MOCK TRIAL MANUAL

TABLE OF CONTENTS

> Introduction 1

> Opening Statement 2

> Direct Examination 5

> Introduction of Exhibits 8

> Qualifications of Experts 10

> Cross Examination 10

> Impeachment 13

> Objections 14

> Closing Argument 17

Introduction

Creating a good mock trial team requires total compatibility between lawyers and witnesses. This means teamwork! Each knows and understands where the other is coming from and where they both are going. Working together does not mean learning one's "lines" and going by the script but "playing off" each other. It should sound like you have worked together but not rehearsed.

In preparation for the trial, make sure that both the attorneys and the witnesses take part in the writing of the material and also in perfecting each other's style.

Meeting with your attorney – coach is crucial. (S)he will help you build the theory of your case and also teach you how to present it well … remember to take notes.

Finally, have fun! Don't get so wrapped up in the competition that you forget to enjoy yourself.

OPENING STATEMENT

Here we go young attorneys! The opening is an essential part of your presentation – it gives each lawyer a chance to argue that his/her story is the one to be believed. Make a good first impression!

The general purpose of the opening statement is to state what you will prove and how you intend to prove it. However, the purpose goes far beyond informing your audience of the nature of the case and acquainting them with the essential facts. You must present the facts in such a way that your theory of events sounds correct.

There can be no notes read aloud during opening or closing. This does not mean that you can't have bullets listed of important words but it can not be a statement read off an index card.

Here are a few tips on how to build and deliver a convincing opening statement:

DO

1. <u>You may use 1 index card of listed important words that you want to remember.</u> You may not read your opening statement off index cards or paper.

2. <u>Introduce yourself and your colleagues</u> so you immediately establish a certain familiarity with the judge.

3. Explain what <u>contributions</u> your witnesses will make to your case.

4. <u>Corroborate your witnesses' testimony</u>. Draw links in their stories that the judge can easily recognize. If more than one witness testifies to the same fact or circumstance, your entire case will be proportionately strengthened.

5. <u>Include legal requirements</u> (i.e. – charges, damages, requested verdict). Judges usually welcome a simple "statement of purpose" in the opening remarks; solid, practical reasoning always sounds impressive.

6. <u>Personalize your client.</u> Use his/her name and the judge will pay closer attention to what you say.

7. <u>Be brief and direct.</u> Long-winded openings tend to bore or confuse your audience.

8. <u>Pause and change your tone of voice</u> to emphasize important points.

9. Have key words on an index card that you want to remember to include. This tactic will prevent you from rambling and can give your opening some direction.

10. Make eye contact with the judge. This will show that you are sure of your facts and overall case. Sound positive and assertive.

11. Memorize your opening statement.

DON'T

1. Argue testimony of adversary's witnesses. This practice is objectionable because you cannot predict what the other side will testify later in the proceedings.

2. Just summarize or repeat the facts for the judge; argue what you believe to be the facts. The judge has also spent time reviewing affidavits and the stipulated facts—you spend your time weaving those facts into a durable argument to substantiate your version of the facts.

3. Be too specific about upcoming testimony You provide the framework for the testimony to come, and witnesses will fill in the details later.

4. Personalize rival witnesses If you are a prosecuting attorney, do not call the defendant by his/her first name; just refer to that person as "the defendant". You would not want the judge to feel friendly toward your enemy.

5. Use very technical language Try to use simple terms that help you sound natural and believable. Flowery talk will not impress a judge or make you sound more professional, so stick to laymen's terms.

6. Over-emphasize a point Subtlety is often more convincing.

7. Keep your voice monotone; you will sound like you are reading something terribly unexciting and definitely not worth listening to.

8. Walk or pace around the room while you deliver the opening statement; unless such movement is deliberate, you may look restless and uneasy, and disturb your listeners.

9. Handle or tap any object while you are speaking; you will distract your audience. If you must keep hold of something, lightly grip the sides of the reading stand if you have one.

10. <u>Advertise nervous habits</u> If you have an annoying nervous tick like shivering or stuttering, work on ways of quieting them by practicing your opening many times before a mirror. You will feel much calmer if you know what you are going to say—then you can consciously focus on breaking quirky habits.

11. <u>Read from a card or paper.</u> This shows a lack a confidence in yourself and your case. Not making eye contact with the judge shows you are nervous about your case.

