

**ILLINOIS YMCA YOUTH AND GOVERNMENT  
JUDICIAL PROGRAM  
TRIAL HANDBOOK**

**For Use By:**

**Youth Attorneys  
Youth Clerk-Bailiffs  
Advisors  
Advising Attorneys**



**Sixty-Third Model Assembly**

**2011-2012**

# **TRIAL HANDBOOK**

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## PART 1.

### INTRODUCTION

This handbook has been written to assist the organization of YMCA Youth and Government mock criminal trials.

**The mock trial is an optional phase of the Judicial Program.** For delegations that choose to participate in the Mock Trial phase, it is recommended that this portion of the program be conducted between the beginning of the program up until Pre-Leg II, generally from September or early October to December, and that the appeal phase be primarily conducted from Pre-Leg II through the Assembly in Springfield at the end of the program, generally from December to March. It should be noted that the training Pre-Leg I, at the beginning of November, will be directed to introducing the Appellate phase of the program. It is understood, however, that delegations participating in the Mock Trial may not be able to finish the trials prior to Pre-Leg I.

The mock trials are based upon fictionalized "facts" know as Trial Facts. Two different sets of Trial Facts (denoted as Cases "A" and "B") allow Youth participants a choice as to which case they will handle. (During the appeal phase, Youth Attorneys will hear the other case as a Supreme Court Justice.)

An electronic version of this handbook can be downloaded from the Judicial Section at [www.ilymcayg.org](http://www.ilymcayg.org). ***Parts 7-11 utilize excerpts from the Illinois State Bar Association Mock Trial Handbook. Illinois YMCA Youth and Government deeply appreciates the use of this material.***

Anyone who is getting their introduction to Illinois YMCA Youth and Government itself from this handbook might like to know that it is an innovative program in which more than 850 high school students from all corners of Illinois assume various roles associated with state government such as state legislators, constitutional officers, lobbyists, legislative pages, newspaper and television press, trial and appellate attorneys, Supreme Court justices, and court clerks/bailiffs. The program year generally coincides with the school year and peaks during a busy weekend in March at the State Capitol complex in Springfield.

Most states have YMCA Youth and Government programs. In Illinois, generally regarded as one of the best in the nation, the Model Assembly will meet for the 63rd time in 2011-2012.

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## PART 2.

### WHO SHOULD USE THIS HANDBOOK

This handbook is for anyone who chooses to participate in the optional mock trial portion of the Judicial Program of Illinois YMCA Youth and Government. Participation includes these principal categories:

- Youth Attorney  
(A high school student who is registered with the Youth and Government Program as a Youth Attorney.)
- Youth Clerk-Bailiff  
(A high school sophomore or junior who is registered with the Youth and Government Program as a Clerk-Bailiff.)
- Advisor  
(An adult who is registered with the Youth and Government Program as an Advisor.)
- Advising Attorney  
(A real-life attorney who is helping with the mock trial portion of the Judicial Program but not necessarily registered with the Youth and Government Program as an Advisor.)
- Mock Trial Judge  
(A real-life attorney, who may or may not be a real-life judge, who presides over a Youth and Government mock trial.)

Although others may be involved with the mock trial as witnesses or jurors, this handbook is not meant for them. Witnesses should be instructed by the Youth Attorneys who are calling them and jurors will be instructed by the Mock Trial Judge.

**Please note that there are some student exercises included in this Trial Handbook for which the "Answer Keys" are not located in the Trial Handbook for obvious reasons. Those "Answer Keys" may be found in the Judicial section of the Advisor Manual.**

## **PART 3.**

### **GETTING STARTED**

It is strongly suggested that all Clerk-Bailiffs be teamed with an upper-class Youth Attorney, preferably a student who participated in the Judicial program the year before. The Clerk-Bailiff should participate as a partner to a Youth Attorney at the trial, in addition to performing his or her responsibilities as a Clerk-Bailiff, which are described in Part 16 of the Trial Handbook. It is suggested that the Clerk-Bailiff be given less challenging responsibilities if teamed with a Youth Attorney.

It cannot be stressed too much that there are a number of Youth and Government coordinators other than those from your delegation who are available to provide whatever assistance you might need with Judicial activities. Just let the Youth and Government Office (See Part 1 of this Handbook) know you have a problem and help for you will be arranged.

#### Step 1: Registration

Youth and Government delegations get organized in September and October. The information needed to register can be found in the General Section of the Advisor Manual; some of it is repeated here.

As each delegation's Advisors are explaining students' general options for participating in Youth and Government, the opportunities in the Judicial Program should be discussed. The Advisors should have a copy of both sets of the Trial Facts and Appeal Facts, the fictionalized facts on which the program is based.

Each delegation that registers Youth Attorneys can do so in groups of two. Two Youth Attorneys will act as either a team of prosecutors or a defense team. Sophomore Attorneys must be paired with a junior or senior. The teams will oppose each other in the mock trial. (The teams will not oppose each other in the appeal phase; rather, they will be paired against a team from a different delegation.)

If a delegation has more than one group of two Youth Attorneys, the groups must be as evenly divided as possible between the two cases (known as "A" and "B"); otherwise, there will be an imbalance in the number of times some students must sit as Youth Justices during the appeal.

Only sophomores and juniors may be Clerk-Bailiffs. They need not register in groups or teams or be assigned to either Case A or B. In the trial phase of the program, they will assist in the planning of one or more mock trials, including working with a team of Youth Attorneys as a research assistant, and acting as a clerk and/or bailiff during at least one mock trial. At least one Clerk-Bailiff must be registered for every eight Youth Attorneys from a particular delegation.

Once your delegation is registered, each Judicial Youth will be able to download a copy of this handbook and the Trial Facts from the Illinois Youth and Government website.  
([www.ilymca.org](http://www.ilymca.org))

## Step 2: Have a Judicial Organizational Meeting

Once registration is finalized, the Advisor of each delegation should meet with all Youth Attorneys and Clerk-Bailiffs to get organized with respect to steps 3-5.

This also is a good time to mention to Youth Attorneys that they may wish to run for Chief Justice. Be sure to check the General Section of the Advisor Manual for the deadline for filing the Declaration of Candidacy Form.

Although Clerk-Bailiffs can run for the position of Head Clerk-Bailiff, it is not necessary to declare candidacy for this position until Friday of the Springfield Assembly.

## Step 3: Advise the Youth and Government Office of the Youth Attorney's Case Distribution

At the time of First Registration, each Head Advisor should complete and e-mail to the Youth and Government Office the Youth Attorney Case Distribution and Clerk-Bailiff Assignment Form showing that the delegation's groups of two Youth Attorneys have been as evenly divided as possible between Cases A and B. This form will be e-mailed to each Head Advisor and will also be available on the website [www.ilymcayg.org](http://www.ilymcayg.org).

## Step 4: Assign Clerk-Bailiffs

Each Clerk-Bailiff should be assigned to help plan and participate in at least one mock trial and could be easily be assigned to more. Since, in real life, the functions of clerks and bailiffs are separate, each mock trial easily could use two Clerk-Bailiffs. Each Clerk-Bailiff should be consulted concerning his or her willingness to participate in more than one mock trial.

Regardless of how many mock trials in which a Clerk-Bailiff plans to participate, each one also should work as a research assistant with a Youth Attorney team as it prepares for the mock trial. This is not only a question of helping to line up a courtroom and so forth; the Clerk-Bailiff should participate in strategy discussions and research as would a Youth Attorney. After all, a Clerk-Bailiff is a Youth Attorney in training.

Head Advisors should indicate on the Youth Attorney Case Distribution and Clerk-Bailiff Assignment Form which mock trial(s) each Clerk-Bailiff will participate in as well as which Youth Attorney team is being assisted by each Clerk-Bailiff.

## Step 5: Arrange for an Advising Attorney for Each Youth Attorney Team

Each team of Youth Attorneys (which may include a Clerk-Bailiff who is assisting) needs, in addition to the help of the delegation's Advisors, the advice of a real-life attorney who will act as an Advising Attorney. This should be arranged now.

Although one Advising Attorney may be willing to advise all of a delegation's Youth Attorney teams, because teams compete against each other, it is better to involve two Advising Attorneys at a minimum so that one can work with prosecution and the other with defense. Ideally,

different Advising Attorneys will work with each Youth Attorney team so that each team can get as much individual attention as they need as the trial draws closer.

How does one go about finding Advising Attorneys? It is easier than it might seem. Here are some suggestions:

- \* Ask an attorney with whom someone in your delegation is acquainted if they will be an Advising Attorney or are willing to check with other attorneys.
- \* Check with the staff at the local State's Attorney's office and the local Public Defender's office. These attorneys specialize in criminal law and probably will help.
- \* Contact the local Bar Association, which probably has a committee on legal education.
- \* Go online and search for local attorneys..

If you have trouble lining up an Advising Attorney, contact the Youth and Government Office for assistance.

Once you know who at least some of your Advising Attorneys are, send the Advising Attorney Information Form to the Youth and Government Office with the First Registration, who will then send each Advising Attorney a copy of this handbook. This form will be e-mailed to Head Advisors. It is up to the Head Advisor to furnish the Advising Attorney with a copy of the Trial Facts.

If other Advising Attorneys are recruited after the form is sent to the Office, be sure to advise the Office of the name, address, email address and telephone number of the additions.

## **PART 4.**

### **HOW TO PREPARE FOR THE MOCK TRIAL**

#### Study The Trial Facts

There is a certain amount of background information that Youth Attorneys and Clerk-Bailiffs must understand before meaningful planning for the mock trial can begin. Studying the Trial Facts (Case A or B) is extremely important.

#### All Judicial Youth Meet Together With the Advising Attorneys for a General Discussion

Once the Judicial Youth have read and studied the Trial Facts, they should meet with the Advising Attorneys to discuss this information. Since the first discussion will be general with respect to the principles involved, it may be most efficient for all of a delegation's Judicial Youth to meet together until specific case preparation begins.

More than one meeting may be needed to cover everything even before preparation of the case has started.

#### The Judicial Youth, Advisors and Advising Attorneys Involved With a Particular Mock Trial Meet

Once the general information involved has been discussed by everyone, it is time to start to make plans for the mock trial. This will require at first a meeting of everyone who is to be involved with a particular mock trial (except the Mock Trial Judge, who probably has not yet been chosen.)

Matters to be discussed include:

- \* Whether pre-trial motions will be filed (see the discussion of pre-trial procedure in Part 5 of this handbook) and, if so, what procedures and deadlines will apply.
- \* When the Pre-Trial Conference will be held.
- \* What exhibits or potential exhibits (consistent with the Trial Facts) will be created.
- \* Development of each team's Trial Notebook.

#### Each Youth Attorney Team Should Meet With Its Advising Attorney

Once planning for the mock trial is underway, it is time for each Youth Attorney team (which may include a Clerk-Bailiff as a research assistant) to meet apart from the opposing team with its Advising Attorney.

At this point, the value of the Trial Notebook should become clear. If the Trial Notebook is developed by each Attorney Team as suggested in this handbook, the Attorney Team eventually

will be ready for the mock trial. Accordingly, development of the Trial Notebook should be a principal topic.

**Make Sure a Candidate for Chief Justice Files a Declaration of Candidacy Form by the Deadline.**

The deadline date can be found in the General Section of the Advisor Manual; the form will be emailed to the Head Advisor and be available on the Youth and Government website ([www.ilymcayg.org](http://www.ilymcayg.org)).

## PART 5.

### THE STAGES OF A CRIMINAL CASE

This section contains a description of the stages of a criminal case, from the enactment of a criminal law to the sentencing of a defendant after conviction. It should be noted that the Youth and Government Judicial Program only deals with the criminal trial and appeal, but it is helpful to understand the complete process.

