Virginia Law Related Education Institute

Virginia High School Mock Trial Program

Curriculum Manual

VIRGINIA LAW RELATED EDUCATION INSTITUTE

Focusing on Access to Justice

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Virginia High School Mock Trial Competition
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Greetings!

You are probably reading this because you find yourself in one or more of these situations:

- A student (or students) approached you about starting a mock trial program at your school or homeschool cooperative and you are looking for a place to start.

- An administrator (or department chair) asked you to help expand extracurricular offerings in social studies and you are researching potential options.

- You are looking for a way to create real-world connections for your students in their understanding of law and government and want to incorporate problem-based learning into this instruction.

- You took over a mock trial program from another coach and are unsure about what you need to do.

- You already started a mock trial program and are looking for ways to improve your team and their understanding of how to break down and apply case materials.

You are not alone!

There are many coaches in the same boat as you. Everyone started from scratch at some point. As the old axiom goes, "You don't know what you don't know," and this holds especially true with coaching a high school mock trial team.

This manual is designed as a practical guide to help you implement mock trial as a project-based learning experience in your school or homeschool community. Mock trial is fantastic! But like any good education program, mock trial is only as good as the teacher's understanding of the goals, scope and sequence, and eventual results to be demonstrated by her students.

You're an educator … you can do this!

An educator's worst fear is setting up their students for failure. We wrote this manual from an educator's perspective. While the competition aspect of mock trial is exciting, what really matters is that your students understand the importance of access to justice in our society.

So welcome to mock trial!

You and your students are going to have a great time learning about the importance of access to justice! The legal professionals and educators of the Virginia Law Related Education Institute cannot wait to see you and your students in action!

Chapter 1
Incorporating Mock Trial as an Educational Tool

A. Program overview

The goal of the Virginia High School Mock Trial Program is to provide students with a law-related educational activity that focuses on:

- Increasing understanding of the judicial process and access to justice
- Developing and refining speaking, listening, writing, and analytical skills
- Encouraging teamwork, cooperation, and respect for fellow teammates, and
- Furthering an understanding of law-related education

During the program, teams of six to ten students prepare their solution to a mock trial problem and present their solution in a trial court setting. Teams compete at one-day regional competitions, with the top teams advancing to a two-day state competition. The winner of the state competition advances to the National High School Mock Trial Championship.

B. The mock trial GRASP

Goal: To represent both sides of an American civil or criminal law case at trial.

Role: Students assume the role of one of three trial attorneys or one of three witnesses who will testify in support of their case at trial.

Audience: The jury that decides the case and the presiding judge.

Situation: A civil or criminal case is ready for trial. Witnesses have been called to testify about what they know, but not everything they know is good for their side. Can the lawyers and witnesses convince the jury that their client should win?

Purpose: Well prepared attorneys who knows the rules of court provide their clients with the best opportunity to obtain justice. Only one side can prevail, but everyone wins when all parties have access to a fair and impartial trial.

C. Standards and criteria for success

The results of a mock trial project can be objectively graded using a standard rubric (*Figure 1.1*) and scoring sheet (*Figure 1.2*). The goal for each team is not to win the case on its merits, but instead to demonstrate their understanding about access to justice within five aspects of a trial:

1. *Opening statements*: When an attorney provides a case overview; mentions the key witnesses, states the relief requested; and provides a clear and concise case description.

2. *Direct examinations*: When attorneys present properly phrased questions (who, what, where, when, how, and why); use proper courtroom procedure; demonstrate an understanding of the issues and facts; properly introduce evidence; and defend objections in clear and concise terms.

3. *Cross examination:* When attorneys use leading questions; properly impeach witnesses; raise proper objections with clear reasoning; know and use the Rules of Evidence and not overuse objections; and shows courtesy to the opponent.

4. *Witnesses*: When factual or expert witnesses provide testimony at a trial, and in doing so, act credibly; are prepared for trial, understand the facts; respond spontaneously to the attorneys; are poised, and observe courtroom decorum.

5. *Closing Arguments*: When an attorney summarizes the evidence; emphasizes the supporting points of their case and weak points for the opponent; concentrates on the important (not trivial), parts of the case, applies the applicable law; and respond to any questions from the judge with poise.

Figure 1.1 – Standard Rubric

POINTS	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, ineffective in communication.
3-4	Fair	Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of task and materials. Communications lack clarity and conviction.
5- 6	Good	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case, but does not convey mastery of same. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials.
9-10	Outstanding	Superior in qualities listed for "Excellent" rating. Thinks well on feet, is logical, kept poise under duress. Can sort out essential from the nonessential and uses time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

Figure 1.2 – Sample Ballot

Ballot		Prosecution	Defense
Opening statements			
Prosecution first witness	Direct Examination		
	Cross Examination		
	Witness Performance		
Prosecution second witness	Direct Examination		
	Cross Examination		
	Witness Performance		
Prosecution third witness	Direct Examination		
	Cross Examination		
	Witness Performance		
Defense first witness	Direct Examination		
	Cross Examination		
	Witness Performance		
Defense second witness	Direct Examination		
	Cross Examination		
	Witness Performance		
Defense third witness	Direct Examination		
	Cross Examination		
	Witness Performance		
CLOSING ARGUMENTS			
TEAM TOTALS (add scores in each column)			

D. <u>Enduring understanding and alignment with state standards</u>

The goal of the Virginia High School Mock Trial Program is for students to appreciate the importance of access to justice in American society. We achieve our mission when students leave our program with the following enduring understanding:

> *A fundamental protection for citizens in an open society is the right to appear in court with counsel, whether a citizen can afford to do so or not, as well as the right to be afforded an equality of outcome, no matter a citizen's social, political, gender orientation, or economic situation.*

This enduring understanding lends itself to a variety of curriculum objectives as set forth by the Virginia Department of Education. Traditionally, mock trial is linked to Virginia and American Government standards (*Figure 1.3*). But, access to justice can be explored throughout the high school curriculum. For example, the entirety of the English 9.1 VDOE curriculum standard is capture by the mock-trial project-based learning experience (*Figure 1.4*).

Figure 1.3 – Virginia and American Government Objectives covered by mock trial

VA.GOVT.1a:	The student will demonstrate skills for historical thinking, geographical analysis, economic decision making, and responsible citizenship by planning inquiries by synthesizing information from diverse primary and secondary sources
VA.GOVT.1d:	The student will demonstrate skills for historical thinking, geographical analysis, economic decision making, and responsible citizenship by evaluating critically the quality, accuracy, and validity of information to determine misconceptions, fact and opinion, and bias
VA.GOVT.1j:	The student will demonstrate skills for historical thinking, geographical analysis, economic decision making, and responsible citizenship by communicating conclusions orally and in writing to a wide range of audiences, using evidence from multiple sources and citing specific sources.
VA.GOVT.4d:	The student will apply social science skills to understand the Constitution of the United States by defining the structure of the national government outlined in Article III.
VA.GOVT.7a:	The student will apply social science skills to understand the organization and powers of the national government by examining the judicial branches
VA.GOVT.8a:	The student will apply social science skills to understand the organization and powers of the state and local governments described in the Constitution of Virginia by examining the judicial branch

The same holds true for a multiple variety of objective inflection points, including, but not limited to,

- Exploring how access to justice impacted the advance of the civil rights movement in an American History class;
- Analyzing how the absence of access to justice brought about a fundamentally unfair result for Tom Robinson in *To Kill a Mockingbird*;
- Synthesizing knowledge of physics and motion in a car accident case; and
- Determining the impact of pollutants on the cellular level in a toxic torts case.

Figure 1.4 – VDOE English 9.1 Standards and mock trial project-based learning connections

The student will make planned oral presentations independently and in small groups.

Include definitions to increase clarity.	Opening statement
Use relevant details to support main ideas.	Opening statement and direct examination
Illustrate main ideas through anecdotes and examples.	Closing argument
Use grammatically correct language, including vocabulary appropriate to the topic, audience, and purpose.	Witness testimony
Use verbal and nonverbal techniques for presentation.	Attorney and witness presentation
Evaluate impact and purpose of presentation.	Cross examination and closing argument
Credit information sources.	References to exhibits
Give impromptu responses to questions about presentation.	Objections and responses to objections
Give and follow spoken directions to perform specific tasks, answer questions, or solve problems.	Understanding trial procedure
Use a variety of strategies to listen actively.	Attorneys listening to testimony; witness listing to questions
Summarize and evaluate information presented orally by others.	Closing argument
Assume shared responsibility for collaborative work.	Team preparation of solution and delivery at trial

E. <u>Mock trial in the classroom or as a club</u>

Coaches sometimes struggle with how best to implement mock trial as a project-based learning experience. Should mock trial be used as part a yearly a curriculum? Or should you run an afterschool club to install in your students an appreciation for access to justice?

The answer depends on your goals as a coach.

- Mock trial in the classroom works well if you focus on a specific grade-level objective. Each year new students experience access to justice through your curriculum.
- Mock trial as a club works well if you focus on teaching access-to-justice across the curriculum. Students work during their high school careers to gain a mastery of the analytical process and the technical skills needed to provide their client access to justice.

Mock trial as a club is also proper for teams looking to compete at a higher level.

F. Program pacing and the end game

The hardest thing faced by an educator tasked with teaching a new curriculum is determining pacing. How long do I have to get to the end? How much time will it take to finish a section?

Registration for the Virginia High School Mock Trial Program starts September 1st. Take note that many schools are not yet in session at that time. Some schools or a homeschool community may wait to register until they have enough student interest.

Regional competitions occur on a Saturday in late January or early February. Your students present their mock trial solution during three rounds of competition against other teams. Up to twenty teams from throughout Virginia advance to the state competition. *It is imperative that students know all competition dates in advance so that they can plan accordingly.*

Attorneys earn their keep by "building a case" for their client, and provide access to justice by:

- Learning the facts of the case and applying them to the law (Chapter 2)
- Determining the best way to win the case (Chapter 3 and 4), and
- Practicing the delivery of that case at trial (Chapter 5).

We recommend that you spend approximately one-third of your time on each section.

As for the end game, the level at which you want your team to demonstrate their achievement is up to you! In other words:

- Your students need to be able to present their basic case-in-chief at the competition
- Do not compare your team to other teams, and
- You decide what constitutes a mastery of the facts, procedures, and rules of evidence.

G. Program sequencing

There are multiple methods to sequence this program. These three common methods are:

- The *team analysis method* is a holistic approach to the program, in which students (1) analyze and synthesize the problem as a team, (2) are assigned roles and design their solution as a team, and (3) practice their solution.