PERSONAL HINTS

Now that you have a basic understanding of the style and format of an opening statement, here are some more suggestions which may be helpful in winning a judge's favor:

⇨ **<u>Outline your argument</u> before you begin to write an opening statement. A clear order of events will help you develop a cohesive theory and paint a clear picture of what happened.**

➡ **<u>Memorize your opening statement,</u> if possible. If you can talk to the judge face to face, you will appear sharp and convincing, so try to refer to your notes as little as possible**

⇨ **<u>Be polite.</u> Begin with a strong, courteous introduction, such as: "May it please the Court, opposing counsel, ladies and gentlemen…" <u>Remember</u> key phrases, such as: worthy adversaries, distinguished visitors, and the ever-popular "May it please the Court".**

⇨ **<u>Anticipate what weaknesses</u> and self-damaging evidence in your case will most likely be used by opposing counsel, and mention these weaknesses without emphasis. This tactic will minimize the impact of the testimony later.**

⇨ **<u>Maintain good posture</u> to project poise. Body language is an important factor in displaying confidence and commanding respect.**

⇨ **<u>Do not object</u> during opposing counsel's opening statement unless you find it crucial to block improper testimony. It may display your knowledge of the law, but annoy the judge at the same time. There are a few exceptions, namely if your adversary:**

- **Blatantly argues testimony of your witness;**
- **Argues any evidence which has not been properly introduced;**

- **Directly contradicts the stipulated facts.**

⇨**Avoid too much legal jargon** - - legal language is often unnecessary to make your point (see #5 in DON'T list).

⇨ **Take notes** on what the other lawyer says - - you or your fellow attorneys should be attentive to the enemy's game plan, listening for hints of what they will do, as well as for possible weaknesses and mistakes.

⇨**Believe what you are saying,** and the judge will be more apt to believe you.

DIRECT EXAMINATION

Purpose: The direct examination is designed to elicit testimony favorable to your witness, and to establish his version of the story. Direct exam offers you, the attorney, the chance to put your witness in the most favorable light and to establish the credibility of his testimony. Let your witness be the star; you just ask simple questions and let the witness command the judge's attention. Ask questions in a clear, logical order and in simple, direct terms' to carefully guide the witness through his story. You may not read your questions from an index card or paper.

Tips for the attorney:

DO

1. Begin your examination with a few preliminary questions that you feel are necessary to set the groundwork for the more important testimony to come. At this point in your questioning, you should not worry about leading the witness; questions such as "Do you know the defendant?" are perfectly acceptable to start.

2. Ask open-ended questions- - those that allow the witness to expand beyond a simple "YES" or "NO" answer- - that elicit descriptive responses. This style of questioning keeps the judge's attention focused on the witness' answers, not on the content of your questions.

> i.e. – Then you ran to your friend's house right? (leading – WRONG)
> Where did you go after that? (open-ended – CORRECT)

3. Keep questions short and sweet - - let the witness tell the story. The Hofstra University law manual explains that to simplify direct exam, you should "determine in advance what the critical part of the witness' testimony is, get to it quickly, develop it sufficiently, then STOP."

4. Ask about events as they actually occurred- - in definite <u>chronological order.</u> This clarifies the testimony in the judge's mind and makes your story sound natural and believable.

5. Enter the affidavit properly as evidence.

6. Make eye contact with the witness and the judge. This shows your confidence in your case.

<u>7. Elicit description, then action.</u> The Hofstra University Law Manual, Manuet's <u>Fundamentals of Trial Techniques,</u> instructs that the judge and jury "should have a complete description of the scene before hearing about the action."

According to Manuet's book, the general order of a direct exam should be:

- **I. Establish witness' <u>background</u> (if he's to be qualified as an expert in some field, emphasize the depth and breadth of his experience):**
- **II. Pin down the <u>location</u> and <u>setting of the event in question:</u>**
- **III. Confirm what happened just <u>before</u> the event- - <u>during</u> the event- - then immediately <u>after</u> the event (this is the "meat" of the testimony- - make your strongest points *here*):**
- **IV. Have witness describe any initial and continuing <u>medical treatment</u> he may have received from that event:**
- **V. Validate any initial and sustaining <u>injuries</u> (physical and/or psychological) your witness suffered as a result of what happened;**
- **VI. Establish any financial <u>losses</u> to date due to the event and its aftereffects.**

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8. <u>Pace yourself.</u> Do not let your nervousness give you lockjaw or verbal diarrhea. Slow the pace of your direct exam to highlight major points. Know all aspects of the trial so you can make up questions as you need them.

9. <u>SPEAK UP!</u> The judge can't read your lips. Never be afraid of sounding too loud- - a courtroom is big and <u>voice projection</u> is vital.

10. <u>Use a friendly, conversational tone</u> that projects poise and self-assurance- - the more easygoing and matter-of-fact the direct exam is, the more fresh, believable and unrehearsed it sounds. Make eye contact.

