

**2009
UTAH
MOCK TRIAL HANDBOOK**

Sponsors

**UTAH STATE BAR
UTAH BAR FOUNDATION
UTAH ADMINISTRATIVE OFFICE OF THE COURTS
VANCOTT, BAGLEY, CORNWALL & MCCARTHY**

Salt Lake City, Utah

FOREWORD

Law-Related Education (“LRE”) has become an integral part of elementary and secondary school curriculum. LRE emphasizes fundamental issues and concepts in democratic governance. LRE focuses upon law, its sources, meaning, and consequences. LRE helps provide the skills necessary for making moral and ethical decisions.

Since its inception, the goal of Utah Law Related Education has been to encourage students to be more active, concerned, and knowledgeable citizens. The Utah Mock Trial Program provides an excellent opportunity for secondary students to practice citizenship and legal skills in a judicial setting.

The Utah Mock Trial Program thanks:

- **teachers** who field teams,
- **attorneys** who coach those teams,
- **judges and court personnel** who allow mock trials to be held in their courtrooms,
- **judges, attorneys, and community members** who judge the mock trials, and
- **students** whose hard work gives adults hope for the future.

THE UTAH MOCK TRIAL PROGRAM

The Utah Mock Trial Program was established in 1980 to teach students their legal rights and responsibilities as citizens. Each year volunteer attorneys write the case or revise and adapt a legally authentic case involving issues relevant to students' own personal experiences:

- Child custody in a divorce proceeding.
- The liability of a private party host for personal injuries caused by a drunk driver who attended a party where the host served alcohol.
- The right of a teenager to join a religious cult.
- A newspaper's right to protect a confidential source having knowledge of the whereabouts of a child abducted by a non-custodial parent.
- A public school's right to seize a controlled substance from a student's backpack.
- Vehicular homicide.
- Employment discrimination.
- Battered spouse defense in a homicide trial.
- Students' First Amendment rights to publish material in a school newspaper.
- Negligent storage of a firearm.
- Drive-by shooting.
- Sentencing in a death-penalty homicide case.
- The wrongful death liability of a national racist organization for the murder of a black man killed by a skinhead who read the organization's literature.
- A school shooting with issues of weight and admissibility of confidential statements made by a high-school-age patient to a mental health therapist.
- Child abuse.
- Parental liability in a Columbine-like situation.
- Rural land use planning.
- Issues of murder and memory reliability.
- Aggravated arson.
- Criminal homicide.
- Homicide involving high school athletes.
- Negligence in a school setting.
- College coach and known campus gambler charged with gambling, bribery, and threat to influence contest.
- Defamation action involving a student's MySpace website.
- Youth charged with controlled substance homicide in the death of a friend for allegedly providing methamphetamine to him/her.

The program generates significant community interest. Over 300 attorneys and community members throughout the state assist in coaching, making arrangements for the use of actual courtrooms, securing judges, and judging the mock trials. The Utah Mock Trial Program is open to all students in public and private junior high, middle, and senior high schools in Utah. In the 2008 Mock Trial Program, more than 1,000 junior and senior high school students on 70 mock trial teams participated.

PROGRAM OBJECTIVES

The Utah Mock Trial Program is designed to give people an understanding of the law, the legal system, and their rights and responsibilities as engaged citizens. Our objectives include the following:

- To recognize the vital importance of our United States Constitution and the Utah State Constitution.
- To further an understanding of the law, court procedures, and our legal system.
- To encourage students to be engaged citizens endowed with the knowledge, skills, attitudes, and confidence to participate fully in democratic life.
- To increase students' proficiency in basic life skills, such as listening, speaking, reasoning, and responsive thinking.
- To heighten career consciousness of law-related professions.
- To promote increased communication, civility, and cooperation among legal professionals, educators, students, and community participants.
- To give teachers and student participants, as well as the many friends, parents, and community members who attend the mock trials, an increased understanding and appreciation of the dynamic nature of the law and the legal system.

For Further Information, Contact:

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ACKNOWLEDGMENTS

The Utah Mock Trial Program is made possible by funds and support from the Utah State Bar, the Utah Bar Foundation, the Utah Administrative Office of the Courts, VanCott, Bagley, Cornwall & McCarthy, and participating teams.

Through its leadership and members, the Utah State Bar assists Utah LRE in securing attorney coaches, judges, and courtrooms for various rounds of the competition, providing certificates of merit for participating students, and honoring the winning teams. Utah LRE wishes to thank the Utah State Bar for its strong support over the past twenty-nine (29) years.

Over 300 volunteers from the Utah State Bar and Utah communities act as coordinators, judges, coaches, and advisors for the Mock Trial Competition. The program is indebted to them for their support and guidance. The judges and court personnel who graciously permit the use of their courtrooms deserve special thanks.

The 2009 mock trial case was developed for the Oregon Mock Trial Competition. Michelle M. Roybal and Kathi Sjoberg made significant revisions and adapted the case to Utah law. Ms. Roybal is the Alternative Dispute Resolution Administrator for the United States District Court for the District of Utah, where she developed the court's Public Outreach and Education Program. She is a member of the Board of Directors for Utah Law Related Education and has participated in the Mock Trial Program as an attorney judge. Ms. Sjoberg, a Deputy Davis County Attorney, has participated in the Mock Trial Program as an attorney judge and is a member of the Board of Directors for Utah Law Related Education. Utah LRE expresses its gratitude to Ms. Roybal and Ms. Sjoberg for their outstanding commitment to the legal education of youth in the State of Utah.

CALENDAR OF EVENTS

December 5, 2008	Mock Trial Registration due
January, February, March 2009	Judges recruited
January 27 (4:00 - 6:30 p.m.)	Teacher Meeting/Training (Attorney-coaches also are invited.)
January 27 (5:30 - 7:30 p.m.)	Attorney CLE Training (Mock trial teachers also are invited.)
February 24 to March 20	Playoff rounds throughout Utah
Saturdays, February 28 and March 7	Playoff rounds at Scott M. Matheson Courthouse
March 24 and 25	Quarter-final rounds (6 trials each for junior and senior division)
March 27	Semi-final rounds (2 trials each for junior and senior division)
March 31 (evening)	Senior high school final round in Salt Lake City
April 2 (evening)	Junior high/middle school final round in Salt Lake City
May	National Mock Trial Competition

Each team will participate in a minimum of two trials in the playoff rounds. Because participating schools come from areas throughout the state, each team should expect to travel for at least one of its trials. It is the responsibility of the teacher-sponsor to handle permission and logistics for travel. Teachers will be advised at the teacher meeting of their team(s)'s schedule for the playoff rounds.

Above all else, we hope that the benefits of participating in this year's competition will go far beyond the rewards associated with competing against one's peers and perhaps winning a round or two. Please stress cooperative planning, civility, courtesy, and teamwork among participants.

MOCK TRIAL SIMPLIFIED STANDARDS OF PROFESSIONALISM

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Lawyers should exhibit courtesy, candor, and cooperation in dealing with the public and participating in the legal system. Civility and professionalism are hallmarks of a learned profession dedicated to public service. To that end, the following principles shall be observed:

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.
2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected.
3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary.
4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken.
5. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.

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COMPETITION INFORMATION

SECTION I

RULES OF COMPETITION

The Utah Mock Trial Program is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all competition trials. The competition is, first of all, an exposure to the function of our legal system. It also is an exercise in communication and the art of advocacy, which are the bases of our adversary system of justice. Our judicial system is based upon the belief that a court will be better able to make a well-informed decision by hearing a vigorous presentation of each side of a case.

This is not a speech or debate tournament, and it is not a dramatic presentation, although some lawyers may utilize elements of all three. First, understand the mechanics of a trial and the function of each part. Then blend the parts into an overall presentation that effectively communicates your position. Style, voice, diction, and the like are valuable tools--but their impact is lost unless the court understands your overall message and is persuaded to agree with you. *It is important to remember that our judicial system, just as this competition, is run by people and, therefore, is subject to individual interpretations. Unexpected obstacles in the course of a trial are the rule rather than the exception in real life as well as in this competition.* Being prepared to deal with the unexpected obstacles that will inevitably arise is an important part of being prepared for the competition.

A. TEAM PRESENTATIONS

1. Witness' Voluntary Statements comprise the sole source of information for testimony. The Statement of the Case provides an overview, but should not be used as a basis for any witness' testimony. *Judges may deduct points for deviating from the facts in the handbook.*
2. Each witness is bound by his/her individual statement or affidavit. All participants agree that the witness statements are signed and sworn affidavits.
 - a. Fair extrapolations which are 1) *consistent* with facts contained in the witness affidavits, and 2) do not *materially* affect the witness' testimony are permitted. It is important for the witnesses to exercise caution in such extrapolations in order to avoid 1) initiation of a dispute over the existence of a rules violation which should be brought to the attention of the judges, and 2) impeachment of the witness' credibility by the use of his/her prior written affidavit which was, presumably, all the witness could recall, under oath, at a time much closer to the events in controversy.
 - b. If an attorney believes that a witness has contradicted that witness' prior affidavit, that testimony may be impeached during cross-examination

of the witness through correct use of the affidavit. (See “Impeachment,” pp. 19-20.)