- The *role analysis method* is the traditional approach to mock trial, in which students (1) are assigned roles, (2) work in small teams or individually to analyze and synthesize the problem, and (3) use the practice portion of the program to solidify their solution.

- The *hybrid method* (1) assigns student roles, (2) allows students to create a solution while analyzing a problem, and, (3) uses the practice portion of the program to solidify their solution.

This manual is designed around the *team analysis method*, but it is also designed to allow you flexibility on how to move forward with the program. Choose the path that best fits your teaching style and the learning styles of your students. Create scaffolding and supporting educational materials. How your students reach the end game is entirely up to you!

Chapter 2
Analyzing the Problem

A. Setting expectations

You know a lot more than you think about the American legal system. From TV courtroom dramas to cases unfolding in real time on the Internet, we all know what this looks like.

Your students also know a lot about the legal system, and like you, they have preconceived notions about mock trial. Many teams are ready to "play courtroom" only to quickly dislike the project. Students quit teams once they "learn there is a lot of work" or dislike the experience until they "compete for the first time."

Mock trial is first and foremost an educational experience. Like any curriculum, it takes proper planning, expectation setting, and appropriate scaffolding for students to enjoy the journey to the solution. If your students are not enjoying the journey, how can they learn the concepts you are trying to teach them?

Our suggested starting point is to set forth the following expectation:

Access to justice starts in the lawyer's office, not at the courthouse.

The value of a good attorney is in his or her ability to understand a case, come up with a solution, and use his or her skills to present the client's case clearly and convincingly at trial. It is also important that your students do the work from the start. Many coaches give students the answers, when the point is for students to learn as they move forward. No one gives attorneys the answers. And, if you are not careful, you will do all the work!

B. The initial reading

The first thing your students should do is read through the mock trial problem together. A new problem is presented each year. If a case is a criminal trial one year, the case next year will be a civil trial (and vice versa). This adds a challenge as the trial switches the burden of proof from a preponderance of evidence in a civil trial to beyond a reasonable doubt in a criminal trial.

The mock trial problem consists of the following sections:

- The *Statement of the Case* introduces the problem and provides basic facts such as the incident that happened, when and where it occurred, and what the prosecution/plaintiff alleges is the defendant's responsibility. Also included are the reasons why the defense believes they are not responsible for what happened. Witnesses for each side are listed, and they are usually given gender-neutral names so that they can easily be portrayed by any team member.

- *Special instructions* contain a list of important information and guidelines for teams. Teams are bound by these instructions and an attempt to circumvent them is a violation of mock trial rules. If instructions are given, they will contain information about what teams may use as part of their solution outside the four corners of the problem.

- A *Stipulation of facts* provides a list of statements that both parties in the case agreed to prior to trial. This often applies mostly to simple facts, like agreeing that the materials presented in the exhibits are what they purport to be. This is also where it states that both parties agreed to the instructions provided to the jury. It is important to read through the stipulation of facts because it can help you formulate your team's solution.

- *Witness statements and affidavits* make up the bulk of the problem. Each witness has a roughly three to four-page statement regarding the incident that occurred and what they knew of the defendant or situation prior to the incident. Witnesses are 100% bound to their statements. Witnesses cannot create facts outside of the scope of these statements, particularly if it will aid in shifting the balance of the case to their side. If a witness makes up information that shifts the balance of the case, their statements can be objected to on the grounds of "unfair extrapolation" and considered a rules violation.

- *Expert witness reports* are usually longer than witness statements and set forth an explanation of the facts presented to the jury. An expert witness will have a curriculum vitae (resume) to set forth her qualifications. While questioning an expert about her qualifications (*voir dire*) is not permitted by rule, several questions regarding an expert's background should be asked prior to proffering the witness as an expert. Likewise, opposing attorneys should look for reasons why the expertise of the witness is being called into question, and therefore, why her report may not be entirely valid.

- *Exhibits* are signs, pictures, or diagrams of objects pertinent to the case. Per the stipulation of facts, both sides of the case agree to the exhibits and no additional exhibits may be entered into evidence. Teams may be provided poster boards with blown-up pictures of the exhibits at trial. Before being used in trial, exhibits must be officially entered into evidence. It is up to your team to decide what evidence is relevant to your case and how and when you plan to utilize each exhibit.

- *Legal precedent* consists of jury instructions or case law that, per the stipulation of facts, are agreed upon by both parties. Legal precedent usually contains the alleged crime or claim by the prosecution/plaintiff, and the level of burden of proof required to prove that claim. Additionally, legal precedent will set out findings that must occur for a jury to rule in favor of one side or another. There are also definitions for some legal terms that are provided to aid the jury in their deliberations.

The best place for your students to start their journey is by learning the legal precedents.

C. Breaking down the legal precedent

This is the most overlooked part of the mock trial experience. Attorneys provide clients access to justice because they are trained to analyze and apply the law. Breaking down a law is also a great way to challenge your student's analytical abilities while working as a team.

Look at *figure 2.1* and see if you can break down this state statute:

Figure 2.1 - Code of Virginia Section 18.2-77. Burning or destroying dwelling house, etc.

A. If any person maliciously (i) burns, or by use of any explosive device or substance destroys, in whole or in part, or causes to be burned or destroyed, or (ii) aids, counsels or procures the burning or destruction of any dwelling house or manufactured home whether belonging to himself or another, or any occupied hotel, hospital, mental health facility, or other house in which persons usually dwell or lodge, any occupied railroad car, boat, vessel, or river craft in which persons usually dwell or lodge, or any occupied jail or prison, or any occupied church or occupied building owned or leased by a church that is immediately adjacent to a church, he shall be guilty of a felony, punishable by imprisonment for life or for any period not less than five years and … a fine of not more than $100,000. Any person who maliciously sets fire to anything, or aids, counsels or procures the setting fire to anything, by the burning whereof such occupied dwelling house, manufactured home, hotel, hospital, mental health facility or other house, or railroad car, boat, vessel, or river craft, jail or prison, church or building owned or leased by a church that is immediately adjacent to a church, is burned shall be guilty of a violation of this subsection.

B. Any such burning or destruction when the building or other place mentioned in subsection A is unoccupied, shall be punishable as a Class 4 felony.

There is a lot going on here! Yet students are already prepared to undertake this activity. The best strategy is to break down a law in a mock trial problem is asking "newspaper questions,"

- Who does the law focus on?
- What is the law addressing?
- When must a person do what is required?
- Where must a person do what is required?
- How must a person do what is required? and
- What happens if a person does these things?

So, what is the breakdown of the statute in *Figure 2.*1?

- Who does the law focus on? *Any person*
- What is the law addressing? *(i) Burning, or by use of any explosive device or substance destroying, in whole or in part, or causing to be burned or destroyed, or (ii) aiding, counseling or procure the burning or destruction of something*
- When must a person do what is required? *It does not say! so we assume anytime*
- Where must a person do what is required? *At any of several defined building types*
- How must a person do what is required? Maliciously
- What happens if a person does these things? They are guilty of a felony, punishable by imprisonment for life to not less than five years and a fine of not more than $100,000

What about in a civil case? Look at *figure 2.2* to determine the breakdown is a negligence case.

Figure 2.2 - From Burn v. Gagnon (Supreme Court of Virginia 2012 (citations omitted))

> "Negligence," we have long said, "is not actionable unless there is a legal duty, a violation of the duty, and consequent damage."
>
> "when a parent relinquishes the supervision and care of a child to an adult who agrees to supervise and care for that child, the supervising adult must discharge that duty with reasonable care."
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if his failure to exercise reasonable care increases the risk of such harm.

This statement of the law may look harder, but it breaks down the same way,

- Who does the law focus on? A supervising adult, defined as one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things
- What is the law addressing? Negligence
- When must a person do what is required? Only when it is actionable, aka, there is a legal duty, a violation of the duty, and consequent damage
- Where must a person do what is required? When one undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things
- How must a person do what is required? With reasonable care
- What happens if a person does not do these things? They are liable for any physical harm resulting from their failure to exercise reasonable care in taking care of children

Understanding a law is a classic analytical task. But laws are complex, and your students will need guidance to steer them in the right direction, without being provided the answers.

Use these best practices as you guide your team during this part of mock trial.

- Teach your students how to break down a law first by using the above examples
- Allow students to work in small groups as they break down relevant laws
- Make sure to give students plenty of time and guidance as they move forward, and
- Allow students to research the internet to gain additional understanding about the law

D. Breaking down the facts

Now that we know the law, it's time to apply the facts! Facts are embedded into a mock trial problem as either witness statements or exhibits. There are often many facts to consider, and the goal is to pair those facts with one of two primary issues:

- Does the fact support or not support an element of the relevant law?
- Does the fact impact the way that we look at the credibility of the evidence?

This is not as easy as it sounds. The problem is that student's form opinions about a witness's credibility before fully analyzing the witness's statement. This may cause students to make ill-informed judgments about what they are analyzing.

Read fact pattern *Figure 2.3*, which relates to the arson statute in *Figure 2.1.* You can assume that the witness will be called by the prosecution in support of their case,

Figure 2.3 – Police Statement

Witness statement of Pips McMannis (February 21st)
King's Grant County Police Department

My name is Pips McMannis. I am 63 years old and live near Joe's Barn. You see that I obviously wear glasses, but only for reading I tell you. On February 12th at around 8:00 PM I was outside on my porch when I heard a noise coming from near the barn. I saw Joe Johnson near the barn, where he looked like he was trying to light a fire. Joe was awfully close to the barn, and he seemed to be, you know, sneaking around and moving wood towards the barn door. Then I saw Joe pour something out of what looked like a gas can. Joe then walked away … and all the while … a lightning storm was moving in! Dang, I know that we all think Joe is a fool, but a criminal? Wow! Later that night the fire department was right there!