11. Include a question or two to <u>address a glaring weakness</u> in your witness' testimony- - one that you predict the cross-examiner will use to badly discredit your witness. Since the answer your witness gives is self-incriminating, she/he should be quick to offer an excuse why the weakness exists. This defensive strategy is to take the sting away from opposing counsel's cross exam.

12. Always appear interested in your witness' answers- - that is, if you want to interest the judge in your witness' testimony. If you're inattentive because you're contemplating your next question, the judge will not feel any desire to listen to your witness.

DON'T

1. Use fancy vocabulary to make your questions sound more "professional"; it may confuse or annoy the judge and lessen the impact of direct.

2. Present facts randomly "as they spill out". You have to help the judge fit the pieces to the puzzle or your case will fall apart.

3. Simply repeat the witness' affidavit. Use it as a guideline for your testimony, but you must select only the important elements- - not everything in the affidavit needs to be included in your direct.

4. Lead the witness! By suggesting the answer in your question, you lose the impact of having the witness him/herself supply the facts, and you make the witness appear less credible in his answer.

i.e. – You went to the bar afterwards, didn't you? (leading)

versus **What, if anything, happened next? (acceptable)**

NOTE: "What, if anything" does not always negate a leading questions- - always be careful that your question does not hint at the answer, *especially a "YES" or "NO" answer.

5. Rush through your examination. This is your chance to show off your witness- - give your audience a chance to absorb what (s)he says.

6. Prepare too many questions to ask in your allotted time. Stick to the seven minute time limit. Better to make a few points well than to overwhelm the judge with facts.

7. Stare at your script of questions while your witness is giving answers. Your witness is more important and more interesting than a bland list of questions, so look alive and interested in what he says. Don't read the questions. You aren't supposed to have written questions, just words.

8. Repeat your witness' answers for emphasis- - the judge has already heard it once, so don't insult their intelligence; give them credit for determining what's important

9. Breeze through important events- - these descriptions need to be drawn out for particular emphasis in the witness' testimony.

10. Assume that the judge knows everything about your witness and the events described- - use the evidence provided affidavits to buttress your witness' testimony, and allow your witness to recall or explain important parts of his testimony without allowing too much time to ramble.

11. <u>Ask "why" questions</u>- - most are irrelevant because motivation for action is usually considered trivial compared to what actually happened.

<u>INTRODUCTION OF EXHIBITS</u>

<u>*SPECIAL for direct exam:</u> <u>THIS IS VERY IMPORTANT!!!!</u>

There is a standard technique for introduction of documents into evidence. If a document has already been received into evidence, simply refer to it by its exhibit number; do not introduce it again.

The following protocol (or a similar version) must be followed to lay a proper foundation for all incoming evidence:

The following elements have been extract directly from Thomas Mauet's <u>Fundamentals of Trial Techniques</u> (1980 by Little, Brown & Co., Boston), page 185, found below "Foundations for Exhibits" under section headed "Tangible Objects"

Foundation Elements:

- **Exhibit is relevant (to the case).**
- **Exhibit can be identified visually, or through other senses**
- **Witness recognizes the exhibit**
- **Exhibit is in the same or substantially the same condition as when the witness first saw it on the relevant date**

The following method of questioning is the one we have used with some success in the past to set the foundation for exhibits. Lucky for us, it follows fairly well with the elements listed above:

1. **"Your Honor, I would like this document marked for identification."**
   (hand to bailiff, or walk to the bench and hand document to judge)

2. **(Approach the witness stand to show your witness the document)—**
   I) "Do you recognize this?"

   ii) "What is it?"

   iii) If the witness signed the document:

"Is that your signature at the bottom?

iv) If another party also signed the document, and that signature was an important part of the signed agreement, you should add:
"Were you present when (<u>names of cosignatory</u>) signed this document?"

v) If witness signed document, also include:
"Is this a fair and accurate representation of the document you signed on (<u>date of signing</u>)?"

vi) If the document is a map or photograph of the crime scene, or a suspect or piece of evidence that your witness had the privilege to see during the events in questions, modify the above to say:
"Is this a fair and accurate representation of the (area as it appeared/person as (s)he appeared) on (date of events)?"

3) "Your Honor, at this time I would like to offer this document into evidence as (Defense/Prosecution or Plaintiff) Exhibit # (<u>1, 2, 3 etc.*)</u>"

****Exhibit numbers, as you can see, simply go in the order of the documents presented by your side. If plaintiff's attorney, for example, introduces two medical bills as Plaintiff's Exhibit #1 and #2, respectively, (you can introduce more than one document at a time if you feel those documents "go together") your first exhibit would be Defense Exhibit #1, and so on.***

<u>NOTES ON OBJECTIONS:</u>

1) Object to exhibits when you sense opposing counsel has not established all the necessary elements to set the proper foundation for the exhibit. When you make your objection, tell the judge there is NO FOUNDATION for the exhibit, then briefly explain the elements(s) you feel are missing.

