Virtual Middle School Mock Trial
Rules of Competition

This program is a video competition where students from the **same school** will present both sides of the case in one trial (i.e. prosecution and defense are from the same school). After practicing the simulation, teams will record their trial and submit it by the designated due date for evaluation. There will be a final round between the top two teams depending on availability and other circumstances. A face-to-face competition is contingent on school openings, and if one cannot be held, then all placements will be released between May 15, 2021. Awards will be presented to the top three placements.

Competition Schedule:

September 15: Case released to schools

March 8: Videos due

April 10: Information released about final rounds

May 5-10: Final rounds

May 15: Final announcement of placements

Description and Goals:

The annual statewide middle school mock trial simulation and competition provides opportunities for students to learn about the legal process, the courts, and the jury system through a classroom activity aligned with the civics and government benchmarks for middle school. The competition provides an avenue for middle school students to participate in a simulated trial in the classroom or at a local courthouse. Local judges or attorney volunteers can serve as the presiding judge for the activity. Teams should videotape the trial and submit using the directions in the case materials. You can locate video clips from previous years on the Justice Teaching website.

The middle school mock trial program is designed to:

- Increase student understanding of and interest in the legal process, the courts, and the jury system;
- Generate interest in law-related careers;
- Improve civic literacy skills including critical thinking, public speaking, and legal reasoning.

We have aligned the case materials with the middle school civics benchmarks including: SS.7.C.2.6 Simulate the trial process and the role of juries in the administration of justice. Supplemental classroom materials are provided. For additional assistance, contact justiceteaching@flsouthern.edu <mailto:justiceteaching@flsouthern.edu> or Annette Boyd Pitts, Director at apitts@flsouthern.edu <mailto:apitts@flsouthern.edu> .

RULES:

Rule I: Team Composition/Presentation

A. The competition is open to students currently enrolled in grades 6-8 in Florida schools. All students on a team, prosecution/plaintiff and defense/defendant, **must be enrolled in the same school** or members of a club at the same school. Each team must have a teacher sponsor.
B. **Only one video per school will be accepted**.
C. The video shall consist of at least twelve students **from the same school** to be used in any manner deemed appropriate by the teacher and coach, as long as the distribution of duties does not conflict with other competition rules. Roles include attorneys, witnesses, members of the jury, and other roles as determined by the teacher such as a bailiff. Teams who have less than 12 students can have students play more than one role for witnesses as opposed to attorneys.
D. Each school must present both sides of the case in one trial. (Prosecution/Plaintiff and Defense/Defendant).
E. Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.
F. Team Roster/"Roll" Call
    a. Teams should introduce themselves, their school and teacher/coaches at the beginning of the filming as well as their corresponding roles before beginning the trial begins.

Rule II: The Case

A. The case may contain any or all of the following stipulations: documents, narratives, exhibits, witness statements, etc.
B. The stipulations (and fact statements, if any) may not be disputed at the trial. Witness statements may not be altered.
C. All witnesses must be called.

Rule III: Trial Presentation

A. The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the State Mock Trial Advisory Committee, whose decision is final.
B. Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem. If, on cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony. Adding facts that are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to
    a. Creating a physical or mental disability,
    b. Giving a witness a criminal or bad record when none is suggested by the statements, (c) Creating facts which give a witness standing as an expert and;

c. Materially changing the witness' profession, character, and memory, mental or physical ability from the witness' statement by testifying to "recent changes."
d. If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. However, their testimony concerning the facts of the case may be challenged.

C. On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Rules of Evidence.
D. On cross-examination, no restrictions will be made on the witness or the cross examination, except that the answer must be responsive and the witness can be impeached. If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer **does not contradict or materially change** the affidavit. If the answer by the witness is contrary to the stipulations or the affidavit, the cross examination attorney may impeach the witness.
E. Use of **voir dire** examination of a witness is not permitted.
F. It is recommended that teams be less scripted in the delivery of the trial; less reading is recommended.