- c. Witness affidavits are subject to all of the human errors of judgment or opinion that people may make in similar situations.
 - d. A witness is not bound by facts contained in other witness’ affidavits or the pleadings.
 - e. It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers can ask. The witness statements are not intended as a complete life history and, for the most part, information not in the statements will not be relevant and is subject to objection. If a witness invents an answer which is likely to affect the outcome of the trial, the opposition may object and request a bench conference. The judges will decide whether to allow or exclude the testimony. *The judges may consider such inventions of fact in making the decision to deduct presentation points.*
 - f. Only documents in the official mock trial handbook may be introduced into evidence.
3. Consistent with principles of professionalism and civility, all participants are expected to display proper courtroom decorum and good sportsmanlike conduct.
 4. The trial proceedings are governed by the Mock Trial Simplified Rules of Evidence. *Other more complex rules may not be raised in the trial.* Voir dire is not permitted.
 5. During the actual trial, *teachers, attorney coaches, and all other observers may not talk to or otherwise communicate with the teams.* Team members, including named alternates, may communicate with each other during the trial. *All team members and named alternates shall sit in the front of the courtroom.* The purpose of this rule is to eliminate complaints about coaching; it is not intended as a device to disqualify an opposing team.
 6. Observations of playoff, quarter-final, and semi-final rounds by noncompeting mock trial teams will be allowed, as follows, **provided the Court Representative consents, in advance, to the increased number of observers, and the opposing team is notified in advance.**
 - a. Junior high teams may observe senior high teams;
 - b. Senior high teams may observe junior high teams.

7. **Tape recording or videotaping of trials is allowed upon approval by the opposing team prior to the trial date.**
8. Teams must prepare both plaintiff's/prosecution's and defense's cases. Teams will reverse roles for the second playoff round. Teams will be informed of which side they will be presenting one to five days before any quarter-final, semi-final, or final round.
9. Witnesses are not permitted to use notes in testifying during the trial. Attorneys may use notes in the presentation of their material. (Note: Refreshing recollection is only allowed as set forth on page 18.)
10. *Redirect and recross* examination will be allowed in both divisions. An additional three minutes per witness will be allotted for redirect and two minutes for recross. *If time remains, witnesses may be recalled **only** to address surprise evidence.*
11. Each clerk/bailiff shall be familiar with timing responsibilities before the mock trial begins.
12. The clerks/bailiffs will keep track of times on time sheets. At the conclusion of the closing arguments, each clerk/bailiff shall tell the judges whether his/her team went more than one-half minute over time in any of the trial categories. (See "Guidelines for Students Acting as Clerk/Bailiff," pp. 39-40.)
13. The time sequence and trial categories (opening statement, direct examination, cross-examination, and closing argument) are as follows:

TRIAL CATEGORIES	TIME SEQUENCE
Prosecution's Opening Statement	5 minutes*
Defense's Opening Statement	5 minutes*
Prosecution's Direct Examination	9 minutes per witness* or 27 minutes total
Defense's Cross-examination	7 minutes per witness* or 21 minutes total
Prosecution's Redirect Examination (optional)	3 additional minutes per witness
Defense's Recross (optional)	2 additional minutes per witness
Defense's Direct Examination	9 minutes per witness* or 27 minutes total
Plaintiff's Cross-examination	7 minutes per witness* or 21 minutes total
Defense's Redirect (optional)	3 additional minutes per witness
Prosecution's Recross (optional)	2 additional minutes per witness
Prosecution's Closing Argument	7 minutes*
Defense's Closing Argument	7 minutes*
Prosecution's Rebuttal (optional)	Closing argument time must be allotted by prosecution to rebut defense's closing statement.*
Total (approximate)	75 minutes per team

* **Time allotted** for *opening and closing statements* (and any rebuttal) may be altered, but cannot exceed a total of 12 minutes. **Time allotted** for *direct examination of witnesses* may be altered, but cannot exceed a total of 27 minutes. **Time allotted** for *cross-examination of witnesses* may be altered, but cannot exceed a total of 21 minutes.

14. Judges may reduce a team's total score for a time limit violation. Timing will halt during objections and responses thereto. The presiding judge may, in his/her discretion, grant time extensions in the interest of fairness.
15. Teams are expected to be present in the courtroom no earlier than 20 minutes prior to and no later than 10 minutes after the starting time of the trial. *The judges may deduct points for a team that arrives more than 10 minutes after the trial should have started or may determine that the team has forfeited the match.* If possible, the team whose playoff opponent forfeited will be scheduled to play against a volunteer team. Incomplete teams will have to begin without some of their members or with alternates.
16. Judges also may deduct points for a team that demonstrates improper decorum or lack of civility (specific behavior included in Simplified Standards of Professionalism); strays from the facts; or divides the attorney responsibilities unevenly.
17. Neither team may introduce surprise witnesses or call any witness from the other side. Three witnesses for each side must take the stand.
18. Witnesses shall not be excluded from the courtroom during the trial.

B. TEAM COMPOSITION

1. *Teams will consist of a maximum of eleven students. Two additional students may be listed as "alternates." Alternates will receive certificates, but cannot participate in actual trials unless an emergency situation arises, and Utah LRE has been notified. ULRE compares each team's roster to verify consistent team composition. A disparity between Plaintiff/Prosecution and Defense team composition may result in disqualification.*
 - a. Teams will consist of no more than four nor less than three attorneys, unless cleared with ULRE staff and the opposing team. *Attorneys shall evenly divide attorney point responsibilities. (See below.) Judges may score lower for unequal division of point responsibilities among attorneys. Attorneys may devise any division of duties so long as each attorney's point responsibility load is roughly equal.*
 - 1) If four attorneys are used, each should be responsible for 20 maximum points (out of 80 maximum points possible for attorneys; see score sheet).
 - 2) If three attorneys are used, two should be responsible for 30 maximum points and one for 20 maximum points (out of 80 maximum points possible for attorneys; see score sheet).

- 3) *Only the attorney examining a particular witness shall make the objections to that witness' cross-examination, and the attorney who cross-examines a witness shall be the only one to make objections on that witness' direct examination.*
 - b. The Plaintiff/Prosecution team will consist of three witnesses and the Defense team of three witnesses. The names of characters are gender neutral to allow any student to play the role using the names provided in the case.
 - c. Each team also will include one clerk/bailiff who shall keep time for his/her own team.
2. A team may use its members to play different roles in different rounds. Some substitution of team members is allowed i.e., an attorney may become a witness or a clerk/bailiff may become an attorney.

C. JUDGING AND COMPETITION ADVANCEMENT

1. Judging of each round will be done by a panel of three, or possibly two, judges. Attorneys and judges will play the roles of the presiding judge and/or one panel judge. One judge may be a community representative. **If there are only two judges, those judges' total scores will be averaged to obtain the score of a third judge.**
2. Judges will receive the Mock Trial Handbook prior to the trial they are judging, so they may study the case and rules.
3. Judges are asked to make two decisions: a) the legal merits of the case, and b) the best team presentation. The first decision, on the merits, will be decided by the presiding judge who may confer with the other judge(s) in reaching this decision. This will be a decision based on what would happen in an actual court of law according to the facts presented. **[In a jury trial, the presiding judge will ask the jury foreperson to read the jury's verdict.]**

The second decision will be on team presentation. Judges will score the teams on performance using the Performance Rating Ballot as found in the Forms section. A completed Sample Ballot and other judging resources also are included. There can be no point ties on any judge's ballot. The decision on the legal merits of the case lends realism to the competition; however, *teams will advance based only on ballots won. The decisions of the judges are final.*

4. Questions by judges regarding judging may be directed to Utah LRE staff at 801.322.1802.

At the trial, the Plaintiff/Prosecution teacher or coordinator conducting the mock trial shall, in collaboration with the judges and a representative from the opposing team, answer or resolve questions any judge may have.

5. Each team will participate in a minimum of two playoff trials. Teams from each division will advance to quarter-final and semi-final rounds. Winners of each division's semi-final rounds will meet in a final round.
6. Advancement to the quarter-finals will be determined by **“power-matching.”** Power-matching is done on the basis of the cumulative ballot win-loss groupings and points within each ballot win-loss grouping. An example of power-matching is as follows:
 - a. Ballot win-loss groupings are determined, such as 6-0, 5-1, and 4-2 (win-loss record).
 - b. Within each ballot win-loss grouping, the teams are ranked according to total points received.
 - c. The 6-0 team with the highest points is matched with the 4-2 team with the least points.
 - d. Because only 12 teams per division advance to the quarter-finals and 4 per division to the semi-finals, ballot win-loss groupings may or may not extend to 4-2 and 3-3.
7. **Advancement to the semi-finals also will be determined by “power-matching.” However, the playoff and quarter-final ballots will be combined to determine which teams advance to the semi-finals.**

D. MISCELLANEOUS RULES

1. Divisions
 - a. Division I: High school students (10th, 11th, and 12th grades)
 - b. Division II: Junior high/middle school students (7th, 8th, and 9th grades)
 - c. For any questions concerning age qualifications, please contact the mock trial office at 801.322.1802 or lre@icw.com.
2. Regulations for Each Participating School
 - a. Each sponsoring teacher may enter **two** teams in the competition.
 - b. A maximum of two teams per division/per school will be allowed.

