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Trial Court Tips for Evaluators

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1. General Rules

- a. Evaluators score individual judge and team performances. Each evaluator fills out an individual ballot, and evaluators should not consult with one another during this process. The judge is not involved in performance scoring decisions. Teams should not ask judges to rule that an event during the trial should be assigned a particular score on evaluator ballots.
- b. The decision on team scores is made by a scoring panel consisting of at least two, and preferably three, evaluators who are law students, sitting or retired trial and appellate judges, or any licensed attorneys. If only one or two evaluators are available, the trial judge will be asked to serve as the additional member of the evaluator panel.
- c. NO COMPLETED BALLOTS ARE TO BE VIEWED BY ANY TEAM MEMBER OR ANY OTHER PERSON DURING THE COMPETITION, in compliance with the educational goals of the National Judicial Program. These are to be returned to the tournament staff after the round has been concluded and the winning team recorded. Score and comment sheets for a team will be copied and distributed to that team's coach after the competition is completed.
- d. The following scoring and ranking rules apply:
 - i. A team wins an evaluator's ballot by receiving a higher point total on that ballot than the opposing team. If the teams have identical point totals on an evaluator's ballot, then the tie breaker on that ballot will be used to determine the winner.
 - ii. A team wins a trial by winning the majority of the evaluator ballots for that trial
 - iii. At the conclusion of the competition, teams will first be ranked according to their record of trial wins and losses. Teams with identical win-loss records will next be ranked based upon the total number of ballots the team received in the competition. Teams with identical win/loss records, and identical records for total number of ballots received, will next be ranked based upon the total point score they received in the competition.
- e. In regard to scoring – start each team/judge as a 5 and work up or down from there based on performance. Rankings are from 1-10, with 10 being for really outstanding performances.
- f. Please be on time. The judges and the teams have been warned that they will have points deducted if they are late. Please deduct 2 points from the overall score for any judge or team that is late. If they are more than 10 minutes late, deduct 5 points from the overall score. Judges have been told that they may start at the time appointed even if a team is not present.
- g. The judge is in charge of the court room. If you have any question regarding the case, the judge should be able to help you. If the judge ever stops the trial and asks you a question, the judge is not well prepared. **Evaluators are not permitted to interrupt or stop the trial.** The only person who can stop and start the trial is the student judge, or the director of the competition.

2. Evaluating Judges

- a. The judge should open the case with the case number and the parties involved. They should ask if the defense wants the charges read.
- b. During the trial, the role of the judge is to preside, keep order, make rulings, and oversee the different events in the course of the trial.
- c. At the end of the trial, they should give a clear and reasoned verdict.
 - i. The judge should explain their verdict, and it should be based on how the prosecution or defense proved the elements of the case – not that either team simply had a better argument.
- d. Just because the judge gives a verdict for a team does not necessarily mean the judge thought that team was better, and the verdict of the judge should not affect how they are scored by the evaluator(s).
- e. Judges should demand respect, in the sense that if an attorney does not stand when addressed or is addressing the judge, or are referring to the judge by name or other names besides “your honor,” “the court,” “judge,” the judge should instruct them otherwise.
- f. It is the judge’s courtroom, and he or she is in control to preside over the trial. A judge who allows a sloppy trial should be counted down. A judge who permits attorneys to argue with him, or the opposing counsel should be counted down. Verdicts of the judge should never be argued.
- g. Judges are to keep the trial on schedule, as they are the time keepers. Judges who permit attorneys to run over time should be heavily counted down. Time does stop on objections, unless the judge allows them to become excessive.
- h. It is the judges’ prerogative on whether or not to ask for a response from the other side when an objection is made.
 - i. If an objection is leading, narrative, or non-responsive, the judge has been instructed to make a ruling without discussion or explanation. Judges that do this deserve a score of at least 7 on “Decision Making Ability.”
 - ii. If a judge allows attorneys to argue an objection excessively, deduct points from the judges’ score.

