

GORDON D. SCHABER MOCK TRIAL

GENERAL

- Familiarize yourself with the *People v. Croddy* (pp. 8-50) and Mock Trial Simplified Rules of Evidence (pp. 63).
- Review Pretrial and Trial Procedures below, Evaluation Criteria, Guidelines for scoring

SUMMARY OF PRETRIAL PROCEDURES

1. The hearing is called to order
2. The presider asks the defense to summarize the arguments made in the motion. The defense has four minutes. The presider will interrupt to ask clarifying questions. The time spent answering the presider's questions is not included in the four-minute time limit.
3. The presider asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.
4. The presider offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues.
5. The presider offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.
6. At the end of the oral arguments, before ruling, the presider asks students if they would like 30 seconds to consult with teacher/attorney coaches regarding any trial irregularities.
7. The presider will rule on the motion and begin the trial.

SUMMARY OF TRIAL PROCEDURES

1. Attorneys present physical evidence for inspection.
2. Presider states charges against defendant.
3. Prosecution delivers its opening statement. **No questioning** by presider during opening statements.
4. Defense may choose to deliver its opening statement at this point or may wait to open after the prosecution has completed its case in chief.

5. Prosecution calls its witnesses and conducts direct examination.
6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense cross-examines the witness.
7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.
8. After prosecution presents all its witnesses, defense delivers its opening statement (if it did not do so earlier).
9. Defense calls its witnesses and conducts direct examination.
10. After each defense witness is called to the stand and has been examined by the defense, the prosecution cross-examines the witness.
11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.
12. Prosecution gives its closing argument, then defense presents its closing arguments. **No questioning** by presider during closing arguments.
13. Prosecution and defense present rebuttal arguments.
14. At the end of the trial before ruling, the presider asks students if they would like 30 seconds to consult with their teacher/attorney coaches regarding any trial irregularities.
15. Presider deliberates, announces verdict in court, and conducts a short debrief of the trial with the scoring attorneys (not to exceed 10 min.)

EVALUATION CRITERIA

Students are to be rated on a ten-point scale (clerk/bailiff five-point) for each category according to the following criteria appropriate to each presentation. **Points should be deducted if criteria are not met or are violated.** NOTE: Some scores are weighted and therefore can affect a team's score more dramatically. These include the pretrial motion (x2) and the closing argument (x2).

Pretrial Motion (x2)

- Clear and concise presentation of issues and appropriate use of case materials.
- Well-developed, reasoned, and organized arguments.
- Solid understanding of the legal reasoning behind the arguments.
- Responded well to presider's questions and maintained continuity in argument.
- Effective rebuttal countered opponent's argument.

Opening Statement

- Provided a case overview / Introduction of Attorneys
- Theme/Theory of the case was identified
- Overview of key witnesses and their testimony
- Outlined burden of proof
- Request for relief (what the side is asking the court to decide)
- Mention of applicable law or statutes to be covered.

Direct/Re-Direct Examination, Attorney:

- Used questions requiring straightforward answers and brought out key information for her/his side of the case.
- Properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- Properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Responded to the objections utilizing rules of evidence or the rules of competition.
- Made effective objections to cross-examination questions of her/his witness when appropriate.
- Did not make unnecessary objections and only used only those objections listed in the Summary of Evidentiary Objections.
- Made appropriate use of time throughout questioning.
- Avoided leading questions.
- Did not ask opinion questions unless witness is expert.

Cross-Examination, Attorney:

- Made effective objections to direct examination (of the witness she/he cross-examined) when appropriate.
- Used narrow questions that suggested a yes or no answer and did not allow the witness to provide a narrative explanation.
- Responded to objections utilizing rules of evidence or the rules of competition.
- Properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Exposed contradictions in testimony and weakened the other side's case.
- Impeached the witness without appearing to harass or intimidate him/her.
- Referred to witness testimony and followed rules for showing the testimony to the witness.

Witnesses:

- Witness was believable in her/his characterizations and presented convincing testimony.
- Witness was well prepared for answering the questions posed to her/him under direct examination and responded well to them.