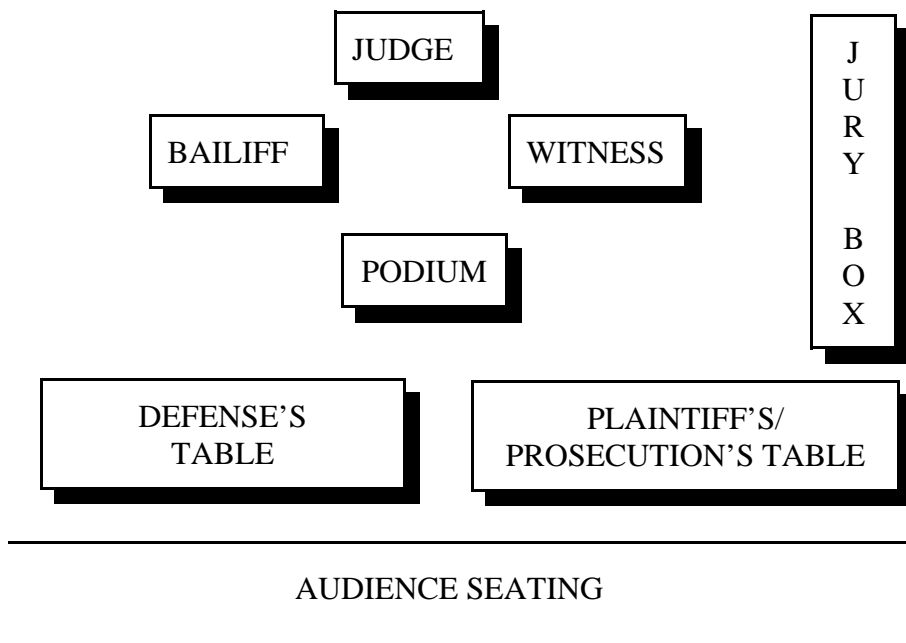
- c. If there are more than two teams per school, there must be an elimination round held within the school. Such a competition will be the school's responsibility.
 - d. Each school must submit an official entry form and entry fee (\$75) for each team by the date noted on the entry form; \$95 for late registration. The \$75/\$95 entry fee is non-refundable.
 - e. Each sponsor must contact the appropriate authorities regarding transportation to trial sites, release of students from class, substitutes, etc.
 - f. To the extent possible, each team will play once in its own region. Quarter-final, semi-final, and final rounds are held in Salt Lake City.
 - g. Utah LRE discourages rehearsal in actual courtrooms since the courts hold ULRE staff responsible for the condition of courtrooms used by mock trial students.
3. Courtroom Dress and Conduct of Participants
- a. No costumes or props for witnesses will be allowed.
 - b. Participants should be appropriately dressed for attending court. Judges will not score lower for attire worn, but team members should be aware that dress/appearance creates an impression and should dress accordingly.
 - c. *Remember, no gum chewing, food, drink, or unruly or loud behavior is allowed in courtrooms.*

SECTION II

MOCK TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the general physical setting of the courtroom, the events that generally take place during the exercise, and the order in which they occur. This section outlines basic steps in a “bench” trial before a judge. **[Additional steps in a Saturday jury trial are in brackets.]**

A. COURTROOM LAYOUT



B. PARTICIPANTS

1. The Judge
2. The Attorneys
For Plaintiff(s)/Prosecution
For Defense
3. The Witnesses
For Plaintiff(s)/Prosecution
For Defense
4. The Bailiff

C. STEPS IN A MOCK TRIAL

1. The Opening of the Court

The clerk/bailiff will call the Court to order by saying, “All rise for the Honorable Judges _____, _____, and _____.” The Twelfth Judicial District Court of Park County, State of Utah, is now in session, the Honorable Judge _____ presiding.” After the judges are seated, everyone may sit down. The presiding judge may ask the bailiff to announce the case: “Your Honors, today’s case is *State of Utah v. Casey Campbell*, Case Number 09cr36912.”

The presiding judge will then ask the attorneys for each side if they are ready.

[Presiding judge welcomes jury, tells them their role, and instructs them to pay close attention to the evidence to be presented.]

2. Opening Statements

Statements should strategically “tell the story,” not argue the case.

a. Plaintiff (Civil Case)/Prosecution (Criminal Case)

After introducing himself/herself and colleagues to the judges, the plaintiff’s attorney in a civil case or the prosecution’s attorney in a criminal case tells the story plaintiff’s/prosecution’s evidence will show the Court, mentions key witness testimony, and tells the judges what relief is being requested.

b. Defense (Civil or Criminal Case)

After introducing himself/herself and colleagues to the judges, the defense’s attorney in a civil or criminal case identifies inadequacies in the plaintiff’s/prosecution’s evidence, tells the story defense’s evidence will establish, mentions key witness testimony, and tells the judges what outcome the defense wants. The defense may choose to wait until the plaintiff/prosecution has put on its case before making defense’s opening statement.

c. Avoid excessive detail, exaggeration, and overstatement. Arguing or discussing the law is not permitted here. *The best presentations do not involve reading.* Defense should not repeat undisputed facts.

3. **Direct Examination by the Plaintiff's/Prosecution's Attorneys**

The plaintiff's/prosecution's attorneys conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the plaintiff's/prosecution's case will be presented. The purpose of direct examination is to allow the witness to *present the facts* that support plaintiff's/prosecution's view of the case. Show your own witnesses at their best.

The attorneys for both sides, on both direct and cross-examination, should remember that their *only function is to ask questions*. An objection may be made if an attorney *testifies or gives evidence*.

4. **Cross-examination by the Defense's Attorneys**

After the attorney for the plaintiff/prosecution has completed questioning a witness, the judge then allows the defense's attorney to cross-examine the witness. By asking short, careful questions to which the witness can answer only "yes" or "no," the cross-examining attorney leads the witness to "tell" the defense's version of what happened. The cross-examining attorney seeks to discredit, clarify, or point out inconsistencies in the witness' testimony on direct. The cross-examiner seeks to establish that the witness has a bias, an interest to further, or a motive that motivated the witness' testimony on direct. It is important to act in a courteous and professional manner at all times.

- a. Almost never ask who, what, where, when, why, or how questions. Ask only questions that may be answered "yes" or "no." (These are called "leading questions.")
- b. Avoid hostility toward the witness. Be insistent but courteous. When you receive a favorable answer, stop and go on to another matter. Wait for your closing argument to emphasize the favorable answer you obtained. Do not give the witness a chance to "explain away" the favorable answer.
- c. Impeachment: If direct testimony is given, and you feel it contradicts the witness' affidavit, wait until cross-examination. *Then confront the witness with the affidavit and bring out the inconsistencies.* (See "Impeachment," pp. 19-20.)

5. At the close of plaintiff's/prosecution's case, the defense may make a motion to dismiss on the grounds that plaintiff/prosecution has failed to present evidence establishing any necessary element of the claim. Judges may award higher points to an attorney making such a motion, but they will **not** grant the motion.

6. **Direct Examination by the Defense’s Attorneys**

Direct examination of each defense witness follows the same pattern as in number 3, page 13.

7. **Cross-examination by the Plaintiff’s/Prosecution’s Attorneys**

Cross-examination of each defense witness follows the same pattern as in number 4, page 13.

8. **Redirect Examination** (optional)

NOTE: Redirect examination is allowed in both divisions.

If the *credibility or reputation for truthfulness* of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be *limited* to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’ truth-telling image in the eyes of the court. *Redirect examination is limited to issues raised by the attorney on cross-examination.* It is not a chance to ask questions an attorney forgot to ask on direct.

Time limit: 3 additional minutes per witness; not included in 27 minute total for direct examination.

9. **Recross Examination** (optional)

The cross-examining attorney may ask questions pertaining only to the preceding rehabilitative redirect examination.

Time limit: 2 additional minutes per witness; not included in 21 minute total for cross-examination.

NOTE: When the plaintiff/prosecution has finished presenting its witnesses, plaintiff’s/prosecution’s counsel should state, “The plaintiff/prosecution rests, Your Honors.” When the defense finishes with its witnesses, defense’s counsel should state, “The defense rests, Your Honors.” This lets the court know to proceed to the next phase of the trial.

10. Closing Arguments

Arguments must not include discussion of evidence not introduced during the trial.

a. Plaintiff/Prosecution

Closing argument is a review of the evidence presented. This is where you put the pieces together for the judges. It should point out testimony which supports your case and damages your opponent's. It must indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a verdict of guilty (criminal case) or a judgment for the plaintiff (civil case). The **burden of proof** rests with the plaintiff/prosecution. Argue what you feel is important and discard the unimportant. Be an advocate--forcefully urge your point of view. Be dynamic--avoid a boring review of the facts. State your case simply. Correct any misunderstanding the judges may have. You may use all exhibits which have been admitted into evidence at this point. Point out bias, credibility, self-interest, or prejudice of witnesses.