3. Witness Limitations

- a. No witness (even if they are taking someone else’s place at the last minute) may take a script or notes or a witness statement to the stand with them.
- b. If you notice anyone in the courtroom signaling a witness – either by nodding their head or making some indication of how they should answer a question – please make a note on your evaluation form and report this to the office as soon as the round is over.

4. Rules for Attorneys

a. Exhibits:

i. Only one version of each exhibit can be entered into evidence. Therefore, once an exhibit is entered, the other side has to use it in order to ask questions about it. Attorneys should use the evidence throughout their presentation.

ii. The case is set up so that the prosecution should enter exhibits. The legal process for entering evidence is one of the skills that the attorneys must get right to get a good score. The judge should know the procedure.

- If the prosecution fails to enter a sufficient number of exhibits into evidence, you should score them lower than the defense team. There are potentially 4 exhibits that can be entered. The prosecution should enter at least 3 to properly develop their case.

iii. Only the prosecution is **required** to enter evidence, though there is some evidence that would benefit the defense should they choose to enter it. If the defense does not enter evidence, your score should be based on their response to the prosecution's evidence and the handling of any exhibits.

- Give the defense team one point for each exhibit they enter into evidence.

b. Use of Notes: Attorneys can and should use notes, but only during direct and cross-examination of witnesses.

c. Discussion amongst themselves: Attorneys *are* allowed to confer with each other as long as it does not become a distraction to the court.

5. Scoring Attorneys and Witnesses

a. Opening Statements:

i. A good opening statement tells you what they intend to prove in the trial. It should be memorized, but this is not required.

ii. The prosecution should lay out the elements of the crime and briefly describe how these elements will be proved.

iii. The defense may reserve their opening statement until it is time for them to present their part of the case.

iv. The defense should lay out how they will attack the prosecution's case and briefly describe how they will do so.

b. Direct Examination: The direct examination of witnesses help you understand what the case is about. You should have an idea of what each witness knows and how their testimony helps prove the case.

- i. Scores in this section should be based on how well the attorneys handle difficult situations with witnesses. For example, if a witness does not give the answer the attorney was looking for, the ability to create a new question to extract that information on the spot without getting flustered.
 - ii. Too many leading questions on behalf on one team should cause the deduction of a point.
 - iii. Teams should make objections during examination. If the other team has most of its objections sustained during direct examination, the team examining the witnesses should see points deducted.
 - iv. If the other team has most of its objections overruled during direct examination, the team making the objections should see points deducted.
- c. Cross Examination: The idea behind cross examination is to discredit the witness or to get them to admit how the facts could be turned in the other team’s favor.
 - i. Scores in this section should be based on the attorney’s ability to handle hostile witnesses without badgering. Attorney teams should show respectful determination to extract information needed or prove a point using the other team’s witnesses.
 - ii. If an attorney can get a witness boxed in with a “Yes or No” question, they have done well to flip the witness for their team.
 - iii. Cross examination should not consist of simply asking the same questions already asked in direct examination.
- d. Closing Statement:
 - i. A good closing statement tells you what the team managed to prove or disprove about the case. It should not sound pre-written or rehearsed.
 - ii. The order of closing statements is:
 - Prosecution’s closing
 - Defense’s closing
 - Prosecution’s rebuttal
 - iii. The prosecution must reserve time for rebuttal or else they cannot speak after the defense’s closing statement.
- e. Overall Demeanor:
 - i. Attorneys must ALWAYS stand up COMPLETELY when addressing the judge, when the judge is addressing them, during opening statements and closing arguments, and when objecting or responding to objections.
 - ii. It is the decision of the judge whether attorneys should sit or stand while questioning witnesses and each judge should make clear at the beginning of the trial which is his or her preference.
 - iii. Attorneys should show respect for the judge at all times, and are NEVER permitted to argue with the judge. Remember, the attorneys are in the judge’s

courtroom, and the judge is completely in control. Respect for the judge, both verbal and in body language is very important for an attorney team to score high.

f. Preparation: Organization is extremely important if an attorney team plans on scoring high. Attorney teams that are always shuffling around with papers, stumbling over sentences or questions, and talking to each other are not well prepared, and should be counted off accordingly.

g. Scoring of witnesses should be based on each witness's performance: believability, character, demonstrated knowledge of affidavit, and overall demeanor.