- Witness responded well to questions posed under cross-examination without unnecessarily disrupting or delaying court proceedings.
- Witness understood the facts.
- Witness testified to key facts in a consistent manner and avoided irrelevant comments.
- Witness did not disrupt the trial with unreasonable inferences.
- Played up the strengths of his/her statements and adequately explained the weakness.
- Did not use notes; Sounded spontaneous and not memorized; Did not wear a costume.

Closing Argument (x2), Attorney:

- Performance contained elements of spontaneity and was not based entirely on a prepared text.
- Incorporated examples from the actual trial, while also being careful not to introduce statements and evidence that were not brought out during the trial.
- Outlined the strengths of his/her side's witnesses and the weakness of the other side's witnesses.
- Asked for the verdict, including a request for relief, and explained why the verdict was justifiable.
- Effective rebuttal countered opponent's arguments.
- Made an organized and well-reasoned presentation summarizing the most important points for his/her team's side of the case.
- Reviewed the exhibits and how they helped the case.
- Stated the applicable law or statutes and how they supported the side's story.

Clerk

- Present and punctual for trial
- Performed her/his role so that there were no disruptions or delays in the presentation of the trial.
- Conducted her/himself professionally without attracting any unnecessary attention.
- Properly used verbal and visual time warnings.

Bailiff

- Present and punctual for trial
- Performed her/his role so that there were no disruptions or delays in the presentation of the trial.
- Conducted her/himself professionally without attracting any unnecessary attention.
- Knowledgeable about script and role in trial.
- Followed script

Team Performance

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly and displayed good sportsmanship to all competitors, regardless of trial results.
- All team members were involved in the presentation of the case and actively participated in fulfilling their respective roles.
- Witnesses performed in synchronization with attorneys in presenting their side of the case.
- As much as possible, each trial attorney displayed examination and argumentation skills, and when appropriate, displayed knowledge of California Simplified Rules of Evidence in making objections.
- Team members demonstrated cooperation and teamwork.
- The teachers and attorney coaches displayed good sportsmanship.

Guidelines for (1-10) Scoring

The following are general guidelines to be applied to each category on the score sheet. It is recommended that scorers use “5” as an indication of an average performance, and adjust higher or lower for stronger or weaker performances.