Do not assume the judges have understood the full impact of all the testimony. Avoid ridicule; it may seem effective, but it is not. Indeed, it is considered unprofessional. Be clear and logical. Organize your closing argument as the trial proceeds. Anticipate your opponent's argument. Be assertive: "The evidence proves"

NOTE: Asking the judges to put themselves in your client's position is improper. Appeals to sympathy and prejudice of judges also are improper and subject to objection.

Plaintiff's/Prosecution's rebuttal (opportunity to have the last word), if any, is *limited to the scope of defense's closing argument*. (Rebuttal is optional, 1-2 minutes, if time remains.)

b. Defense

The closing argument for the defense follows the same pattern and directives. Counsel for the defendant reviews the evidence actually presented, indicates how the evidence does not satisfy the elements of the claim or charge, stresses the facts favorable to the defense, and asks for a verdict of not guilty (criminal case) or judgment for the defendant (civil case).

[Presiding judge reads jury the prepared jury instructions which will be provided at the time of the trial. Bailiffs escort jury to jury room. While judges finalize performance scoring, jury decides merits of case (usually about 15 minutes). Bailiffs return jury to courtroom. Judges return to courtroom.]

11. **Deliberation and Decision**

The presiding judge calls for a short recess to confer with other judges to make two decisions: a) the legal merits of the case, and b) the best team presentation. The judges return, and the presiding judge gives the decision on the merits. The judges then **briefly debrief** the trial (5 minutes per judge) and announce their decision on team presentation, which determines whether or not a team advances.

[After the judges and jury have returned to the courtroom and everyone has been seated, the presiding judge asks the jury foreperson to read the jury's verdict to the judges. The presiding judge will a) set the matter for the next phase of trial, or b) dismiss the defendant(s). The judges will then briefly debrief the teams.]

12. **Closing Court**

Following the judges' debriefing session, the clerk/bailiff closes official proceedings: "All rise. This Honorable Court is hereby adjourned."

13. **Wrap-up**

Teams review score sheets, verify addition and totals, and sign the sheets. The teacher/sponsor of the Plaintiff/Prosecution team must:

- a. obtain Performance Rating Ballots from judges;
- b. keep pink copy and give Defense yellow copy;
- c. clean courtroom and put back in original order;
- d. obtain signature of court representative on "Team-Courtroom Agreement" form;
- e. call in playoff scores to 801.322.1802 or e-mail to lre@icw.com; and
- f. immediately mail white score sheets, Team Rosters, and signed "Team-Courtroom Agreement" forms to the Utah LRE office. **If it is the last week of playoffs or during quarter-finals or semi-finals, the sheets also must be faxed (801.323.9732) the day of the trial.**

D. **THE JUDGES' ROLE AND DECISION**

The judges preside over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the presiding judge also has the function of rendering a decision on the merits, based upon the evidence actually presented and the applicable law although the winner is not determined by this decision. **The judges determine the winner from the Performance Rating Ballots.**

SECTION III

SIMPLIFIED RULES OF EVIDENCE

In American trials, complicated rules are used to regulate the admission of proof i.e., oral or physical evidence. These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. *If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge.* The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified as follows:

A. WITNESS EXAMINATION

1. **Direct Examination** (Attorneys call and question their own “friendly” witnesses.)

a. **Leading the Witness**

Witnesses may not be asked leading questions by the attorney who calls them. A leading question is a question that suggests to the witness the answer desired by the examiner, often “yes” or “no.” Direct questions generally are phrased to bring out a set of facts from the witness: who, what, where, when, why, and how.

Example of a direct question: “Ms. White, can you describe the appearance of the old woman who knocked on the door?”

Example of a leading question on direct: “Ms. White, the old woman had a weathered face and a long, crooked nose just like the defendant, didn’t she?”

b. **Narration**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or “narrate” a whole story. Narrative questions are objectionable.

Example of a narrative question: “Ms. White, tell the Court about the day the old woman with the magic apple came to the door.”

At times, a direct question may be appropriate, but the witness’ answer may go beyond the particular fact about which the question was asked. Such answers are subject to objection on the grounds of narration.

c. **Improper Character Testimony**

For mock trial purposes, evidence of a person’s character or character trait is not admissible to prove action regarding a particular occasion, unless character evidence is offered by the accused or by the prosecution to rebut character evidence the accused has presented.

For example, in a murder case, a prosecution witness on direct examination says, “The defendant tortured cats.” This is not admissible as evidence tending to prove the defendant caused the death of another (or of a cat). If a defense witness testified the defendant never harmed a flea, then the prosecution could ask the defense witness about the defendant torturing cats.

d. **Refreshing Recollection**

If a witness on direct examination is unable to recall a statement made in that witness’ affidavit, or if the witness contradicts the affidavit, the attorney on direct may have the witness refer to that portion of the affidavit that could help the witness to remember.

Example: A witness sees a purse snatching and gives a statement. At trial, the witness has trouble remembering the events he/she saw. The attorney may help the witness remember by showing the witness’ statement to the witness. **(Note: The attorney must first mark and identify the statement and show the opposing side a copy. However, the affidavit need not be actually introduced into evidence.)**

e. **Improper Religious Testimony**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of his/her nature, the witness’ credibility is impaired or enhanced.

2. Cross-examination

a. Form of Questions

An attorney should only ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided: who, what, where, when, why, how, and explain. The purpose of cross-examination is to have the witness agree with your version of the story or to discredit the witness or both.

Example of a leading question: "Mr. Wolf, you've always liked roast pork, haven't you?"

b. Scope of Witness Examination

In a mock trial, teams cannot call a witness for the other side as their own witness. A team *may* question a witness for the other side on cross-examination about anything in that witness' statement. Consequently, in a mock trial, the "beyond the scope" objection must be different than in real life. Therefore, the "beyond the scope" objection is only available on redirect and recross.

During redirect or recross, attorneys may only ask questions that relate to matters brought out by the other side on cross-examination or redirect. Any attempt to question about anything else is objectionable.

Example: If on either direct or cross-examination the plaintiff in a car accident case never mentions damages to plaintiff's car, then defendant's attorney could object ("beyond the scope") to a redirect question about left rear fender dents. Likewise, if on direct, cross, and redirect the plaintiff never says anything about weather conditions, the defense cannot ask about the weather on recross.

c. Impeachment

During cross-examination, the attorney may want to show the Court that the witness should not be believed. This process is called impeaching the witness and may be accomplished in three ways:

- 1) By asking the witness questions about **prior conduct** that go to the issue of the witness' credibility (truth-telling ability).

- 2) By asking the witness about evidence of **prior criminal conviction** for a related type of crime or for a crime involving dishonesty or a false statement.
- 3) By introducing the witness' affidavit and asking the witness whether he/she has contradicted some statement in the affidavit (**prior inconsistent statement**).

Example: (Prior Conduct) "Little boy, you have cried 'Wolf!' at times in the past when there has been no wolf, haven't you?"

To impeach with a **prior inconsistent statement**, the attorney should:

- 1) Allow the witness to make the inconsistent statement.
- 2) Ask the witness if he/she made a statement at an earlier time.
- 3) Ask the witness if he/she told the truth when he/she made the earlier statement.
- 4) Show the witness the earlier statement in his/her affidavit and ask him/her if the signature on the statement is his/her own.
- 5) Ask the witness to read the inconsistent statement from the earlier affidavit and then ask the witness if he/she, in fact, said it.
- 6) Stop. Do not accuse the witness of lying. That may be done in the closing argument.

NOTE: These types of impeachment questions may only be asked when the questioning attorney has evidence that indicates the conduct or statement actually happened.

d. **Bias, Motive, or Interest**

An opposing witness may be asked a question the answer to which would show bias, interest, or motive to testify in a way the witness has testified.

Example: "Mr. Jones, Joe Davis paid \$15,000 for you to visit his projects in Los Angeles, New York City, Boston, London, and San Francisco, didn't he?"

e. **Concessions**

The opposing witness will almost always have some testimony consistent with your theory of the case. Cross-examination is an effective way to bring that information to the judge or jury.

3. **Redirect and Recross Examination**

The rules for direct and cross-examination, above, apply respectively.

B. **ADDITIONAL RULES OF EVIDENCE**

1. **Hearsay**

Rule 801, Utah Rules of Evidence, provides:

The following definitions apply under this article:

(a) **Statement:** A “statement” is (1) oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant:** A “declarant” is a person who makes a statement.

(c) **Hearsay:** “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

However, a statement is not hearsay if the statement is offered against a party and is the party’s own statement.

Rule 802, Utah Rules of Evidence, provides:

Hearsay is not admissible except as provided by law or by these rules.

Example: At his vandalism trial, Wolf testifies, “The Second Little Pig said, ‘My brother knocked my house down.’” (What the Second Little Pig purportedly said is offered to prove that the brother of the Second Little Pig knocked the Second Little Pig’s house down and is inadmissible hearsay.)