Rule IV: Student Attorneys

A. Team members are to evenly divide their duties. During the video, each of the three attorneys for each side (Prosecution/Plaintiff and Defense/Defendant) will conduct one direct and one cross; in addition, one will present the opening statements and another will present closing arguments. In other words, the attorney duties for each team will be divided as follows:
    a. Opening Statements
    b. Direct/Re-direct Examination of Witness #1
    c. Direct/Re-direct Examination of Witness #2
    d. Direct/Re-direct Examination of Witness #3
    e. Cross/Re-cross Examination of Witness #1
    f. Cross/Re-cross Examination of Witness #2
    g. Cross/Re-cross Examination of Witness #3
    h. Closing Arguments
    i. Prosecution's/Plaintiff's optional closing rebuttal
B. Opening statements must be given by both sides at the beginning of the trial.
C. The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness on cross examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.
D. Each side must call the three witnesses listed in the case materials. Witnesses must be called only by their own side and examined by opposing counsel. Witnesses may not be recalled.
E. Attorneys may use notes in presenting their cases. However, it is preferable for students to avoid reading directly from their notes.
F. Witnesses should not use notes while testifying during the trial.
G. To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and **whenever addressing the presiding judge**. Students may move from the podium only with the permission of the presiding judge.

Rule V: Swearing of Witnesses

The presiding judge will indicate that all witnesses are assumed to be sworn.

Rule VI: Case Materials

Students may read other cases, materials, and articles in preparation for the mock trial. However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet. In addition, students may not use, even for demonstrative purposes, any materials that are not provided in the official packet.

Rule IX: Conduct/Attire
All participants are expected to demonstrate proper courtroom decorum and display collegial sportsmanlike conduct.

Rule XII: Jury Trial
For purposes of the competition, students will assume this is a jury trial. The presiding judge is the trial judge. Students should address the jury and the presiding judge.

Rule XV: Time Limits

A. The video should be 60 minutes plus two minutes for introductions. Scoring judges may provide some flexibility with timing on objections. Teachers should instruct judges used during the video on the timing restrictions.
B. Opening and closing statements should be no longer than 5 minutes per side.
    a. The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/ Plaintiff may reserve one minute or less of the closing time for a rebuttal. Prosecution/Plaintiff must notify the judge before beginning closing argument if the rebuttal time is requested. The Prosecution's/Plaintiff's rebuttal is limited to the scope of the defense's closing argument. Attorneys are not required to use the entire time allotted.

Rule XVI: Judging

A. The presiding judge will oversee the trial and rule on objections and evidentiary matters. The presiding judge may be the attorney coach or another local attorney or judge. Make sure they are aware of the rules and timing prior to taping.
    a. Presiding judges can be selected from a range of community volunteers. The following is a list of suggestions: sitting judges, attorneys, teachers, mock trial coaches/teachers, or high school mock trial participants. Teachers should use their discretion when selecting a presiding judge. Teams are not being evaluated based on their presiding judge.
B. At no time during the filming of the trial may team sponsors or coaches communicate or consult with the students.

Rule XXIV: Eligibility

A. Both sides of the case must be presented by students enrolled in the same school.
B. Each school may only send in one video/electronic recording.

Rule XXV: Video Submission

A. Submission of videos should be through Google drive or YouTube using the Justice Teaching website link.
    a. If submitted through YouTube, please remove your video from public access. You can do this by choosing to **unlist** your video and provide us with a link. Unlisted videos can only be viewed by people who have the link to it. These videos will not appear on your channel page and they will not appear in the search. To share an unlisted video, you have to directly share the link. DO NOT set to private or we will not be able to access or judge the video.
B. Please provide team photos of students as opposed to individual photos.
C. The submission should be one continuous video without editing.

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

Simplified Rules of Evidence are provided for informational purposes and may be used at the discretion of the teacher and/or coach. They are provided as an outline for the trial process but should not complicate the instructional process.

