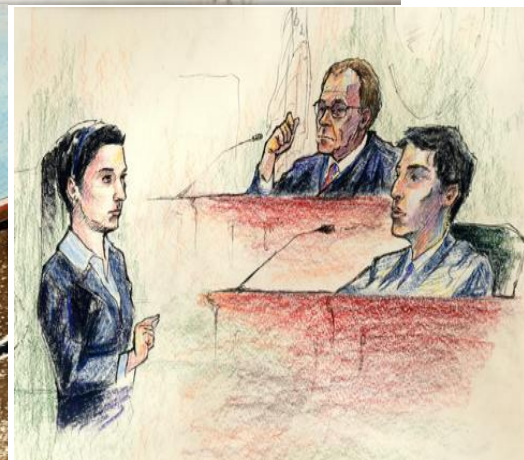




CONSTITUTIONAL RIGHTS FOUNDATION

EDUCATING TOMORROW'S CITIZENS

CALIFORNIA MOCK TRIAL PROGRAM JUDGE/ATTORNEY HANDBOOK 2008-2009



Co-Sponsored by:

**California Bar Foundation, David Carrillo and Lisa Sardegna,
and the Daily Journal Corporation**

CRF*601 S. Kingsley Drive*Los Angeles*CA*90005

www.crf-usa.org

TABLE OF CONTENTS

Introduction	3
Instructions for Attorneys and Judges	3
Scoring and Procedural Reminders	4
General Tips for Attorney and Judge Volunteers	7
Script For Presiding Judge	8
Summary of Pretrial Motion Procedures	11
Summary of Trial Procedures	12
Scoring Procedures	
Evaluation Criteria	13
Scoring Criteria	15

INTRODUCTION

Thank you for agreeing to serve as an attorney scorer or judge for Constitutional Rights Foundation's California Mock Trial program. The program reaches over 8,000 students from around the state and involves thousands of members from the bar and bench. As a volunteer, you are an invaluable part of an extraordinary learning experience for California's young people.

Students have labored for months preparing this year's case and they value your comments and scoring of their presentations. Your role as a mock trial volunteer is critical to creating a positive learning experience, so it is crucial that your feedback be fair, helpful and positive. Your comments and accurate scoring of the trials you review are fundamental to making the mock trial an educational experience for all the students involved.

INSTRUCTIONS FOR ATTORNEYS AND JUDGES

BEFORE THE COMPETITION:

Please review the Facts, Pretrial Argument (Only applicable to high school trials) and witness statements. All scoring attorneys and presiders are expected to be familiar with these materials.

- ♦ **Presiders**, please review the mock trial scoring and procedural reminders and the summary of pretrial and trial procedures in this packet.
- ♦ **Scoring attorneys**, please review the mock trial scoring and procedural reminders, and evaluation and scoring criteria in this packet.

ORIENTATION: Each individual county may or may not conduct volunteer orientations. In Los Angeles County and at the state competition, there will be a mandatory 10 minute orientation session prior to the start of each round of competition. The orientation will cover basic rules, last-minute instructions, and trial assignments.

ATTORNEY SCORERS: Generally, your role is to numerically score the presentation based on the criteria in this handbook. You will also be asked to provide positive and constructive comments to students at the conclusion of the trial.

JUDGE/PRESIDER: The role of the judge is to preside over the trial and help students to relax and enjoy this educational experience. As the presider, you will make all decisions regarding the running of the trial, including ruling on the

pretrial argument, ruling on objections, ruling on competition violations and announcing a verdict (the verdict is independent of which team may have won/loss the trial).

SCORING AND PROCEDURAL REMINDERS

1. It is very important to read the fact situation and witness statements carefully. Because this is a mock trial, students will refer to specific facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.
2. Before the trial, a student from each school will present a team roster/award nomination form to the judge and scoring attorney(s). This form will have names and designated trial roles. If you feel a student did an outstanding job, please place a check by the student's name on the nomination form.
3. Please keep in mind that the mock trial competition involves timed presentations. One team's unreasonable running of the opposing team's time is inappropriate. If witnesses are deliberately not responding to questions, they may be admonished and receive point deductions, and poor sportsmanship may be reflected in the team performance score.
4. SCORESHEETS/TIE-BREAKER
 - a. Please fill in every box on the score sheet. No fractions are allowed.
 - b. When filling out score sheets, **please make your decisions independently**. There should be no conferring with other attorney scorers.
 - c. After every trial, the presiding judge must complete the purple-tie breaker form and indicate which team she/he feels should be the overall winner in case the scores determine a tie. **Do not announce scores or tiebreaker information to the teams.**
6. WITNESSES
 - a. The official source of information for witness testimony includes a witness's own statement, all stipulations and exhibits, and any portion of the fact situation of which that witness reasonably would have knowledge. A witness may testify only to facts stated in or reasonably inferred from