Did you decide that Joe Johnson is guilty as charged? Or did you assume that Pips is an unreliable witness? Students want to make these decisions on the spot. Let's look at the same fact pattern neutrally using the graphic organizer in *Figure 2.4*:

Figure 2.4 – Pips McMannis factual breakdown

Witness name: Pips McMannis Witness for: The prosecution		
Fact	Element of the law	Credibility determination
63 years old and lives near Joe's Barn		His age (might be good or bad), and he lives close to the scene (good)
Wears reading glasses		Maybe he can't see well (bad), but they are reading glasses (good)
On February 12th at around 8:00 PM I was outside on my porch when I heard a noise coming from near the barn.		Witness statement is 8 days after the incident (bad), it was probably dark (bad), on porch and heard a noise near the bar (good)
I saw Joe near the barn, where he looked like he was trying to light a fire, and the fire department came later	A person A barn (one of the buildings named in the statute) Fire (burning)	Sight issue, are we sure that it was Joe? (bad)
Joe was awfully close to the barn, and he seemed to be, you know, sneaking around and moving wood towards the barn door.	Sneaking around and placing wood near the bar door (Maliciousness)	What does sneaking around look like? (good or bad). Was Pips already suspicious of Joe? (bad)
Then I saw Joe pour something out of what looked like a gas can.	Intent (malicious) Gas can (burning) Something? (uh oh … problem)	Again, issue with being able to see, (bad) but can anyone really tell? (good)
Joe then walked away … and all the while … a lightning storm was moving in!	Intent (malicious) Lightening (burning) It is a storm, he is getting out of it?	
Dang, I know that we all think Joe is a fool, but a criminal? Wow!		Does he not like Joe? Or maybe Joe is just a fool with no sense? And it does not sound like something Joe would do! (all bad). But he obviously knows Joe well (good)

Pips told us a lot in his statement! It appears that Joe did everything needed for him to be guilty of arson. But, other facts challenge if Pips can be totally relied upon to explain what really happened on the night of February 12th.

Breaking down the facts in a mock trial problem provides your students with the building blocks they need to design a solid, analytically-based solution. In other words, the more your students analyze the problem, the easier it will be for them to come up with a workable solution.

Use these best practices as you guide your team during this part of mock trial.

- Teach your students how to break down the facts by first using the above example.
- There are six witnesses in any mock trial problem; assign each witness to small groups of students and have them present what they learned to the team.
- See if the team can find the factual connection between the witnesses.

E. Tying it all together

So far, your students have focused exclusively on analyzing the mock trial problem. Now is a good time for your students to combine the information into one story. There are several ways to go about this. These are two traditional methods.

- *The timeline approach*: Students work together to draw out a comprehensive timeline of the case. Some teams use a whiteboard as their medium. Other teams use a long piece of bulletin board paper. Still other teams use a computer.

- *The outline approach*: Students work together to create a comprehensive outline of the case. Many teams rely on the outline as they move forward into planning their solution.

Whatever you decide, do not begin solving the problem until you are comfortable that your students have a solid grasp of the law and facts. There is time later for students to master the details, but it is time consuming to go back and relearn the basic legal and factual elements.

Now that your students have analyzed the case, it's time for them to come up with a solution! And, there is a good chance that your students already have something amazing in mind.

Chapter 3
Solving the Problem

A. Moving towards synthesis

Like practicing attorneys, your students learned the facts of the case first before going further. A good mock trial problem is dense with facts that often contradict ether other from witness to witness, exhibit to exhibit, or even within a single witness statement!

If done correctly, your team should have a working understanding of these concepts:

- An understanding of the controlling law of the case (what must be proved legally);
- An understanding of the burden of proof (how convinced must a jury be to find for you);
- An overarching understanding of the events of the case; and
- A solid grasp on the witnesses and their facts, as well as the exhibits and their meaning.

Now it is time for your students to solve the problem, and to do that, they must rely on both their analytical and synthesis skills. These concepts are not mutually exclusive, and no group of professionals knows that better than legal professionals!

Your students will solve the mock trial problem in two steps,

- Legally structuring the mock trial answer (legal analysis), and
- Factually structuring the mock trial answer (legal synthesis)

Legal analysis is taking the facts of the case and applying them to controlling legal principles. Legal synthesis is when students become creative. What types of questions need to be asked by an attorney to elicit the correct response from a client that supports your case?

Remember, all of what we are about to discuss needs to be done for both side of the case!

B. Legally structuring the mock trial answer

In mock trial, the primary sources of information are witness statements and supporting exhibits. Your team will also rely on the stipulation of facts and special instructions. The stipulation of facts set forth evidence that provides no advantage to either side. The special instructions may include possible advantages that you embed in your solution.

Let us use the breakdown of our arson statute (*Figure 2.1*) and apply it to Pips McMannis's statements regarding Joe Johnson (*Figure 2.*4) for our Legal analysis (*Figure 3.1*). Let us also assume this stipulation of facts: "the National Weather Service issued a thunderstorm watch for the area at 5:00 PM and a severe thunderstorm warning for the area at 7:50 PM."

Figure 3.1 – Legal Analysis

Case	Commonwealth v. Johnson	
	Plaintiff/Prosecution	**Defense**
Burden of Proof	We can prove that Joe did it beyond a reasonable doubt	Reasonable doubt exists in this case because of several issues
Things we need to show to judge/jury prior to end of trial to support our side of case	Any person – Pips saw Joe Johnson on February 12th 8:00 PM, as he lives near Joe's barn and heard a noise coming from the barn. Pips was stunned that Joe would do such a thing!	Any person – Is it really Joe? Pips is old and needs reading glasses, and is his account eight days after the incident something that was can trust? And it was dark! And, does Pips even like Joe? He thinks that he is a fool, plus he is stunned that Joe would commit a crime.
	A building – Pips saw Joe near the barn, which is covered by the law	A building – Yeah, there is nothing to help us here.
	A burning – Pips saw Joe looking like he was trying to start a fire, pouring something out of gas can, and the fire department was at the scene later	A burning – Burning what? How do we know that he was trying to start a fire? What was really in the gas can? Did he start a fire?
	Malicious intent – Pips saw Joe sneaking around and moving towards the barn door, saw him pour something out of what looked like a gas can, lightning storm moving in!	Malicious intent - What does "sneaking" look like? It was dark, maybe he was stumbling? Was he just being foolish, working outside in the approaching storm?
Stipulated facts	Weather report is a neutral fact	Weather report is a neutral fact
Advantages in special instructions (if any)?	None	None

Now that we analyzed how Pips's testimony will help or hinder both sides of the case, we can properly synthesize the questions we need to ask him at trial.

How does a team gain an advantage using special instruction? A recent Virginia mock trial problem allowed teams to admit as evidence an approved picture of the deceased party. While many teams thought nothing of this instruction, one team, which eventually won the competition, successfully used an approved picture when delivering their closing argument.

Use these best practices as you guide your team during this part of mock trial.

- Assign a witness statement to two small groups, with one group focusing on plaintiff/ prosecution and the other defense, then have the groups argue their side to the team
- Work as a team to uncover which witness will address what legal issue, as not every witness will have information that impacts everything legally

C. Factually structuring the mock trial answer

Congratulations! Your students successfully analyzed a mock trial problem. Your students learned the law and facts and analyzed how the law and the facts work together. They know what needs to be proven to win, and what they need to disprove on the other side.

Most of your team's solution will focus on their case-in-chief, in which your witnesses testify in support of your side of the case. The only way for witnesses to tell "your side of the story" is for your team attorneys to ask the right questions to the testifying witnesses.

You also get to ask the other side's witnesses questions during their case-in-chief. The goal here is not to tell "your side of the story," but is instead to discredit "their side of the story," either by challenging the witness's story or their credibility to testify in the first place.

As you can see, trials are a formal process regulated by formalized rules and procedures. Your students will need to learn and understand two courtroom resources:

- The *National High School Mock Trial Rules of Evidence* outline how evidence is presented at trial, including what makes evidence relevant, how to impeach a witness, how to refresh the memory of a witness, and what testimony constitutes hearsay. http://www.nationalmocktrial.org/files/1115/1387/0326/NHSMTC_Rules_of_Evidence_11-1-15.pdf.

- The *National High School Mock Trial Rules of Competition* set forth the procedures for trial. Many of these rules align with generally accepted rules of courtroom procedure. http://www.nationalmocktrial.org/files/6315/1387/0391/NHSMTC_Rules_of_Competition_12-1-17.pdf.

Rule 611 of the *Rules of Evidence* is the first rule your students will learn. This rule explains how attorneys should phrase their questions to witnesses. In general:

- Attorneys asking their own witnesses questions during direct examination ask open ended questions (Who? What? When? Where? Why?)

- Attorneys asking questions of the other side's witnesses questions during cross-examination ask leading questions (yes or no).

Let us use the legal analysis we completed in *Figure 3.*1 and following Rule 611 of the *Rules of Evidence* to formulate questions we will ask Pips McMannis at trial (*Figure 3.2*).

Figure 3.2 – factual structuring

Witness: Pips McMannis			
Fact that supports the witness's side of case.	Question(s) to ask on direct examination to elucidate the fact (direct examination)	Statements that do not support the witness's side of the case or may impact credibility (cross examination)	Question(s) to ask in direct examination to mitigate impact of negative facts (re-direct examination)
Any person – Pips saw Joe Johnson on February 12th 8:00 PM, as he lives near Joe's barn and heard a noise coming from the barn. Pips was stunned that Joe would do such a thing!	Where were you on the evening of February 12th? Who did you see that evening at 8:00 PM? Why did you look at him? How did you react when you saw what Joe was doing?	You wear glasses? You told the police about this eight days later? You saw Joe at 8:00 PM, so it was dark outside? You don't really like Joe because you think that he is a fool?	What type of glasses do you wear? When do you need to wear those glasses? You said that Joe is a fool, but what else did you say about him? Why were you stunned?
A building – Pips saw Joe near the barn, which is covered by law	Where was Joe standing?	Was it dark by the barn?	How did you see Joe?
A burning – Pips saw Joe looking like he was trying to start a fire, pouring something out of gas can, and the fire department showed up	What did it look like Joe was trying to do? Why did you think Joe was trying to do that?	You can't say for certain that Joe burned anything? You cannot tell us what Joe was pouring?	Why did you conclude that Joe was trying to start a fire? Why do you think that he was pouring gas?
Malicious intent – Pips saw Joe sneaking around and moving towards the barn door, saw him pour something out of what looked like a gas can, lightning storm moving in!	How was Joe acting as you watched him? What else was going on that made you think that Joe was trying to start a fire?	Sneaking could mean a whole lot of things? It was dark, maybe he was stumbling around because of it? Maybe Joe was just foolish, as you said, and was foolishly outside?	Why did you believe that Joe was sneaking around?

As you can see, a cross-examination question is a statement by an attorney that require a witness to provide a yes or no answer, not an actual question.

Also, as shown in the redirect column of *Figure 3.2*, an attorney may ask a witness a question that cannot be directly answered using the witness's statement or supporting exhibits. Rule 2.3 of the *Rules of Competition* guides how a witness can answer this type of question through "extrapolation" of a witness's knowledge beyond her statement. In general:

- A "fair" extrapolation is a neutral witness statement, which means that it is consistent with other statements and does not materially affect the witness' testimony or any substantive issue of the case.

- An "unfair" extrapolation is a biased witness statement, which means that it is inconsistent with other witness statements to the benefit of the witness's team.