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

A. Witness Examination/Questioning

1. Direct Examination

Attorneys call and question their own witnesses using direct as opposed to leading questions.
Example:

Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomac County.

"Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?"

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

a. Leading Questions

A **leading question** is one that suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. **Leading questions** are **not** permitted on direct examination, but questions on cross-examination should be leading.
Examples:

"Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?"

"Isn't it true, that due to all the stress from work you decided to go to a therapist?"

These questions are obviously in contrast to the direct examination questions in the preceding section. **Leading questions** suggest the answer to the witness. This is **not** proper for direct examination when a party is questioning its own witness.

b. Narration

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for **specific information**. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. At times, the witness' answer to a direct question may go beyond the facts asked for by the question asked. Narrative questions are objectionable**.**

Example Narrative Question:

"Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county."

Narrative Answer:

"It all began the night I found out that it was the county that was dumping on my land. At first I thought it was my neighbors, but they denied having any part in the dumping. I decided to watch my vacant lot and see if I could catch the person responsible. I drove down to my lot the night of the 13th and parked in a place where I could see the lot but no one could see me…"

c. Scope of Witness Examination

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

d. Character

For the purpose of this mock trial, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

i. Methods of Proving Character (Section 90.405)

1. Reputation: When evidence of the character of a person or of a trait of his/her character is admissible, proof may be made by testimony about his/her reputation.

2. Specific Instances of Conduct: When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his/her conduct.

e. Refreshing Recollection

When a witness uses a writing or other item to refresh his/her memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

2. Cross Examination (questioning the opposing side's witnesses)

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer.

Examples:

"Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?"

"As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?"

"Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?"

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

a. Scope of Witness Examination

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

b. Impeachment

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness' credibility may be impeached by showing evidence of the witness' character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something that contradicts the testimony on the stand.

i. Impeachment Procedure

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness' affidavit. By pointing out the differences between what a witness now says and what the witness' affidavit says, the attorney shows that the witness has contradicted himself or herself.

ii. Who May Impeach?

Any party, including the party calling the witness, may attack the credibility of a witness by:

1. Introducing statements of the witness which are inconsistent with his/her present testimony;

2. Showing that the witness is biased;

3. Attaching the character of the witness in accordance with the state mock trial competition

rules of evidence and procedure;

4. Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he/she testified; and

5. Proof by other witnesses that material facts are not as testified to by the witness being impeached.

iii. Section 90.610 Conviction of Certain Crimes as Impeachment

A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

1. Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

2. Evidence of juvenile adjudications is inadmissible under this subsection.

iv. Section 90.614 Prior Statements of Witness

1. When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.

2. Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.

3. Re-direct and re-cross examination/questioning. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Re-cross examinations follows re-direct examination but is limited to the issues raised on re-direct only and should avoid repetition. The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

B. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should **stand up and do so at the time of the violation**. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the judge should not accept the objection. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term "objection sustained" means that the judge agrees with the objection and excludes the testimony

or item objected to. The legal term "objection overruled" means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

1. Standard Objections on Direct and Cross Examination

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

2. Leading Questions: *"Objection. Counsel is leading the witness."* Remember, this is **only** objectionable when done on direct examination (Ref. Section A1.a).

3. Narrative Questions and Answers: may be objectionable (Ref. Section A1.b).

4. **Improper Character Testimony:** *"Objection. The witness' character or reputation has not been put in issue* or *"Objection. Only the witness' reputation/character for truthfulness is at issue here."*

5. **Hearsay**: *"Objection. Counsel's question/the witness' answer is based on hearsay." If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record."*

6. **Opinion**: *"Objection. Counsel is asking the witness to give an opinion."*

7. **Lack of Personal Knowledge**: *"Objection. The witness has no personal knowledge that would enable him/her to answer this question."*

8. Lack of Proper Predicate: Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.

9. Ambiguous Questions: An attorney shall not ask questions that are capable of being understood in two or more possible ways.

