writes down pertinent information and prepares for cross-examination of witnesses.

4. Cross-Examination

- Objectives: To make the other side's witnesses less believable in the eyes of the trier of fact; to negate your opponent's case; to discredit the testimony of your opponent's witnesses; and to discredit real evidence that has been presented.
- Advice in Preparing:
  - Carefully analyze all possible adverse testimony and other evidence to find weaknesses; an attorney should attempt to explain, modify, or discredit the opponent's evidence by exposing its weaknesses.
  - Jot down ideas or key words which may be used to write out the cross-examination questions later. Prepare short questions using easily understood language.
  - Use narrow, leading questions (ones that suggest the answers and normally require only a yes or no answer). Each question should only introduce one fact.
  - Pick two to three main "lines of questioning" to structure your cross-examination. Think of each line of questions as a chapter in a book. Use transitions to signal when you are moving to a different "chapter."
- Types of Questions to Ask:
  - Questions that establish that the witness is inaccurate or untruthful 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).
  - Questions to show that the witness is prejudiced or biased (e.g., the witness testifies that s/he has hated the defendant since childhood).
  - Questions to weaken the testimony of the witness by showing his/her opinion is questionable because of poor circumstances such as location or lighting (e.g., a witness who has poor eyesight claims to have observed all the details of a fight that took place 100 feet away in a crowded bar).
  - Questions to show that an expert witness is not competent or qualified because s/he does not have the proper training or experience (e.g., a psychiatrist testifying to the defendant's need for dental work).
  - Questions to reflect on a witness' credibility by showing that s/he gave a contrary statement earlier (e.g., the witness' testimony is different from what s/he testified to in the affidavit).

- Advice in Presenting:
  - Eye contact with the witness is recommended.
  - Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
  - Always listen to the witness's answer.
  - Be fair and courteous; don't quarrel with the witness.
  - Use narrow, leading questions that suggest an answer to the witness (these are generally questions that require a "yes" or "no" answer). Avoid allowing the witness to explain anything (i.e., by refraining from using "why" as an open-ended question).
  - Save the ultimate point for closing; do not try to get the opposing witness to admit to committing the murder, etc. Use cross-examination to bring in key facts which the closing attorney can "tie together" in closing argument.
- Other Suggestions:
  - Anticipate each witness' testimony and write your questions accordingly. Be ready to adapt your questions at the trial depending on the actual testimony.
  - Be brief. Don't ask so many questions that well-made points are lost in the shuffle.
- What does opposing counsel do during this time?
  - Listens carefully, objecting when appropriate, and noting pertinent testimony to prepare for re-direct, if necessary.

5. Closing Arguments

- Objective: To provide a clear and persuasive summary of: (1) the evidence you need to prove the case, and (2) the weaknesses of the other side's case.
- Advice in Preparing:

  What should be included:
  - Isolate the issues and describe how your presentation resolved those issues.
  - 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 final statement to reflect what the witnesses actually said rather than relying on just the anticipated weaknesses of the other side.)
  - Closing arguments can be composed before trial, but students should be prepared to adapt their closing to the developments and evidence in that specific trial. Relaxed and informal statements are more effective.
  - Review the physical evidence. Outline the strengths of your evidence and also outline the weaknesses of the other side's evidence. (This section too must be adapted at trial.)
  - State the applicable statutes which support your side.
  - Remind the jury of the required burden of proof. If you are the plaintiff's or prosecution's lawyer, you must tell and convince the jury that you have met that burden. If you are the attorney for the defense, you must inform and convince the jury that the other side has failed to meet its burden.

- Argue your case by stating how the law applies to the facts as you have proven them.
- Don't forget to confidently request the verdict/remedy you desire.

- Advice in Presenting:
  - You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc. in the other side's case that actually came out during the trial. You can't anticipate everything perfectly before the actual presentation of the case.
  - Argue your side, but don't appear to be vindictive. Fairness and professionalism are important.
  - Do not read throughout your presentation. It is much easier to avoid reading if your notes contain only a brief outline/list of the important points you want to remember to cover. If you are using notes, make eye contact with the jury as often as possible.
  - Rehearse as much as possible (this will help you feel comfortable presenting your closing without reading it).
  - Make sure your closing argument is well organized.

APPENDIX C
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). 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 3.5.)
- 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).
     - Know the questions that your attorney will ask and prepare clear and convincing answers that contain the information that 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 important.
     - 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.

4. **Cross-Examination**
   - Objective: To make the other side's witnesses less believable in the eyes of the trier of fact.
   - Advice in Preparing:
     - Learn the case thoroughly, especially your witness statement.
     - 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 not to get flustered.
     - Be sure that your testimony is never inconsistent with the facts in the affidavit.
     - Don't read or recite your witness statement word for word.
     - 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.

APPENDIX D
Suggestions to Make the Most of Your Oral Presentation

Your personal appearance affects the way people view you and your performance; therefore, always dress appropriately for the courtroom.