For example, the question was asked in *Figure 3.2*, "Why did you believe that Joe was sneaking around?" One of these two statements are allowed under Rule 2.3:

- *Allowed*: "Well, he was walking around in the dark at night, around his dark barn, and there was a thunderstorm coming in. It seemed to me that he was trying to purposefully do things in the dark, and cover up what he was doing with the storm coming in."

- *Not allowed*: "Well, he was making sure that all of the lights were off near the barn. I saw him turning off the lights. And he was obviously trying to hide in the shadows, darting between hay bales and the tractor."

Attorneys will tell you that witnesses sometimes embellish their testimony or provide incorrect facts that they believe will help their case. The way to challenge an unfair extrapolation is to challenge a witness's credibility. Why did the witness not make these statements in her witness statement? An attorney who protects their client from an unreliable or untruthful witness provides their client with access to justice.

Use these best practices as you guide your team during this part of mock trial.

- Work in two-person groups to write out questions for a witness, then have the small group run through their questions and answers in front of the rest of the team.
- As one two-person group practices eliciting testimony, have another two-person group listen and try to quickly come up with leading questions to challenge the witness
- Advanced teams should review Rule 2.3 from a competition perspective and determine when, if ever, they may gain a competitive advantage using the rule in this way.

D. <u>Utilizing Exhibits</u>

Mock trial problems include anywhere from four to six exhibits. These exhibits are used by witnesses to support or explain parts of their testimony. Exhibits can be used during a round to

support a team's case-in-chief or to challenge the other side's story or credibility. It is up to a team if evidence should or should not be used as part of their overall case.

Let us look the evidence in *Figure 3.3* and see how we could use it to support or discredit the testimony of Pips McMannis:

Figure 3.3 – Exhibit A

King's Grant County Police Department
Evidence found at crime scene

Figure 3.2 – factual structuring (portion)

Fact that supports the witness's side of case.	Question(s) to ask on direct examination to elucidate the fact (direct examination)	Statements that do not support the witness's side of the case or may impact credibility (cross examination)	Question(s) to ask in direct examination to mitigate impact of negative facts (re-direct examination)
<u>A burning</u> – Pips saw Joe looking like he was trying to start a fire, pouring something out of gas can	What did it look like Joe was trying to do? *Exhibit A to support answer* Why did you think get was trying to do that? *Exhibit A is a red gas can*	You can't say for certain that Joe was burning anything? You cannot tell us what Joe was pouring? *Exhibit A is unmarked, "gas can" not written on it.*	Why did you conclude that Joe was trying to start a fire? *Exhibit A to support answer* Why do you think that he was pouring gas? *Exhibit A is a red gas can!*

Rule 4.20 of the *Rules of Competition* sets forth the procedure for admitting exhibits into evidence. In fact, the National High School Mock Trial Championships provide a script!

Use these best practices as you guide your team during this part of mock trial.

- Correctly entering evidence should be practiced; have all members of your team attempt to move an exhibit into evidence both as an attorney and a witness.
- Have a two-person group incorporate exhibits into their witness examination
- As a two-person group practices entering exhibits into evidence, have another two-person group challenged the entry of that evidence and its use by the witness.

E. Creating a theme for each solution

Your team analyzed the mock trial problem and synthesized how to elicit testimony from witnesses. Now it is time to take the last step – deciding on a case theme.

The case theme is a basic statement that both captures the jury's attention and focuses the jury on your overall case. The case-in-chief is essentially your client's story. The theme is essentially the title of that story, and everything that occurs at trial should relate back to it.

Case theme do not need to be complex. These are three examples of criminal trial themes:

- "Someone in this courtroom is lying." (prosecutor opening in *U.S. v. Manafort*)

- "Fact and fiction have furnished many extraordinary examples of crime that have shocked the feelings and staggered the reason of men, but I think not one of them has ever surpassed in its mystery the case that you are now considering." (defense opening in the *Lizzie Borden trial*)

- "The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility." (Opening statement in *Nuremburg Trial*)

It is important that your team come up with a theme for both their prosecution/plaintiff and defense sides of their case-in-chief. Once your team has their themes ready, it is time to apply that theme as the team designs its unique solutions.

Chapter 4
Assigning Student Roles

A. Getting the most out of roleplaying

Students love to roleplay! Whether it be a classroom debate, or acting out a Shakespearian play, students are highly engaged when they allowed to assume a role.

A good mock trial program taps into this valuable teaching tool. But all too often, students want to "play a part" simply because it is there. A student may wish to be an attorney, but their skills may align more with a witness. Or you may have a highly gifted student who wants to be a fact witness, but will grow tired of that part, and should instead be your expert witness. Assigning students proper roles enhances their mock trial experience, as well as facilitates the overall experience of all students participating in your program.

B. Playing in the Sandbox

Just like attorneys, your team must develop their solution around a series of mock trial rules and procedures. Again, trials are a formal process regulated by formalized rules and procedures. Your students will need to learn and understand two courtroom resources:

- The *National High School Mock Trial Rules of Evidence* outline how evidence is presented at trial, including what makes evidence relevant, how to impeach a witness, how to refresh the memory of a witness, and what testimony constitutes hearsay. http://www.nationalmocktrial.org/files/1115/1387/0326/NHSMTC_Rules_of_Evidence_11-1-15.pdf.

- The *National High School Mock Trial Rules of Competition* set forth the procedures for trial. Many of these rules align with generally accepted rules of courtroom procedure. http://www.nationalmocktrial.org/files/6315/1387/0391/NHSMTC_Rules_of_Competition_12-1-17.pdf.

Mock trial is like playing in a legal sandbox, with the edges set out by rules and procedures. How does this relate to access-to-justice? Attorneys use the rule to their client's advantage, but those same rules act as a hinderance for clients who represent themselves.

C. The makeup of a mock trial team

Mock trial teams consist of six to ten students[1] who create two structured presentations:

[1] The Virginia High School Mock Trial Championship allows ten total members per team. The National High School Mock Trial Competition limits a team to nine members. For additional information specific to the competition structure and rules of the Virginia High School Mock Trial Program, see the Mock Trial Handbook, https://govlre.org/media/documents/vhsmtc_handbook.pdf.

- One side that presents the merits of the case as the prosecution or plaintiff, and
- One side that presents the merits of the case in the position of the defense.

Teams present one side of the case against another team. Teams compete three times at the regional competition and four to five times if they qualify for the state competition. Teams are required to argue both side of the case at both the regional and state competitions.

D. Composition of a mock trial team

Seven of your students will assume one of these roles during each round of the competition:

- *Attorney #1* delivers the opening statement, directly examines one of your team's three witnesses and cross-examines one of the three witnesses on the other team

- *Attorney #2* directly examines one of your team's three witnesses and cross-examines one of the three witnesses on the other team.

- *Attorney #3* directly examines one of your team's three witnesses, cross-examines one of the three witnesses on the other team, and delivers the closing argument.

One attorney will introduce the team before the start of the trial. Attorneys raise and argue objections made during their questioning of witness. The attorney who handles objections is the one who is currently conducting direct or cross examination or delivering a statement.

- *Witness #1* receives direct examination questions from an attorney and is cross-examined by one of the opposition attorneys.

- *Witness #2* receives direct examination questions from an attorney and is cross-examined by one of the opposition attorneys.

- *Witness #3* is often an expert witness who receives direct examination questions from an attorney and is cross-examined by one of the opposition attorneys.

Two witnesses are usually fact witnesses. Fact witnesses were part of the event in question and/or have direct knowledge of the people involved with those events. The third witness is usually an expert witness. Expert witnesses guide the jury on issues of which the expert has special knowledge. Expert witnesses were not involved in the events leading up to the trial.

- The *Timekeeper* tracks time during the trial. A timekeeper, while very helpful, is not a necessary requirement to participate in mock trial.

Some students will not participate on both sides of the solution. A student may play the role of attorney on the plaintiff/prosecution side and not have a role on the defense side. There also

may be some students that have a role on both sides of a case, such as a student who is an attorney on the prosecution/plaintiff side and a witness on the defense side.

E. Selecting roles for students

You and your students should already have a good idea about what role(s) they want to assume. But, you as coach need to keep the following in mind when moving forward:

- All students have strength and weaknesses; differentiate your students accordingly;
- High school students are notoriously overscheduled; make sure you leave room in your schedule to accommodate missed practices; and
- Take care to get your team to the highest level of achievement that they can practically reach; position your students to succeed at a level at which you are comfortable.

Each role type requires the same amount of diligence from students. But, certain role types require students to possess the following strengths and skills:

- *Attorneys* present the overall case to the factfinder. These students view a case from "the top down," using their analytical mind to organize multiple facts and deliver a logical and convincing case to the factfinder. Students must also use the *Rules of Evidence* and *Rules of Procedure* to their advantage and think critically as a team.

- *Fact witnesses* present specific information to the factfinder. Students view the case from "the ground up," using their creative mind to present specific information realistically to the factfinder, a.k.a., creating a persona. These students need to not just know the information, but also act it!

- *Expert witnesses* present specific information to the factfinder, but they also develop an actual expertise on their respective topic. These students are both analytical and creative, researching the terms, methods, and skills of their field to develop a deeper understanding of their role. An expert knows what everything means in their report.

- *Timekeepers* know the competition rules and keep time using stopwatches for multiple parts of a trial at once. Timekeepers can use signs to alert attorneys when they are close to the allotted time for each segment trial segment.

F. The audition process

Selecting roles is like auditioning students for a play. The difference is that this play is written by the students themselves using the facts of the case and courtroom procedure as their guide.

There is a strategy to assigning roles. For example, it may benefit a student attorney to directly examines a witness on one side of a case and cross-examine that same witness on the other

side of the case. Or, if a student can handle different roles, have that student play a witness on one side of the case and the attorney who cross-examines that witness on the other side.

It is also highly recommended that everyone auditions for a role each year. Allow veteran students to audition first to serve as exemplars for others. By requiring all students to audition, you as a coach continue to show that students are working together to complete this program.

Whether you have enough students to form two teams, or you are working with only six students, the audition process is an important part of the program. While the method in which you educate your students is up to you, we recommend two audition methods:

- *Method one* is best used with teams that already completed the analysis and initial synthesis portion of the program. Two students rely on a selected legal and factual breakdown and assume the roles of attorney and fact witness. As a pair, the students develop and deliver a direct examination. The student auditioning as a lawyer is also asked to prepare a short opening statement based on prior analysis and synthesis.

