MOCK TRIAL STUDENT OVERVIEW

I. **The Opening Statement**

A. **Purpose of the Opening Statement**

1. Preview of the case: issues and evidence
2. Provides road map of the trial

B. **Prepare Case**

1. Prepare a sheet with two columns
   a. Column one: favorable facts and law to your side
   b. Column two: unfavorable facts and law to opposing side
2. Find a theme that fits the case
   a. Possibilities: freedom, safety, justice, fairness
   b. Allow development of emotion and continuity
3. Outline what occurred and what the evidence from each witness will show (consult co-counsel).
4. Analyze the statute (the law) and how it applies to your case.
5. Pull your ideas together and organize them for the opening and closing statements.

C. **Write Opening Statement**

1. Format
   a. "May it please the court, your honor, ladies and gentlemen of the jury. My name is _____, and these are my co-counsels _____.
   b. Summarize case (in no more than 30 words)
   c. Set forth the issue: "The issue in the case today ..."
2. Detail what occurred
   a. Refer to what the evidence will show
   b. Briefly identify each witness and relate to case
3. State the statute (the law that should apply in the case)
   a. Cover elements of proof
   b. Explain burden of proof
4. Summarize and tell the court specific relief you want
5. Don't argue. Keep it factual.

D. **Additional Information and Advice**

1. Opening statement is the first impression of team
   a. Look the professional role (dress and manner)
   b. Fulfill expectations: leader, teacher (what the law is), guide (to what facts are important)
2. Be careful not to overstate the case.
3. Call client by name but use "label" for opponent such as "prosecution" or "defendant."
4. Attend to specific, concise language: "accident" instead of "collision" or "crash" if you want the incident to look more favorable.
5. Use outline to talk from or polished memorization – never read an opening statement.
6. Coordinate opening statement with closing statement by sticking to a theme.
7. The opening statement is an introduction not an argument.
8. Look the jury members in the eye.
9. Speak up so that everyone in the courtroom can hear.

II. Direct Examination

A. Purpose of Direct Examination

1. Present your "story" of facts.
2. Build major ideas of the case as outlined in your opening.
3. Give your witnesses credibility.
4. Act as though the jury knows nothing of the case and tell the story through questions and your witness's answers.

B. Prepare Direct Examination

1. Decide what your side needs to prove.
2. Decide what a specific witness knows and the information and exhibits that will help prove this knowledge.
3. Attorney and witnesses work together to prepare questions and answers.
4. Practice! Work on concepts and phrasing but not rigid questions and answers.
5. Keep promises made in opening statement. If the opening statement said the evidence will show x,y,z, make sure the witnesses testify to x,y,z.

C. Questions for Direct Examination

1. Limit questions to those that matter.
   a. Purposeful
   b. Directly link case in chief
2. Be direct.
3. Be concise.
4. Sequence questions so that order of events is clear; include who, what, when, where, and how.
5. Focus of attention should be on witness and witness's answers, rather than on the attorney.
6. No leading questions.
7. Know which questions risk objections and word them to avoid the objection, if possible.
8. Be prepared to argue objections to questions, documents, etc.
9. Avoid asking "why" unless sure of witness's response.

D. Answers for the Witnesses being Direct Examined

1. Give focused answers based on what you know (based on affidavits).
2. Be truthful.
   a. Stay within affidavit and do not make up information to answer a question.
   b. Limit answers to facts in affidavit.
3. Be convincing as the person.
   a. Characterization without distracting from purpose of trial (over acting will not be rewarded).
   b. Emotional understanding of attitude toward the dispute.
   c. Phrasing consistent with the person you represent.
4. Know what your witness knows and doesn't know.
5. Look at the person(s) you must convince.
   a. Direct eye contact with the judge(s)/jury.
   b. Body language to signal important answers.
6. Know the substance of any documentation you may be asked about, impeached with, or asked to introduce the evidence.
7. Speak up so that everyone in the courtroom can hear.