Exception:

Example: Joe is on trial for murdering Henry. Ruth is on the stand and testifies that Joe told her, “I killed Henry.” Joe’s statement is an admission of guilt by Joe, the defendant in the case, and is, therefore, not hearsay.

Though hearsay is not usually allowed at a mock trial, a judge may sometimes allow it if it fits into one of these exceptions to the hearsay rule:

- a. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. (Sometimes called “**State of Mind**” exception.)

Example: Joe is on trial for drunk driving. Ruth is on the stand and testifies that five minutes before his car was stopped by the police, Joe said, “I probably should not be driving. I’m feeling drunk.”

- b. A statement relating to a startling event or condition made while the declarant is under the stress of excitement caused by the event or condition. (“**Excited Utterance**” exception.)

Example: Joe is on trial for murdering Henry. Ruth is on the stand and testifies that immediately after Joe shot Henry, Derek said, “Oh, no! Joe shot Henry in the head!”

2. **Opinions of Witnesses/Qualification of “Expert” Witnesses**

As a general rule, lay witnesses may not give professional opinions. Certain witnesses who have special knowledge or qualifications and have no interest in the outcome of the trial may be qualified as “experts” and may give a professional opinion. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert’s qualifications and experience. The judge must approve the witness to testify as an expert.

Example: To qualify a law enforcement officer as an expert in fingerprint identification, you would have to ask questions like these:

Q: What is your name and address?

Q: What is your business or profession?

Q: How long have you been a police officer?

Q: What type of specialized training have you had regarding fingerprint identification?

Q: What experience have you had as an expert in fingerprint identification?

“Your Honor, I would like this witness to be qualified as an expert in fingerprint identification.”

The judge then will ask the other side if there are any objections. The other side could object to a lack of foundation (qualifications and experience not adequately established), or that the witness has a subjective interest in the outcome of the trial.

All witnesses may give opinions on what they *saw and heard* at a given time, if such opinions are relevant to the facts in issue and are helpful in explaining their story. All witnesses may offer opinions based on the common experience of lay persons in the community and of which the witness has first-hand knowledge.

Examples: “I think Snow White was a very kind woman.” (Allowed.) “I think Snow White suffered from obsessive compulsive disorder.” (Not allowed unless made by a qualified mental health expert.)

No witness may give an opinion about how the case should be decided. That is the province of the judge or jury.

Example: “Papa Bear, do you think Goldilocks should be convicted for eating your porridge, breaking your son’s chair, and messing up all the beds?” (This is called the “ultimate issue” question.)

3. **Lack of Personal Knowledge**

A witness may not testify to any matter of which the witness has no personal knowledge.

Example: If Papa Bear dropped his glasses and could not see without them, he could not testify that he saw Goldilocks run out of the house.

4. **Relevance of Evidence**

Generally, only relevant testimony and evidence is allowed. Relevant physical evidence and testimony is that which tends to make an important fact more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the judge. Testimony, physical evidence, and demonstrations may be disallowed, if they have no direct bearing on the issues of the case or have nothing to do with making the issues clearer.

Example: Goldilocks’ attorney asks, “Mama Bear, isn’t it true you never make cookies?” This should be objected to as “irrelevant.”

5. **Introduction of Physical Evidence**

There is a special procedure for introducing physical evidence (called exhibits) during a trial. Physical evidence includes written materials, diagrams, photos, or any other object that might help clarify what happened. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis. Below are the basic steps an attorney must use when introducing a physical object or document for identification and/or use as evidence.

a. **Mark Exhibit before Trial**

Prosecution marks Exhibits P-1, P-2, P-3 Defense marks Exhibits D-1, D-2, D-3 *Give opposing counsel a copy of all premarked exhibits before trial begins.*

b. **Identify Exhibit**

“Your Honors, I would like to refer to this hair which has been marked as Defense’s Exhibit 1.”

c. **Show Opposing Counsel**

Show exhibit to opposing counsel who may make an objection to the offering at this time.

d. **Show Witness**

Show exhibit to witness. “Baby Bear, do you recognize this hair which is marked as Defense’s Exhibit 1?” (The witness should say “Yes.”)

e. **Lay Foundation**

At this point, the attorney must proceed to ask the witness a series of questions about Exhibit 1 in preparation for asking the crucial question. “You found this hair on your pillow?” “This is the same hair you found on your pillow?” “Was this hair on your pillow when you left the house to go for a walk?” “This hair is black?” “Goldilocks’ hair is red?” “This hair is straight?” “Goldilocks’ hair is wavy?” “This hair is long?” “Goldilocks’ hair is short?”

f. **Ask Crucial Questions**

“This hair does not match the hair on Goldilocks’ head, does it?”

g. **Request Admission of the Exhibit**

If the attorney wishes to place the item into evidence, he/she says, “Your Honor, I offer this hair for admission into evidence as Defense’s Exhibit 1 and ask the court to so admit it.”

h. **Objection**

Opposing counsel may then object to the exhibit’s admission (if there is some basis for objection, such as lack of foundation, relevance, or lack of personal knowledge), and the judge will decide whether the exhibit is to be admitted. *If it is admitted, it should be given to the clerk/bailiff to give to the judge.*

C. **OBJECTIONS**

An attorney may object any time he/she thinks the opposing attorneys are attempting to introduce improper evidence or are violating any rule of evidence. The attorney wishing to make a timely objection must stand up and object at the time of the violation. (“Objection, Your Honors.”) The judge will ask the basis for the objection. Then the judge will ask the opposing attorney to explain why the objection should be disregarded by the judge. The judge will decide whether the question, answer, or evidence should be disregarded because it has violated a rule of evidence (“Objection sustained.”) or whether to allow the question, answer, or evidence to remain on the trial record (“Objection over-ruled.”).

1. **The following, and the matters discussed in Section B above, are standard objections:**

a. **“Relevance”**

“I object, Your Honor. This testimony is not relevant to any issue in this case.”

b. **“Leading Question”**

“Objection. Counsel is leading the witness.” (A direct examination question often supplies the answer “yes” or “no” to the witness. The attorney should rephrase the question using the “who, what, where, when, why and how” style.)

c. **“Improper Character Testimony”**

- 1) “Objection. The accused has not put his/her character at issue.”
- 2) “Objection. Only the witness’ reputation/character for truthfulness is at issue here, not the witness’ reputation/character for (neatness, kindness to dogs, etc.).”

d. **“Hearsay”**

“Objection. Counsel’s question asks for hearsay (or the witness’ answer is hearsay).” (If the witness has made a hearsay statement, the attorney should also say, “. . . and I ask that the statement be stricken from the record.”)

e. **“Improper Opinion”**

“Objection. Counsel is asking the witness to give an expert opinion.”

f. **“Lack of Personal Knowledge”**

“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”

g. **“Argumentative”**

“Objection. That question is argumentative.” (An attorney cannot badger or argue with the witness, even using a pleasant tone of voice. An attorney cannot, in the guise of asking a witness a question, present an argument to the judge/jury.)

h. **“Speculation”**

“Objection. Counsel is asking the witness to speculate in order to answer the question.”

i. **“Lack of Foundation”**

“Objection. Foundation.” (The attorney has not established through a friendly witness the “who, what, where, when, why, or how” of the subject about which a question has been asked. The attorney should proceed to ask the “who, what, where, when, why, or how” style questions that will show the basis that witness has to be able to answer the question.)

j. **“Asked and Answered”**

“Objection. The witness has already testified about this.”

k. **“Arguing Fact Not in Evidence”**

“Objection. Counsel is stating a fact in closing argument that was never brought up in any testimony or evidence.”

l. **“Nonresponsive”**

(On cross-examination, a witness might give an answer that makes a point the witness wants to make, but evades answering the question the attorney actually asked. After repeated nonresponsive answers, the cross-examining attorney could ask the judge to instruct the witness to answer the question(s) actually asked.)

m. **“Narrating”**

(The witness is supplying information beyond the question asked.)

n. **“Improper Character Testimony”**

(In a criminal case, the accused has not offered evidence of his/her character, so the prosecution may not present negative evidence about the character of the accused.)

o. **“Improper Religious Testimony”**

(An attorney may not ask a witness about religious beliefs or opinions to enhance or impair a witness’ credibility.)

2. **Creating a Material Fact Not in the Record**

One objection available during a mock trial, but not an actual rule of evidence, allows you to stop an opposing witness from creating new facts. (See “Team Presentations,” pp. 3-7.) This objection is misused most often by mock trial attorneys who do not know how to impeach a witness on cross-examination. *In making this objection, be prepared to explain how the new fact would affect the outcome. Judges may deduct points from the other team’s score.*

3. **Hints on Objections**

- a. Object as soon as you're sure you feel uncomfortable about a question asked or the answer a witness begins to give. Give the judges a specific objection from the list you have prepared. Use objections sparingly and accurately, not wildly. Too many objections during a trial may be annoying to the judge/jury.
- b. Only the attorneys assigned to do the direct or cross-examination of a particular witness shall raise and respond to objections when the opposing side conducts its examination of that witness. (See "Team Composition," pp. 7-8.)
- c. If the judge rules against you on a point in the case, take the correction gracefully. Be cordial to the judge but don't thank the judge for ruling against you. *Don't take the ruling personally or be afraid to object again.*
- d. Don't give up a line of questioning just because an objection to one question is sustained. Take a deep breath, then think of a different way to ask the question or approach the subject.