- *Method two* is best used with teams that assign roles first. Students receive a stipulation of facts and one witness statement/affidavit from a prior problem. Students prepare direct examination questions based on the witness statement. A student auditing for a witness role is asked by a coach or veteran student direct and leading questions to determine their skill level. A student auditioning for an attorney role also prepares an opening statement based on the stipulations. That student delivers their opening statement, asks a few direct examination questions to you, and is given a basic test on the rules of evidence.

Whatever method you choose, as an educator you should put students in the best position for them to demonstrate what they learned about access to justice.

Chapter 5
Designing your solution

A. Keeping the team concept alive

Your students did a lot to get to this point! They worked as a team to analyze and solve the mock trial problem together. They all know the solution, and most importantly, they own it!

No matter how you sequence your program, now is not the time to assign student roles and let everybody go their separate ways. Access to justice requires that attorneys work with their witnesses, staff, and other attorneys to secure the best outcome for their clients. Working as a team often leads to the best result in the courtroom and at a regional or state competition.

The best way to keep the team concept alive is to focus on your theme. Your theme should run through the entire case and eventually lead to one unified solution.

A. The opening statement

The opening statement is the foundation for your solution. A good statement does not just state the facts. Instead, as explained at the *37th Annual National Trial Advocacy College* in 2018, an opening statement "is an argument", but "it is not argumentative."

The opening statement is almost always 100% scripted. Unless an attorney says something completely out-of-bounds, most statements are delivered without objection. The same holds true for mock trial, except no objections are allowed by rule (see Rule 4:17 of the *National High School Mock Trial Rules of Competition* on objecting to opening statements post-delivery).

We recommend that students draft opening statement in one of two ways:

- *The team method* requires the team to work together and craft an opening statement by consensus, from which students develop the rest of their solution.

- *The individual method* requires one or two attorneys to draft an opening statement, which is then shared and critiqued by the rest of the team and redrafted

Using either method requires your student to surrender their "author pride" to reach an agreeable compromise, just like what happens in many law offices.

In a Virginia mock trial competition, an attorney has 5 minutes to present their opening statement. A well-drafted opening statement will include the following components:

- A story or "hook" to introduce your case, usually modeled after something in the statement of facts in the case materials and incorporating the theme.
- A backstory as to the events that occurred up to the incident on trial.
- An explanation to the jury what your side is encouraging them to find, including a description of the burden of proof in a case.
- A description of each witness presented by your side and what they will describe that supports your position.
- A description of what the opposition side may try to say, including a description of what to expect to hear from each opposition witness and how their testimony either supports the position or should be disregarded.
- A recap of the case, possibly including a second statement of their sides theme, and
- A reminder to the jury that at the end, an attorney is going to come back up in front of them and ask to show that the burden of proof lies in their favor.

This is a lot to cram into five minutes! Not only that, but everything at trial must align with your opening statement. Let us look back at *Figure 3.2* and see how your students can structure their opening statement. (*Figure 5.1*):

Figure 5.1 – Prosecutors opening statement in Commonwealth v. Johnson

Section	Statement	Supported by
Hook	You know the old saying where there's smoke, there's fire? Well, in this case, where there's sneaking, there's arson. May it please the court, my name is Jane Doe, and I represent the prosecutor in the case of Commonwealth v. Joe Johnson, the defendant. Today, we will prove to you beyond a reasonable doubt that, where there is sneaking, in this case by the defendant as he set his barn on fire, there's a crime happening.	Supported by Pips McMannis's statement that Johnson was sneaking around the barn.
Backstory	February 12th at 8:00 PM. It was a dark evening in the middle of winter. That is the night that Pips MicMannis, the defendant's neighbor, was at home. Pips, who knew the defendant, was enjoying the evening on his porch, which faces the defendant's barn. When he heard a noise in the dark near the barn, Pips took notice.	Pips saw Joe Johnson on February 12th 8:00 PM, as he lives near Joe's barn and heard a noise coming from the barn. Pips knew Joe and thought that he was a fool

Explanation	Do you know what Pips saw? There was the Defendant, trying to set his barn on fire! The defendant was sneaking around his own barn, carefully moving wood into the barn door, then pouring gasoline on the wood out of a gas can. And not only that, but Joe was going to use the weather to cover his tracks, as a lightning storm, previously announced by the weather services, was moving in. Can you believe it? A man trying to burn down his own barn in the middle of the night? But, what did Joe really see? He saw a crime happening right before his eyes – he saw Pips commit arson. He saw the defendant, purposefully and maliciously moving around his barn, a structure, getting flammable materials, and pouring gas on those materials, to start a fire. And Joe was going to use Mother nature, a lightning storm, to cover his tracks, but Pips knew better when he saw the fire department at Joe's barn later that night. Not only can we prove that the Defendant committed arson, we can prove it beyond a reasonable doubt, meaning that you would need to look at the facts unreasonably to come up with any other conclusion, that Joe maliciously and purposefully set his barn on fire. We even have the gas can in our possession.	Pips saw Joe near the barn Pips saw Joe looking like he was trying to start a fire, pouring something out of gas can Pips saw Joe sneaking around and moving towards the barn door, saw him pour something out of what looked like a gas can Gas can exhibit Agreed facts about the weather Arson statute and burden of proof Gas can
Witnesses	How do we know all of this? Pips McMannis, that's how. Pips saw the whole thing unfold right in front of him. Pips saw the defendant maliciously sneaking around his own barn, maliciously moving wood into place, maliciously pouring gas on the wood, and maliciously doing all of this during a lightning storm. Pips was stunned at what he saw! That's how we know.	Pips's testimony supports these facts.
Opposition	Now, you will hear from the defendant's attorneys, and they will try and cast doubt in this case. They will say that it was dark. They will say that Joe could not see anything. They will say that there is no way we can prove what the defendant was thinking. They will say that Joe does not like the defendant. They will even point out that Pips did not see Joe burn anything. But, they are grasping at straws, and there is no way that the defendant is anything but guilty.	Pips wore glasses Pips called Joe a fool Pips didn't see a burning What is "sneaking?"
Recap	So now you see it. where there's sneaking, there's arson. The law does not allow people to maliciously burn down a building, even if it is their own barn. As you listen here today, listen and see this crime happen in front of you, through the testimony of Pips McMannis.	Argument of what occurred

Reminder	At the end of this trial, you will hear from my colleague John Doe, and he will argue why you must rule for the prosecution, for the law, for justice. A crime happened on February 12th at 8:00 PM. Don't let the defendant get away with it.	Argument of what occurred

Remember, your opening statement must line up your direct examination, cross examination, and closing argument.

B. Direct and Cross examination

You already synthesized questions for direct and cross examinations. But, drafting questions is only part of presenting your mock trial solution.

On *direct examination* your team has a total of 25 minutes to examine your three witnesses. Your team must examine all three witnesses, but the order of examination and time spent on each witness is a strategic decision.

You also need to make a strategic decision about how each witness with testify at trial. In other words, how will that witness appear on the stand as part of your solution. For example:

- If a witness has credibility issues, how will a student limit those credibility issues based on their demeanor? Or do they play up their bad character traits?
- If a witness is accused of a violent crime, how will a student act to seem safer?
- If a witness is an expert, how will a student appear and act scholarly as warranted?

You cannot change the testimony of your witness, but you can positively impact your solution by assuming a persona that demonstrates access-to-justice. For example:

- Is your witness someone who is comfortable in a suit or simpler clothing?
- Is your witness highly educated or plain spoken, or plain spoken yet highly educated?
- Is your expert an academic, or was the expert called for their technical expertise?

See Rule 4:11 of the *National High School Mock Trial Rules of Competition* for specific guidance on the limitations of witnesses in presenting your solution. But remember, the sky's the limit in creating a witness's demeanor, accent, attitude, and anything else within the competition rules. The scope and sequence in asking questions is equally important. Access to justice may be denied at trial simply because someone did not know how to tell "their side of the story." It is up to the attorney and witness to work together to develop a narrative as follows:

- The witness is the "star" of direct examination, presenting credible evidence to the jury.
- The attorney guides the witness to provide structured, understandable, and credible testimony.

On *cross examination* each side is given 20 minutes to challenge the other side's witnesses. The attorney and witness are adversarial, and each party must anticipate the questions to be asked and the answers given. During this part of the trial:

- The attorney is the "star" of cross examination, using leading questions to challenge the witness's story, as well as damage her credibility if possible.
- The witness's role is to defend both her story and her credibility as much as possible.

Again, teams must consider their sequence of questions, but they must also consider how to approach a witness based on a witness's demeanor. And, it is easy to deny your client access to justice by asking the wrong question or one too many questions to an adversarial witness.

Additionally, every direct and cross examination question must be allowable under the *National High School Mock Trial Rules of Evidence* or the other team can object to the question. But, there is a strategy to using the using the *Rules of Evidence* during a trial as well:

- Ask leading questions on direct examination to move the examination forward;
- Ask direct questions on cross examination to allow a witness to clarify their testimony prior to challenging their story or credibility;
- Know the *Rules of Evidence* is important, as attorneys often attempt to ask questions beyond the rules, hoping that the other side does not object to the question; and
- Strategically place properly formulated and timed objections, as objecting to everything may be frowned upon by the court as a waste of time.

Attorneys may rephrase their question if an objection is sustained by the judge. Too often, an attorney will abandon a great question simply because of an objection. There are also rules for admitting evidence at trial. Rule 4.20 of the *Rules of Competition* sets forth a scripted procedure for admitting exhibits into evidence.

Drafting successful questions is probably the most difficult part of designing a mock trial solution. Even attorneys sometimes struggle to properly sequence how they will question their witnesses, much less how they will question adversarial witnesses.

Figure 5.2 and *Figure 5.3* provide best practices to help you develop successful direct and cross examination questions. *New teams should focus on the first set of best practices*.

Figure 5.2 – Best practices for drafting direct examination questions

Forming the narrative

- Questions and answers should form a narrative that supports the solution.
- Highlight the important points for your side; your story needs to lead to an important point.
- Each element of the story should lead to the next element to help the jury understand the story, which means that, as much as possible, ask questions in chronological/sequential order.
- Help the jury understand your witness's facts/opinions to support your legal argument.
- There should be a clear connection between the question and your narrative.
- Questions should connect to each other to form a narrative.
- Answers should connect or transition to the next question.
- Direct examination on average can be completed in approximately 20 questions, with a total time of questioning and answering at about 7-8 minutes.

Drafting individual questions

- Most answers should directly answer the question (in less than one sentence) and be followed by an explanation (if required) by the question.
- Break apart the witness's testimony; most answers should be between 2 and 3 sentences; answers should rarely be longer than 5 sentences.
- Every question/answer needs to relate to an important point in the case; do not include irrelevant information.
- Back up all statements with evidence, as your witness must has personal knowledge of the subject matter being discussed, or he or she cannot testify to that subject matter.
- Trace everything in your direct examination back to your theme.
- Be prepared to reference back to the mock trial problem to support a question.