2) Save your objections until the moment your adversary tries to introduce the evidence, not before. For example, do not object when the document is being marked for I.D.; wait until it is offered into evidence.

3) If you think something is not correct object; don't wait until the end of the trial.

QUALIFICATION OF EXPERTS

If you want to qualify your witness as an expert in a certain field, you must establish all elements of their background that support their expertise. Concentrate specifically on any areas of specialty they have within their field.

After you have exhausted your preliminary questions about your witness' background, you ask the judge to qualify the witness as an expert in a given area.
For example:

Your Honor, given this person's training and qualifications as a master carpenter, I ask that they be qualified as an expert in the area of carpentry and home reconstruction.

CROSS EXAMINATION

PURPOSE: Cross exam is designed to dismantle and destroy opposing counsel's case. You should elicit testimony that damages your adversary's theory and promotes yours. This stage of questioning is your opportunity to discredit the witness, or make his story seem unbelievable. Therefore you should listen carefully to the direct examination of the witness. You might think of another question for the witness based on their testimony.

Here is the attorney's turn at being the star, so you must take charge of the witness. Your job is to minimize the impact of the testimony the witness just gave on direct, and dominate the witness with incriminating questions. Highlight inconsistencies in testimony, and make the witness admit the weakness in his case.

TIPS FOR THE ATTORNEY:

DO

1. Ask leading questions - - tell the witness what he did so he must answer "yes" or "no".

2. Phrase questions sharply, such as: "Isn't it a fact that…", "Didn't you testify that…", "You stated on direct that…", "You wrote in your affidavit… didn't you", "Isn't it true that…". Make sure that you vary the phrases.

3. Focus on a few major points - - do not bury yourself in petty details, or you will risk losing your audience.

4. Ask questions with confidence and determination. On cross exam, the strong, destructive style of questioning is particularly important. Know the whole trial.

5. Know the answer before you ask the question! Knowledgeable anticipation of answers will reduce the witness' opportunity to introduce new, unwanted information.

6. Destroy witness credibility by emphasizing bias, bad memory, and contradictions in written and spoken testimony.

7. Use the witness' affidavit against him whenever you can, especially if he verbally contradicts it – see upcoming section on "Impeachment of Witnesses' for techniques.

8. Start with a BANG and end with a BOOM! The beginning and end leave the strongest impressions.

9. Listen to the answers! Don't get too involved with your questions. This is most important!

DON'T

1. Wait until after the trial to complain that the other team did something wrong Object at the time it happens.

2. Ask vague, open-ended questions that give the witness a chance to explain or excuse what he did.

3. Ask a "why" question - - a cardinal rule! For the court, the significance of an event lies in what happened, not why it happened, and you open yourself up to the longest witness narrative you might ever hear. If you turn to the judge for help in cutting off the witness, don't be surprised if he says, "You asked for it!"

4. Continually hammer away at one point If you have made it, stop and go on to the next; if you have not made your point, know when to abandon a lost cause - - fishing expeditions take too long.

5. Make blunt statements that contradict witness testimony As an attorney, you are limited to questions - - commenting is not allowed.

6. Let the witness ramble - - he will attempt to use up your time on cross, so stop him if he expands unnecessarily beyond a basic "yes" or "no".

****VERY IMPORTANT****

*****NOTE: If the witness tries to "run the game" on you, you can:**

1) Interrupt the witness to appeal to the judge for help:

> **"Your Honor, please instruct the witness to answer my question and my question only."**
>
> **"Your Honor, please instruct the witness to answer my questions with a simple "Yes" or "No, if he/she can."**
>
> **"Your Honor, I ask that you strike the latter part as unresponsive to my question."**

2) Let the witness finish, then ask him/her:

> **"You never stated that on direct, did you?"**
>
> **"You never stated that in your affidavit, did you?"**

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7. Ask the "ultimate question Let your cross exam suggest a point; the judge will catch on without being beaten over the head with a point.

8. Argue with the witness - - it will only make him/her *more* defensive. Better to set your traps quietly than to explode with your arguments.

9. Be shaken up by unexpected answers Have a back-up question if the point is crucial; if not, calmly proceed to your next point.