- these official sources. Reasonable inferences should be limited, and student's should not create facts that are material to the case.
- b. Witnesses are not allowed to use notes when testifying.
 - c. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. Witnesses can be impeached if they contradict the material contained in their witness statements. This rule is designed to limit, not eliminate, the use of reasonable inference by providing a familiar courtroom procedure.
 - d. Witnesses will remain in the courtroom for the entire trial, in designated seating at the front of the courtroom.
 - e. Unless otherwise specified, witnesses may not testify or respond to another witness's testimony.
 - f. Once the trial has begun, contact is prohibited between a witness and **any** other team member, teacher, parent or school representative. The only communication allowed during the trial is between trial attorneys on the same side. Additionally, the defendant may sit at counsel table and communicate with the defense attorneys. All communication must be non-disruptive to the trial. Pretrial attorneys may not communicate with the trial attorneys at any time. Any contact forbidden contact with team members, coaches or spectators will be a deduction of five points per score sheet.
 - g. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called, and the direct examination team will automatically receive a score of zero.

7. PRETRIAL

- a. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Although mandatory in the State Finals and in Los Angeles County for High School trials, the pretrial motion is optional at the local level. The county coordinator will inform you whether this will be part of the local competition. T
- b. There are no motions permitted in the trial except for the pretrial motion and motion to move exhibits into evidence. No written pretrial motion memoranda may be submitted to judges at local or state levels. If a motion is made, two points will automatically be deducted from the team's total performance score.
- c. Additional background research may supplement students understanding of the pretrial issue, but such supplemental materials may not be cited in arguments.

d. No objections are allowed during pretrial arguments. Points may be deducted for objections made during pretrial arguments.

8. ATTORNEYS

- a. Attorneys may conduct re-direct examination when appropriate. No re-cross-examination is allowed.
- b. Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony. Points may be deducted for objections made by the wrong attorney.
- c. To maximize the educational value of the mock trial experience, allow student-attorneys to argue evidentiary objections before rulings are made.

9. At the conclusion of the pretrial and again at the conclusion of the trial, one attorney from each team has 30 seconds to confer with the attorney coach and teacher sponsor and 30 seconds to orally note any rule irregularities to the court. It is the judge's responsibility to determine whether or not a rule violation occurred and if so, to direct the scoring attorneys accordingly. Before ruling, we strongly encourage judge's to have teams direct them to the page in the rulebook that states the rule allegedly violated.
10. At the conclusion of the trial, comments of presiders and attorneys should be limited to a total of 10 minutes. Informal comments may be made once students have been dismissed.
11. Costumes, theatrical makeup and phony accents are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and speaking in their normal voices.
12. Gender-neutral names allow students of either gender to play the role of any witness. Any questions regarding gender, race, or physical characteristics not included in the official case materials are not allowed.
13. All trials at the state and Los Angeles County competitions are bench trials. Please do not make any jury references as students have prepared for bench trials.

GENERAL TIPS FOR ATTORNEY & JUDGE VOLUNTEERS

DO's:

- Do** be fair.
- Do** try to help the students relax. Remember this is supposed to be a positive experience for them!
- Do** offer a few words of encouragement or insight into the trial process before the trial begins. This will help put the students at ease, and by emphasizing the educational, rather than the competitive aspects of the mock trial, you will help to bring the experience into proper perspective.
- Do** give positive and constructive feedback at the conclusion of the trial.

DON'TS:

- Do not** lecture the students.
- Do not** ask students to comment on cases, trial procedures or information not included in the case packet.
- Do not** give negative comments.
- Do not announce a winner.**

Please Keep in Mind...

- Mock trial students take their work and efforts very seriously. Judges and attorneys should be equally as serious about their roles and responsibilities. You are in a position of great influence with respect to the students' evaluation of their work and themselves.
- Your comments are very important to the students who participate, so please be positive and constructive. Students are likely to take such comments to heart. Being mindful that the participants are middle school or high school students and not college or law students, and that mock trial is a law-related education function, judges/attorneys should strive to educate and inform participants as well as to give them advice on improving their performances.

**THANK YOU FOR YOUR DEDICATION TO THE YOUTH OF CALIFORNIA
AND WE HOPE YOU ENJOY YOUR MOCK TRIAL JUDGING/SCORING
EXPERIENCE!**

SCRIPT FOR PRESIDING JUDGE

NOTE: This script incorporates some of the unique instructions of the mock trial competition. Please feel free to use all or portions of this script during the trial.

OPENING REMARKS

A few words of welcome or insight into the trial process can help but the students at ease

INTRODUCTIONS

“To help myself and the attorney scorers, will the Prosecution team please state your name and role?” “Defense team please state your name and role.”