III. Cross-Examination

A. Purpose of cross examination

1. To make other side less believable.
2. To cast doubt on evidence.
3. To cast doubt on witness's credibility.

B. Questions and Techniques for Cross Examination

1. Use leading questions to control witness.
   a. Short questions with simple words that will yield a "Yes/No" response from the witness. You control the information they deliver.
   b. Ask for facts not evaluations.
   c. Get one fact straight at a time, i.e., "The light was red, wasn't it?"
2. Always know how the witness should answer the question.
3. Listen and if you don't get the answer you want, ask the question again or ask it in a different way.
4. Ask leading questions to try and force a yes/no answer.
5. Focus of attention should be on you and your questions rather than witness's answers.
6. Be prepared for fabrication, if you get fabrication, impeach with affidavit or object.
7. Link questions to direct examination.
8. Use opportunities to attack witness's credibility.
   a. Establish that witness is lying.
   b. Establish that witness is biased.
   c. Establish that testimony is invalid because of conditions at time of accident.
   d. Establish that witness is not competent (by training or experience) to give opinion.
   e. Find contradictions in testimony.
9. Speak up so that everyone in the courtroom can hear.

C. Answers for the Witness being Cross Examined

1. Give focused answers based on what you know (based on the affidavit).
2. Be cooperative and honest.
   a. Cooperate, but do not give more than you have to.
   b. Remember, you are a witness for the side that called you.
   c. Any fabricated answer is not permitted.
3. Be convincing as the person.
   a. Characterization without distracting from purpose of trial.
   b. Emotional understanding of attitude toward your dispute.
   c. Phrasing consistent with the person you represent.
4. Know what your witness knows and doesn't know.
5. Look at the person(s) you must convince.
   a. Direct eye contact with the judge(s)/jury.
   b. Body language to signal important answers.
6. Know what might come up in cross examination and prepare.
7. Stay confident when cross examined.
8. Don't argue with the attorney.

IV. Exhibits

A. Purpose

1. To advance your case and give something for the witnesses to interact with
2. To help clarify a witnesses testimony
3. To impeach (draw into question the truthfulness or believability) an opposing witness on cross examination
4. To aid with controlling the cross examination of a witness

B. Procedure

1. An exhibit must be entered through either the direct examination or cross examination of a witness.
2. The attorney wishing to introduce the exhibit shows the exhibit to the witness for identification.
3. The attorney shows the exhibit to opposing counsel.
4. The attorney asks the witness to identify the exhibit.
5. The attorney asks the witness a few questions about the document to demonstrate its relevancy and that the witness has sufficient, personal knowledge about the exhibit. For example, the attorney should establish the following:
   a. What type of document it is (e.g., Would you please identify the document that I have handed up to you)
   b. The witness's knowledge about the document (e.g., Is that your signature on the letter? Where have you seen this document before?)
   c. The relevance of the document to the witness's testimony and the court proceedings in general (e.g., Is this the written contract in dispute in this litigation? Is this something you used for the basis of your expert opinion?)
6. Ask to enter the document as an official exhibit to the proceedings.

C. Some Advice

1. All exhibits are potentially admissible, but some witnesses may be better suited to introduce the exhibits than others.
2. Regardless of how important an exhibit might be to your case or the opposing side's case, the Modified Rules of Evidence may restrict which witness can be used to introduce the exhibit. For example, a doctor who treated a witness would not be the right witness to introduce a letter from Mr. Doe to Ms. Roe discussing the medical treatment Mr. Doe received, but the sender of the letter, Mr. Doe, and its recipient, Ms. Roe, could introduce the exhibit because they have sufficient personal knowledge about it.
3. Exhibits are another tool for the attorney at trial. They are a powerful tool because, unlike the witnesses, the exhibits will eventually go back to the jury room while the jury deliberates the case. Therefore, while the jury might not remember all of the verbal testimony they listened to during the trial, they can keep referring back to the exhibits later on. In this light, the attorney must do more with an exhibit than get it introduced at trial. The attorney must use the witnesses and the exhibits themselves to explain their relevance and how they fit in with the theme of the attorneys' case. Remind the jury why the exhibit is relevant.