10. Use the same tone of voice you use for direct exam Lean toward a more probing and determined sound.

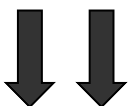
PERSONAL HINTS

1. Break up a major point into many short questions. You make your points much more dramatic by building up to them.

2. Maintain eye contact with your witness and judge. If you stare at your notes, the witness will not be intimidated by your questioning. Look your witness straight in the eye when you interrogate him. This is very important! You aren't supposed to have written out questions. Just use key words to remind you.

3. Prepare your cross exam in one of three ways:

a) Make a tree of questions - - have questions going in either direction down the page; diagonally left for YES responses, diagonally right for NO's.



b) Set up two columns of questions: one for YES's and one for NO's. Both the tree and the columns are a protective measure against unexpected responses.

c) Jot down a few key points that you will focus on in your cross exam. This is the most flexible but least predictable way to prepare, and it

requires the most courtroom confidence- - if this kind of cross is done well, it is extremely forceful because it centers on so few points.

4. <u>Do not be thrown by objections</u> because most of them will occur during cross. The witness supposedly hired a lawyer for counsel and defense, so expect the other side to object to protect his client.

5. <u>Prioritize your arguments.</u> Spend most time on major aims of your cross exam; just touch upon less important ideas.

6. <u>Save some points for closing.</u> Understand which areas are best addressed when your final points can be made undisputed- - during closing arguments. Cross exam does not wrap up business with a witness; a point or two in the closing can be very effective.

7. <u>Let some questions hang</u> and let their points be implied. Silence after a point is made can have quite a dramatic effect in court.

8. <u>Pace yourself</u> by limiting the number of points you cover. Five minutes is not much, so use it wisely. Time your cross beforehand.

9. <u>Practice.</u> Think beforehand about what possible situations that might come up that you could object to or re-cross.

<u>SPECIAL for cross exam</u>: <u>IMPEACHMENT OF A WITNESS</u>

VERY IMPORTANT

This technique is essential for cross exam to "catch" a witness changing his story. An important tool to use in this process is the witness' affidavit.

The process begins when the witness makes a statement during trial that differs from a prior one he made, i.e. – in his affidavit. To perform an effective impeachment, you, the attorney, must show a clear contradiction between the two statements. Don't wait until after the trial to complain. This is your chance.

After you get a contradicting answer, you should then ask the witness if he "recalls stating at one time…" the testimony in his affidavit, which you should then paraphrase for the witness. Remember that the affidavit is not yet in evidence, so you cannot quote directly from it.

If the witness still does not admit his mistake, the next series of questions should run as follows:

1) Do you recall a sworn affidavit in regard to this case?

2) Your Honor, at this time I would like this document marked for identification as Defense/Plaintiff's Exhibit #___.

3) (May I approach the witness, Your Honor?) Do you recognize this document?

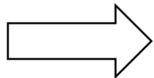
4) What is it?

5) Is that your signature at the bottom?

6) Did you proofread it before you signed it?

7) Is this a full and accurate representation of the document you signed on (date)?

8) Your Honor, at this time I would like to offer this affidavit into evidence as Defense/Plaintiff's Exhibit #___.



FINAL IMPACT – hand the affidavit to the witness and *have him read aloud* for the court the line or lines that (s)he contradicted

OBJECTIONS
Very Important

Purpose: Objections are an essential way for counsel to defend his client. Attorneys should make objections firm and brief. In most cases, you will only need to say one or two words. Almost all objections are self-explanatory; a few are spelled out here. Don't wait until the end of your trial to object. If something is wrong, object.

Responding to objections: If you feel that opposing counsel's objection to your question is invalid, ask the judge before he makes a ruling, "Your Honor, may I be heard?" and proceed with a brief explanation or valid excuse for your question, such as, "I'd like this questioning to be subject to further connection." Do not make this practice a continuing habit, however; reserve the right to defend a line of questioning for when you most need it.

Types and phrasing of common objections:

AGAINST DIRECT EXAM

1 – Leading Question - - Objection. Counsel is leading the witness.

2 – Narrative - - Objection. This question calls for a narrative.
Objection. Witness is giving a narrative.

3 – Opinion/Conclusion - - Objection: witness is drawing a conclusion.
Objection. Counsel is asking witness to give an opinion.
***NOTE: Expert witnesses are allowed to give qualified opinions.**

4 – Irrelevant - - Objection, irrelevant. – or - Objection. This testimony is irrelevant to the facts of this case.

5 – Asked and Answered - - Objection, Your Honor. This question has already been asked and answered.

6 – Invention - - Objection. This question calls for invention.
Objection. Witness is inventing testimony.

NOTE: "Invention" differs from "expansion" in that invention requires the fact pattern to be deliberately changed; expanding on, or adding to the facts without seriously altering the fact pattern (set forth in the stipulated facts and in affidavits) is allowed. Make sure the objectionable question or answer is different enough from the realm of facts presented to warrant an objection on invention.