Character and credibility

- The development of a witness's character is encouraged, so long as it does not detract from the jury's ability to understand the witness.
- Questions to establish a witness' character or background are acceptable, so long as it eventually ties into testimony about the important points of the case.
- Opinions are acceptable so long as the witness can give his or her opinion under the *Rules of Evidence*, but make sure that the witness explains his or her opinion and how he or she arrived at it.
- Some witnesses are in a better position to testify about the facts than other witnesses.
- Don't try to explain the entire case in one direct examination, but instead focus on the facts and important points that the witness can articulate well.
- Admitting wrongdoing or "bad facts" on direct examination helps to mitigate the damage to your witness's credibility on cross examination.
- Use language that a jury would understand, not overly legalistic language.
- For expert witnesses, review the expert's qualifications and then proffer the witness as an expert to the court.

Figure 5.3 – best practices for drafting cross examination questions

Cross examination basics

- Cross examinations can either be "constructive" or "destructive" (or both in some cases).
- A constructive cross examination elicits evidence that is helpful to your side.
- A destructive cross examination looks to discredit and detract from the evidence presented by the other side (including by discrediting the witness).
- There is no narrative; either pick apart certain specific pieces of evidence or elicit certain evidence to either poke or fill in holes in the case, respectively.
- Unlike in a real trial, your cross examination does not have to pertain to the subject matter contained in the direct examination of the witness you're crossing, and you can ask questions on any topic of which the witness has knowledge.
- Organize sets of questions into "pockets" that consist of questions on a single topic/issue.
- Your cross should have 2-3 pockets of questions each with around 5 to 10 short questions, lasting for a total of 5 to 6 minutes.

Drafting individual questions

- Keep the questions closed-ended so that they require only simple "yes" or "no" answers.
- Suggest the answer you want to hear in the question by leading the witness.
- Phrase your questions as statements/facts (i.e. "You were at the scene of the crime." instead of "Were you at the scene of the crime?").
- Don't ask the question unless you know what the answer will be.
- Ask specific questions, so you do not give the witness "wiggle room."
- Every question must relate to an important point in the case, not irrelevant information.
- Questions to discredit the witness by questioning their truthfulness, character or trustworthiness are acceptable.
- Use language that a jury would understand, not overly legalistic language.

Impeaching a witness

- Often impeaching a witness is phrased as "refreshing the memory of the witness."
- Use when the witness says something on cross examination (usually to help his or her side of the case) that contradicts information provided in the witness statement or his or her direct examination testimony.
- Rules 607, 612, and 613 of the *Rules of Evidence* covers how to impeach a witness.

Ending cross examination and re-cross

- Cross examination is successful if you successfully elucidate the details you need.
- When a witness provides an answer that gives your side of the case everything you need to support your argument, stop cross examination right there without going into the details.
- If the other side conducts a redirect examination of the witness, which is limited in scope to material presented in cross examination, you can perform a re-cross examination on the witness, but it is limited in scope to what was questioned during redirect examination.

There is a lot to think about when questioning a witness! A way in which students can structure a direct examination is by following this sequence:

- Witness introduction
- Witness relevance
- Witness testimony
- Summation

Let us look back at *Figure 3.2* and use that information to create direct and cross examination questions for Pips MicMannis as set out in *Figure 5.4*.

Figure 5.4 – Direct examination of Pips McMannis

Witness: Pips McMannis (for the prosecution)		
	Direct testimony	Cross Examination
Introduction	**Q.** Please state your name for the court? **A.** Pips McMannis **Q.** Where do you live? **A.** I live next to Joe Johnson's farm **Q.** And why are you here in court today? **A.** Because I saw Joe trying to burn down his barn, that's why!	No cross examination
Relevance	**Q.** How long have you known the defendant? **A.** I've known Joe for some time, we all have. **Q.** Can you please point him out to us? **A.** He's right there (point at Joe) **Q.** And where were you on the evening of February 12th? **A.** I was sitting on my porch, which faces Joe's barn	Pocket #1 **Q.** You've known my client for some time? **Q.** You pointed him out to us? **Q.** But you don't like him that much, do you? **Q.** In fact, you think that a fool lives next to you, right?

Testimony	**Q.** Let me take you to around 8:00 PM that evening, who did you see from your porch? **A.** I saw Joe. **Q.** Now I see that you wear glasses. How did that impact your ability to see what was happening? **A.** It didn't. I could see clear enough all right. **Q.** And where was Joe standing? **A.** Well, he was standing over by his barn. **Q.** So, what made you look over there? **A.** I heard a noise coming from over there. **Q.** What did it look like the defendant was trying to do when you looked over at him? **A.** I was a bit stunned, because I saw Joe trying to burn down his barn! **Q.** Why did you think that the defendant was trying to burn down his barn? **A.** Well, for one thing, he was moving wood right into the barn door, and I also saw him with something that looked like a gas can. (attorney follows Rule 4.20 script) **Q.** You identified this as a can held by the defendant. What did you think that the defendant was pouring out of the can? **A.** Well, I thought that it was probably gasoline. **Q.** And how did you come to that conclusion? **A.** The can was colored red and he was pouring the gas all over the wood. It really could not have been anything else. **Q.** As you're watching the defendant, with the wood, and with the can, what did you think about how was he acting? **A.** There was something going on! Joe was	Pocket #2 **Q.** You wear glasses? **Q.** So you have an issue with your vision? **Q.** And it was 8:00 PM when you saw my client, what do you say, sneaking around? **Q.** So all of this happened in the middle of February at 8:00 PM, when it was dark, and you wear glasses? Pocket #3 **Q.** So, you believe that my client was going to burn down his barn? **Q.** You testified to seeing my client do several things, right? **Q.** But, my client was just doing what a farmer does in his barn? **Q.** I mean, there was a lightning storm coming? **Q.** Everyone knew a storm was coming? **Q.** My client was moving things into the barn with the storm coming? **Q.** And, my client could have just as well been moving cautiously around his barn, with the storm coming and all, right? Pocket #4 Q. Let's talk about this canister that you identified, the one that you saw in the dark, in the dead of winter, and you wear glasses; that was when you identified that canister? Q. You didn't see what was coming out of the canister, did you? Q. You say that it was gasoline, but you never smelled gas? Q. And, even if you saw everything clear as day like you testified, it does not say gasoline on the canister, does it?

	sneaking around, trying to be inconspicuous. It looked to me that he was doing something wrong. **Q.** Now, you never stated that you saw the defendant set fire to anything, so how do you think he planned to burn the barn down? **A.** Lightning! **Q.** Lightning? **A.** Yeah, lightning. You see, there was a storm coming in, a bad thunderstorm. The weather service was out with a warning in fact. It was clear to me that Joe planned to use the lightning storm as a cover for when he would set his barn on fire! **Q.** Wow. How did you react when you saw this happening? **A.** I was a bit stunned to be honest. I always knew that Joe was a fool, but I never thought that he was a criminal to be honest. It's crazy to think that a criminal lives right next door! Q. But, how do you know that Joe Johnson burned his building down? A. Well, the fire department was out there later that evening, so it was a logical conclusion for me.	Pocket #5 Q. Lightning? Q. You think my client was going to use a lightning storm to cover up arson? Q. But I thought that you thought he was a fool?
Summation	**Q.** So, your testimony today is that you saw the defendant on the night in question, sneaking around, as he moved wood into place and doused it with gasoline, all the while knowing that a lightning storm was coming in that would cover his true actions? **A.** That about sums it up perfect! **Q.** Is there anything else that you would like to tell us today. **A.** No, that's about it. No further questions for now	Q. One last thing, you never actually saw my client set anything on fire, did you? No further questions for now

Direct and cross examination is the heart of you team's mock trial solution. Just like when practicing law, details matter if your team is to demonstrate access to justice in their solution.

C. Closing argument

The closing argument is the culmination of your mock trial problem. But what makes a good closing statement? California Superior Court Judge Thomas E. Stevens said this about closing arguments when interviewed by the American Bar Association[2]:

> The most memorable closing arguments that I have seen involved a fully developed, compelling theme, combined with the attorney's mastery of the facts and law in support of that theme. Additionally, effective closing arguments are usually relatively short, fairly outline the law and evidence, and highlight aspects favorable to the attorney's case, while acknowledging (and rebutting) unfavorable facts and legal concepts.

Closing statements provide a client with the ability to argue their case through the lens of a legal professional. Like with opening statements, an attorney is provided 5 minutes to present a closing statement. Unlike opening arguments, closing arguments must address what occurred during the trial, specifically as to what was and was not presented to the jury.

For example, if your team did not make a factual point during examination, they cannot credibly argue that point during closing statement. In turn, your team's closing statement should account for any opening allowed by the opposing team. The six active team members are provided with a short recess prior to closing statements to discuss modifications, if any, to be made to the closing statement.

Despite this fluidity, a good closing statement still aligns with the rest of your team's mock trial solution. Again, and unlike at a real trial, no objections are allowed by rule at regional or state competitions (see Rule 4:17 of the *National High School Mock Trial Rules of Competition* on objecting to opening statements post-delivery).

Like with opening statements, students can draft closing statement in one of two ways:

- *The team method* requires the team to work together and craft a closing statement by consensus, which aligns with the solution planned by the team.

- *The individual method* requires one or two attorneys to draft a closing statement, which is then shared and critiqued by the rest of the team and redrafted as needed.

A good closing statement will have the following components:

[2] https://www.americanbar.org/groups/litigation/committees/trial-evidence/practice/2018/tips-effective-closings/.

- A restatement of the theme
- The legal burden to be proved or disproved
- An argument on how the facts and law support the theme
- An acknowledgment of unfavorable facts and legal issues
- A concise statement as to why your client wins legally
- A closing argumentative statement

Unlike with opening statements, the party with the burden of proof (the prosecutor/plaintiff) may reserve time prior to delivering their closing statement as a rebuttal to the defense.