10. Non-responsive Answer: A witness' answer is objectionable if it fails to respond to the question asked.

11. Argumentative Question: An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

12. Unfair Extrapolation/Beyond the Scope of the Statement of Facts

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness's statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. If in CROSS examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

13. **Asked and Answered:** *"Objection. Your honor, the question has already been asked and answered."*

14. Objections Not Recognized in This Jurisdiction: An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

Note: Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that_____." The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.

15. Opinions of Witnesses

1. Expert Opinion

1. Section 90.702 Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

2. Section 90.703 Opinions on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

3. Section 90.704 Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

4. Expert Opinion (additional information)

An expert shall not express an opinion as to the guilt or innocence of the accused.

2. Lay Opinion

1. Section 90.701 Opinion Testimony of Lay Witnesses

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

1. The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

2. The opinions and inferences do not require a special knowledge, skill, experience,

or training.

2. Lay Opinion (additional information)

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses **have first-hand knowledge**. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of experience. No witness, not even an expert, may give an opinion about how the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

"Dr. Isaacs, please read this portion of your sworn statement to the court."

"I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings."

"This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two-hour interview you were only concerned with evaluating Ms. Roberts' working environment and not other psychological factors that may have caused her problems. Thus you really can't say that Ms. Roberts' difficulty on the job was only caused by the actions of Mr. Murphy, can you?"

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

3. Lack of Personal Knowledge

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

16. Relevance of Testimony and Physical Objects

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact that is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence

may be testimony, physical evidence, or demonstrations that have no direct bearing on the issues of the case or do not make the issues clearer.

1. Introduction of Documents, Exhibits, Items, and Other Physical Objects Into Evidence

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to its use on that basis. Below are the basic steps to use when introducing a physical object or document for **identification and/or use as evidence.**

1. Show exhibit and have it marked by the judge. Say "Your Honor, I ask that this____be marked for identification as Plaintiff's/Defendant's Exhibit No.____"

2. Show the exhibit to opposing counsel for possible objection. Ask the witness to identify the exhibit. "I now hand you what is marked as Exhibit No. 1. Do you recognize this document?"

3. At this point the attorney may proceed to ask the witness a series of questions about the exhibit.

   If the attorney wishes to place the document into evidence, say, "Your Honor, I offer this marked as Plaintiff's/Defendant's Exhibit No. 1 into evidence and ask the Court to so admit it."

   Court: *"Is there any objection?"*

   Opposing Counsel: *"No, your Honor." or "Yes, your Honor."* (then state objection).

   Court: *"Plaintiff's/Defendant's Exhibit No. 1 is (is not) admitted."*

NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence. Exhibits can be pre-marked.

To observe this process, teams may want to watch a clip from the Florida High School Mock Trial Competition final round or request a clip from the Justice Teaching Center.

17. Hearsay and Exceptions to this Ruling

1. What is Hearsay?

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. "Hearsay" is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions would be objectionable as "hearsay" if you are trying to prove that the color of the door was red:

"Mr. Edwards what color did Bob say the door was?"

This is **hearsay**. Mr. Edwards is using Bob's statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

2. Reasons for Prohibiting Hearsay

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is "reliable"; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be "unreliable" for four reasons:

1. The hearsay statement might be distorted or misinterpreted by the witness relating it in court.

2. The hearsay statement is not made in court and is not made under oath

3. The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness' behavior and evaluate his/her credibility).

4. The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

3. When Can Hearsay Evidence Be Admitted?

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are prior statements made by the **witness himself** and admissions made by a **party opponent.**

1. Exceptions

Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed; even though the declarant is available as a witness.

1. Spontaneous Statement

A statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

2. Excited Utterance

A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

3. Medical Statements

Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

4. Recorded Recollection

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and

accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

5. Records of a Regularly Conducted Activity

1. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.
2. No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

6. Learned Treatises

To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, 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 or admission of the witness, or by other expert testimony, or by judicial notice.