7 – Characterization (i.e. – someone calls your client a creep) - -
Objection. Witness is characterizing my client.

8 – Violates "Best Evidence Rule" - - appropriate grounds only if opposing counsel tries to admit the witness' affidavit on direct exam.

9 – Lack of personal knowledge – or – Beyond the scope of the witness - - Objection. The witness has no personal knowledge that would enable him/her to answer this question.

10 – No foundation (can be used to object to improperly introduced exhibits or poorly qualified "experts") - -
Objection, Your Honor. Counsel has not laid a proper foundation to (qualify witness/introduce exhibit).
Or, in other cases: Objection. Opposing counsel has not indicated any reason for offering this into evidence.

***NOTE: In professional trials, one may ask for an "offer of proof" which means essentially what was stated in the latter objection.**

11 - Hearsay (when witness testifies to something he didn't hear, see, or do himself) Objection. Witness answer is based on hearsay.

Against Cross Exam

1 – <u>Speculation</u> - - (i.e. – Isn't it possible that…?)
Objection, Your Honor. Question is speculative.

2 – <u>Argumentative</u> - - (i.e. – Attorney wants an open argument with the witness: Are you trying to tell me…?! - or - You're telling this court that…?!) - -
Objection. Counsel's question is argumentative.

3 – <u>Double Question</u> - - (when counsel asks two questions in one) - -
Objection, Your Honor. Double question.

4 – <u>Badgering</u> - - (when counsel relentlessly harasses your witness)
Objection. Counsel is badgering my witness.

5 – <u>Confusing the witness</u> - - (when counsel asks baffling or ambiguous questions) - -
Objection. Counsel is confusing the witness.

6 – <u>Improper Question</u> or <u>Form of the Question</u> - - (manner in which question is asked - - must not be statements or comments, only questions) - -
Objection to the form of the question.
- **or – Objection. This (question/testimony) is totally improper.**

7 – <u>Unintelligible question</u> - - (when a question is nonsensical, or unrelated to the case) - -
Objection. This is an unintelligible question.

8 – <u>Document speaks for itself</u> - - (when the lawyer reads directly from obvious material evidence, such as a contract)
Objection, Your Honor. The document speaks for itself.

9 – <u>Improper conduct</u> (counsel does not behave properly).
Objection, Your Honor, to counsel's improper conduct.

***NOTE: There is overlap in types of objections used against direct and cross, such as "asked and answered," "opinion", "irrelevant", etc. Be ready to use objections from either group, if need be the case.**

CLOSING ARGUMENT

Purpose: **This is literally your last change to score points with the judge. You must present your arguments logically and forcefully, and you must sound like you believe in what you're saying - - otherwise no one, the judge included, will trust your argument. There are various strategies you can use to enhance the effectiveness of your presentation, but you must use your set of facts and theory of the case to strengthen your power of persuasion. Argue both the facts of the case and the points of law that befit your argument. Listen to the witness and use their testimony in the closing statement.**

Techniques:

1. Argue your theory of the case. Logically connect the facts with your most convincing theme of what happened. Use any supporting case law you were given, and in your argument, you should never lose sight of your "theory" - - a general idea of what you're trying to prove. The theory is the basis of your claims for liability or non-liability.

2. Stick to the facts. Don't become a legal demagogue - - you're not going to sway a judge with a purely emotional plea for his support. You must use the facts and chronology of events you are given to provide the framework for your argument. A persuasive is well-reasoned. One strategy is to think to yourself: "The facts speak for themselves," and simply tell the judge why.

3. Use stories and analogies to crystallize and enhance your argument, but know how and when the story ends - - the theme of the story should boost your theory of the case, and if short and pertinent, will help the judge remember your argument for the better.

4. Ask rhetorical questions - - questions that answer themselves - - such as: "Would you buy a brand new car that had no warranty?"
If such questions are left unanswered by opposing counsel, they become a very powerful persuasive tool.

****NOTE: Never answer your own rhetorical questions; they are much more effective if left unanswered.**

5. Understate your argument by presenting facts not aggressively and dogmatically, but matter-of-factly. The judge tires of overstatement, especially from young attorneys eager to impress with their arguments. You often can convince a judge better with a subtle approach, letting him draw the conclusions.