Let us look back at *Figures 5.1* and *5.4* and see how your students can structure their closing statement:

Figure 5.5 – Prosecutor's closing statement in Commonwealth v. Johnson

Section	Statement	Argument
Restatement Of the theme	Remember when we said that where there's sneaking, there's arson? What did we mean by that? We meant that the actions of the defendant, Joe Johnson, were not normal, not just suspicious, but were malicious and intentional. We proved beyond a reasonable doubt that the defendant committed arson, a serious crime, and you the jury must hold him accountable for his actions.	The actions of Joe Johnson clearly fit into the theme set forth by the prosecutor
Legal burden to be proved or disproved	We the Commonwealth have a high burden to meet for us to prove that the defendant committed this crime. We must prove our case beyond a reasonable doubt. We must prove to you that a building was burned, that the building was burned intentionally, and that the defendant maliciously intended to burn the building. And, we must prove our case to the extent that there could be no reasonable doubt in the mind of a reasonable person that the defendant is guilty.	The law and burden of proof is clearly set forth for the factfinder
Argument	Let's take another look back at the night of February 12th. But this time, let's match the facts to the law. Our prime witness is Pips McMannis, Joe's neighbor. Pips saw the defendant working near his barn. But it's not a crime to work at night. Nor is it a crime to work at night or even to own a gasoline can.	The case is argued from the perspective of the law, not just a restatement of the facts of the case.

	The problem for Joe Johnson is in how he acted, not knowing that he was being watched. Joe was acting "suspiciously," but Pips knew it was something more than that, something sinister, something deliberate and with malice to do harm. Legally it all makes sense. We have a building, that being Joe's barn. We have a burning, as seen by Pips later that evening. And, we have the most crucial thing of all, maliciousness. Pips didn't just see the defendant working. No, Joe Johnson was intentionally and maliciously preparing to set his barn on fire. He was placing flammable materials, wood, right next to the barn, and he was pouring gasoline onto those materials. He was even planning to cover up the crime by using a thunderstorm as his cover. Ladies and gentlemen, Joe Johnson acted deliberately and maliciously. There is no other reasonable explanation for Joe Johnson's actions. He wanted to commit arson, and he did just that.	
Acknowledgment of unfavorable facts and legal issues	Now, let's talk about Pips McMannis. There is nothing to indicate that Pips is lying about what he saw that evening. Pips wears glasses, but we showed you that he was able to see without them that evening. Maybe Pips has a less than stellar view on his neighbor, but Pips saw what he saw, and what he saw was not tainted by any ill will towards Joe Johnson. Thinking that someone is a fool is not enough to show malice or bias. And, Pips did not see Joe light the fire, but he sure saw those fire trucks on Joe's property. It is not beyond reasonable doubt to connect the dots in this case and clearly see how dousing wood with gasoline next to a barn will cause a fire.	Addressing the potential issues with Pip's testimony.
A concise statement as to why your client wins legally	In the end, Joe Johnson clearly violated Virginia criminal law when he maliciously and intentionally burned his barn to the ground. Ladies and gentlemen, it is your responsibility as juror and citizens of this commonwealth to make certain that people like Joe Johnson are punished for their crimes. Arson is a dangerous, malicious, and deliberate crime that puts firefighters and other first responders in harm's way. Deliberately damaging property with fire is malicious to the core, and in Joe Johnson's case, it is criminality at its worst.	Why should the jury convict the defendant?

A closing argumentative statement	Where there's sneaking, there's arson. Joe Johnson knows this all too well, and it is up to you ladies and gentlemen of the jury to find him guilty.	Something for the jury to remember as you finish your closing argument

Remember, your opening statement, direct examination, cross-examination, and closing argument should line up to create a cohesive, comprehensive, and understandable case. Now that you have everything drafted, it is time to practice!

Chapter 6
Practicing your Solution

A. If we only had more time!

Everything is ready for your team to start practicing their solution. It took you until the end of November to get to this point. So what lays ahead as your team *finally* practices the solution?

- Thanksgiving break
- Holiday break
- The potential for winter weather, and
- Students looking forward to all three of these events.

Now is not the time to panic! There is plenty of time to prepare for regional competitions. In fact, you might just be able to use time pressures to get the best results from your team.

B. Pacing to the first run-through

Your goal before Holiday break is to complete your first run-through. At this point focus on getting the team to present its solution, not perfect it. Your teams should focus on two areas:

- *Mechanics* is where students get comfortable with their technical delivery. Issues include pacing opening and closing statements so that they are delivered in five minutes of less, running direct examination so that attorney and client properly deliver testimony, including introducing evidence at trial, and developing effective cross-examination.
- *Creativity* is where students practice how they will effectively deliver a realistic solution. Issues to work on include trial technique and mannerisms for attorneys, developing reasonable and plausible personas for witnesses, and creating a specific persona for the expert witness that aligns with their expertise.

Where do students go to find examples of mechanics and creativity in mock trial? In a word – **YouTube!** Newer teams (and even experienced) teams can rely on the Internet to find multiple examples of high school, college, and law school mock trial teams in action. For example, the 2017 National High School Mock Trial Championship video can be accessed through the following link, https://www.youtube.com/watch?v=ZxrvKyB81YM.

Newer mock trial teams should focus on mechanics first and then layer in the creativity aspect when ready. *Figure 6.1* provides guidance on what students should work on mechanically as they prepare for their first run through:

Figure 6.1 – Basic mechanics to practice and refine

Courtroom Behavior	• When the judge and jury enter a courtroom, everyone should stand until told to be seated by the presiding judge. • Attorneys should always stand before speaking (unless unable to do so). • Attorneys should say "Your Honor" when addressing the judge. • Attorneys should ask permission before moving around the well, moving objects such as displays of exhibits, and asking witnesses to move. • Unless quietly showing an exhibit to be entered into evidence, attorneys should never speak directly to opposing counsel during a trial. • All communication is with the presiding judge during objections. • Do not show visible frustration such as eye rolls or deep sighs. • Witnesses should not show frustration with the opposing counsel (unless planned as part of a persona). • Attorneys should thank the judge for decisions on motions or objections, whether the decision goes their way or not.
Dress[3]	• Attorneys are encouraged to dress conservatively • Witnesses should dress as they would appear at trial, subject to mock trial rules.
Notes and memorization	• Attorneys may use notes, but are encouraged to demonstrate access to justice by knowing their case by heart • Witness cannot bring notes onto the stand while testifying
Courtroom positioning	• Attorneys gain an advantage when they can properly use the courtroom • Attorneys with notes often tether themselves to the podium. • An attorney can move about the courtroom to show exhibits, get proper responses from witnesses, and speak directly to the judge and jury. • Attorneys may carefully choreograph their movement around the courtroom ahead of time, knowing where he or she should stand for each part of an opening statement or closing argument. • Witnesses should position themselves so that they are speaking to the judge and jury while in the witness stand. • Attorneys empathize that witnesses speak directly to the judge and jury • It is tempting for a witness to speak to the lawyer, and this is fine, but when emphasizing important points, they need to be directed to the judge and jury. • Attorneys will coach a witness to look at a lawyer to receive the question, and then turn to the jury to emphasize their response. • Attorneys often position themselves in the courtroom that forces the witness to look towards the jury in response.

This is a lot of stuff to deal with (yet again)! Scaffold as you see fit and work on what you believe will best help your students as they move forward with the project.

[3] Students are not scored on dress at a regional or state competition.

C. The first run-through

Your goal is to complete the team's first run-through for both sides of their solution before leaving for the holiday break. Your first run through should include the following components:

- Opening and closing statements should be understandable, with the delivering attorney making a rehearsed statement/argument while relying on their notes;
- The questions on direct examination should be determined, with each witness and attorney delivering direct examination in a conversational manner and tone;
- Attorneys should have a basic knowledge of the rules of procedure and, if they are ready, the rules of evidence; and
- All students should have a grasp of how they will "deliver" their part of the solution, with attorneys adopting trial techniques and witnesses adopting their persona.

You will probably need two practice sessions of approximately 60 to 75 minutes each to complete each run-through. Your goal is to get from the beginning to the end of your solution without stopping, no matter how rough your students deliver their portion of the solution.

Students not actively participating in a run-through should be attentive, ready to provide positive and constructive feedback on the solution. Now is the time to fix a glaring hole in direct examination, or to correct an alignment issue. Non-participating students can also cross-examine to test the ability of the attorney and witnesses who are presenting their solution.

Another way to complete your first run-through is to have the team compete against itself. This will require several students to flip parts during the run-through, but it is worth it.

D. Pacing to the regional competition

It is well-known that students are natural procrastinators! Attorneys do not have the same luxury, yet they are faced with similar time constraints. In either case, access to justice requires that attorneys best prepare for their trial no matter the time constraints.

Regional competitions occur between the third week of January and the first week of February. Regional Coordinators take many factors into consideration when scheduling their competition date, including competing programming. You can expect to have between three to four weeks to prepare prior to your regional competition.

Starting in the new year, increase your practice time to two or three days per week, with at least one day where you run through the entire trial (this may require a coach or understudy to stand in for someone with multiple roles). Your team is fine tuning their solution and working on courtroom positioning or word choice, as well as practice entering objections in the trial.

E. Daily Improvement

Like with any long-term project-based learning experience, it is important for both you and your students to focus on daily improvement. Set specific goals for your team and individual students and use them as benchmarks to note progress and regression. It is recommended that you use the scoring matrix and rubric (*Figures 1.1* and *1.2*) to provide your students with concise and appropriate feedback.

F. Reaching out to the legal community

Educators are often weary about mock trial because they lack legal knowledge. The Virginia High School Mock Trial Program is designed so that educators can guide their students without relying on legal professionals. This manual is specifically written for educators!

With that said, legal professionals are ready and willing to work with your students as they prepare for the competition. The goal is not so much that legal professionals help your team win, but that they demonstrate to your students access to justice in real time, based on their authentic experiences.

Legal professionals can help at all stages of this project, from breaking down the case to preparing for the courtroom. But be careful that legal professionals do not inadvertently take away the experience from your students. Students will rely on legal professionals to do the work for them, just as they will rely on you if you let them!

Many educators do not have direct access to legal professionals to assist our teams. Some suggestions on recruiting attorneys to assist are as follows:

- Ask parents. Many students join a mock trial team because one or both of their parents are attorneys. Ask these students if their parents would be willing to assist.
- Ask your school division community liaison to assist you. School divisions have someone who can be asked to find legal professionals willing to donate their time.
- Ask school administrators. School divisions often rely on legal counsel and a school administrator may be knowledgeable about the law.
- Ask your PTA or PTSA. Many parents know somebody who is an attorney that may be willing to assist you.
- Ask your local bar association for the names of young lawyers and law clerks
- Contact your local law school and ask if any law students would be willing to help.

If all else fails, contact VLRE! We may be able to assist you in finding a lawyer willing to help start or mentor a new mock trial program. Remember, mock trial benefits the legal profession by guiding students as they explore access to justice. These are the students who will eventually join the legal profession as attorneys and judges.