6. Procedure for Objecting

a. An attorney can object any time the opposing attorney has violated the rules of evidence.

b. The attorney wishing to object should stand up and do so at the time of the violation.

c. When an objection is made, the judge will:

i. Ask the reason for it

ii. Ask the attorney who asked the question to explain why the objection should not be accepted ("sustained" by the judge)

iii. Decide whether a question or answer must be

- Discarded ("objection sustained")
- Allowed to remain on the trial record ("objection overruled")

7. Some Common Objections

a. Objections: Objections should be stated in a legal manner. The attorneys should know a legal objection, and not get up and give a long reason as to why something is not acceptable. The ability to respond to an objection in legal terms is also vital for a high score. Attorneys that do not respond to objections when instructed to by the judge should be marked low.

b. Irrelevant Evidence: "I object, your honor. This testimony is irrelevant to the facts of the case."

i. Evidence is irrelevant when it does not tend to prove or disprove matters that are material to the case.

ii. Example: a question asking a reporter if he was wearing blue jeans when he went to talk to the mother of the victim.

c. Leading Question: "Objection, your Honor. Counsel is leading the witness." (This is objectionable only when in direct examination).

i. A leading question is a question that begs or suggests an answer.

ii. Example: "When you went to meet the mother to talk about the article, you promised not to reveal her whereabouts, isn't that correct?"

iii. Note: Cross-examination is all about leading questions. Attorneys should control witness responses with this technique only during cross-examination.

d. Improper Character Testimony:

i. "Objection. The witness' character or reputation has not been put in issue."

ii. "Objection. Only the witness' reputation for character or truthfulness is at issue."

e. Non-Responsive: the witness did not answer the question that was asked.

i. "Objection. The answer is not responsive to the question."

f. Compound Questions: the question being asked is asking for more than one answer.

i. Example: "Did you see her there and did she speak to you at that time about the incident, and what did she say?"

ii. "Objection. The question being asked is really asking more than one question."

g. Lack of Proper Foundation: an expert fails to give their qualifications which make their opinion founded.

i. "Objection. Counsel has failed to lay the proper foundation for his expert to render this opinion."

- In order for this objection to be timely, it must be made after the attorney has asked the expert for an opinion but before the expert has rendered his opinion.
- If the objection is made after the expert has rendered his opinion, the objection is late and must be overruled.

ii. Attorneys cannot attack the qualifications of a witness unless the question is outside the expertise of the witness, because the cases stipulate which witnesses are qualified and attorneys cannot dispute that.

iii. Attorneys can attack the ability of an expert to make a certain statement if it is apparent that that expert failed to take some step or secure some information that other experts in the same field would before forming their opinion.

h. Offering and Admitting Documents: The proper questions for admitting a document are as follows:

i. "I hand you what has been marked as Exhibit _____."