SECTION IV

GUIDELINES

A. GUIDELINES FOR TEACHERS

1. The role of the teacher includes acting as the sponsor for the team. The teacher is expected to field a team, decide which students will play the parts in the mock trial, and train the students to play those roles.

As part of the sizeable responsibility of acting as team sponsors, teachers are responsible for the following areas:

- a. **Rules of the Program**

All teachers and teams are expected to adhere to the Mock Trial Rules of Evidence and the facts, law, and other materials provided in the Mock Trial Program packet.

- b. **Team Selection**

While the ultimate decision of team selection is up to the teacher, teachers are strongly encouraged to select students based on their interests and abilities, not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern. Note that roles may be played by males or females, and gender neutral names are provided.

- c. **Team Preparation**

Teachers should find a local attorney to help coach each team. Classes should prepare both sides of the case and, if possible, conduct a regular in-class mock trial prior to meeting another school in a competitive trial.

- d. **Education**

Education is the primary goal of the Mock Trial Competition. Healthy competition helps to achieve this goal. However, teachers are encouraged to keep the competitive spirit at a reasonable level. The reality of the adversary system is that one party wins and the other loses. Teachers must prepare their students to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, civility, and personal courtesy, rather than winning or losing.

e. **Travel Arrangements**

Travel arrangements should be made with your school and district as soon as your trial dates are announced. If the court representative (as listed on the pink Courtroom sheet) consents, other students, parents, and friends of the participants are welcome to attend the trials. Teachers and students are encouraged to invite parents, other teachers, and principals. Members of other mock trial teams in the same division and from the same school should not attend. (Please refer to p. 4, number 6.)

f. **Team Rosters and Performance Rating Ballots**

Each teacher is solely responsible for preparing four copies each of the respective Plaintiff/Prosecution or Defense Team Rosters identifying the students playing each role in the order the witnesses will be called. (See Forms section.) Each judge and the other team shall be given Team Rosters before the start of a mock trial.

Each teacher also is responsible for having the attorneys' and witnesses' names filled in on the Performance Rating Ballot before they are given to the judges. The witnesses' names should be written in the order they will be called.

g. **Arrival Times**

Teachers are held responsible for getting their teams to the assigned courtroom no earlier than 20 minutes prior to and no later than 10 minutes after the starting time of the trial. (See page 7, number 16.)

h. **Name Tags**

Each student attorney will need to wear a *large name tag* with his/her own name printed on it. Students playing the roles of witnesses should wear the witness' name on their name tags. It is the *teacher's responsibility* to supply the name tags for each trial. Name tags should **not** identify the team's school nor should any other school identification occur until after the judges have completed their ballots.

i. **Signed Certificates**

Signed certificates will be distributed by Utah LRE. Each teacher will be responsible for filling in the names and distributing the certificates to student participants.

j. **Ballots**

Teams must examine the ballots, and the teacher or coach must sign them. Following the debriefing session, the **Plaintiff/Prosecution** team's teacher/sponsor will collect the **white score sheet**, together with one each of the **Plaintiff's/Prosecution's** and **Defense's Team Roster sheets**, and transmit them to ULRE. Plaintiff's/Prosecution's team shall receive the pink ballot copies; Defense's the yellow.

2. Teachers will want to accomplish the following in training their students:
- a. Teach trial procedure.
 - b. Teach rules of evidence.
 - c. Teach facts and issues of the case.
 - d. Teach the law involved in the case.
 - e. Develop student understanding of strategies for each side.
 - f. Organize students to prepare the case.
 - g. Assign roles.
 - h. Rehearse individual parts of the trial.
 - i. Conduct an in-class mock trial.
 - j. Debrief after the in-class mock trial.
 - k. Evaluate students' performances.
 - l. Select team(s) that will compete.
 - m. Practice proper courtroom decorum, including civility and personal courtesy.
 - n. Make sure name tags, team roster sheets, and ballots are properly prepared for trial.
 - o. Introduce and conclude Plaintiff/Prosecution mock trial.
 - p. Debrief and evaluate team's mock trials.

After the case is discussed, have students work in groups to prepare their roles. Break the class into two teams: 1) Plaintiff/Prosecution, and 2) Defense. Designate students to be attorneys who will conduct the various parts of their case. These students can work with the witnesses to whom they are assigned or work separately if they are assigned the opening or closing statement. During the preparation, the attorneys for each team must closely coordinate their opening and closing statements with the testimony of each witness.

3. **Charting Groups and Activities**

Tasks for Entire Class	Tasks for Small Groups
<p>Distribute materials</p> <p>Read facts and statements.</p> <p>Discuss facts (important, conflicting, damaging).</p> <p>Plot facts on a time line.</p> <p>Discuss issues of law.</p> <p>Teach:</p> <ul style="list-style-type: none"> • steps in a trial • rules of law • evidence • burden of proof • precedent cases <p>Brainstorm arguments for each side.</p> <p>Brainstorm opening statements.</p> <p>Brainstorm questions for witness examinations.</p> <p>Prepare trial materials and, if Plaintiff/Prosecution, conduct trial.</p> <p>Debrief.</p>	<p>Outline/write opening statement.</p> <p>Organize/write direct examination.</p> <p>Organize/write cross-examination.</p> <p>Outline/write closing argument.</p> <p>Drill witnesses on facts.</p> <p>Drill attorneys on statements and questions.</p> <p>Discuss strategies for each segment of case.</p> <p>Discuss possible objections to questions asked by other side.</p>

4. **Team Tasks in a Mock Trial to Be Assigned to Team Members**
(See “Team Composition,” pp. 7-8.)

Plaintiff/Prosecution	Defendant/Defense
Opening Statement	Opening Statement
Direct Examination of Prosecution’s Witness #1	Cross-examination of Prosecution’s Witness #1
Direct Examination of Prosecution’s Witness #2	Cross-examination of Prosecution’s Witness #2
Direct Examination of Prosecution’s Witness #3	Cross-examination of Prosecution’s Witness #3
Cross-examination of Defense’s Witness #1	Direct Examination of Defense’s Witness #1
Cross-examination of Defense’s Witness #2	Direct Examination of Defense’s Witness #2
Cross-examination of Defense’s Witness #3	Direct Examination of Defense’s Witness #3
Closing Argument	Closing Argument
Role of Prosecution’s Witness #1	Role of Defense’s Witness #1
Role of Prosecution’s Witness #2	Role of Defense’s Witness #2
Role of Prosecution’s Witness #3	Role of Defense’s Witness #3
Role of Clerk-Bailiff	Role of Clerk-Bailiff

5. Key Points to Remember

- a. Students should prepare their own questions, with the teacher and attorney coach giving the team continual feedback and assistance on the assignment as it is completed.
- b. As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should practice their testimony. Student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial.
- c. After the student attorneys prepare questions for witnesses, a team should hold several practice sessions where its attorneys question individual witnesses. The rest of the students or team should evaluate which questions are good and which might be dropped or added in order to bring out favorable evidence.
- d. Opening and closing statements should be written by students with editing assistance from the attorney-coach and teacher. *Closing arguments should not be totally composed before trials.* They are supposed to highlight the important prosecution and defense developments which have *actually occurred during the trial.*
- e. Each attorney should be prepared for interruptions from the judge on matters such as the relevance of questions or the rationale of the arguments during the closing argument. Attorneys must think quickly on their feet when a witness gives an unexpected answer, opposing counsel asks an unexpected question, or a judge throws questions at the attorney or witness.
- f. The ability of a team to adapt to different situations is *always* a key part in a mock trial enactment since each judge--or lawyer acting as a judge--has his/her own way of doing things. **Since the proceeding or conduct of the trial depends on the judge who presides, student attorneys and other team members should *always* be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined procedures and rules.**
- g. Courtroom etiquette, decorum, and especially civility should be stressed at practice and observed at trial i.e., standing when addressing the Court and when the judges enter or leave the courtroom, calling judges "Your Honor," and treating opposing counsel with respect.

- h. All participants should speak loudly and clearly. PLEASE DO NO TOUCH MICROPHONES OR ANY SOUND EQUIPMENT IN THE COURTROOMS.
- i. Credibility of witnesses is very important and, therefore, students acting as witnesses should be encouraged to “get into” the roles and to attempt to think and act like the person they are playing. These students should read over their statements many times and have other people ask them questions about the facts until they know them “cold.” NOTE: Witnesses are not permitted to refer to their statements during the trial unless an attorney attempts to refresh recollection (direct) or impeach (cross).
- j. During practice sessions, students on the competition team should present both sides even though the team is representing one side during the first round of competition.