6. Rebut opposing counsel's theory, whether you have heard it or must anticipate it. Rebuttal, according the Hofstra Law Manual, should run as follows:

a. Introduce the point of argument
b. Make your strongest points
c. Address the other side's contentions*
d. Refute with other strong points
e. Conclusion (which can be subtly suggested)

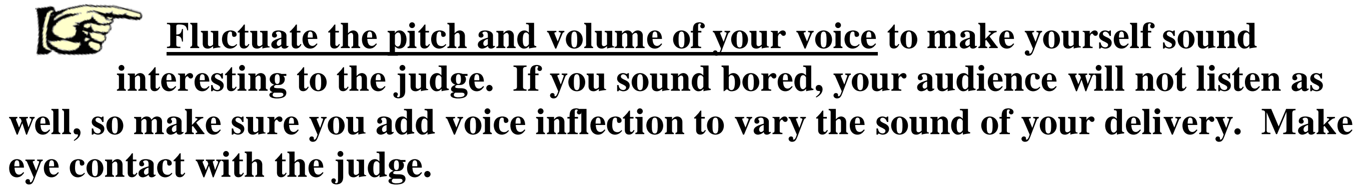
***NOTE: It is advisable to reserve some part of your closing argument to at least acknowledge the arguments of the other side. If you are the defendant in a criminal trial, you need only show that the prosecution has failed to meet its burden of proof, so your closing would, in effect, be one big rebuttal of the prosecution's contentions. Otherwise, by addressing the other side, you add credibility to your own argument, and you can actually strengthen it by using the method of argumentation outlines above.**

7. Corroborate your witness' testimony. This will connect the various positive aspects of your testimony in a convincing way. You corroborate testimony by combining like testimony of two or more witnesses that point to a common conclusion. This strategy strengthens the validity of the resulting conclusion since more than one witness carries the same belief.

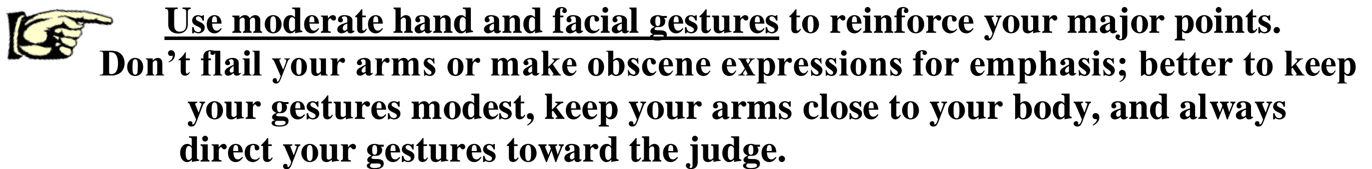
8. Conclude your summation by smoothly and efficiently summarizing your position (do not recount your entire theory), and strongly but calmly requesting the verdict you want.

9. Do not read a prepared closing statement as this proves to the judge that you didn't really listen to the witness or the trial. The most effective closing is one that has references to the witnesses' testimony.

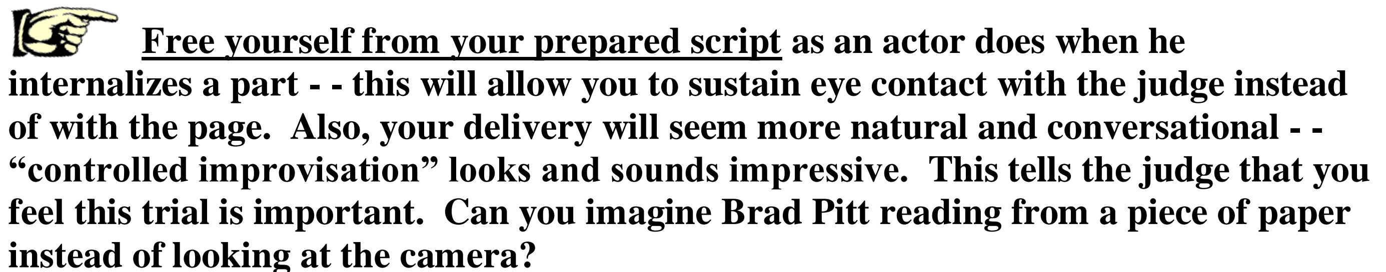
PERSONAL HINTS



Fluctuate the pitch and volume of your voice to make yourself sound interesting to the judge. If you sound bored, your audience will not listen as well, so make sure you add voice inflection to vary the sound of your delivery. Make eye contact with the judge.