7. Then Existing Mental, Emotional, or Physical Condition

1. A statement of the declarant's then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

   - Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.
   - Prove or explain acts of subsequent conduct of the declarant.

2. However, this subsection does not make admissible:

   - An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.

   - A statement made under circumstances that indicate its lack of trustworthiness

C. Trial Motions

No trial motions are allowed except for special jury instructions as permitted in these case materials.
Examples:

Directed verdict, dismissal, acquittal, motion in limine, motion to sequester witnesses.

Exception:
Motion for Recess may only be used in emergency situations.

Florida Virtual Middle School Mock Trial Competition
SCORE SHEET/BALLOT

P = **Plaintiff/Prosecution**:_____ **D** = Defendant:_____
(Team Code) *(Team Code)*
Date:_____ **Round:** *(circle one)* **1** **2** **3** **4** **F**

Using a scale of **1 to 10**, rate the **P** and **D** in the categories below.
Do **NOT** use fractional points. Please use a ballpoint pen.

Not Effective **Fair** **Good** **Excellent** **Outstanding**
1 2 3 4 56 7 8 9 10

Score Sheet/ Ballot		**P**		**D**
Opening Statement		**(_____)**		**(_____)**
Plaintiff's First Witness	**Direct Examination**	**(_____)**		
	Witness Presentation	**(_____)**	**Cross Examination**	**(_____)**
Plaintiff's Second Witness	**Direct Examination**	**(_____)**		
	Witness Presentation	**(_____)**	**Cross Examination**	**(_____)**
Plaintiff's Third Witness	**Direct Examination**	**(_____)**		
	Witness Presentation	**(_____)**	**Cross Examination**	**(_____)**
Defense's First Witness			**Direct Examination**	**(_____)**
	Cross Examination	**(_____)**	**Witness Presentation**	**(_____)**
Defense's Second Witness			**Direct Examination**	**(_____)**
	Cross Examination	**(_____)**	**Witness Presentation**	**(_____)**
Defense's Third Witness			**Direct Examination**	**(_____)**
	Cross Examination	**(_____)**	**Witness Presentation**	**(_____)**
Closing Argument		**(_____)**		**(_____)**
Ethical Conduct		**(_____)**		**(_____)**
Team Performance		**(_____)**		**(_____)**
Column Totals: DO NOT TIE TEAMS		**(_____)**		**(_____)**

Note: Any errors in *ADDITION* will be corrected by score room staff. Please review your individual scores and return to trial coordinator.

_____
Judge's Signature

Florida Virtual Middle School Mock Trial Competition
EXPLANATION OF RATINGS USED ON THE SCORE SHEET/BALLOT

Participants will be rated in the categories on the ballot on a scale of 1-10 points (10 being the highest), according to their roles in the trial. Each video will consist of a plaintiff/prosecution side and defendant/defense side from the same school.

POINT(S)	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Not Effective	Exhibits lack of preparation/understanding of the case materials. Communication unclear, disorganized, and ineffective. Unsure of self, does not think well on feet, reads heavily from script or notes.
3-4	Fair	Exhibits minimal preparation/understanding of the case materials. Communication minimally clear and organized, but lacking in fluency and persuasiveness. Minimally self-assured, but lacks confidence under pressure. Reads from notes.
5-6	Good	Exhibits adequate preparation/understanding of the case materials. Communications are clear and understandable, but could be stronger in fluency and persuasiveness. Generally self-assured, reads from notes very little.
7-8	Excellent	Exhibits mastery of the case materials. Communication is clear, organized, fluent and persuasive. Thinks well on feet, poised under pressure, uses notes as bullet points. Attorneys use notes minimally.
9-10	Outstanding	Superior in qualities listed for 7-8 points' performance. Attorneys use notes minimally if at all.