Attorneys	Score	Witnesses
<ul style="list-style-type: none"> • Excellent understanding of the case, rules and legal issues. • Questions and arguments advanced case and didn't ask for unfair extrapolations. • Persuasive and articulate delivery made without use of notes. • Thought well on feet, in control of situation, and responded to other team's presentation. • Objected when appropriate; clearly understood how to respond to objections. • Maintained eye contact with judge and witnesses, spoke in clear and audible voice. 	9 – 10 Excellent	<ul style="list-style-type: none"> • Excellent understanding of case, witness statements, and exhibits (if applicable) • Convincing, credible presentation • Answers were thorough, accurate, persuasive, and natural, not scripted. • Didn't provide answers that embellished facts and/or went outside scope of case materials. • Maintained eye contact with judge and student attorneys; strong audible voice.
<ul style="list-style-type: none"> • Good understanding of the case, rules and legal issues. • Most questions and arguments advanced case and didn't ask for unfair extrapolations. • Mostly persuasive and articulate delivery; used notes occasionally. • Able to think on feet some of the time. • Most objections were appropriate; usually understood how to respond to objections. • Mostly maintained eye contact with judge and witnesses; Mostly spoke in clear/audible voice. 	7 – 8 Above Average	<ul style="list-style-type: none"> • Good understanding of case, witness statements, and exhibits (if applicable) • Mostly convincing, credible presentation • Most answers were thorough, accurate, persuasive, and mostly natural, not memorized. • Rarely provided answers that embellished facts and/or went outside scope of case materials. • Sometimes forgot to maintain eye contact with judge and student attorneys; Mostly spoke in clear and audible voice.
<ul style="list-style-type: none"> • Fair understanding of the case, rules and legal issues. • Used notes, sometimes stumbled on delivery. • Some questions and arguments advanced the case and didn't ask for unfair extrapolations. • Prepared for trial but often relied on preparation and not responding to other team's presentation. • Missed appropriate opportunities to object; didn't always understand how to respond to objections. • Sometimes forgot to maintain eye contact with judge and witnesses; Sometimes difficult to hear. 	5 – 6 Average	<ul style="list-style-type: none"> • Fair understanding of witness statements and exhibits • Somewhat convincing, credible presentation. • Answers not always thorough, accurate or persuasive; sounded scripted, not natural. • Some answers embellished facts and/or went outside scope of case materials. • Sometimes forgot to maintain eye contact with judge and student attorneys; Sometimes difficult to hear.
<ul style="list-style-type: none"> • little understanding of case, rules, and legal issues. • Needs to work on poise and delivery; didn't respond to other team's presentation. • Read mostly scripted questions; relied heavily on notes. • Few questions and arguments advanced case; may have asked questions that required unfair extrapolations. • Struggled to understand when to object and how to respond to objections; used objections to interfere with other team's presentation. • Often forgot to maintain eye contact with judge or witnesses; Often difficult to hear. 	3 – 4 Below Average	<ul style="list-style-type: none"> • Struggled to understand witness statements and exhibits (if applicable). • Presentation not convincing, credible; often unrealistic. • Answers were generic and often didn't seem natural, but based on memorized script; sometimes stumbled over responses. • Often provided answers that embellished facts and/or went outside scope of case materials. • Often forgot to maintain eye contact with judge and student attorneys; Often difficult to hear.
<ul style="list-style-type: none"> • Did not understand case, rules, or legal issues. • Not persuasive or articulate in delivery; read entirely from script. • Not prepared for trial; not able to think on feet. • Questions and arguments didn't advance case; asked for answers that required unfair extrapolations. • Did not know when to object or how to respond to objections. • Disruptive / disrespectful / inappropriate actions. • Did not maintain eye contact with judge or witnesses; unclear or inaudible voice. 	1 – 2 Far Below Average	<ul style="list-style-type: none"> • Did not understand witness statements and exhibits. • Presentation not convincing or credible; seems unrealistic. • Answers were not thorough, accurate, or persuasive, and didn't sound natural; stumbled over responses. • Answers were not consistent with the facts and/or went outside scope of case materials. • Did not maintain eye contact with judge or student attorneys; Weak, inaudible, or unclear voice. • Disruptive / disrespectful / inappropriate actions. • Gave excessively long, non-responsive answers on cross examination to deliberately use up opposing counsel's time.

Clerk	Score	Bailiff
<ul style="list-style-type: none"> • Very professional demeanor • Clear understanding of procedures; excellent time keeping • Clear, audible voice when issuing verbal warnings (if applicable). • Visual warnings were clearly visible to student attorneys. • Able to think well on feet, in control of situation. 	<p style="text-align: center;">5 Excellent</p>	<ul style="list-style-type: none"> • Very professional, believable presentation • Consistent use of clear audible voice, and eye contact. • Consistently natural delivery of script. • Excellent understanding of role and procedures.
<ul style="list-style-type: none"> • Professional demeanor • Good understanding of procedures; good time keeping • Mostly spoke in clear, audible voice when issuing verbal warnings (if applicable). • Visual warnings were mostly clearly visible to student attorneys. 	<p style="text-align: center;">4 Above Average</p>	<ul style="list-style-type: none"> • Professional, believable, presentation. • Used clear, audible voice, and eye contact a lot of the time. • Knew script and delivery was mostly consistent & natural. • Good understanding of role and procedures.
<ul style="list-style-type: none"> • Good demeanor • Basic understanding of procedures; able to keep time. • Was heard when issuing verbal warnings (if applicable) • Visual warnings were visible to student attorneys. 	<p style="text-align: center;">3 average</p>	<ul style="list-style-type: none"> • Mostly natural, believable presentation. • Audible voice, some eye contact. • Apparent that script was memorized. • Understood role and procedures.
<ul style="list-style-type: none"> • Demeanor lacked professionalism. • Little understanding of procedures; time keeping not entirely accurate. • Not clear or audible when issuing verbal warnings (if applicable). • Visual warnings may not have been visible to student attorneys. 	<p style="text-align: center;">2 Below Average</p>	<ul style="list-style-type: none"> • Presentation not realistic, lacked professionalism. • Voice not all that clear or audible; little eye contact. • Used notes, stumbled with script. • Did not have a good understanding of role or procedures.
<ul style="list-style-type: none"> • Complete lack of professionalism. • No understanding of procedures; time keeping was inaccurate. • Verbal warnings not used or completely inaudible (if applicable). • Visual warnings not used or not at all visible. • Disruptive / disrespectful / inappropriate actions. 	<p style="text-align: center;">1 Far Below Average</p>	<ul style="list-style-type: none"> • Complete lack of Professionalism • Voice not audible or clear; no eye contact. • Relied almost entirely on notes/script. • Did not understand role and procedures. • Disruptive / disrespectful / inappropriate actions.

