

MARYLAND MOCK TRIAL PROCEDURES FOR VIRTUAL COMPETITIONS

I. Courtroom Set-Up

- a. More information to come.

II. The Opening of the Court and the Swearing of Witnesses

- a. The Bailiff for the Prosecution will call the Court to order through the following steps:
 1. In a loud, clear voice, say, "The Court will now hear the case of State v. Gardner. The Honorable _____presiding."
 2. The judge will ask each side if they are prepared to begin.
- b. For the purpose of time, it will be assumed that each witness has already been sworn in.

III. Opening Statement (5 minutes maximum)

- a. Once the case has been called, one member from each attorney team will state who they are representing. This is typically done in this format:
 - a. If you are the Prosecution:
 - i. "Good afternoon, Your Honor. I am (provide your name) representing the State of Maryland. Then introduce your co-counsel: "With me is my Co-Counsel": provide their names.
 - b. If you are the Defense:
 - i. "Good afternoon, Your Honor. I am (provide your name) from **Wais, Vogelstein, Forman & Offutt** and I represent Izzy Gardner." Then introduce your co-counsel: "With me is my Co-Counsel": provide their names.
- b. Prosecution (criminal case)

After introducing oneself and colleagues to the judge, the prosecutor summarizes the evidence for the court which will be presented to prove the case. The Prosecution's opening statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is intended to provide facts of the case from the client's perspective.
- c. Defense (criminal or civil case)

After introducing oneself and colleagues to the judge, the defendant's attorney summarizes the evidence for the court which will be presented to rebut (or deny the validity) of the case which the Prosecution has made. It includes facts that tend to weaken the opposition's case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the prosecution/plaintiff's case. As with the Prosecution's statement, Defense should avoid argument at this time.

IV. Direct Examination

The Prosecution/Defense attorneys conduct direct examination of each of their own witnesses. During direct exam, testimony and other evidence to prove or strengthen the Prosecution's/Defense's case will be presented. The purpose of direct examination is accomplish one or more of the following goals:

- a. To allow the witness to relate the facts to support the prosecution claim/defense argument and meet or disprove the required burden.
- b. Introduce undisputed facts – No facts or information can be considered by the judge or jury until they are placed in evidence through a witness' testimony.
- c. Enhance the likelihood of disputed facts – Direct examination is your opportunity to set forth your client's version of the undisputed facts and persuasively introduce evidence which supports that version.
- d. Lay foundation for the introduction of exhibits – Documents, photos, writings, reports or other forms of evidence will often be central to your case. In most instances, it is necessary to lay a foundation for the admission of exhibits through direct testimony of witnesses.
- e. Reflect upon the credibility of witnesses – The credibility of a witness is always an issue. For this reason, direct examinations should begin with some background information about the witness. After an introduction, the judge/jury should learn why the witness is testifying. Your job is to:
 - i. Help the witness tell their story, by asking open-ended questions. Rather than those that draw a "yes" or "no" response, questions that begin with "who," "what," "where," "when," and "how" or "explain..." and "describe..." are helpful during direct examination.
 - ii. Questions should be clear and concise, and should help guide your witness through direct examination.
 - iii. Be careful to avoid questions that elicit narrative answers. Witnesses should not narrate too long, as it will likely draw an objection from opposing counsel.
 - iv. Do not ask questions that "suggest" a specific answer or response.

V. Cross Examination

After the attorney for the Prosecution/Defense has completed the questioning of a witness, the judge then allows the opposing attorney to cross-examine the witness. The purpose of the cross-examination is to cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the Judge through cross-examination. General Suggestions:

- a. Use narrow, leading questions that "suggest" an answer to the witness. Ask questions that require "yes" or "no" responses.
- b. In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.
- c. Never ask "why." You do not want to give a well-prepared witness an opportunity to expand upon a response.
- d. Avoid questions that begin with "Isn't it a fact that...", as it allows an opportunistic witness an opportunity to discredit you.

VI. Redirect Examination

Redirect examination is an additional direct examination conducted following a witness' cross examination. The purpose is to allow the witness to clarify any testimony that was cast in doubt during cross examination. It is limited to the scope of the cross examination.

VII. Recross Examination

Recross examination is an additional cross examination, following a redirect. The purpose is to respond to matters that may have arisen during the re-examination of a witness. Recross can only deal with those subjects that were addressed during redirect.

VIII. Voir Dire

Pronounced "vwahr deer," and translated from French "to speak the truth" or "to see to speak." The phrase has two meanings, only one of which applies to Mock Trial. People are most commonly introduced to the term when they are called for jury duty. The judge and/or attorneys conduct voir dire to determine if any juror is biased and/or feels unable to deal with issues fairly. The voir dire that is applicable to mock trial is the process through which questions are asked to determine the competence of an alleged expert witness.

Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall, if he/she chooses to do so, have the opportunity to conduct a brief cross-examination of the witness' qualifications. Voir dire is to be limited to the fair scope of the expert's report.

IX. How to Admit Evidence

- a. The exhibits have been pre-marked.
- b. State to the Court which exhibit you plan to use. (Ordinarily, you would approach opposing counsel with a copy of the exhibit, request permission from the judge to approach the witness, and show it to the witness. These steps will be skipped during virtual competitions.)
- c. Ask the right questions to establish a foundation:
 - i. I am handing you what has been marked as Exhibit X. Do you recognize this?
 - ii. What is it?
 - iii. Is it a fair and accurate copy?
- d. Ask the court to admit the evidence.
- e. Ordinarily, you would hand it to the judge (or clerk) to mark the exhibit into evidence. This step will be skipped during virtual competition.

X. How to Impeach a Witness

Counsel can challenge the credibility of opposing witnesses by showing the judge or jury that the witness made inconsistent statement in the past and/or by demonstrating a witness is biased or has personal interest.

- a. Get the witness to repeat the wrong statement. Ask, "Is it your testimony that [insert exact quote of oral testimony if possible?]"
- b. Find the affidavit of the witness and proceed with the following questions;
 - i. "Do you remember making this statement?"
 - ii. "And you were under oath?"
 - iii. "This is your deposition, correct?"
 - iv. "And this is your signature?"
 - v. "Now read silently as I read aloud."
 - vi. "I read that correctly, didn't I?"
- c. The purpose is to emphasize the disparity between the witness' current testimony and prior statement; the goal being to point out that the witness has changed their answer, *not* to give them a chance to affirm the truth of their most recent statement.

XI. Closing Arguments (7 minutes maximum)

For the purposes of the Mock Trial competition, the first closing argument at all trials shall be that of the Defense.

a. Defense/Defendant

A closing argument is a review of the evidence presented. Counsel for the Defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of the charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty (or not at fault) for the Defense.

b. Prosecution/Plaintiff

The closing argument for the Prosecution/Plaintiff reviews the evidence presented. Their closing argument should indicate how the evidence has satisfied the elements of the charge, point out the law applicable to the case, and ask for a finding of guilt or fault on the part of the Defense. Because the burden of proof rests with the Prosecution/Plaintiff, this side has the final word.

IX. The Judge's Role and Decision.

The Judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the Judge also has the function of determining the facts of the case and rendering a judgment, just as in actual Bench trials.