#### A. Enactment of a Criminal Law

A "crime" is an act that violates a law. Laws defining crimes typically come from "statutes", which are bills that have been enacted by legislatures and signed into law by a state Governor or the President of the United States. As a general rule, the Federal government enacts criminal laws governing crimes that cross state borders, and state governments enact criminal laws governing crimes that occur within their borders.

Statutes enacted by the Illinois General Assembly pursuant to the Illinois Constitution are compiled for convenience in a set known as the Illinois Compiled Statutes (formerly the Illinois Revised Statutes) which are divided into chapters by topic and updated as new legislation is enacted. Virtually every Illinois law library and most public libraries have a set, and they may be accessed on the web at: <http://www.ilga.gov/legislation/ilcs/ilcs.asp>. Each Youth Attorney team will need to access the Illinois Compiled Statutes.

The principal statutes defining criminal offenses are found in Chapter 720 of the Illinois Compiled Statutes. The legislature has given the Illinois Supreme Court authority to establish various procedural rules that govern criminal cases. Although not statutes, the Supreme Court Rules, which are also found in the Illinois Compiled Statutes, must be followed. Some procedures for criminal cases are found in Chapter 725. Judicial Youth should familiarize themselves with the portions of Chapters 725 and the Supreme Court Rules that apply to their cases.

As an example, many of the Youth and Government cases have first-degree murder as the primary charge against the defendant. The Illinois laws defining homicide can be found at 720 ILCS 5/ Criminal Code of 1961 at Title III, Part B, Article 9. The particular crime of First Degree Murder is Section 9-1.

#### **Sec. 9-1. First Degree Murder - Death penalties - Exceptions - Separate Hearings - Proof - Findings - Appellate procedures – Reversals:**

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or(3) he is attempting or committing a forcible felony other than second degree murder.

## B. The Commission of a Criminal Act is Alleged

Once there is a law on the books that classifies certain behavior as a crime, there still can be no criminal case to resolve until someone is accused of having violated that law. The word "accused" is important, since in the United States a person who is accused of a crime is considered innocent until proven guilty. A mere accusation is not proof of guilt. The whole point of the trial is to resolve whether or not the crime was, in fact, committed by the accused. The accused is also referred to as the Defendant. (Defense attorneys must learn to always refer to a "crime" as an "alleged crime". Prosecutors usually do not bother.)

The accusation of a crime usually begins with one or more witnesses reporting an alleged crime to the police. Once an alleged crime is known to the police, they bring it to the attention of the prosecutor. In Illinois, that is basically the State's Attorney, who is elected in each county. If the State's Attorney decides to "press charges", then there is a pending case that must be resolved.

Of course, accounts and interpretations offered by witnesses of an event can differ. It is up to the "finder of fact" to sort out the variations in the accounts provided by the witnesses in order to determine what really happened. The finder of fact is the jury in a jury trial and the judge in a "bench trial" where the right to a jury has been waived by the defendant. In Youth and Government, the fictionalized Trial Facts provide details concerning who supposedly saw and said what. It is up to the finder of fact at the mock trial (presumably a jury) to determine what actually happened.

## C. A Formal Charge is Filed

If an alleged offense is a "misdemeanor", which in Illinois essentially means that any jail term upon conviction can not exceed a year and may not be in a penitentiary, the State's Attorney usually files a document known as an "information" with the circuit court in the county in which the crime allegedly was committed. The information sets forth the basic details of the allegation: who, what, when and where.

In the case of a felony, the State's Attorney brings formal charges either by filing an information or by obtaining a grand jury indictment.

A grand jury is formed at the State's Attorney's request and its members are chosen by chance from a county's registered voters. The grand jury, which meets in secret, hears sworn testimony about alleged crimes and, if it votes that there is "probable cause" that a crime was committed, returns a "true bill" or "indictment" that becomes a public record and serves more or less the same purpose as an information.

In the case of a felony charge brought by information, since there is no grand jury finding of probable cause, a defendant is entitled to a "preliminary hearing" on that issue before being required to stand trial. In the case of a misdemeanor there is no requirement of a finding of probable cause so there is no requirement of a preliminary hearing even for a charge brought by information.

#### D. Arraignment

Regardless of whether a charge is brought by information or indictment, when a defendant first is accused of a crime an "arraignment" is held by the court.

At the arraignment the court gives the defendant a copy of the information or indictment that has been filed with the court, reads it out loud, explains the possible penalties upon conviction and asks for a plea of either "guilty" or "not guilty".

Most defendants, at least in felony cases, plead "not guilty" and the matter is scheduled for further proceedings. Most courts will not allow a defendant to plead guilty to a felony at an arraignment. They prefer that a defendant receive the advice of an attorney before pleading guilty to such a serious charge. Even though a defendant may believe that he or she "did something" they may not understand their rights or how the crimes with which they are charged are defined by law.

Bail, also known as bond, usually is discussed at the arraignment. Defendants who cannot afford an attorney to represent them on the charges often are appointed one from the Office of the Public Defender which employs attorneys who represent such indigent defendants.

The Youth and Government judicial program starts at this point in the process. The Trial Facts usually establish that the fictional defendant has been indicted and has plead not guilty to the charges.

#### E. Pre-Trial Procedures

A criminal case does not move directly to a trial following the arraignment or preliminary hearing. "Pre-Trial procedure" in real-life courts often is as involved as the trial.

Usually one of the first pre-trial procedures is the filing by attorneys for both sides of a "discovery motion", or a request to the court that certain information (such as the names of witnesses who may be called to testify and copies of statements made by witnesses) be disclosed by the other side. (See Chapter 720 and the Supreme Court Rules of the Illinois Compiled Statutes.) The court usually gives each side a certain amount of time to comply. In Youth and Government, the Trial Facts usually resolve most, if not all, discovery matters.

Attorneys for either side also may file pre-trial motions. One of the most common pre-trial motions in a criminal case is one filed by the defense alleging that the prosecution should be prohibited from using certain evidence because it was collected in violation of a defendant's rights (such as an illegal search or an involuntary "confession"). A motion explains what relief is requested and why it supposedly is justified. The court holds a hearing before the trial to hear any evidence, make any necessary findings of fact, and hear the attorneys' arguments.

In Youth and Government, the Trial Facts do not discuss any pre-trial motions other than those for discovery. However, pre-trial motions are not necessarily precluded in Youth and Government; it depends on what those who are involved with a given mock trial want to do.

If either of the Youth Attorneys involved with a particular mock trial wishes to file pre-trial motions, they should discuss it with other Youth Attorney teams, the Advisors, and the Advising Attorneys. The factors to consider include whether the extra work will interfere with preparation for the mock trial itself.

If a decision is made to allow pre-trial motions, they should be thoroughly discussed by all involved and deadlines for their filings set, the latest possible of which should be the Pre-Trial Conference which should be held soon after Pre-Leg I.

Pre-trial motions should be ruled on by the Mock Trial Judge during the Pre-Trial Conference. The Pre-Trial Conference is usually scheduled for immediately prior to the trial.

The Trial Facts are written to set the stage for the mock trial, so there is no problem if pre-trial motions are not part of the mock trial process.

A Pre-Trial Conference should be held as discussed in Part 14 of this Handbook.

#### F. Trial

Although all cases in Youth and Government have a trial, in real-life most cases are resolved in some manner so that they never get to trial. For example, charges may be dropped, or a case may be settled. In criminal cases, resolution often occurs as the result of "plea bargaining". In a plea bargain, a defendant usually pleads guilty to at least one charge in exchange for the dismissal of some charges and/or an agreed sentence. A plea bargain results from negotiations between the prosecution and defense, although the court can refuse to accept it. There is no plea bargaining in Youth and Government since the mock trial is more exciting.

Sometimes cases do not reach trial because the State's Attorney decides that the defendant is not guilty of a crime after all or at least that there is not sufficient admissible evidence for a conviction. For example, if the court rules pursuant to a pre-trial motion that evidence was collected in violation of a defendant's constitutional rights and therefore can not be used at trial, the prosecution may decide it does not have enough evidence to proceed.

The stages of a trial are discussed in the next part of this handbook.

#### G. Post-Trial Motion

If a defendant is convicted at trial, his or her attorney files a motion with the court specifying any errors that supposedly were made during the consideration of the case that prejudiced the defendant. This is a chance for the court to correct any errors that were made before any appeal is filed.

Although post-trial motions can be filed in Youth and Government, they are optional.

## H. Sentencing

If a defendant is convicted, the judge usually decides the sentence. The only exception is in a death penalty case, where the defendant can have a jury decide whether the death penalty will be imposed.

Before a sentence is imposed, the court orders the preparation of a pre-sentence report that sets forth certain information about the defendant, such as prior offenses. A hearing on the sentence is held before the judge decides.

Although sentencing hearings can be held in Youth and Government, they are optional.

## I. Appeal

If a defendant is convicted, the defendant may challenge that conviction if there are grounds for asserting that the trial was unfair in some way. An appeal is basically a request to a higher court asking that the conviction be overturned. The appellate process, and particularly the process for appeals in the Youth and Government program, are discussed in the Appeal Handbook, which is distributed at Pre-Leg II.

## **PART 6.**

### **THE STAGES OF A CRIMINAL TRIAL**

Below is a “quick list” outline of the stages of a criminal trial. A discussion of each stage is provided in the pages that follow. The discussion includes details about real-life trials as well as explaining Youth & Government procedures.

#### **Outline of Stages of a Criminal Trial**

- I. The jury is seated and sworn in, the judge then provides the jury with preliminary instructions.
- II. An opening statement is made by the prosecution
- III. An opening statement is made by the defense.
- IV. The prosecution presents its case-in-chief.
- V. The defense enters a Motion for Directed Verdict.
- VI. The defense presents its case-in-chief.
- VII. The prosecution presents any rebuttal evidence.
- VIII. If the prosecution presented any rebuttal evidence, the defense presents any rebuttal evidence of its own.
- IX. The prosecution presents its closing argument.
- X. The defense presents its closing argument.
- XI. The prosecution presents any closing argument in rebuttal.
- XII. The final jury instructions are read to the jury by the Mock Trial Judge.
- XIII. The jury deliberates.
- XIV. The jury announces its verdict.

The Mock Trial Judge will announce each stage of the trial as it arrives and direct the appropriate party to proceed.

It is highly recommended that all participants in a mock trial arrive about 30 minutes before its scheduled start. The Mock Trial Judge will want to meet with the Youth Attorneys and Clerk-Bailiffs to resolve any last-minute matters, such as finalizing jury instructions or hearing pre-trial motions.

Additional information concerning mock trial procedures of special interest to Clerk-Bailiffs is included in Part 16 of this handbook.

## **Discussion of Stages of a Criminal Trial**

### **I. The Jury is Seated and Sworn In, and Preliminary Instructions are Given by the Judge**

Traditionally, the court sends a letter to randomly selected registered voters from that county and informs them that they must appear for jury duty. Sometimes exemptions from jury duty are granted by the court. Those who serve are paid a small, daily fee plus mileage. In Illinois, jury duty is based on a "one day one trial system" whereby citizens are randomly selected by their driver's registration and appear for jury duty for a day. If during that day they are questioned and selected for jury duty, they must serve for the duration of that trial. If they are not chosen, they are free to go until the next time they are selected.

When a trial is ready to start, randomly selected members of this pool of potential jurors are called into court to be questioned under oath by the judge and attorneys (This part of trial procedure is known as "voir dire"). Usually the questions include whether they are acquainted with any of the participants in the trial, have been involved in a trial before or if they or a close acquaintance have been the victim of a crime.