INSTRUCTIONS

“You must complete your presentations within the specified time limits. The clerk will signal you as your time for each section of the presentation begins to run out. When your total time for each section runs out, you will be stopped, even if you have not finished. Attorneys must call four witnesses.

“At the end of the trial I will render a verdict of guilty or not guilty in relation to the charge brought. The teams will be rated based on the quality of their performances, independent of my verdict.”

“Barring unforeseen circumstances, no recesses will be called. If for any reason a recess is necessary, team members should remain in their appropriate places and should have no contact with spectators.”

In the interest of time, would both sides like to waive the reading of the evidence and stipulations?” (If not read the evidence and stipulations found on page 19 of the case packet).

“Please remember that objections are limited to the Mock Trial Simplified Rules of Evidence located in the case packet.”

“If there are no questions, the trial will begin.” **(High schools teams will begin with pretrial arguments, middle school teams will begin the trial).**

PRETRIAL MOTION INTRODUCTION

The pretrial issue in this case revolves around the First Amendment freedom of speech and expression. In spite of what most Americans believe, not all speech is protected. One can be held responsible for making libelous remarks about another individual; one cannot falsely yell “fire” in a crowded theater; one is not

protected for uttering “fighting words” that are likely to produce an immediate violent reaction. The students arguments based on the Constitution, statutes, and court opinions included in the case materials, will help the presider decide if Leslie Lane’s song and presentation at the rally are constitutionally protected speech.

If the judge finds that Leslie’s performance was artistic, political, and symbolic speech protected by the First Amendment, the incitement to riot statute cannot be applied to Leslie’s conduct at the rally and count one must be dropped.

“Both sides have four minutes to present their arguments. Defense will begin. I may interrupt to ask clarifying questions. Time spent answering my questions is not included in the four-minute time limit.”

“At the conclusion of your arguments, each side will be offered two minutes of rebuttal time. Please remember that the rebuttal time is to be used to counter your opponent’s arguments. It cannot be used to raise new issues.”

“Is counsel for the defense ready to begin? Please summarize your arguments.”
“Is counsel for the prosecution ready to begin? Please summarize your arguments.”

Does the defense have a rebuttal? Does the prosecution have a rebuttal?

“Before I rule on the motion students may confer with their attorney/teacher coach regarding any trial irregularities. Please do so now.”

Would the prosecution team like to note any trial irregularities? Defense team?

Rule on motion and begin trial

TRIAL INSTRUCTIONS

“Prosecution/Defense, do you have any physical evidence you would like to present for inspection?”

“The people of the state of California are charging the defendant, Leslie Lane, with violation of California Penal Code Sec. 404.6, Incitement of others to commit an unlawful act-Urging Riot and California Penal Code Sec. 451 Arson.”

“Prosecution, are you ready to present opening statements?” (At the conclusion of opening statements, defense may present their opening statement or wait until the prosecution has completed their case).

“Prosecution, you may call your first witness.”

“Defense, cross-examination?”

“Prosecution, would you like to redirect?”

“Prosecution, please call your next witness.”(Repeat for all four witnesses)

“Is the defense ready to proceed?” (Begin with opening statement or call first witness. Same procedure as with prosecution).

When the defense team completes their case, begin closing arguments.

“Prosecution, would you like to give your closing arguments?” (repeat for defense)

“Rebuttal?” (Prosecution and defense)

“Before I rule on the motion, students may confer with their attorney/teacher coach regarding any trial irregularities. Please do so now.”

Would the prosecution team like to note any trial irregularities? Defense team?

Announce a verdict (although no scores or winners will be announced at this time).

Remind scorers to complete all boxes on score sheet, collect scores, and complete tie breaker.

Commence debrief by judge and scoring attorneys (please limit comments to no more than 10 minutes).

Return envelope with score sheets and tie breaker to mock trial staff.

SUMMARY OF PRETRIAL MOTION PROCEDURES

We encourage presiders to challenge the attorneys with questions about the case law during pretrial arguments.

No objections are allowed during pretrial arguments. Points may be deducted for objections made during pretrial arguments.

1. The hearing is called to order.
2. The judge asks the defense to summarize the arguments made in the motion. The defense has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not included in the four-minute time limit.
3. The judge asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.
4. The judge offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues.
5. The judge offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.
6. At the end of the oral arguments, before ruling, the judge asks students if they would like 30 seconds to consult with teacher/attorney coaches regarding any trial irregularities.
7. The judge will rule on the motion and begin trial.