1. Getting the courtroom ready

- Arrive at the courtroom a few minutes early so that you can acquaint yourself with the layout, make any necessary adjustments for a mock trial situation and be ready to start the trial exactly on time.
- Courtroom should be arranged by competition staff before your arrival. Be cautious about moving any furniture in the courtroom without permission from a site volunteer. The attorneys' tables need to each seat three attorneys comfortably. Be sure that there is adequate room to rise from your chair and adequate passageway to approach the bench or the witness.
- Attorneys should neatly organize their materials on the tables. Get rid of all of your own unnecessary papers, briefcases and pencils. DO NOT DISTURB any equipment or court documents on counsel tables without checking first with a site volunteer.
- NO GUM – THROW IT IN THE TRASH *BEFORE* ENTERING THE COURTROOM.

2. Seating 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 and jurors' impressions 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.

3. Speaking

All participants should speak loudly and enunciate each word clearly, as microphones are not usually available.

4. Presenting opening statements and closing arguments

Since these are extemporaneous speeches, attorneys should employ effective speech-making techniques:

- Organize any materials before beginning.
- Rise slowly.
- With confidence, walk slowly yet deliberately to the podium or the area from which you will deliver the speech.
- 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.

- Before your first word, look the jurors in the eyes and then speak directly to them. Move your gaze between jurors as you move from one sentence to another.
- Try for a conversational tone to your voice. Speak in a clear voice that is slow enough and loud enough for the jury to follow your ideas without straining.
- Avoid using slang. Always use your best vocabulary.
- 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.
- If you concentrate on communicating directly to the jury, 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 jurors. Don't force gestures and always avoid repetitive or unnecessary gestures.
- 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 jury.
- When you have concluded your speech, say "Thank you, Your Honor," while looking directly at the judge. Pause briefly and then take your seat. Show no signs of relief and don't immediately turn to speak to co-counsel. Try to maintain that aura of poise and confidence.

5. Attorney questioning of witnesses

♦ 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.

♦ Speak slowly!

♦ Listen to the witness's response. S/he may not say what you had anticipated and thus you may have to insert or reword questions for clarification.

♦ If opposing counsel makes an objection, stop speaking and give them the floor.

♦ The judge may ask you to respond to their objection. Do so as confidently as you can. Avoid arguing directly with opposing counsel – make your argument directly to the judge. Quote the rule number from the Rules of Evidence if you are able to do so.

♦ Sometimes you may want to ask the judge if you may respond to the objection.

♦ If the judge rules against you on an objection, show no signs of dismay. Simply proceed with another question. The key again is to maintain your poise.

♦ If you honestly don't know how to proceed, ask the judge if you may confer with your co-counsel. Make the conference brief; only use this technique when absolutely essential.

♦ When cross-examining a witness, avoid asking a question to which you do not know the answer.

♦ When you have finished your questioning, say "No further questions, Your Honor," and take your seat in a confident manner.

6. Witnesses

- After you have been sworn in, the judge or bailiff will indicate for you to be seated. Respond by saying, "Thank you."
- Seat yourself in the witness box in a professional manner.
- Position yourself so that you can comfortably give your responses to the jury.
- Speak loudly and clearly and in a manner best fitting the character you are portraying.
- Don't allow any unnecessary movement/gestures to distract from your testimony.
- When an objection is made, immediately stop talking.
- Wait until the objection is decided, and even then don't respond until the attorney doing the questioning indicates that you should do so.
- Do not attempt to answer a question that you don't understand. Ask for clarification to be sure you know what is meant.
- Never argue with the judge or the opposing counsel. Keep a cool head!
- 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?"
- Walk slowly and confidently back to your seat.
- Do not speak to anyone along the way or when you are seated. Remain in character throughout the trial; remember the jurors may look at you at any time.

7. During jury deliberations

- Rise when the judge and jurors are leaving the courtroom.
- You now have the opportunity to meet the other team! Walk over to the other team members. Introduce yourself. It's always appropriate to congratulate them on a good aspect of their performance. Remember that they're teenagers just like you. You are all young people experiencing a courtroom situation. While all of you want to win the trial, a potential friendship can mean a lifetime of winning.
- While the jury panel is deliberating, you will also have an opportunity to choose and recognize an outstanding “STAR Witness” and “STAR Attorney” on the opposing team. Take this responsibility seriously, as it is intended to promote collegiality and professionalism among the student participants.

Procedure for Introduction of Exhibits

With proper foundation, exhibits may be entered on Direct Examination or Cross Examination.
As an example, the following steps effectively introduce evidence:

1. All exhibits are pre-marked, 8½" x 11", and color or black & white.

2. Ask for permission to approach the witness. "Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit ___?"

3. Show the exhibit to opposing counsel.

4. Ask the witness to identify the exhibit. "I now hand you what has been marked for identification as Exhibit _____. Would you identify it please?" Witness answers with identification only.

5. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation for admissibility, including questions of the relevance and materiality of the exhibit.

6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit_____ into evidence at this time. The authenticity of this exhibit has been stipulated."

7. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

8. Opposing Counsel: "No, Your Honor," or "Yes, Your Honor." If the response is "yes," the objection will be stated for the record. Court: "Is there any response to the objection?"

9. Court: "Exhibit ____ is/is not admitted." If admitted, questions on content may be asked.