If a juror has an obvious bias that would make them unable to decide the case based upon a fair hearing of the evidence, the attorney for either side can make a motion that the juror be dismissed "for cause." The judge can also dismiss obviously biased jurors on its own, without a motion by an attorney. In addition, the prosecution and the defense each have a certain number of "preemptory challenges," which allow them to automatically eliminate jurors without needing to state a reason for doing so (although there are certain ways in which preemptory challenges cannot be used, such as dismissing jurors based solely on their race).

Once twelve jurors are selected, the jury is complete. Sometimes one or more alternate jurors also are selected who also listen to the evidence but participate in the deliberation only if they must replace a member of the jury, such as due to illness. As soon as the jury and any alternates are selected, the clerk swears in the jury. Once the jury is sworn in, the judge gives the jury preliminary instructions regarding the nature of the trial and trial procedure.

In Youth and Government, there is usually not jury "selection," and sometimes is a challenge to find twelve jurors of any description. It may even be necessary to use a jury with less than twelve members.

There should be a discussion at the Pre-Trial Conference of who the jurors will be. Ideally, they will not even be acquainted with the participants in the mock trial. If more than twelve potential jurors are available, a jury selection procedure of some sort may be appropriate. In such cases, additional time for the mock trial should be scheduled. This also should be discussed at the Pre-Trial Conference.

A Clerk-Bailiff should be at the courtroom to meet all potential jurors to welcome them and tell them where to sit. These plans also should be made at the Pre-Trial Conference.

Once the members of the jury have been determined and court convened, the Mock Trial Judge will ask a Clerk-Bailiff to swear in the jury. The procedure is set forth in Part 17 of this handbook.

Although in real life a defendant may, in most cases, waive a trial by jury and allow the judge to render a verdict, the participants in a Youth and Government mock trial are highly recommended to use a jury in order to get a more complete experience.

## II. The Prosecution's Opening Statement

The purpose of opening statements is to allow each side to give the jury an overview of the case before the evidence is presented and summarize for the jury what evidence it believes will be presented. Additionally, it is an opportunity for each side to present its theory of the case and begin the attempt to persuade the jury that the case should be decided in their favor. However, the opening statement, unlike the closing argument, may not be argumentative in nature.

The prosecution, having the burden of proof, goes first. The prosecution must prove guilt “beyond a reasonable doubt,” and should use the opening statement to lay out the evidence that they believe will meet this burden.

Like any statement made by an attorney during the course of a trial, opening statements themselves are not evidence.

Usually, opening statements in Youth and Government are short enough that there is no need to establish a time limit for them, but five (5) minutes is a good guideline for an upper limit.

Some examples of proper format and procedure for an opening statement are provided in Part 7 of this handbook.

## III. The Defense's Opening Statement

After the prosecution's opening statement, it is the defense's turn. The statement is done in the same fashion as the prosecution's in that the defense provides their theory of the case and explains what evidence they believe will be presented during the trial. The defense, however, does not have to prove anything (because by definition, an accused is innocent until proven guilty). The defense should remind the jury that “beyond a reasonable doubt” is a heavy burden of proof and should use their description of the evidence to “poke holes” in the prosecution’s case.

Unlike the procedure for closing arguments, the prosecution is not allowed to rebut the defense's opening statements.

#### IV. The Prosecution's Case-In-Chief

This stage of a trial is for the prosecution to present its case, which is done by calling the prosecution witnesses one at a time. A witness is someone who has personal knowledge about what happened, they saw or heard something that the prosecution believes will help it prove its case. A witness may also provide certain information about a tangible object that then is admitted into evidence as an exhibit. Detailed information about the procedures to be followed in the examination of witnesses is presented in Part 8 of this handbook. Detailed information about exhibits in Part 11.

A prosecution witness first is questioned by the prosecution, which is known as "direct examination." Direct examination must consist of open ended questions that allow the witness to provide their version of the relevant events.

The witness next is questioned by the defense, known as "cross examination". The prosecution can then opt to ask additional questions, known as "redirect examination," which is limited to explaining or refuting matters brought out on cross examination. There can be "recross examination" by the defense, which is limited to explaining or refuting matters brought out on re-direct by the prosecution, and so forth. Typically, in Youth and Government, one round of questioning often is enough and more than two rounds rarely are needed.

Once the prosecution has called all of its witnesses, the prosecution is done presenting its case-in-chief. The prosecuting attorneys usually tell the judge that they are done by stating that "the prosecution rests" or that "the prosecution has no further witnesses at this time."

In real life, the prosecution and defense can call any witnesses and present any exhibits that they wish and whatever the witnesses say during their testimony is what they say. In Youth and Government, the Trial Facts dictate which witnesses and exhibits can be introduced by each side as well as the important details of their testimony.

If the Trial Facts are not followed closely by the witnesses, the mock trial will fall apart. The Youth Attorneys should stress to their witnesses the significance of the Trial Facts and give them a copy of all portions pertinent to their testimony. Those who appear at the mock trial as witnesses should be cautioned about the importance of adhering to the Trial Facts.

If a witness forgets part of the facts, his or her memory can be "refreshed." This procedure is discussed in Part 8 of this handbook under "Refreshing a Witness' Recollection."

If, despite all precautions, a witness significantly contradicts the Trial Facts during the mock trial, the best procedure for dealing with it is to "impeach" (in essence, confront) the witness with his or her prior statement as set forth in the Trial Facts. Either side can impeach a witness. The procedure for impeaching a witness is discussed in Part 11 of this handbook.

The Youth Attorneys are responsible for finding someone to portray their witness(es) at the mock trial. Everyone should strive for realism, including costumes where appropriate. A costume should usually consist of appropriate courtroom attire for the character being portrayed. For example, a real police officer could portray a witness who is a police officer and wear his or her uniform.

The gender of witnesses set forth in the Trial Facts can be changed to accommodate that of the available thespians so long as the change is worked out early enough with the other participants.

Since any exhibits should be worked out by agreement at the Pre-Trial Conference, there should be no problem at the mock trial with their consistency with the Trial Facts.

If the Youth Attorneys have presented pre-trial motions, rulings by the Mock Trial Judge must be followed when presenting evidence.

#### V. Motion for Directed Verdict

Prior to the Defense's Case-In-Chief, the defense may want to make a Motion for Directed Verdict. Because the Prosecution has the burden of proof and must prove beyond a reasonable doubt every element of the charge(s) against the defendant, the defense may move to dismiss the trial if the Defense feels there was not enough evidence presented to find the defendant guilty beyond a reasonable doubt and to proceed would be a waste. If the judge agrees, the trial ends.

In Youth and Government trials, a motion for directed verdict is never granted, but it is a useful exercise (and almost always done). One reason for making the motion in the mock trial setting is for the Defense attorneys to take advantage of the extra opportunity to argue against the Prosecution's case. At the end of the trial, the Mock Trial Judge will most likely inform Youth Attorneys whether the burden had been met, and under real circumstances, whether the motion would have been granted.

#### VI. The Defense's Case-In-Chief

This stage of the trial is for the defense to present its case, which is done pretty much in the manner that the prosecution presented its case. However, now it is the defense that conducts direct examination. In real life, the defendant does not have to testify, but in Youth and Government, the Defendant does testify.

#### VII. The Prosecution's Rebuttal Evidence

At its option, the prosecution can present additional evidence once the defense has presented its case-in-chief, which is known as "rebuttal" evidence. However, this right is allowed sparingly even in real-life cases and should be even more rare in Youth and Government.

The purpose of rebuttal evidence is to allow the prosecution to present additional evidence that, for some reason, could not have been presented during its case-in-chief.

For example, if a defense witness testifies in a manner inconsistent with a statement made before the trial, the prosecution may wish to present evidence concerning the prior statement. (See the discussion of "Prior Inconsistent Statements" in Part 8, Section A of this handbook.) Typically this should be handled in the cross examination of the witness.

Since any rebuttal evidence submitted by the prosecution must be on a subject "within the scope" of the defense's evidence, the prosecution cannot present evidence that is outside that scope or that it simply forgot to present during its case-in-chief.

#### VIII. The Defense's Surrebuttal Evidence

If, and only if, the prosecution presents rebuttal evidence, the defense can rebut that, known as "surrebuttal". It is limited to the scope of the rebuttal evidence.

It is unlikely that there will be a need for surrebuttal evidence in a Youth and Government mock trial.

#### IX. The First Portion of the Prosecution's Closing Argument

The purpose of closing arguments is to allow the attorneys for both sides to summarize the evidence for the jury and argue what its decision should be. The attorneys for both sides should also take a moment in their closing arguments to thank the jury and the judge for their time in hearing the case.

The nature of the closing argument differs in some fundamental respects from the opening statement. The closing argument is just that, argument. The attorney may use all of the evidence that has been presented and argue why it should be interpreted in a manner that results in the desired verdict. A discussion of appropriate procedures and methods of making closing arguments is provided in Part 10 of this handbook.

The Prosecution should use the admitted evidence during closing argument to show how each element of the crime has been proven beyond a reasonable doubt. The attorney is now allowed to draw inferences and jump to conclusions, so long as the attorney reasonably relies upon the admitted evidence and does not fabricate material information. Additionally, it is appropriate here to attack the credibility of the witnesses by pointing out their biases or places where they lack useful knowledge of what happened.

As the jury will be reminded by the judge, the statements made by an attorney during a trial are not evidence.

The closing arguments should be kept as brief as possible while still providing each side with enough time to present their arguments. Ideally, the closing arguments should not run over 10 minutes for each side.

## X. The Defense's Closing Argument

The Defense should use the admitted evidence during closing argument to show why the Prosecution has failed to prove every element of the crime beyond a reasonable doubt. The Defense can draw inferences and make conclusions based upon the evidence to argue why the defendant could not possibly have committed the crime.

The Defense should keep in mind that it only gets one shot at the closing argument, and the Prosecution gets to stand up one more time and rebut whatever the Defense says in its closing. The Defense needs to be thorough, accurate, and complete in its recitation of the evidence and the conclusions it would like the jury to draw.

## XI. The Rebuttal Portion of the Prosecution's Closing Argument

After the Defense presents its closing argument, the prosecution is allowed time to rebut the defense's closing argument. The prosecution is given the last word in closing argument since it has the burden of proof.

## XII. The Jury is Instructed

At the conclusion of the closing arguments, the judge reads the final jury instructions to the jury.

Since one or more bailiffs are responsible for keeping the jury isolated, the clerk swears in one or more bailiffs to perform this duty. In a Youth and Government mock trial, the Mock Trial Judge does this if there is only one Clerk-Bailiff present or all of those present will attend the jury. The procedure is set forth in Part 16 of this handbook.

## XIII. The Jury Deliberates

The jury is shown by the Bailiff to a room where it can deliberate in private. The jury is allowed to keep with it all exhibits admitted into evidence during the trial and the written jury instructions.

The jury instructions tell the jury how to go about its deliberations. If the jury has a question that it wants answered, the bailiff tells the jury foreperson to put it in writing. The Bailiff then delivers the question to the judge, who consults with the attorneys about how to answer it. Usually, eventually the jury reaches a verdict, as signified by the jurors' signature on the appropriate form of verdict for each charge brought. At this point the foreperson informs the Bailiff that a verdict has been reached and the judge is so informed.

Sometimes juries deliberate a long time and are not able to reach a unanimous verdict, known as a "hung" jury. Most judges ask juries to keep trying, given the expense of holding the trial again. Because time is a constraint in a Youth and Government mock trial, a hung jury is an acceptable outcome.