G. Scrimmages

Scrimmages provides students with an opportunity to practice their skills in a real-time environment. Students become comfortable in a competition setting, as they refine courtroom techniques. Finding a local team to scrimmage benefits both teams, particularly if the teams are newer to high school mock trial. Any team wishing to scrimmage can contact us at VLRE and we will work to locate a local team in your area.

Regional coordinators also have the option to run sanctioned scrimmages based on interest. These scrimmages allow teams to present their solution to legal professionals in a modified competitive environment. Legal professionals are provided the opportunity to provide in-depth feedback to teams that they would not otherwise have at a regional or state competition.

Another way to scrimmage is by fielding more than one team. We welcome the registration of multiple teams from the same school, as well as from the homeschool community. Prior to the competition, teams from the same school or homeschool community may prepare, practice, and scrimmage each other, as well as discuss strategy and any other issues related to the Virginia High School Mock Trial Competition. Once a team enters a region or state competition site, that team may not share any information related to the actions, strategy, solution, or presentation by any opposing team to any other team.

No matter your scrimmage partner, make sure that you find at least two attorneys to score your teams and provide feedback. Scoring judges at a scrimmage can use more time to provide more feedback, and your students can ask those judges questions. Preparing scoring sheets from the Mock Trial Handbook in advance will help to further your scrimmage experience.

Chapter 7
The Competition

A. Setting expectations for you and your students

The best part about project-based learning is watching your students present their solution. They worked for five months to prepare their case, and they are ready to put that case to the test! But, before your students compete, let us set some expectations about competitions.

High school mock trial is unique because it provides students the ability to learn in a truly authentic environment, that being the modern courtroom. This environment is adversarial by nature. Someone wins, and one team represents Virginia at the National High School Mock Trial Championship. But the meaning of "winning" is how you define it for your students.

We define "winning" as when students leave our program understanding that:

> *A fundamental protection for citizens in an open society is the right to appear in court with counsel, whether a citizen can afford to do so or not, as well as the right to be afforded an equality of outcome, no matter a citizen's social, political, gender orientation, or economic situation.*

All too often a team gets so caught up in the competition that they forget why we are here. Unfortunately, all that team learns is that winning is everything, not that attorneys are officers of the court, judges guard the justice system, and that we all benefit from access to justice.

Virginia, like many other states, has a growing mock trial program that requires regional competitions. Older established programs have up to 300 teams competing statewide. It will be great if your team makes it to the state competition! But it is best for us all when your students understand the power of the legal system and how they can benefit from it.

B. Registering your team

The Virginia High School Mock Trial Program registration period begins on September 1st. If you have two or more teams competing at your school, you will need to register each team. We encourage early registration with a discounted rate until October 15th. All teams must create an account on the GoVLRE.org portal to access case materials, https://govlre.org/vhsmtc.html.

Schools may register digitally or by mail if needed due to the use of a check. Case materials are available to registered teams online as of September 1st. You must register on the portal to access the mock trial problem whether you pay digitally or by check.

A school may have some interest in mock trial but not enough at the outset to fill a team. There is a "drop period" up to December 20th for all registered teams to receive a refund.

You are also assigned a code once you register your team. The code is designed to keep all teams, including their home region, anonymous throughout the competition.

C. Regional dates and assignments

The Virginia Law Related Education Institute administers the Program through regional sites throughout Virginia. Site Coordinators select a Saturday between the third week of January and first week of February to hold a regional competition. That date is selected based on facility availability and avoidance of other educational programming.

Teams are assigned to sites as follows:

- The number and location of sites is based on the number of teams anticipated to participate in the program from that region and the general location of those teams.
- Teams are assigned to the closest regional site in relation to their specific location.
- Certain teams that are centrally located between two regional sites are asked to serve as floater teams, and as such, the State Coordinator will ask for the latest possible date in which they can be assigned to a regional site based on administrative needs.
- The assignment of a site by the State Coordinator is final and cannot be challenged.

Teams are assigned their sites well in advance so that educators can complete the necessary administrative paperwork in a timely manner.

D. The state competition

The state competition is for select teams to demonstrate their knowledge of access to justice at a higher level. The number of teams advancing per site is based on a ratio of number of sites and number of teams per site. Sites with more teams than other sites are awarded more slots to the state competition. A total of twenty teams advance to the state competition.

The state competition is held between the first and third weekend in March. The two-day competition consists of four rounds and a final round for placement. All teams compete in the first four rounds of the competition. The top ten teams at the end of four rounds compete in the final round, with the top two teams competing against each other for the state championship, and the remaining eight teams competing for placement.

E. What to bring to a competition

Competition day is exciting! Students dress in all types of formal attire, teams are carrying binders and lugging roller carts, and parents are generally stressed out for their kids. *The only items that must be brought to the competition are the team roster, including your assigned code, and your exhibits*. Your team cannot change once your roster is submitted at registration.

Teams are encouraged, but not mandated, to bring the following to the competition:

- Several copies of the case materials to ensure that, at the very least, each attorney has a copy of the case in case something unusual happens.
- Copies of the Rules of Competition and Rules of Evidence (or at least a "cheat sheet").
- Copies of all affidavits, which can be used during direct or cross examination either for dramatic effect or to refresh the memory of the witness.
- Copies of your direct and cross examination questions and a general outline for your path of direct/cross examination.
- Copies of opening statements and closing arguments.
- Copies of case exhibits that are not provided at the competition.
- Pens/pencils and yellow legal pads for jotting down notes of things that occur at trial.
- Time cards for the timekeeper, with a set of cards consisting of 15 minutes, 10 minutes, 5 minutes, 2 minutes, 1 minute, 45 seconds, 30 seconds, and 15 seconds remaining.
- Any special materials that are allowed in the trial that you may want to use.
- Bottles of water for attorneys (if permitted).

Coaches may use their own scoresheet to assess their team. Non-participating team members may also quietly review questions or trial materials for their side of the case.

F. Rules, rules, and more rules

One of the unique things about mock trial is that students not only compete against each other, but they also enforce the rules of the competition. Then there is the problem of a presiding judge who probably does not even know that the competition has any rules!

One responsibility that does not fall on students is alleging rule infractions by adults. You as a coach make sure that other adults follow the rules. No one wants to call out another coach or adult, so a dispute resolution system is in place for adult infractions at the competition:

- If you see another adult commit an infraction, approach the opposing coach *after the round ends* and advise them of the issue.

- *Work together* and try to resolve the issue on your own, as well as determine if the issue substantively impacted the round.

- If you cannot resolve the issue together, meet with the state coordinator or designee running the competition, explain the issue by citing the infraction and rule, and abide by the decision of the state coordinator or designee (remember that they are volunteers).

Why is the standard "substantively impacted the round?" Educators support students first and foremost. No one wants to sit through a round like a statute afraid to breath the wrong way for being called out for an infraction. Educators support students first and foremost, so consider these best practices during a regional or state competition:

- Give your students a thumbs up, "golf clap," or a big smile when they do a good job. Your encouragement, whatever it may be, is welcome, so long as it is not coaching.

- Encourage your students when they struggle. Educators are at their best when a student turns back to them with tears in their eyes. Mouthing "you can do this" is not coaching, it is being a good educator! Just be careful not to give a student the answer.

The best way to avoid adult infractions is for coaches to sit together during each round. That way, coaches can be on the same page about how they can support their students.

Student competition violations are a different story. Mock trial is very much like football. As best explained by former Dallas Cowboy great Nate Newton:

> "We're as clean as any team. We wash our hands before we hit anybody."

There is a potential rules violation committed at every step during a mock trial round. From going five seconds over time, to wearing a piece of clothing that may be considered a prop, to eliciting unfairly extrapolated testimony, mock trial violations are all around us!

Students should know the rules, *as should you*, since students can ask for your assistance about a rule violation at the end of a round. More importantly, students should determine if an infraction is important enough to raise with the presiding judge, who again probably knows nothing about the rules of competition. An attorney who protects a client from a procedural issue without distracting the factfinder provides that client with access to justice.

Some guidance to provide your students regarding the rules of competition includes:

- Focus on your team's solution first. Good teams prevail because of their well-designed solution and delivery of that solution. State champion teams almost never address a rules violation, because at the end of their round, they win based on the merits.

- Determine if the violation impacts your solution. Costuming by another team will not overcome a well-designed and delivered solution. It is a different story if costuming directly impacts the mock trial problem itself to the disadvantage of your team.

- Use a violation to your advantage as an attorney. An attorney who impeaches a witness instead of citing a rules infraction shows legal professionals that the attorney knows the rules of court and can use it to their client's advantage.

- If your team needs to call out a substantive violation, know the rules and cite to them! Assume that the presiding judge knows nothing about the rules of the competition. The presiding judge must be convinced not only that the violation was made, but that the violation was egregious enough to change the score.

Teams that focus on the problem do well because they demonstrate access to justice to legal professionals, not simply an understanding of the rule of competition.

G. Cost and fundraising considerations

The sites selected for regional competitions are designed to be centrally located if possible. In addition to the registration fee, teams can expect to pay for the following:

- Transportation costs (either by school bus or private carrier).
- Food and beverages (regional sites may have food for sale on site).
- Money for pins and other merchandise if made available.

Teams advancing to the state competition do not need to pay a second registration fee. Those teams should keep the following costs in mind.

- Transportation costs (either by school bus or private carrier).
- Teams traveling a significant distance will need to book hotel rooms for at least one overnight (many teams book two overnights due to the early morning start of the competition) (your school division may dictate the amount of rooms required).
- Food and money for a two to three-day event depending on your travel plans.
- Money for pins and other merchandise if made available.

The average cost of competing at the state competition is relative to the size of your team, with larger teams costing more money. For example, a small team of 6 students and 3 coaches can expect to pay between $900.00 to $1,100.00.

Please note that most mock trial coaches in Virginia are often not paid by their respective school divisions. You may wish to consider fundraising not just for the team, but to pay the coach!

Congratulations!

You made it to the end of this manual! You now have all the information that you need to start a successful high school mock trial program.

There is one thing that we cannot provide you with in this manual. That is a passion for teaching! It is because of educators like you that Virginia students get the opportunity to participate in law-related educational programming.

Many of us at involved with the Virginia High School Mock Trial Program were once like your students. We were eager to explore the law, hoping one day, we would get to practice it. We all have that "teacher" who supported and inspired us to do what we do today. You are that person for the next generation of Virginia lawyers, as well as the future leaders of many other professions and vocations.

We at the Virginia Law Related Education Institute thank you for providing your passion, your time, your energy, and your love of teaching to help students in our program. And we salute you for what you do!

Please contact us if you have any questions about this manual.