SUMMARY OF TRIAL PROCEDURES

1. Attorneys present physical evidence for inspection.
2. Judge states charges against defendant.
3. Prosecution delivers its opening statement. No questioning during opening statements.
4. Defense may choose to deliver its opening statement at this point or may wait to open after the prosecution has completed its case in chief.
5. Prosecution calls its witnesses and conducts direct examination.
6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense cross-examines the witness.
7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.
8. After prosecution presents all its witnesses, defense delivers its opening statement (if it did not do so earlier).
9. Defense calls its witnesses and conducts direct examination.
10. After each defense witness is called to the stand and has been examined by the defense, the prosecution cross-examines the witness.
11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.
12. Prosecution gives its closing argument, then defense presents its closing arguments. No questioning during closing arguments.
13. Prosecution and defense present rebuttal arguments.
14. At the end of the trial before ruling, the judge asks students if they would like 30 seconds to consult with their teacher/attorney coaches regarding any trial irregularities.
15. Judge deliberates, announces verdict in court, and conducts a short debrief of the trial with the scoring attorneys (not to exceed 10 min.)

EVALUATION CRITERIA

Students are to be rated on the five-point scale for each category according to the following criteria appropriate to each presentation. **Points should be deducted if criteria are not met or are violated.** NOTE: Some scores are weighted and therefore can affect a team's score more dramatically. These include the pretrial motion (x3) and the closing argument (x2) .

1. Pretrial Motion (x3)

- Clear and concise presentation of issues and appropriate use of case materials.
- Well-developed, reasoned, and organized arguments.
- Solid understanding of the legal reasoning behind the arguments.
- Responded well to judge's questions and maintained continuity in argument.
- Effective rebuttal countered opponent's argument.

2. Opening Statement

- Provided a clear and concise description of the anticipated presentation.

3. Direct/Re-Direct Examination

- Questions required straightforward answers and brought out key information for her/his side of the case.
- Attorney effectively responded to the objections made.
- Attorney properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney made **effective** objections to cross-examination questions of her/his witness when appropriate. Attorney did not make **unnecessary** objections.
- Throughout questioning, attorney made appropriate use of time.
- Attorney used **only** those objections listed in the Summary of Evidentiary Objections.

4. Cross-Examination

- Attorney made **effective** objections to direct examination (of the witness she/he cross-examined) when appropriate. Attorney did not make **unnecessary** objections.

- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney exposed contradictions in testimony and weakened the other side's case.

5. Witnesses

- Witness was believable in her/his characterizations and presented convincing testimony.
- Witness was well prepared for answering the questions posed to her/him under direct examination and responded well to them.
- Witness responded well to questions posed under cross-examination without unnecessarily disrupting or delaying court proceedings.
- Witness testified to key facts in a consistent manner and avoided irrelevant comments.
- Witness did not disrupt the trial with unreasonable inferences.

6. Closing Argument (x2)

- Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.
- Attorney incorporated examples from the actual trial, while also being careful **not** to introduce statements and evidence that were not brought out during the trial.
- Attorney made an organized and well-reasoned presentation summarizing the most important points for her/his team's side of the case.
- Effective rebuttal countered opponent's arguments.

7. Clerk and Bailiff

- The clerk or bailiff was present and punctual for trial.
- The clerk or bailiff performed her/his role so that there were no disruptions or delays in the presentation of the trial.
- The clerk or bailiff conducted her/himself professionally without attracting any unnecessary attention.

8. Team

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- Team members displayed good sportsmanship to all competitors, regardless of trial results.
- **All** team members were involved in the presentation of the case and actively participated in fulfilling their respective roles.

- Stronger voice needed, more eye contact
- Invents material facts and repeatedly stumbles over responses
- Needs more work on poise and delivery

3 AVERAGE MEETS REQUIRED STANDARDS

- Organized
- Adequate preparation and demonstrated a basic understanding of case and legal procedure
- Acceptable but uninspired presentation
- Demonstrated basic legal knowledge and mostly understood role
- Audible voice and some eye contact
- Needs more spontaneity and persuasiveness

4 ABOVE AVERAGE GOOD, SOLID PERFORMANCE

- Well-organized and good preparation
- Demonstrated good understanding of case and legal procedure
- Good smooth presentation
- Clearly demonstrated legal knowledge and understood role
- Questions/answers mostly advance case theory
- Able to be spontaneous some of the time
- Mostly believable performance
- Easily audible voice, much eye contact

5 EXCELLENT EXCEPTIONAL PERFORMANCE

- Excellent preparation and well organized
- Demonstrated superior ability to think on her/his feet
- Demonstrated outstanding knowledge of case and legal procedure
- Questions and answers almost always advanced case theory
- Resourceful, original & innovative approaches
- Portrayal was both extraordinary and realistic, not overly rehearsed or memorized
- Clear understanding of rules and procedures
- Strong voice and eye contact
- Polished