#### XIV. The Jury's Verdict is Announced

On the basis of the foreperson's indication that the jury has reached a verdict, the jury is brought back into the court. The foreperson is asked by the judge if a verdict has been reached. The foreperson presumably indicates that one has, at which point the foreperson hands to the judge, with the help of a bailiff, the verdict forms that have been signed by the jury. The judge then reads the verdicts out loud.

The side that loses a verdict has the right to ask the court to poll each juror individually to make sure that the verdict reported to the court is, in fact, each juror's verdict. The signed verdict forms are left with the judge.

***PLEASE NOTE THAT THE FOLLOWING SECTIONS, PARTS 7-11, CONTAIN EXCERPTS FROM THE ILLINOIS STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL HANDBOOK. ILLINOIS YMCA YOUTH AND GOVERNMENT APPRECIATES THE USE OF THIS MATERIAL.***

## **PART 7.**

### **OPENING STATEMENTS**

The opening statement should introduce the attorney and his/her client and tell the jury what the case is all about. It is the attorney's first opportunity to present the jury with a clear and concise description of the case from his or her client's perspective. But the opening statement is not an argument. The attorney may not infer from or plead the facts of the case that he/she expects to prove during the trial. The purpose of the opening statement is to tell the jury what the case is about and what you expect your evidence will be.

A test of a good opening statement is this: If the jurors heard the opening statement and nothing else, would they understand what the case is all about and would they want to decide in your favor?

The opening statement is first given by the prosecution, then the defendant.

#### **Overview**

##### **Opening statements should:**

present the party's theory of the case

provide a framework to analyze the case

state the facts of the case that you expect will be admitted into evidence

"understate" or "soft-sell" points

appeal to the good judgment of the court

(defendants in criminal cases) stress the state's burden of proof, i.e., to show guilt beyond a reasonable doubt.

##### **Opening statements should not:**

be argumentative

refer to evidence if its admissibility is doubtful because it may violate one of the rules of evidence.

## **Language and Formalities**

An opening statement should begin with a formal address to the Judge and the jury: "May it please the court, your Honor, and Ladies and Gentlemen of the jury, my name is \_\_\_\_\_, counsel for \_\_\_\_\_ in this action."

The theory of the case should be presented at the beginning of an opening statement, but after the formal address. The theory of the case should complete the sentence "This is a case about..." The theory of the case is a short/concise explanation of the theme that governs how the attorney plans to present the evidence. What story is the attorney trying to tell to convince the jury that this is what really happened and why?

A proper and courteous title should always be given to the judge when an attorney is addressing or referring to the judge. Appropriate titles include: your Honor and Judge.

When it is necessary to refer to opposing counsel, a proper and courteous title should always be given. Appropriate forms of reference include: my opposing counsel, counsel for the Defense, counsel for the Prosecution, counsel for the State, the Defense, the Prosecution, my colleague for the Defense, my colleague for the Prosecution.

The opening statement may be presented in chronological order or another orderly sequence of events.

Proper phrasing for discussing the evidence that a party believes will be introduced during the trial includes: the evidence will indicate...

the facts will show...

witnesses will present evidence to show...

witness A will be brought to testify on the state's/plaintiff's behalf that...

witness B will be called to tell you...

## **Objections/Rules of Evidence**

Normally, there are no objections allowed during an attorney's opening statement. Opposing counsel, may object, however, if the statement is argumentative. Attorneys should thus be wary of using statements that are overly slanted or speculative.

## **PART 8.**

### **DIRECT EXAMINATION**

Direct examination is the primary tool through which evidence is admitted during a trial. Witnesses testifying for one side or the other present their stories of what happened to the jury.

A well-conducted direct examination must be carefully prepared in advance by the attorney and practiced with the witness. The direct examination is most effective when questions are put to the witnesses in plain language, rather than legal jargon, which may seem unduly long, stilted or unnatural to the jury.

For fact witnesses, the evidence/testimony they give must be based upon their personal knowledge. For expert witnesses, the evidence/testimony they give must be based upon scientifically accepted methods of analysis.

#### **Overview**

Direct examination is conducted by the attorneys of their own witnesses. It should be designed to get facts from the witnesses which are understandable and, hopefully, to convince the jury to accept your position.

#### **Questions used during direct examination should:**

make the witness seem like he/she ought to be believed

elicit facts relating to elements of the alleged crime or defenses thereto

allow the witness to tell their story in a coherent manner

keep the witness "in control" (prevent the witness from rambling since this might weaken the effect of his/her evidence)

#### **Questions used during direct examination should not:**

be leading (where the attorney is telling the story for the witness)

#### **Language and Formalities**

Call the witness for direct examination by saying:

"Your Honor, I'd like to call \_\_\_\_\_ to the stand."

"Your Honor, the Prosecution calls \_\_\_\_ to the stand."

“Your Honor, the Defense calls \_\_\_\_ to the stand.”

After the witness is sworn by the bailiff or court clerk, some introductory questions should be asked to establish who the witness is and why they are testifying:

“Please state your name, address, and occupation.”

Establish the length of residence or present employment, if this information is relevant in establishing his/her credibility

Ask further questions about professional qualifications for expert witnesses.

After establishing the preliminary information, ask the witness questions to elicit any knowledge they have that is relevant to the issues in the case.

Refer to your witness by their first name, unless they are an expert, to personalize the situation and make it seem friendlier. (Defense attorneys should also refer to the Defendant by his/her first name when referring to him/her in asking questions of others. The Prosecution will always refer to the Defendant as “the Defendant” or “Mr./Ms. \_\_\_\_”).

Stand in the background (for example, towards the far end of the jury box) so that the witness is talking to the jury as they answer your questions.

Conclude your direct examination by saying:

"Thank you, Mr./Ms.\_\_\_\_\_. That will be all, your Honor."

“Thank you Mr. Ms. \_\_\_\_\_. I have no further questions for this witness at this time, Your Honor.”

(note that the witness remains on the stand for cross examination by the opposing attorney)

### **Objections/Rules of Evidence**

All of the Rules of Evidence apply to the testimony and exhibits offered during direct examination. The rules specifically governing the procedure for direct examination include:

**No Leading Questions:** Generally, an attorney may not ask leading questions during direct examination. A leading question is one that suggests the answer by the way the question is asked, and is often asked in a manner that specifically suggests either a "yes" or "no" answer. Instead, Direct questions should be openly phrased to elicit the testimony from the witness in the form of one or two full sentences. Yes or no answers may be appropriate to Direct questions, so long as the answer was not suggested in the way the question was asked.

#### **Examples of proper direct examination questions:**

Mr. Bryant, when did you first meet Angela?

Mr. Bryant, had you ever met Angela before October 25, 2005?

Mr. Bryant, how long have you been employed by the factory?

Directing your attention to Saturday, October 25, could you please tell the court what you observed?

**Examples of leading questions:** (not permitted in Direct Examination)

Mr. Hayes, isn't it true that you dislike Daryl Bryant?

You were not in the building that day, were you?

Mr. Hayes, didn't you see Jack put the money into the briefcase?

**No Compound Questions:** One question should be asked at a time. Attorneys should not ask multiple questions and then try to have the witness respond to all of the questions at once.

**Examples of Compound Questions:**

Mr. Johnson, what did you do when you went to the store and where were you when the robber came in?

Ms. Frantz, did you know Mr. Bryant prior to October 25, and did you know that he was a convicted felon?

**No Repetition of Questions:** Questions should only be asked and answered once. It may be appropriate to rephrase a question if it did not get the response that the attorney was looking for, or even to re-ask a question if the answer was unclear. However, the same question should not be asked in a repetitious manner to elicit the same response, this is not an appropriate method of highlighting or emphasizing testimony.

**Examples of Asked and Answered Questions:**

Q: Mr. Johnson, was it raining on the evening of October 25?

A: Yes.

Q: It was?

A: Yes.

Q: So, it was raining on October 25?

**No Narrative answers:** Witnesses should not be allowed to give long, uncontrolled responses to direct questions. Likewise, an attorney should not ask a question that is designed to elicit a narrative answer. Instead, Direct examination should consist of a series of short questions and answers that are not much longer than one or two sentences in length.

**Examples of Questions Calling for Narrative Answers:**

Mr. Johnson, please tell the jury everything you did on October 25.

Ms. Frantz, please describe the actions of the defendant from the moment he walked in to the time he ran away.

**Refreshing Recollection:** If, during Direct examination, a witness cannot recall a statement that he/she made in an earlier statement (such as what the Trial facts say they said in their statement to the police), the attorney may help the witness to remember by “refreshing the witness’ recollection.” The lawyer must first mark and identify the statement as an "exhibit for identification" and show the other side a copy, before giving it to the witness to review. However, the statement need not actually be admitted into evidence in this situation, the witness is merely asked if reviewing the statement helped to “refresh” their recollection and if they now remember what happened, then questioning proceeds.

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

## **PART 9.**

### **CROSS EXAMINATION**

Cross examination is the tool through which attorneys get evidence from witnesses that were called by opposing counsel. Because the witness is there to testify in favor of the other side, and is therefore hostile to the cross examiner, the attorney is allowed to control the witness through the use of leading questions.

Because a witness has just finished telling their story on Direct examination, there is no need to rehash all of the evidence brought out during Cross examination. Instead, Cross examination should be used to cover points related to the subject matter that was addressed on Direct but they may have been omitted or glossed over. Cross examination also affords the opportunity to ask questions, which bring to light any bias the witness, has relating to the case.

A well conducted Cross examination must be carefully prepared in advance by the attorney with the knowledge that the witness will attempt to thwart the attorney's efforts to get favorable information.

#### **Overview**

Cross examination is conducted by the attorneys of the other party's witnesses. Cross examination is most effective when questions are designed to lead the witness in a series of answers consisting only of "yes" or "no." without leaving room for the witness to expand and twist the information being gathered.

#### **Example of Leading Questions:**

Mrs. Bryant, you considered marrying George Hayes, didn't you?

Isn't it true that you are hard of hearing, Mrs. Short?

Mr. Jones, don't you generally prefer to avoid loud, crowded taverns?

#### **Questions used during Cross examination should:**

Bring out any bias or reason why the witness should not be believed

Elicit facts relating to elements of the alleged crime or defenses thereto

Control the witness through leading questions

#### **Questions used during Cross examination should not:**

Allow for an answer beyond “yes” or “no”

Ask the witness to explain or give an opinion (many attorneys are tempted to do this when they think the witness is trapped, but it always backfires)

Ask the witness to confirm the conclusion that the attorney is trying to reach (the witness may have to agree with the attorney up to a point regarding the facts, but they will always disagree with the ultimate conclusion to be drawn from those facts)

Include questions to which the attorney does not know the answer

### **Language and Formalities**

When the judge tells you to proceed with Cross examination, say “Thank you, Your Honor.”

Always refer to the witness as Mr./Ms. \_\_\_\_.

Stand close to the witness to aid in the confrontational manner of Cross examination.

Focus your questions so you only address the points you need to get in order to help your side.

Conclude your Cross examination by saying:

"Thank you, Mr./Ms.\_\_\_\_\_. That will be all, your Honor."

“Thank you Mr. Ms. \_\_\_\_\_. I have no further questions for this witness at this time, Your Honor.”

(note that the witness may remain on the stand for re-direct examination, or may step down if there is no re-direct)

### **Objections/Rules of Evidence**

All of the Rules of Evidence apply to the testimony and exhibits offered during Cross examination. In addition to the rules against compound and repetitive questions described above in the Direct Examination section, the rules specifically governing the procedure for Cross examination include:

**Questions Limited to the Scope of Direct Examination** (and issues of credibility): the scope of cross-examination is limited to the scope of direct. However, as long as a line of questioning reasonably relates to what was testified to on direct examination, it is considered within the scope. Also, this limitation does not prevent an attorney from inquiring into the witness' bias or prejudice or using prior convictions or inconsistent statements to impeach him/her.