0 – PENALTY	<ul style="list-style-type: none"> • Failure to cross-examine a witness. • Failure to conduct direct examination of a witness. • Can apply only to rule violations that specify a zero score.
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TRIAL PROCEDURES

- The mock trial is a bench trial
- Presiders should not question students during opening and closing statements.
- **Students get 30 seconds to confer with coaches about challenges after pretrial and trial**
- Case is gender neutral.

PRETRIAL ARGUMENTS

- **Prior to each trial is a pretrial argument.**
- Each side gets four minutes to present their arguments and two minutes for rebuttal.
- **Presiders are expected to ask questions about case law during arguments.**
- Students are limited to the case synopsis we provide in the case packet. Supplemental materials may not be cited in arguments.
- **The pretrial motion, motions entering exhibits into evidence, and motion to strike testimony are the only motions allowed.**

STUDENT ATTORNEYS

- **Student attorneys may conduct redirect when appropriate but no re-cross-examination is allowed**
- Only direct and cross-examination attorneys for a particular witness may make objections during that testimony.
- **When possible, Presiders should allow student attorney to argue evidentiary objections before ruling.**

STUDENT WITNESSES

- **Witnesses stay in the courtroom during the trial, but CANNOT testify to what they have heard.**
- Witnesses can only testify to the facts stated in or reasonably inferred from his/her witness statement or the mock trial fact situation.
- **Questioning by cross-examination attorneys are not limited by direct.**
- Costuming, accents and theatrical make-up are prohibited, and should not be taken into consideration for scoring purposes.

EVIDENCE - STUDENTS ARE LIMITED TO:

- **The physical evidence listed as Exhibits in the case packet. NO COSTUMES OR PROPS ALLOWED!**
- The evidentiary objections listed in case packet.
- **The four corners of the case and MAY NOT create unfair extrapolations not included in the record.**

SCORING REMINDERS

- **Complete all portions of the score sheet with scale 0-10.**
- Make your scoring decisions independently.
- **No communication/contact between team members/spectators/coaches during the trial.**

POINT DEDUCTIONS:

Schools should be told the penalties received.

Mandatory:

- Objections during an open/close – 2 points
- **Wrong objector (only examining attorney may object) – 2 points**
- Violation of communication/contact rule - 5 points (from each judge score sheet).
- **Un-allowed Motions: 2 points, per violation (from each judge score sheet).**
- Unreasonable running of time – 5 points from offending attorney or witness score (each judge sheet). Examples:
 - Attorneys: Every member of counsel looking at evidence prior to approving.
 - Witnesses: Speaking slowly to the point of being annoying; Taking too long to review exhibits; Refusing to answer questions until repeated 1 or more times; Asking for a question to be repeated; Answering a yes/no question with lengthy narrative.
- **All 4 witnesses must be presented, if not:**
 - **Direct Attorney & Witness receive a zero.**
 - **Cross-examination attorney gets 10 pts.**
- Witnesses and attorneys making unfair extrapolations – 1 pt. from individual scores.

Discretionary:

- **If presiding judge finds that any other rule has been violated - scorers will determine the penalty. (use mandatory point amounts as guide).**
Examples:
 - Witness use of notes
 - **Witness use of costumes or accents**

TIMING:

Each team has 40 minutes to present its case:

Pretrial Motion	4	Rebuttal	1
Rebuttal	2	Direct/Redirect	14
Opening/Closing ...	9	Cross Exam	10

Clock will be stopped When:

- Presiders ask questions during the pre-trial
- Witnesses are called to the stands
- Attorneys are making objections
- Presiders are offering observations or questioning attorneys/witnesses