- "Do you recognize this document?"
- "What is it?"
- "Is this a true and accurate representation of the area (for photos and drawings)?" Or

- "Does this document accurately represent the incident?" And
 - "Has it been altered in any way??"
- ii. "Objection. Counsel has failed to lay the proper foundation for the document to be admitted into evidence."
- For this objection to be timely, it must be made after the attorney has offered the exhibit into evidence but before the court has ruled on its admissibility.
 - If the objection is made after the court has ruled on the admissibility of the exhibit, the objection is late and must be overruled.
- iii. If the attorney doesn't ask these questions then it is proper for the other team to object that there is no proper foundation.
- i. Speculation: Questions about what someone else was thinking or feeling, or asking the witness to imagine or guess what another was intending, etc.
- i. "Objection. That question asks the witness to speculate in order to answer."
- j. Narrative: Questions that call for long-winded responses that ramble on and on.
- i. "Objection. That question asks the witness to respond with a narrative answer."
 - ii. "Objection. The answer has become a narrative."
- k. Assumes Facts Not In Evidence: Attorneys ask about documents not entered into evidence.
- i. "Objection. That question asks the witness to assume facts that are not in evidence."
- l. Argumentative: Badgering the witness. Examples include:
- i. Asking the witness the same thing over and over.
 - ii. Raising their voice at the witness.
 - iii. Asking questions in a rapid-fire manner without allowing the witness to respond.
 - iv. Instructing the witness to just answer "yes" or "no."
 - v. "Objection. Counsel is being argumentative in his questions."
- m. Asked and Answered: The attorney is going over the same matter again and again.
- i. "Objection. Counsel has already asked this question and the witness has answered it."
- n. Hearsay: Hearsay is a statement other than one made by the witness testifying at the trial and offered in evidence to prove that the matter asserted in the witness statement is true. Hearsay is normally excluded from a trial because it is deemed untrustworthy, as the

opposing side has no way of testing the credibility of the out-of-court statement. Examples include:

- i. A witness testifying that he/she heard another person (not a witness at the trial) saying something about the facts in the case.
- ii. Exceptions to the hearsay rule include:
 - Prior statements made by the witness himself.
 - Admissions made by an opponent.
 - Present Tense Impression: The person making the statement describes an event which they perceived as it happened or immediately thereafter
 - Excited Utterance: The person making the statement is under the stress of excitement caused by describing their perception of an event.
 - Dying Declarations: The person making the statement believed that his/her death was imminent when experiencing the event or circumstances being described.
 - Medical Statements: Statements made for the purpose of medical diagnosis or treatment.
 - Recorded Recollection: A record concerning a matter about which a witness once had knowledge, but now has insufficient recollection of to enable him to testify fully and accurately.
 - Records of a Regularly Conducted Activity: Any type of data compilation maintained by a business and detailing a regularly conducted business activity.
 - Learned Treatises: Statements contained in public treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony of the witness, other expert testimony, or by judicial notice.
- iii. "Objection. Counsel's question is calling for a hearsay response."
- iv. "Objection. The witness' answer is based on hearsay. I ask that the statement be struck from the record."
- o. Opinion/Lack of Personal Knowledge:
 - i. "Objection. Counsel is asking the witness to give an opinion for which he is not qualified."
 - ii. "Objection. The witness has no personal knowledge that would enable him/her to answer the question."

p. Evidence Obtained Through Invalid Search:

i. "Objection. This evidence was obtained without a valid search warrant. As such, this evidence should not be admitted."

8. Procedure for Introducing a Physical Object or Document:

a. "Your Honor, I ask that this piece of evidence be marked for identification as Plaintiff's (or Defendant's) Exhibit No. 1."

b. Marking the Exhibit:

i. The team will pre-mark the exhibit before trial and have the judge confirm that it is marked correctly.

c. The exhibit will be shown to the opposing counsel before it is shown to any witness.

d. The witness will be asked to identify the exhibit.

i. Assuming the witness does recognize the exhibit, the attorney should ask the judge to admit the exhibit into evidence by stating, "You Honor, I ask that Exhibit No. 1 be moved into evidence."

e. The judge will ask the opposing party for any objections to moving the exhibit into evidence.

i. Objections should relate to whether the evidence was identified and shown to be authentic.

i. If there are objections, after the judge rules on the objections, the trial judge will admit the exhibit.

f. Once the exhibit is admitted, the attorney may proceed to ask the witness a series of questions about the exhibit.