**Examples:**

If the plaintiff in a car accident case never mentions damages to the car when being questioned by his/her own attorney, then the defense may not ask questions on cross examination about the repair costs.

On direct examination, the witness testifies as to events that took place in a bar in Milwaukee on Friday evening. On cross examination the attorney may only ask the witness about the events in that bar in Milwaukee on Friday evening. The attorney may not ask the witness what happened at the Toledo Zoo on Thursday afternoon. However, in order to test the credibility of the witness, the attorney could ask about a situation in which the witness had lied in the past, even if the situation in question had nothing to do with the bar in Milwaukee on Friday evening.

**No Remarks that are Not Actually Questions:** During examination of a witness, everything out of an attorney's mouth should be a question for the witness to answer (or a communication to the judge). Examination is not the time for argument or snide remarks, any commentary that is not a question is therefore objectionable.

**Example of Remarks that are Not Questions:**

“And, of course, you expect the jury to believe that.”

“Yeah, right.”

**No Argumentative Questions / No Harassing the Witness:** Controlling a hostile witness can be difficult, but it is important for an attorney to avoid simply getting into an argument. If an attorney is too hostile, opposing counsel may object that the attorney is being argumentative or is harassing the witness.

**Example of Harassing the Witness:**

“Come on, Mr. Bryant, tell the truth, you weren't there, were you?”

“Do you mean to tell me that you were able to see the whole thing even though there was a wall blocking your view?”

## **PART 10.**

### **CLOSING ARGUMENTS**

After all of the evidence has been presented, the attorneys are permitted to give their Closing Arguments. The Prosecution goes first, then the Defense, and then the Prosecution has an opportunity to argue again in rebuttal.

Closing Argument is the final opportunity for the attorney's to explain to the jury why they should find in the attorney's favor. Closing arguments should be used to persuade the jury as to how the facts add up — or fail to add up—to a certain result. The testimony of each witness should not necessarily be repeated in chronological order since the jury has already heard it. Instead, the attorney, by referring to the witnesses' testimony, should focus on putting the whole story together for the jury.

#### **Overview**

##### **Closing arguments should:**

- Reintroduce your theory of the case
- Reiterate the burden of proof and show how it was met or not met
- Use arguments to prove your theory correct
- Draw conclusions and inferences from the evidence
- Emphasize the strong points of a party's case
- Discuss which witnesses to believe and why
- Appeal to the good judgment of the court and the jury
- Ask the jury to reach the desired conclusion

##### **Closing arguments should not:**

- Refer to evidence that was not admitted (whether because it was not offered or because it was successfully objected to)

#### **Language and Formalities**

A Closing statement should begin with a formal address to the Judge and the jury, and should thank them for their time and consideration of the case.

A proper and courteous title should always be given to the judge when an attorney is addressing or referring to the judge. Appropriate titles include: your Honor and Judge.

When it is necessary to refer to opposing counsel, a proper and courteous title should always be given. Appropriate forms of reference include: my opposing counsel, counsel for the Defense, counsel for the Prosecution, counsel for the State, the Defense, the Prosecution, my colleague for the Defense, my colleague for the Prosecution.

The Closing Argument may present the evidence in any manner that is persuasive and coherent. Proper phrasing includes:

“The evidence has clearly shown that...”

“Based on this testimony, there can be no doubt that...”

“The evidence overwhelmingly shows that...”

Closing arguments should conclude with, "Ladies, and gentleman of the jury, you have carefully listened and have heard the facts in this case. Now you must decide the verdict, considering.... We ask that you find the Defendant guilty (or not guilty)."

### **Objections/Rules of Evidence**

Normally, there are no objections allowed during an attorney's Closing Argument. Opposing counsel, may object, however, if the attorney refers to evidence that was not admitted at trial or makes up material facts.

## PART 11.

### RULES OF EVIDENCE - A STUDENT GUIDE

This discussion provides the Rules of Evidence to be used in Youth and Government mock trials. Although the Rules of Evidence used in real courtrooms are more extensive than the rules presented here, many of the basic and core Rules are covered. In order to assist Advising Attorneys, reference to the appropriate Federal Rules of Evidence are made in the following discussion.

#### 1. NO LEADING QUESTIONS ON DIRECT EXAMINATION (Fed. R. Evid. 611)

This means that on direct examination, an attorney may not ask a question that suggests the answer in the question. Usually, a leading question will call for a “yes” or “no” answer and be asked in a manner that is asking the witness to affirm what the attorney said.

**Examples of leading questions:** (not permitted in Direct Examination)

Mr. Hayes, isn't it true that you dislike Daryl Bryant?

You were not in the building that day, were you?

Mr. Hayes, didn't you see Jack put the money into the briefcase?

#### 2. SCOPE OF CROSS EXAMINATION IS LIMITED TO THE SUBJECT MATTER OF THE DIRECT EXAMINATION AND MATTERS AFFECTING THE CREDABILITY OF THE WITNESS (Fed. R. Evid. 611).

This means on cross-examination, the witness may not be asked about new topics that are unrelated to the topics addressed on direct, except that the witness may be asked questions which are designed to test the believability (credibility) of the witness, even though these matters were not gone into on direct examination.

**Example:**

On direct exam, the witness testifies as to events that took place at a bar in Milwaukee on Friday night. On cross examination, the attorney may only ask the witness about the events in the bar in Milwaukee on Friday night. The attorney may not ask the witness what happened at the Toledo Zoo on Thursday afternoon (unless they have a good argument as to how the two are related).

**Example:**

In the above example, the attorney could ask the witness about a situation in which the witness lied in the past, even if the situation had nothing to do with the bar in Milwaukee on Friday night.

3. WITNESSES MAY NOT TESTIFY ABOUT SOMETHING OF WHICH THEY HAVE NO PERSONAL KNOWLEDGE (Fed. R. Evid. 602)

**Example:**

The witness was in Milwaukee when the crime took place in Baltimore. The witness may not testify as to the weather conditions in Milwaukee at the time the crime occurred.

4. ONLY RELEVANT EVIDENCE MAY BE PRESENTED (Fed. R. Evid. 401-402)

Relevant evidence is any evidence which helps to prove or disprove the facts in issue in the case – relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**Example:**

The defendant is charged with running a red light. Evidence that the defendant owns a dog is not relevant.

5. EVIDENCE WHICH IS RELEVANT, BUT WHICH IS UNFAIRLY PREJUDICIAL, CONFUSING TO THE JURY, OR WASTES TIME, MAY BE EXCLUDED (Fed. R. Evid. 403)

**Example:**

In an auto accident case, both sides agree that the defendant was driving the red Ford that hit the plaintiff. Evidence about the color of the defendant's car is relevant, but can be excluded because it is a waste of time if the parties have already agreed that the defendant was driving the car in question.

6. LAY WITNESSES MAY NOT GIVE OPINIONS UNLESS THEY ARE (A) RATIONALLY BASED ON THE PERCEPTIONS OF THE WITNESS AND (B) HELPFUL TO A CLEAR UNDERSTANDING OF THE TESTIMONY OR THE DETERMINATION OF A FACT AT ISSUE (Fed. R. Evid. 701)

Anyone who is not an expert witness is only allowed to testify about the facts, and cannot draw inferences or give opinions about what those facts mean unless the opinion is based upon personal knowledge and is a type of opinion normally considered to be a common sense impression.

**A Lay Witness May Testify Regarding:**

Appearance (he was disheveled, he was dirty, he looked tired)

State of emotion (She was hysterical, he was confused, he was angry)

Intoxication (She was drunk – though the attorney is well advised to ask about the specifics upon which that conclusion is based)

Speed of a vehicle (He was going about 60 miles an hour)

**A Lay Witness May NOT Testify Regarding:**

Topics that require scientific, technical, or other specialized knowledge (cause of death, cause of tire failure, fingerprint analysis).

7. AN EXPERT WITNESSES MAY GIVE OPINIONS THAT REQUIRE SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE (Fed. R. Evid. 702-703)

An expert witness may give opinions and conclusions that are based upon scientific, technical, or other specialized knowledge if they are qualified to do so and their testimony is based upon the types of factors normally relied upon in their field of expertise.

An attorney hoping to establish a witness as an expert must ask foundational questions to prove that the witness is an expert prior to asking for expert opinions.

8. EVIDENCE ABOUT THE CHARACTER OF A PARTY MAY NOT BE OFFERED TO PROVE CONFORMITY THEREWITH ON A PARTICULAR OCCASION (Fed. R. Evid. 404-406, 608)

We convict people of committing a specific crime, not of being a bad person in general. The following rules govern the admissibility of character evidence:

**Character of the Defendant:** Bad character of the Defendant is not admissible by the Prosecution unless the Defense has argued good character and the Prosecution can rebut that evidence.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence may be admissible by the Prosecution, however, for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identify, or absence of mistake or accident, provided that the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

**Character of the Victim:** Character of the Victim is not admissible by the Prosecution unless the Defense has argued the Victim's character and the Prosecution can rebut that evidence.

**Character of a Witness:** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

- (1) the evidence may refer only to character for truthfulness or untruthfulness, and
- (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Evidence that a witness other than an accused has been convicted of a crime shall be admitted, if the crime was punishable by death or imprisonment in excess of one year, but only if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the

punishment. However, evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction.

In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct

**Examples:**

The defendant is charged with armed robbery. A witness may not testify that the defendant is a bad person. The issue here is whether or not the defendant robbed someone, not whether the defendant is a good person.

Mary sues Joe for divorce on the grounds of adultery. A witness may testify that she knows Joe was unfaithful.

9. **HEARSAY IS NOT ADMISSIBLE** (Fed. R. Evid. 801-803)

"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. Anything said by the criminal Defendant at any time is not hearsay.

Normally, the issue of hearsay arises when a witnesses wants to testify about something someone told them for the purpose of having the jury believe whatever it was that was said (He told me it was raining – so you should believe that it was raining).

**Examples of Hearsay:**

Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there, and she told me that Joe killed Henry."

In a civil trial arising from an automobile accident, a witness may not testify, "I heard a by-stander say that Joe ran the red light."

Sandy says, "I've heard that Jack has a criminal record."

**Exceptions to the Hearsay Rule:**

Evidence will be admitted in spite of the rule against hearsay when it qualifies as an exception:

1. **Present sense impression** - A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
  2. **Excited utterance** - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
  3. **Then existing mental, emotional, or physical condition** - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
  4. **Statements for purposes of medical diagnosis or treatment** - Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
  5. **Reputation as to character** (when character is admissible)
  6. **Dying Declaration** – If the person believed that they were about to die and gave a statement concerning the cause or circumstances of their death, those statements are admissible.
10. **ATTORNEYS MAY HELP THEIR WITNESSES REMEMBER.** This is called **REFRESHING THE RECOLLECTION** of the witness.

**Example:**

A witness sees a purse snatching, offers to testify at the trial, gives a statement of events to the lawyer. At trial, the witness has trouble remembering the events he saw. The lawyer can help the witness remember by showing the statement to the witness. (NOTE: The lawyer must first mark and identify the statement and show the other side a copy. However, the statement is not actually introduced into evidence. Instead, the witness is allowed to read the statement and then give testimony once it has been established that their memory has now been refreshed.