4. After the exhibit is properly entered, use it to prove your points. You can pick up the exhibits, you can pass them around, and you can publish them to the jury with permission from the presiding judge. You can get witnesses to react with the exhibit and make their testimony more dynamic.
5. Know why you want to introduce a particular exhibit and who the best witness, on either side of the case, is the best witness to introduce the exhibit.
6. Know the Modified Rules of Evidence and come prepared with objections to the introduction of certain exhibits you do not want introduced because they hurt your case. Objections to the admission of the exhibits may come in the form of objections based on procedural grounds, e.g. lack of proper foundation (the witness has not testified sufficiently to establish why they exhibit is relevant and why this witness can testify about it) or on legal grounds, e.g. hearsay (the lay witness has no personal knowledge about what is contained in the exhibit and the attorney is trying to elicit testimony proving the matter that is specifically set forth in the proposed exhibit.)
7. For further information on exhibits for this competition refer to pages 10 and 16.

V. Objections

A. Purpose

1. To protect your witness
2. To prevent out-of-bounds testimony from entering the court record
3. To restrict introduction of documents where improper or no foundation for its admission is laid

B. Procedure

1. Opposing attorney hears the question.
2. Opposing attorney stands and says, "I object your honor." And then briefly states the reason(s) for the objection.
3. Judge may allow the opposing attorney to respond to the objection.
4. Judge may rule:
   a. "Objection sustained" – the question must be discarded as given and any response stricken from the record
   b. "Objection overruled" – the question stands; the questioning attorney might repeat the question for the witness to get back into the question-answer rhythm
   c. "I'll take note of your objection" – question can still be answered but the judge can weigh what is said in light of objection

C. Some Advice

1. Object with professional courtesy – do not allow your objections to ignite clashes with your opposing counsel.
2. Never disagree with a judge's ruling.
3. When the judge overrules an objection, it merely means that he/she thinks the evidence should be heard; continue to object when you think it necessary.
4. Work out the objection strategies with your co-counsel before the trial.
   a. Anticipate hearsay objections.
   b. Anticipate opinion objections.
   c. Decide where other legitimate objections might be used as a way to block information vital to your opponent's case.

VI. The Closing Argument

A. Purpose of Closing Argument

1. Make conclusions from the evidence.
   a. What evidence is credible and not credible?
   b. What witnesses should be believed and not believed?
2. Show why you should prevail on the merits.

B. Prepare Closing Statement

1. Reread the entire case several times to get an overview of the facts and issues.
2. List all the significant facts in the cases (both sides) and list the conclusions which can be made from the facts.
3. Summarize the statute by writing it in your own words; explain how the conclusions from the facts satisfy what you need to prove.
4. Coordinate your ideas with the opening statement and predicted witness testimony.
5. Make sure the closing fits the theme of the case.

C. Typical Format of a Closing Statement

1. Start by saying, "May it please the court?"
2. Tell why the case is significant to your client.
3. Outline the facts of the case without dispute.
4. Give real issue on which the law turns – review the applicable law.
5. Review evidence and testimony from your witnesses.
6. Refer to opponent's testimony.
   a. Point out testimony which supports your side.
   b. Explain any obvious weaknesses.
7. Go through elements of the statute.
   a. Show how you satisfied each element of proof.
   b. If your side has burden, tell how you met the burden.
8. If plaintiff or prosecution, set forth the specific relief or outcome you want.

D. Additional Information and Advice for a Closing Statement

1. Closing statement should be a polished, prepared speech with a structure that allows specific references to what has been said in the trial.
2. Quote exact phrasing from testimony, if possible.
3. When you refer to exhibits, identifying them by what they are (divorce decree, etc.), not by their exhibit number.
4. Don't waste time arguing all the elements that your opponent has shown – narrow to those necessary to win your side.
5. Point out opponent's failure to fulfill promises.