B. GUIDELINES FOR ATTORNEY COACHES

- 1. Experience has shown that students and teachers 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.
- 2. The preparation phase is intended to be a cooperative effort among students, teacher, and attorney coach.
- 3. The first session with a student team should be devoted to the following tasks:
 - a. Answering questions which students may have concerning general trial practices.
 - b. Explaining the reasons for the sequence of events/procedures found in a trial.
 - c. Listening to the students’ approach to the assigned case.
 - d. Discussing general strategies as well as raising key questions regarding the enactment.
- 4. Second and subsequent sessions with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here, an attorney can best serve as a constructive observer and critic by teaching, listening, suggesting, and demonstrating to the team. *Use questions to teach students how to ask questions.*
- 5. Finally, it is important that participating attorneys help discourage a “win-at-all-costs” attitude among their team members. Indeed, consistent with the direction to the Utah State Bar by the Utah Supreme Court, principles of professionalism and civility should receive emphasis.

C. GUIDELINES FOR STUDENTS ACTING AS WITNESSES AND ATTORNEYS

1. Attorney Opening Statement

- a. The attorneys giving the opening statement should introduce themselves and their colleagues to the judge/jury with whom the attorneys should keep eye contact.
- b. The purpose of the opening statement is to acquaint the judge/jury with the case and outline what you *will* prove through witness testimony and the admission of evidence. Tell the story in short sentences.
- c. The opening statement should include:
 - 1) A short summary of the facts.
 - 2) The burden of proof (the amount of evidence needed to prove a fact). In a **criminal case**, the state has the burden of proof, and guilt must be proven “**beyond a reasonable doubt.**” This is a more difficult standard than in a **civil case** where the Plaintiff must generally prevail by a “**preponderance of the evidence.**”
 - 3) A clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case.

2. Attorney Direct Examination

- a. The purpose of direct examination is to elicit “bite-sized” information from favorable witnesses you call in order to prove the facts of your case.
- b. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information. Be sure all items you need to prove your case are presented through all your witnesses. Using notes is appropriate, but do not read.
- c. Keep to the limited questions you’ve practiced with your witnesses. *Listen to the answers.* Think and act quickly if the witness gives you an unexpected answer; follow through to be sure you obtain the testimony you want.
- d. If you need a moment to think, ask the judge if you can confer with co-counsel for a moment.

3. **Witness Direct Examination**

- a. Learn the case inside out, especially your witness statement. *A witness should never refer to notes or the witness statement, unless given the part under emergency circumstances.*
- b. Practice with your attorney the questions your attorney will ask you and prepare responsive answers that are consistent with your witness statement.
- c. Appear relaxed, confident, and trustworthy. Speak clearly, slowly, and project your voice.
- d. Expect the attorney or judge to ask you a question you haven't anticipated.

4. **Attorney Cross-examination**

- a. The purpose of cross-examination is to make the other side's witnesses appear less believable in the eyes of the judge/jury.
- b. Be courteous to the witness.
- c. Ask short, simple, leading ("Yes"/"No") questions to **establish only what you already know**, such as:
 - 1) The witness is not telling the truth on important points;
 - 2) The witness is prejudiced or biased;
 - 3) The witness' power of observation or competency is questionable;
 - 4) An expert witness is not competent or qualified to offer an opinion outside the specific area of training or experience; or
 - 5) The witness is not credible and has given a contrary statement at another time.
- d. Anticipate each witness' testimony and prepare your questions accordingly. Listen to the witness' answers on direct and cross. *Be ready to adapt your questions at trial depending on the actual testimony.*
- e. Use of notes is allowed, but maintain eye contact with the witness and judges/jury.

- f. *Never allow the witness to say anything you don't want the witness to say. Keep the witness to "yes" or "no" answers. If the witness attempts to explain, you may politely interrupt and thank the witness for having already answered the question. If the witness persists in explaining, politely ask the judge to instruct the witness to limit his/her answer to the question asked.*

5. **Witness Cross-examination**

- a. Learn the case thoroughly, especially your witness statement.
- b. Anticipate what you will be asked on cross-examination and practice answers consistent with your statement. Isolate all the possible weaknesses, inconsistencies, and problems in your statement and practice explaining them.
- c. Appear relaxed, confident, and trustworthy. Speak clearly, slowly, and project your voice.
- d. Expect the attorney or judge to ask you a question you haven't anticipated.

6. **Attorney Closing Argument**

- a. The purpose of the closing argument is to persuade the judges/jury that
 - 1) specific evidence actually presented at trial meets/does not meet the burden of proof in establishing the elements of the relevant law, and
 - 2) the other side has failed to prove/defend its case.
- b. Isolate the issues and describe briefly how specific evidence resolved these issues.
- c. Review each witness' testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses as they relate to the relevant law.
- d. Ask the judges/jury specifically to decide the case the way you want it decided.
- e. Object only when the other side argues evidence that was not actually presented during trial.
- f. Maintain strong eye contact with the judges/jury.
- g. Thank the judges/jury for their time and attention.

D. **GUIDELINES FOR STUDENTS ACTING AS CLERKS/BAILIFFS**

1. The clerks/bailiffs are responsible for a) calling the Court to order, b) swearing in witnesses, c) passing exhibits from attorneys to judges, d) shepherding any jury, and e) time keeping.

2. **Example of Opening the Court**

As the judges enter the courtroom, the clerk/bailiff for the Plaintiff/Prosecution calls out: **“All rise for the Honorable Judges _____, _____, and _____. The Twelfth Judicial District Court of Park County, State of Utah, is now in session, the Honorable Judge _____ presiding.”**

All participants remain standing until the judges are seated. The judge asks the bailiff to call the day’s calendar, at which point the clerk/bailiff says, **“Your Honor, today’s case is Case Number 09cr36912.”** The judge asks if the attorneys for each side are ready.

3. **Presiding Bailiff and Reconvening after Recess**

The clerk/bailiff for the plaintiff/prosecution will preside for the opening statements and the direct and cross-examination of Plaintiff’s/Prosecution’s witnesses. The clerk/bailiff for the Defense will preside at the direct and cross-examination of defense’s witnesses and closing arguments.

The clerk/bailiff who is presiding should instruct the audience to rise whenever the judges leave or enter the courtroom: **“All rise.”**

4. Each clerk/bailiff swears in all witnesses on his/her team. Depending on the wishes of the presiding judge, this can be done individually as each witness is called or collectively at the beginning of the trial. Before the trial begins, the clerks/bailiffs should ask the presiding judge his/her swearing in preference.

Example of Swearing In Witness(es)

Clerk/bailiff stands, holds up his/her right hand and says, **“You do solemnly swear to tell the truth, the whole truth, and nothing but the truth in this mock trial.”**

5. Each clerk/bailiff hands all admitted exhibits for his/her team from the attorneys to the judges.

6. The clerks/bailiffs maintain order in the courtroom, particularly if a disruption occurs.
7. The clerks/bailiffs keep time and should familiarize themselves with the time guidelines found in the Rules of Competition. Both clerks/bailiffs should meet with Plaintiff/Prosecution team's teacher-sponsor and panel judges prior to each trial to clarify timing and other trial procedures.
 - a. The clerks/bailiffs should each have a stop watch (with a second hand) to enforce time. Time sheets will be kept by each clerk/bailiff for her/his own team and turned in to the judges after closing arguments or jury instruction. Time should be calculated to the nearest half-minute. ***Bring your own time sheets to each trial.***
 - b. Interruptions in the presentations do not count as time. For direct and cross-examination, record only time spent by attorneys asking questions and witnesses answering them. Don't include time when witnesses are being sworn in, attorneys are objecting, or judges are ruling on objections.
 - c. Time cards are included in SECTION V of the Handbook. These cards should be used during the trial to indicate to team members and panel judges how much time is remaining. Cards indicate the following: half time used, 1 minute left, 30 seconds left, time.
 - d. Clerks/Bailiffs may refer the judges to performance scoring on p. 46 and the judging resources in the Forms section in order to clarify judging criteria.
8. At the conclusion of the trial, each clerk/bailiff will inform the judges whether there has been any overtime for his/her team.
9. At the conclusion of the judges' debriefing, the defense's clerk/bailiff will close the proceeding: **"All rise. This Honorable Court is hereby adjourned."**

E. GUIDELINES FOR THOSE ACTING AS JUDGES

Judging is done by a panel of two or three individuals: the “presiding judge” is an attorney or judge; the other panel judge(s) is an/are attorney(s) and/or a community representative.

1. Responsibilities of Judges

- a. Be considerate and supportive of the students. For example, if a student loses his/her line of thought, quietly provide a reminder of his/her last statement or question.
- b. Grade generously since the winning team is determined by the number of ballots won not the points received. Points are only used to determine the match-up of teams within ballot win-loss groupings for the quarter-final and semi-final rounds.

c. Become familiar with the following:

1) Mock Trial Rules of Competition, pp. 3 - 10, including:

a) Time allotment, pp. 6-7.