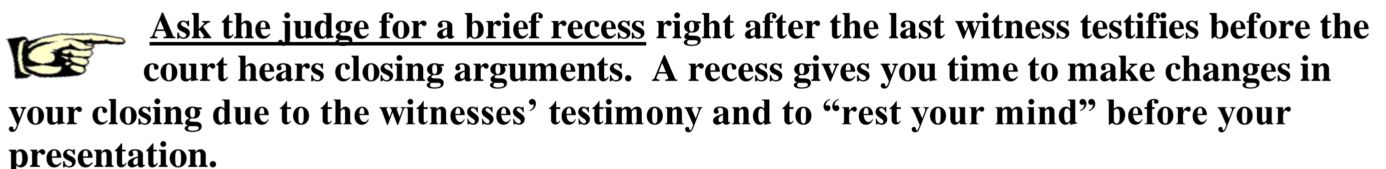


Use moderate hand and facial gestures to reinforce your major points. Don't flail your arms or make obscene expressions for emphasis; better to keep your gestures modest, keep your arms close to your body, and always direct your gestures toward the judge.

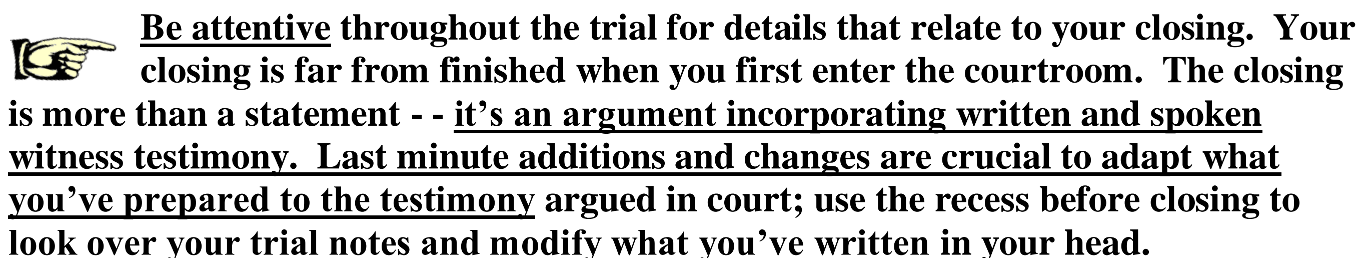


Free yourself from your prepared script as an actor does when he internalizes a part - - this will allow you to sustain eye contact with the judge instead of with the page. Also, your delivery will seem more natural and conversational - - "controlled improvisation" looks and sounds impressive. This tells the judge that you feel this trial is important. Can you imagine Brad Pitt reading from a piece of paper instead of looking at the camera?

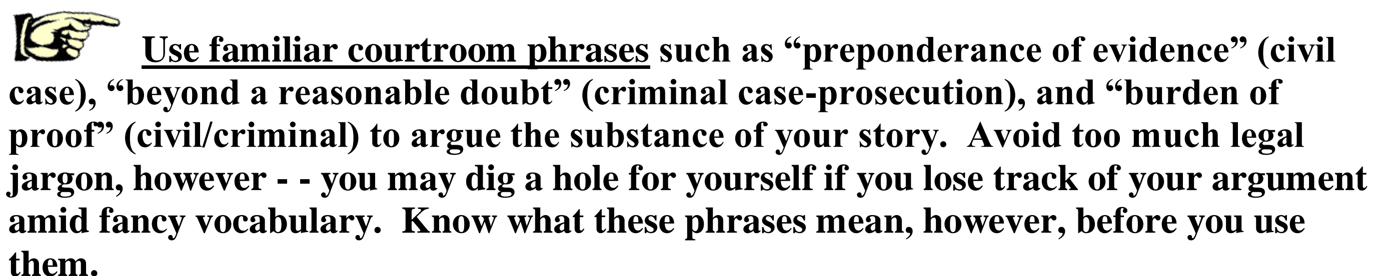
Experiment with dramatic pauses after important points are made- - silence not only allows the judge to think, but also changes the cadence of your speech to keep your listeners interested. Executing a well-timed pause can be more dramatic and persuasive than reciting another page of words.



Ask the judge for a brief recess right after the last witness testifies before the court hears closing arguments. A recess gives you time to make changes in your closing due to the witnesses' testimony and to "rest your mind" before your presentation.



Be attentive throughout the trial for details that relate to your closing. Your closing is far from finished when you first enter the courtroom. The closing is more than a statement - - it's an argument incorporating written and spoken witness testimony. Last minute additions and changes are crucial to adapt what you've prepared to the testimony argued in court; use the recess before closing to look over your trial notes and modify what you've written in your head.



Use familiar courtroom phrases such as "preponderance of evidence" (civil case), "beyond a reasonable doubt" (criminal case-prosecution), and "burden of proof" (civil/criminal) to argue the substance of your story. Avoid too much legal jargon, however - - you may dig a hole for yourself if you lose track of your argument amid fancy vocabulary. Know what these phrases mean, however, before you use them.