11. **ATTORNEY'S MAY IMPEACH WITNESSES BY CONFRONTING THEM WITH THE INCONSISTENCIES BETWEEN THEIR TESTIMONY AND PRIOR STATEMENTS (FED. R. Evid. 607)**

If a witness gives testimony that is contradictory to their prior statement, the attorney can "impeach" the witness by confronting them with what they said before. This can be done on Direct or Cross, but is usually only done on Cross (attorneys on Direct use the process of refreshing recollection, which is less hostile).

**Example:**

A witness sees a purse snatching, offers to testify at the trial, gives a sworn statement of events to the police saying that the purse snatcher was wearing red. At trial, the witness says that the purse snatcher was wearing green. The lawyer should follow these steps:

- (1) Confirm that the witness is now saying the purse snatcher was wearing green
- (2) Get the witness to confirm that they gave a statement to the police and that they were supposed to be telling the truth at that time
- (3) Read the inconsistent portion of the earlier statement and get the witness to confirm that is what they said to the police.

12. **PHYSICAL OBJECTS MAY BE INTRODUCED INTO EVIDENCE**

The procedure for admitting physical objects into evidence is as follows:

1. Show all of your exhibits to opposing counsel BEFORE the hearing so that they can object if they want to.
2. Mark each exhibit with a number, and thereafter refer to it as "Prosecution (or Defense) exhibit one (or whatever number it is) for identification."
3. When the witness gets to the point in the testimony where it would be helpful to introduce the evidence so the witness can talk about it, ask the judge if you may approach the witness and then hand the exhibit to the witness and ask the following questions:
  - a. I am handing you what has been marked as Prosecution exhibit one for identification, can you please describe it for the Court?
  - b. If it is a physical object, ask them if/how they know what it is, and ask any other questions necessary to authenticate it or lay a foundation for it. If it is a photo, ask if it is a "fair and accurate representation" of whatever it is a photo of at the time the crime took place. If there is any reason it would not be fair and accurate (i.e., the photo was taken during the day and the crime happened at night), have the witness describe what was different. If it is a diagram, ask if it is a fair and accurate representation, then ask if it would aid the witness in giving their testimony.
  - c. After the witness has authenticated the exhibit, state to the Court, "Your Honor, I would like to admit Prosecution Exhibit One into evidence."
  - d. If the court accepts it into evidence, continue with the witness by asking whatever questions about the thing you wish to ask, or have them use the thing to aid in their testimony. You may also pass it to the jury so they can look at it.

## **OBJECTIONS**

Objections are made when the other side has violated one of the rules of evidence. The objection should be made as soon as the question is asked by the other lawyer and before the witness answers. If it is not possible to make your objection before the answer is given because it is the answer, which is objectionable, object to the answer and ask to have it stricken from the trial record.

When you make an objection, say “I object” and then state very briefly the basis for your objection. the judge may ask for a more lengthy argument if he/she wants to understand your objection better. The other side then has a chance to say why you are wrong and why the evidence should be allowed. The judge will then rule on the objection.

## **RULINGS:**

**SUSTAINED** - If the judge says "sustained", your objection and the reason for it were correct and the witness will not be allowed to answer.

**OVERRULED** - If the judge says "overruled", your objection or the reason for it was wrong and the witness will be allowed to answer.

## **STANDARD MOCK TRIAL OBJECTIONS:**

RELEVANCY -	"Objection, Your Honor. This testimony is not relevant to the facts of this case."
LEADING QUESTION ON DIRECT EXAMINATION -	"Objection, Your Honor. Counsel is leading the witness."
IMPROPER CHARACTER TESTIMONY -	"Objection, Your Honor. Character is not an issue here."
BEYOND THE SCOPE OF DIRECT EXAMINATION -	"Objection, Your Honor. Counsel is asking about matters that did not come up in the direct exam." (Or matters that are "beyond the scope of the direct examination".)
HEARSAY -	"Objection, Your Honor. Counsel's question, the witness' answer, is based on hearsay." If the witness has already given a hearsay answer, the attorney should also say, "and I ask that the statement be stricken from the record."
OPINION TESTIMONY -	"Objection, Your Honor. Counsel is asking the witness to give an opinion."
NO PERSONAL KNOWLEDGE -	"Objection, Your Honor. The witness has no personal knowledge to answer the question."
LACK OF FOUNDATION OR AUTHENTICATION	"Objection, Your Honor. Counsel has not established the authenticity of this exhibit."  "Objection, Your Honor. Counsel has not laid a proper foundation for this exhibit."
CREATION OF MATERIAL FACT - (This objection is not a rule of evidence ordinarily but is used in the mock trial scenario to avoid the creation of evidence by students which misleads and confuses the issues presented.)	"Objection, Your Honor. The witness is creating facts material to the case which are not in the record."

## **PART 12.**

### **THE TRIAL NOTEBOOK**

The Trial Notebook is a tool that can be used in preparing your case. A Youth Attorney team that conscientiously prepares the Trial Notebook will be well-prepared for the mock trial.

The Trial Notebook should be divided into several sections so that information can be easily located during the mock trial. Some means of keeping the pages in order is needed, such as a binder, large clips or a folder with pockets. Each Youth Attorney and Clerk-Bailiff on a team should keep their own copy of it.

The suggested sections are:

1. Things to do
2. Trial facts
3. Overview of the Case – Strengths and Weaknesses
4. Pre-Trial Conference
5. Jury Instructions
6. Opening Statement
7. Examination of Witnesses
8. List of Exhibits
9. Closing Argument
10. Miscellaneous Notes

Here is further information on the sections.

#### **Section 1: Things To Do**

The idea is to develop an evolving checklist of what needs to be done, who needs to do it and the deadline for doing it. Although some of this information also may be located elsewhere in the Trial Notebook, this section allows for quick reference. Otherwise, these details could very well get lost in the shuffle.

## Section 2: Trial Facts

Not only is it important to be able to find the Trial Facts whenever you need them, but you may wish to underline parts of them. If you do, be sure to keep an unmarked copy of them for other purposes, such as preparing exhibits.

## Section 3: Overview of the Case – Strengths and Weaknesses

When preparing the other sections of the Trial Notebook it is essential to have as clear an idea as possible of the relative strengths and weaknesses of one's case. Of course, these thoughts likely will evolve right up to the mock trial. The purpose of this section is to keep track of these thoughts as a general guide to preparation of the case.

It is suggested that these thoughts be organized by listing the general strengths and weaknesses.

## Section 4: Pre-Trial Conference

Before the Pre-Trial Conference is held this section serves as a checklist of what needs to be resolved at the Pre-Trial Conference. This list should include any pre-trial motions that either side wishes to file.

After the Pre-Trial Conference, this section serves as a record of what was decided there and contains any follow-up materials. (For example, if pre-trial motions will be filed, it contains those materials.)

## Section 5: Jury Instructions

A copy of the preliminary and final jury instructions should be kept handy for reference to the elements of the crime. The jury instructions tell the jury the law that governs the case, so attorneys should always keep them in mind when preparing for trial.

## Section 6: Opening Statements

It should be indicated which Youth Attorney will deliver the team's opening statement and what points will be made. Usually this will be either an outline of points to be made or even a script that can be read.

Note that the Overview of the Case described in Section 3 should be consulted as general guidance for what to emphasize in the opening statement. Thinking about the opening statement may well lead to a refinement of the overview. Remember: Try to constantly refine and improve all sections of the Trial Notebook.

## Section 7: Examination of Witnesses

A subsection should be set up for each witness who will testify at the mock trial and certain information set forth in each subsection.

Each subsection should indicate which Youth Attorney from the team will be responsible for conducting the examination of the witness. Note that this information also should be noted in Step 1 of the Trial Notebook, "Things To Do". Also, for those witnesses who will be called by the team that is preparing the Trial Notebook, their order should be noted. (It is up to the opposition to decide the order in which their own witnesses will be called.)

Each subsection also should indicate what points should be made during questioning. Do not forget to consider and refine the overview of the case. The questions themselves may be written out, but be ready to adjust to what actually happens at the mock trial.

The checklist of points to be made with each witness should include any exhibits for which the witness is to provide the foundation. This information also should be noted in Section 8 of the Trial Notebook, "List of Exhibits".

Each subsection also should note any items of particular significance with respect to the witnesses. It also is suggested that all pre-trial statements made by the witness be assembled here so that all of the information about a particular witness can be found in one spot.

If it is anticipated that particular portions of this handbook will be referred to during the trial, the page(s) in question might be noted.

#### Section 8: List of Exhibits

This section should include a list of exhibits that the Youth Attorney team that is developing the Trial Notebook plans to introduce, as well as those that the opposing team may introduce.

What exhibits might be admitted into evidence should be discussed thoroughly at the Pre-Trial Conference.

#### Section 9: Closing Arguments

This section should list who will give the closing argument for the Youth Attorney team. In the case of the prosecution team, it is possible to have one Youth Attorney deliver the opening portion and the other deliver the rebuttal portion.

The points to be made should be listed. Remember to consult and refine the overview of the case.

#### Section 10: Miscellaneous Notes

This is where to locate whatever thoughts, questions and information you might have that do not fit neatly into one of the other sections of the Trial Notebook. Refer to this section frequently and incorporate this information into the development of the rest of the Trial Notebook.

## **PART 13.**

### **DUTIES OF ADVISORS AND YOUTH ATTORNEYS**

The Advisor should confirm that:

- The Pre-Trial Conference and Mock Trial have been scheduled.
- A Mock Trial Judge has agreed to serve and will attend the Pre-Trial conference.
- The Youth Attorneys seem to understand what remains to be done and when it must be done.

All Youth Attorneys involved should make sure that the delegation's Advisors are aware of the status of their mock trial even if, for whatever reason, a report is not requested by them.

It is also necessary that at least one Advisor attend the mock trial itself.

Remember: If you need help and just do not know where to turn, contact the Youth and Government Office at 630.833.9622 or email at [ilyg@illinoisymca.org](mailto:ilyg@illinoisymca.org).

## **PART 14.**

### **THE PRE-TRIAL CONFERENCE**

The purpose of the Pre-Trial Conference is to make the final plans for the mock trial. A separate Pre-Trial Conference is held for each mock trial. Often, the Pre-Trial Conference is held immediately before the trial begins, although sometimes they are held several days beforehand.

#### Who Should Attend

- Both teams of Youth Attorneys involved with the mock trial.
- All Clerk-Bailiffs involved with the mock trial.
- The Advising Attorneys who are working with the Youth Attorney teams involved.
- The Mock Trial Judge.
- At least one Advisor from the delegation.

#### The Agenda

1. Finalize when and where the mock trial will be held. It is suggested that the participants be there at least half an hour before the mock trial is to start.
2. Discuss whether any contacts need to be made concerning where the mock trial will be held. (An Advisor or Advising Attorney should handle this.)
3. Clarify which Clerk-Bailiffs will be involved with the mock trial and what their roles will be, including the procedure they will follow. At least one should be assigned to greet the jurors as they arrive and tell them where to sit.
4. Confirm that each team of Youth Attorneys has found a person to portray their witnesses and review what should be done to finalize their preparation.
5. Determine whether there will be a jury selection procedure.
6. List what exhibits will and may be offered at the mock trial. Remember that exhibits must be marked and the necessary materials to do this must be available. For example, it is recommended that the statements or written reports of witnesses set forth in the Trial Facts be prepared for marking, if not admission, as separate exhibits.
7. Resolve any pre-trial motions.
8. Resolve any remaining questions on the part of the participants in the mock trial.

## **PART 15.**

### **FINAL PREPARATIONS**

At the risk of stating the obvious, whether any aspect of preparation has been omitted should be considered again two or three days prior to the mock trial.