TRIAL CATEGORIES	TIME SEQUENCE
Prosecution’s Opening Statement	5 minutes*
Defense’s Opening Statement	5 minutes*
Prosecution’s Direct Examination	9 minutes per witness* or 27 minutes total
Defense’s Cross-examination	7 minutes per witness* or 21 minutes total
Prosecution’s Redirect Examination (optional)	3 additional minutes per witness
Defense’s Recross (optional)	2 additional minutes per witness
Defense’s Direct Examination	9 minutes per witness* or 27 minutes total
Prosecution’s Cross-examination	7 minutes per witness* or 21 minutes total
Defense’s Redirect (optional)	3 additional minutes per witness
Prosecution’s Recross (optional)	2 additional minutes per witness
Prosecution’s Closing Argument	7 minutes*
Defense’s Closing Argument	7 minutes*
Prosecution’s Rebuttal (optional)	Closing argument time must be allotted by Prosecution to rebut defense’s closing statement.*
Total (approximate)	75 minutes per team

- * **Time allotted** for *opening and closing statements* (and any rebuttal) may be altered, but cannot exceed a total of 12 minutes. **Time allotted** for *direct examination of witnesses* may be altered, but cannot exceed a total of 27 minutes. **Time allotted** for *cross-examination of witnesses* may be altered, but cannot exceed a total of 21 minutes.

b) **Division of Point Responsibilities Among Attorneys, p. 7.**

Teams will consist of no more than four nor less than three attorneys, unless cleared with ULRE staff and the opposing team. *Attorneys shall evenly divide attorney point responsibilities. Judges may score lower for unequal division of point responsibilities among attorneys. Attorneys may devise any division of duties so long as each attorney's point responsibility load is roughly equal.*

- 1) If four attorneys are used, each should be responsible for 20 maximum points (out of 80 maximum points possible for attorneys; see score sheet).
- 2) If three attorneys are used, two should be responsible for 30 maximum points and one for 20 maximum points (out of 80 maximum points possible for attorneys; see score sheet).

c) **Competition Advancement, p. 8.**

Judges are asked to make two decisions: a) the legal merits of the case, and b) the best team presentation. The first decision, on the merits, will be decided by the presiding judge who may confer with the other judge(s) in reaching this decision. This will be a decision based on what would happen in an actual court of law according to the facts presented. **[In a jury trial, the presiding judge will ask the jury foreperson to read the verdict.]**

The second decision will be on team presentation. Judges will score the teams on performance using the Performance Rating Ballot as found in the Forms section. A completed Sample Ballot and other judging resources also are included. There can be no point ties on any judge's ballot. **The decision on the legal merits of the case lends realism to the competition;** however, *teams will advance based only on ballots won.*

2) **Simplified Rules of Evidence, pp. 17 - 27.**

3) **Performance Scoring, p. 46.**

Participants will be rated in the trial categories on the Ballot on a scale of 5 - 10 (with 10 being the highest) according to their roles in the trial. **Each judge is scoring student performance in each trial category. No judge is scoring the legal merits of the case.**

- d. Arrive 15 minutes prior to the time identified in the judge confirmation letter to meet with Plaintiff/Prosecution team's teacher/sponsor/courtroom coordinator to clarify questions. (Judges also are encouraged to contact ULRE staff at 801.322.1802 with **any** questions prior to this pre-trial meeting.) On Saturdays, ULRE staff will be available at the Scott M. Matheson Courthouse to direct judges to appropriate courtrooms and to answer questions.
- e. If you are unable to attend your scheduled trial, please obtain a substitute and call 801.322.1802 to report any changes as far in advance as possible.
- f. Discuss timing procedures with **both** clerks/bailiffs prior to the trial. Before the trial, verify with clerks/bailiffs that they understand time limits (p. 6) and duties (pp. 39-40), including the duty to notify judges after the conclusion of closing arguments whether or not their teams stayed within time limits.
- g. The **presiding judge** will rule on all objections, answer questions, and make the decision on the merits unless he/she elects to confer with the other panel judge(s). The presiding judge may choose to briefly explain the mock trial procedure, including which party goes first, the sequence for presenting witnesses, the function of the opening and closing statements, how witnesses will be sworn, and when recesses will be taken.
- h. The purpose of the non-attorney panel member is to judge the students on non-legal criteria: presence, organization, speaking skills, clarity of presentation, ability to think on their feet, etc. *The contributions of attorneys and non-attorneys are equally valued and important to the teams.*
- i. Any Defense motion to dismiss/for directed verdict at the end of the Plaintiff's/Prosecution's case is *not to be granted*.
- j. To the extent possible, each judge should score his/her Performance Rating Ballot *during* the trial. Use *whole numbers only*. Judges may elect to take two short recesses to facilitate marking of the rating sheets: one following cross-examination of the Plaintiff's/Prosecution's witnesses and the other prior to closing arguments.
- k. At the conclusion of closing arguments/jury instruction, the judges should meet privately outside the courtroom to complete their ballots and to determine the winner. **If there are only two judges, those judges' total scores are averaged to obtain the score of the third judge.** Each judge, based solely on the points awarded by that judge only, must check the box of the winner on points at the bottom of that judge's ballot. *There cannot be a tie on any judge's ballot.*

- l. The judges will return to the courtroom, and the presiding judge will render the decision on the merits [**or the presiding judge will ask the jury foreperson to read the jury's verdict**]. This should include a short discussion of the merits of the case and the decision he/she would make if it were an actual trial.
- m. Judges should then proceed **briefly** to *debrief* the trial, giving their comments on each team's performance and announcing the winning team based on the performance rating ballots. Each judge may constructively point out particular strengths and weaknesses of both the winning and losing teams. Please include student attorneys, witnesses, and bailiffs in the debriefing. The **complete debriefing by all judges** should last **only 10-15 minutes (approximately 5 minutes per judge)**.
- n. Evening trials at the Scott M. Matheson Courthouse should end at the scheduled time since everyone must be out of the building no later than **9:00 p.m.**
- o. Judges have discretion regarding the following matters:
 - 1) Normal courtroom procedure and decorum. However, judges are asked to be tolerant of mistakes which students will make due to their inexperience.
 - 2) Questions by judges. Judges should feel free to ask occasional questions of attorneys or witnesses during the trial.
 - 3) Objections by students. When objections are made, the presiding judge may give a simple explanation of the reasons behind his/her decisions rather than waiting until the conclusion of the trial to debrief students' use of objections.
 - 4) Length of trial. Judges should move the trial along, if necessary; the trial itself should last approximately 2 to 2-1/2 hours.
 - 5) Tournament guidelines/rules. *If one team challenges the other regarding tournament guidelines/rules, the judges may decide the matter as they see fit.*

- 6) Deduction of points. Each judge may deduct a reasonable number of points for breaches of decorum or competition guidelines/rules.
 - a) The teams and their teachers/sponsors are instructed to arrive at the assigned courtroom no sooner than twenty minutes before the scheduled start time and no later than ten minutes after the starting time of the trial. Judges may deduct points for a team that arrives more than ten minutes after the trial should have started or may determine that a team has forfeited the match.
 - b) Judges also may deduct points for a team that goes over the time limit, demonstrates improper decorum or lack of civility, strays from the facts, and/or divides attorney responsibilities unevenly.
2. The **Plaintiff/Prosecution** team's teacher/sponsor/courtroom coordinator will be responsible for opening and closing the mock trial and greeting, instructing, and assisting the judges.
3. Each teacher also is responsible for having the attorneys' and witnesses' names filled in on the Performance Rating Ballot before they are given to the judges. The witnesses' names should be written in the order they will be called.
4. Following the debriefing session, teams must examine and the teacher or coach must sign the ballots. **Plaintiff/Prosecution** team's teacher will collect the white score sheets and the team roster sheets. Plaintiff's/Prosecution's team shall receive the pink ballot copies and Defense's team the yellow.

PERFORMANCE SCORING

Participants will be rated in the trial categories on the Ballot on a scale of 5 - 10 (with 10 being the highest) according to their roles in the trial. **Each judge is scoring student performance in each trial category. No judge is scoring the legal merits of the case.** Each trial category is to be evaluated separately, and fractional points *are not* to be awarded. One team *must* be awarded more total points than the other. Sign your Ballot, and please check the box of the *team point winner* before turning the Ballot over to the teacher/coordinator. Please also give your Team Roster, Prosecution/Defense Notes, and Performance Scoring Worksheets to the teacher/coordinator.

POINTS	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
5 - 6	Fair	<ul style="list-style-type: none"> ● Exhibits minimal clarity and understanding of the case materials and trial procedures i.e, entering evidence and objections. ● Presentation and communication minimally clear and organized. Eye contact minimal. ● Presence and maintenance of character role minimal.
7 - 8	Good	<ul style="list-style-type: none"> ● Exhibits adequate clarity and understanding of the case materials and trial procedures i.e., entering evidence and objections. ● Presentation and communication are clear and organized, but could be stronger in fluency and persuasiveness. Eye contact adequate. ● Presence and maintenance of character role adequate.
9 - 10	Excellent	<ul style="list-style-type: none"> ● Exhibits excellent clarity and understanding of the case materials and trial procedures i.e., entering evidence and objections. ● Presentation and communication are clear, organized, fluent, and persuasive. Eye contact excellent. ● Presence and maintenance of character role excellent.

Points may be deducted for the following:

- Going over the time limit;
- Demonstrating improper decorum or lack of civility;
- Arriving more than 10 minutes after the starting time of the trial;
- Straying from the facts; and/or
- Dividing attorney responsibilities unevenly.