This is preferable to a discovery that comes in the middle of the mock trial.

Remember that the participants in the mock trial should arrive early enough to do whatever has to be done before the start of the mock trial.

## **PART 16.**

### **SPECIAL INFORMATION FOR CLERK-BAILIFFS**

#### Getting Involved

Make sure you are assigned to a Youth Attorney team as a research assistant. Although your help likely will be welcome, if you are having difficulty being accepted by the Youth Attorney team as a co-worker, you should discuss this problem with an Advisor. You may wish to work with a different Youth Attorney team.

Be sure you are assigned to act as Clerk-Bailiff at one or more mock trials. If your delegation will be holding more than one mock trial and unless your delegation has several Clerk-Bailiffs, you probably should serve at all of your delegation's mock trial. You can be involved with the organization of the mock trials as you wish; simply attend the necessary meetings and speak up for your own involvement. There is plenty for everyone to do.

Try to learn the mechanical side of your job -- where to sit, when to stand, what to say. The rest of this part of this handbook will serve as a guide for you.

#### Greeting the Jury

On the day of the mock trial, one or more Clerk-Bailiffs should be present to greet the members of the jury and tell them where to sit. Where should they sit? Ask the Mock Trial Judge.

As the jurors arrive, get their names and make a list. This will allow you to inform the Mock Trial Judge of which jurors are present and to poll them after their verdict if this is requested.

#### Swearing in the Jury.

Before the opening statements are given, the Mock Trial Judge will ask a Clerk-Bailiff to swear in the Jury. At that point, stand, face the jury, raise your own right hand and say:

"Would you please rise and raise your right hand?"

When the jury has done so, say:

"Do you solemnly swear to perform faithfully your duties as a juror, including to follow the court's instructions and to refrain from discussing with any other person, including your fellow jurors, the facts of the case before all of the evidence has been heard, so help you God?"

### Where to Sit During Court

Consult with the Mock Trial Judge as to where to sit during the mock trial. If more than one Clerk-Bailiff is assigned to the mock trial, determine how they will work together. Discuss this with the Mock Trial Judge.

### How to Open and Close Court

It is up to the Mock Trial Judge to indicate when court will convene. Everyone else enters the courtroom before the Mock Trial Judge. As the Mock Trial Judge enters the courtroom, the Clerk-Bailiff says:

"Everyone please rise."

If this is the first time that the court has convened, then say:

"The Honorable Circuit of the Illinois YMCA Youth and Government Model Court is now in session, the Honorable (please insert name of the Mock Trial Judge here) presiding. Everyone please be seated and quiet in the courtroom."

After the first time court convenes, the second part is reduced to:

"Please be seated and quiet in the courtroom."

The procedure for recessing or adjourning court always is the same. The Mock Trial Judge will announce the recess or adjournment. At that point, announce:

"Everyone please rise."

There is no need to make any further announcement. Once the Mock Trial Judge is out of the room, people will tend to move about naturally.

### Bringing the Jury In or Out of the Courtroom

If the jury is brought into or taken from the courtroom while court is in session, the spectators and participants in the room should be told to rise while this is being done and to be seated when it is.

### Swearing in a Witness

When a Youth Attorney announces the name of a witness who is being called to testify, the witness will walk toward the bench. As the witness approaches, the Clerk-Bailiff stands, raises his or her own right hand, and says:

"Please raise your right hand."

When the witness stops and raises his or her right hand, the Clerk-Bailiff says:

"Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?"

If a witness declines, for religious reasons, to "swear", then change that word in the oath to "affirm".

### Marking and Handling Exhibits

A list should be kept during the Mock Trial of what exhibits have been marked and admitted. If a Youth Attorney wants an exhibit marked, he or she brings it to the Clerk-Bailiff and asks that it be marked. The item will be marked according to whether it is from the People or the Defendant, the number of exhibits already marked by that party (check your list) and the fact that it is "for identification". For example, the fifth exhibit marked by the People is marked "People's Ex. 5 for ID"; the third exhibit marked by the defendant is marked "Defendant's Ex. 3 for ID".

Once an exhibit is marked, the Youth Attorney will take it back, usually to hand to the witness. If an exhibit is admitted into evidence by the Mock Trial Judge, the "for ID" portion of the marking is crossed out by the Clerk-Bailiff.

When court is in recess, the Clerk-Bailiff is responsible for the safekeeping of the exhibits.

### The Jury Deliberations

Those Clerk-Bailiffs who are attending the jury will accompany them to the jury room and remain outside the room. Remember to give the jury all exhibits that were admitted; however, this should not include those exhibits that only were marked for identification.

If the jury has a question or indicates that it has reached a verdict, the Mock Trial Judge is informed. The Mock Trial Judge will indicate when the jury should be moved from the jury room. Do not forget to get the exhibits out of the jury room.

### Announcement of the Verdict

Presumably the Mock Trial Judge will convene court and then bring in the jury, so be sure to have everyone rise.

The Mock Trial Judge will ask the jury foreperson if the jury has reached a verdict and presumably the answer will be that it has. A Clerk-Bailiff should take the signed verdicts from the jury foreperson and hand them to the Mock Trial Judge, who then will read them.

### Polling the Jury

A Clerk-Bailiff may be asked to poll the jury individually. Refer to the list of their names, and one at a time, say:

"(Insert the name of the juror here), was this and is this now your verdict?"

## PART 17.

### STUDENT EXERCISES

These are exercises to be used to verify students' knowledge. Please ask your Advisor for the answer key from his/her Manual to check your answers.

#### EXERCISE 1: THE STEPS IN A TRIAL

Directions: Re-order the following sentences in the order that the events would occur in a real trial. (Fill in the blanks that follow the sentences below.)

FACTS OF THE CASE    Mark is on trial for murder.  
                                  His attorney is Ms. Heath.  
                                  The prosecuting attorney is Mr. Stevens.  
                                  Judge Kelly is presiding.

#### THE TRIAL:

- a. Mr. Stevens delivers his closing argument.
- b. Ms. Heath cross-examines the prosecution's witness.
- c. Judge Kelly gives the jury their instructions.
- d. Mr. Stevens examines the prosecution's witness.
- e. Ms. Heath gives her opening statement.
- f. The jury deliberates, makes its decision, and returns to the courtroom.
- g. Ms. Stevens cross-examines the defense witness.
- h. The foreman hands the jury's verdict to Judge Kelly.
- i. Mr. Stevens gives the prosecution's opening statement.
- j. Mr. Stevens briefly rebuts Ms. Heath's closing argument.
- k. Ms. Heath delivers her closing argument.
- l. Ms. Heath conducts her direct examination of the defense witness.

1. \_\_\_\_\_

8. \_\_\_\_\_

2. \_\_\_\_\_

9. \_\_\_\_\_

3. \_\_\_\_\_

10. \_\_\_\_\_

4. \_\_\_\_\_

11. \_\_\_\_\_

5. \_\_\_\_\_

12. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

## **EXERCISE 2: WHO ARE THE CHARACTERS IN THE COURTROOM DRAMA?**

Directions: Match each of the characters who participate in a trial with the description of what they do.

BAILIFF	listens to the evidence and decides who wins the case.
PLAINTIFF/PROSECUTION ATTORNEY	takes notes on everything said, and said at the trial.
PLAINTIFF/PROSECUTION	gives his/her account of what he/she believes to be the facts in the case. Is asked questions by attorneys from both sides.
JUDGE	the person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of law which apply to the case, and announces the verdict.
JURY	gives his/her opening and closing statements last, cross examines plaintiff/prosecution witnesses and objects to improper questions asked by the opposing attorney. Tries to show that there is not enough evidence to justify a verdict against the defendant.
COURT REPORTER	announces that the court is in session and which judge is presiding. Swears in witnesses.
DEFENDANT	initiates legal action against the defendant
DEFENDANT ATTORNEY	this person is being accused of some wrong-doing. May be found guilty of a crime and/or owe money (depending on the type of case) if he/she loses the case.
WITNESS	gives his/her opening and closing statement first, cross-examines the defense witnesses, and objects to improper questions asked by the opposing attorney. Tries to show enough evidence to persuade the jury that their verdict should be in favor of the plaintiff/prosecution.

### **EXERCISE 3: RULES OF EVIDENCE HYPOTHETICALS – PART A**

1. Doug told me he had killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?
2. On direct exam, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, "You were at school on November 30, isn't that correct?"
3. Same as in 2. Can the attorney ask David, "Where were you on November 30?"
4. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife?
5. Can Harry's unfaithfulness be introduced in a civil trial for divorce?
6. John made a sworn statement two days after the automobile accident he witnessed. When the case finally came to trial and he is called as a witness, John cannot remember what happened. Can the attorney show John the statement that will help him remember? Must the attorney introduce the statement into evidence?
7. Same situation as 6, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross examination, can the other attorney bring up the inconsistencies?
8. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross examination, ask about the repair costs of the car?
9. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that, in his expert opinion, the victim was suffering from a spiral fracture of the right tibia and fibula?
10. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a spiral fracture of the right tibia and fibula?
11. Sally has never seen Amy with the baby. Can Sally testify that Amy is a terrible mother?

#### **EXERCISE 4: RULES OF EVIDENCE HYPOTHETICALS – PART B**

In each of the situations below, the defendant is on trial for murder and is claiming self-defense. Would you object to any of the following testimony or evidence? If so, how would you phrase your objection?

1. On direct examination the defense attorney asks, "You could hear the voices from Mr. Eldon's apartment very clearly, couldn't you, Ms. Spencer?"
2. Mr. Wirtz, an English teacher who knew Joe and Steve since they were in high school, testifies that Joe did not do well in high school because he had deep psychological problems.
3. Miss Cook, who lives in the apartment below Ray (the defendant), testifies that she heard Matt (the victim) yell, "Put down that gun, Ray! Enough is enough!"
4. A police officer says that the defendant told him, "I killed him, the filthy swine had it coming to him."
5. The police officer says that he talked to the defendant in the police car and that the defendant was quite drunk.
6. Robert McClanahan, a bartender at the Wanderer Saloon, says that drinking seven "boilermakers" would make anyone drunk.
7. The defendant, on direct examination, stated that the police officer did not say a word to him from the time of his arrest until they reached the police station. On cross examination, the prosecuting attorney reads the defendant a sworn statement that he made before the trial and says, "The story you told in the pre-trial statement isn't the same, is it Mr. Eldon?"
8. Terry Robinson, a waiter at the Wanderer Saloon, says that Pam Sullivan, a waitress at the same saloon, mentioned to him how sweet the defendant was to be "so protective" of her when his friend, Matt, was "hitting on her" and "acting like an animal".
9. Joanne testifies that she has known the defendant since high school and that he is an extremely nice and considerate guy.

### **EXERCISE 5: RULES OF EVIDENCE HYPOTHETICALS – PART C**

1. Amos is a witness in a personal injury trial. Before trial he told you, the plaintiff's attorney, that the plaintiff's car was facing north after the crash. A photo was taken which shows the accident scene. At the trial, you ask Amos which way the plaintiff's car was facing after the crash. He answers "I can't remember". You want the jury to hear that the plaintiff's car was facing north. What do you do?
2. Willis is on trial for murder. He says that he stabbed Jane in self-defense. You are the State's Attorney. Willis's attorney has a witness, Tom, who testifies that he knew Jane, that she was a bum and never paid her bills. What do you do?
3. Willis is indicted for murder. He claims he stabbed Jane in self-defense. You are the defense attorney. You have a witness, Sally, who testifies that she knew that Jane was a brute who had once beaten and kicked her for no good reason. Will this be admitted into evidence?
4. This is a personal injury case arising from an auto crash with Bill and Ed. Ed is suing Bill for his medical expenses and car repair bills. Tom is Bill's best friend, but he has never driven with or seen Bill drive. He has heard from other people that Bill is a great driver and has never speeded or broken any of the rules of the road. Can Bill's attorney ask Tom what kind of driver Bill is?

## **EXERCISE 6: INTRODUCING PHYSICAL EVIDENCE**

1. Sam is on trial for murder. The prosecution is trying to prove that he got the gun that was used to kill the victim from a friend's (Jeff's) gun cabinet. Jeff, who has an extensive collection of both revolvers and shotguns, is on the witness stand. You are the prosecuting attorney and you want to get the murder weapon admitted into evidence. What do you do?
2. Silvester, a used-car salesman, is on trial for fraud. The plaintiff claims that Silvester tricked him into buying a car that had terrible mechanical problems. The plaintiff has a note, signed by Silvester, that says, "So what if I exaggerated a little about the quality of the car? No one else has ever complained." Silvester is on the stand and you, his attorney, want to get his note into evidence. What do you do?
3. Rose was walking one morning when she saw a car and a bus collide at an intersection. When the police arrived, Rose told them that Jim, the driver of the car, had been going about 20 mph. She later signed a statement to that effect at the police station. At trial, in the case between Jim and the bus company, Rose testifies that Jim was traveling at 45 mph. On cross examination she now denies that she ever said that Jim has been driving at 20 mph. You are Jim's attorney, what do you do?

*Illinois YMCA Youth and Government deeply appreciates the use of this material consolidated excerpted from the Illinois State Bar Association Mock Trial Handbook.*

## **PART 18.**

### **GLOSSARY**

**ADJOURNMENT:** The end of a court session.

**ADMISSIBLE EVIDENCE:** Information about a court case that is placed into the official court record for consideration by the court.

**ADMISSION:** A statement by a party to a court case that admits a relevant fact in another party's favor.

**ADVISING ATTORNEY:** A real-life attorney who is not registered with Youth and Government as an Advisor but who is helping without the Judicial Program.

**ADVISING ATTORNEY INFORMATION FORM:** A form that is sent by each delegation's Head Advisor to the Youth and Government State Office at the time of First Registration that indicates the name, address and telephone number of each Youth Attorney team's Advising Attorney. It should be updated on an ongoing basis. It is in the Judicial Section of the Advisor Manual and will be e-mailed to Head Advisors.

**ADVISOR:** An adult who is registered as an Advisor with Youth and Government.

**ADVISOR MANUAL:** A manual for Advisors that covers Youth and Government in general, available from the Youth and Government State Office.

**AFFIRMATIVE DEFENSE:** A statutory defense to criminal charges that involves admitting that the acts in question were committed but that there are circumstances that avoid a finding of guilt. Examples: Insanity and self-defense.

**APPEAL:** In Illinois state courts, a legal proceeding filed by a party to contest the disposition of a case by the circuit (trial) court.

**ARRAIGNMENT:** A court proceeding held near the start of a criminal case to advise the defendant of the charges. A plea of "guilty" or "not guilty" usually is entered at that time.

**BAILIFF:** In real life, a police officer who keeps order in the courtroom and is in charge of the jury during its deliberations.

**BENCH TRIAL:** In a criminal case, when a defendant waives his or her right to a trial or jury and the judge decides whether or not the defendant is guilty.

**BEYOND THE SCOPE:** Evidence or a question that involves information not involved in the previous round of evidence or questioning.

**CASE-IN-CHIEF:** In a trial, each party's initial presentation of evidence.

**CASE-IN-REBUTTAL:** In a trial, a party's second presentation of evidence.

**CLERK:** In real life, a court employee who keeps the court's records and administers oaths during a trial.

**CLERK-BAILIFF:** A high school student who is registered with Youth and Government as a Clerk-Bailiff.

**CLOSING ARGUMENT:** An oral statement made in a trial by attorneys after the close of evidence concerning what they contend the evidence shows.

**CONFESSION:** An admission by a defendant that a crime was committed.

**CRIME:** An offense committed against society in general as defined in Illinois state courts by the Illinois Revised Statutes.

**CROSS EXAMINATION:** The first round of questions asked of a witness by a party that did not call the witness to testify.

**DEFENDANT:** An accused person in a criminal case.

**DIRECT EXAMINATION:** The first round of questions asked of a witness by the party that calls the witness to testify.

**DISCOVERY:** A pre-trial procedure by which the parties to a case exchange certain information.

**EVIDENCE:** Information about a court case.

**EXHIBIT:** An object that is admitted into evidence in a court case.

**FELONY:** In Illinois state courts, a crime punishable by a prison term.

**FINDER OF FACT:** In a criminal case, whoever decides whether or not a defendant is guilty -- in a jury trial, the jury, in a bench trial, the judge.

**FOUNDATION:** Evidence or certain information in a question that is a prerequisite for the admission of certain evidence.

**GRAND JURY:** A special jury convened to consider whether formal accusations of criminal offenses should be brought.

**GROUND:** In court, the basis for an objection.

**HEAD ADVISOR:** The chief advisor for the delegation from each YMCA or High School.

**HEARSAY:** Evidence of an out-of-court statement that is offered to prove the truth of the content of the statement.

**HUNG JURY:** A jury that is deadlocked and unable to reach a verdict.

ILLINOIS COMPILED STATUTES: A compilation of the statutes of the state of Illinois, newly revised, and effective January, 1993. Criminal statutes are found mostly in Chapter 720.

ILLINOIS REVISED STATUTES: A compilation of the statutes of the State of Illinois. Criminal statutes are found mostly in Chapter 38. (Revised 1/93 and renamed ILCS.)

**IMPEACHMENT**: The process by which an attorney attempts to discredit a witness in court.

**INADMISSIBLE EVIDENCE**: In court, evidence that is ruled to be inappropriate for consideration.

**INDICTMENT**: In Illinois state courts, a decision by a grand jury to formally accuse someone of a crime.

**INFORMATION**: In Illinois state courts, a document filed with the circuit court, usually by a State's Attorney, that formally accuses a defendant of a crime.

**JURY**: In Illinois state courts, a group of 12 citizens who sometimes determine whether a defendant in a criminal case is guilty.

**JURY INSTRUCTION CONFERENCE**: A meeting held by the judge and lawyers in a jury trial after the evidence has been heard but before closing arguments at which it is determined what instructions of law will be given to the jury.

**JURY INSTRUCTIONS**: An explanation of the law given both orally and in writing is desired.

**MATERIALITY**: In a court proceeding, whether evidence deals with details that are significant enough to be of value in deciding the issues before the court.

**MEMORY REFRESHED**: A court procedure by which a witness who can not recall certain facts can consult another source, such as a document, and be reminded of those facts.

**MISDEMEANOR**: In Illinois state courts, a crime punished by imprisonment in a facility other than a penitentiary.

**MOCK TRIAL**: A Youth and Government simulation of a real-life trial.

**MOCK TRIAL JUDGE**: A real-life attorney who serves as the judge at a Youth and Government trial.

**MOTIONS**: Formal requests, either written or oral, made to the court that pertains to procedure.

**NARRATIVE ANSWER**: In court, an answer by a witness that is not in response to a specific question but that involves a monologue by the witness.

**OBJECTION**: A formal protest, usually oral, made by an attorney while in court concerning the procedure that is being followed.

**OPENING STATEMENT:** An oral statement made by attorneys for the parties during a trial before the presentation of evidence begins in order to state what the attorneys expect the evidence to show.

**OVERRULED:** In court, a decision by the judge to deny requested relief. Usually refers to an objection with which the judge disagrees.

**PAST RECOLLECTION RECORDED:** Evidence that is admitted in court of a record made of what a person remembered when the witness is unable to recall certain facts any longer.

**PLEA BARGAINING:** The negotiated settlement of a criminal case.

**PLEADINGS:** In a criminal case, the information or indictment.

**POST TRIAL MOTION:** A motion filed after the trial of a criminal case by a defendant who was convicted that sets forth what errors the defendant contends were committed at the trial.

**PRE-LEG I:** A mandatory meeting of several Youth and Government delegations from one area of the state held on a Friday night of Saturday in November. Mock Trials are covered in the Judicial Training sessions.

**PRE-LEG II:** A mandatory meeting of several Youth and Government delegations from one area of the state held on a Saturday in November. By this point Mock Trials should be completed and training will focus on the Appeal process.

**PRELIMINARY HEARING:** In Illinois state courts, a hearing held in felony cases brought by information to determine whether there is probable cause that the crime was committed and the defendant therefore should stand trial.

**PRE-TRIAL CONFERENCE:** A meeting of the participants in a trial that is held before the trial to resolve procedural issues and assist in the organization of the trial.

**PRE-TRIAL MOTIONS:** Motions filed and considered by the court prior to trial.

**PRIOR INCONSISTENT STATEMENT:** A statement made by a witness before a trial that conflicts with the witness' testimony in court in some material respect.

**PROSECUTOR:** An attorney who presents the case against the defendant in a criminal case.

**PUBLIC DEFENDER:** An attorney who is appointed by the court in a criminal case to represent a defendant who cannot afford to hire an attorney.

**REBUTTAL EVIDENCE:** Evidence presented by the prosecution in a criminal case after the defendant's case-in-chief.

**RECESS:** A break in a court session.

**RE-CROSS EXAMINATION:** The second round of cross examination.

**REDIRECT EXAMINATION:** The second round of direct examination.

**RELEVANCE:** In a court proceeding, whether evidence pertains to the issues before the court.

**SCOPE:** The subjects addressed by all or part of the evidence.

**SENTENCE:** The punishment to be given a convicted defendant.

**SENTENCING HEARING:** A hearing held to hear evidence concerning the sentencing of a convicted defendant.

**STATE'S ATTORNEY:** In Illinois, an official elected in each county to prosecute criminal cases in the state courts.

**STATUTE:** A legislative enactment.

**STIPULATION:** An agreement by the parties to a court case, usually pertaining to some aspect of the evidence.

**SUPREME COURT RULES:** Various rules adopted by the Illinois Supreme Court that supplement the Illinois Compiled Statutes with respect to procedures to be followed in Illinois State courts.

**SURREBUTTAL EVIDENCE:** Evidence presented by the defendant after the prosecution's rebuttal evidence.

**SUSTAINED:** In court, a decision by the judge to agree with a procedural point made by one of the parties. Usually refers to an objection with which the judge agrees.

**TESTIMONY:** Sworn oral statements made by a witness during court proceedings and offered into evidence.

**TRIAL:** In Illinois circuit courts, a court proceeding that hears evidence to determine whether or not a criminal offense was committed.

**TRIAL FACTS:** A fictionalized set of facts upon which Youth and Government mock trials are based. Two sets are written each year.

**TRIAL NOTEBOOK:** A written project through which Youth Attorneys prepare for a mock trial.

**VERDICT:** A jury's decision.

**YOUTH ATTORNEY:** A high school student who is registered with Illinois YMCA Youth and Government as an attorney.

**YOUTH ATTORNEY CASE DISTRIBUTION AN CLERK-BAILIFF ASSIGNMENT FORM:** A form that each delegation's Head Advisor sends to the Youth and Government State Office at the time of First Registration to show whether Youth Attorneys are assigned to Case A or B, the prosecution or the defense, and their team members; and, as to Clerk-Bailiffs, what Youth Attorney team they will assist as a research assistant and what mock trial(s) they will serve as Clerk-Bailiff. It is found in the Advisor Manual and is e-mailed to each Head Advisor.