



# Gene Franchini

## High School Mock Trial



### SUGGESTIONS FOR STUDENT WITNESSES

Witnesses play a key role on the mock trial teams. While many students may consider the attorneys roles as more important, mock trial judges report that their decision depends as much on the witness' performances as on those of the attorneys. *Many* a trial has been won or lost on the witness stand.

#### General Suggestions

1. Familiarize yourself thoroughly with the case materials. Know what you should testify to and what other witnesses know. Witnesses may not use notes while being questioned.
2. Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident (i.e., play the role as if you are the person whose identity you are assuming). You must establish your credibility as a witness by accurately portraying the character. Demonstrate knowledge and understanding of the person (both their strengths and weaknesses).
3. Go over your testimony repeatedly with your attorneys. Have them cross-examine you on the weaknesses in your testimony. Be prepared to handle hostile questions.
4. You are not allowed to make up testimony on direct examination. If asked a question during cross-examination, to which the case materials supply no answer, you may make up an answer, which will not be inconsistent with your previous testimony. (Refer to the Rules of the Mock Trial Competition, section E.3.)
5. Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that a question be repeated. If you realize that you answered a question incorrectly, ask the judge if you may correct your answer.
6. When answering questions, speak clearly so you will be heard. The judge must hear and record your answer; therefore, do not respond by shaking your head "yes" or "no."
7. Do not give your personal opinion or conclusions when answering questions unless specifically asked. Give only the facts as you know them, without guessing or speculating. If you do not know, say so.
8. Be polite while answering questions. Do not lose your temper with the attorney questioning you. Remember that you are there to tell what you know, and not necessarily to be an advocate for your side.

9. Always be courteous to witnesses, other attorneys, and the judge(s).
10. Always stand when the judge enters or leaves the room. Always say "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
11. Dress appropriately (to show respect for the court).
12. If the judge rules against you in the case, take the defeat gracefully and act cordially toward the judge and the other side.

### **Opening Statements**

#### **1. Objective**

To acquaint the judge with the case and outline what your attorneys are going to prove through witness testimony and the admission of evidence.

### **Direct Examination**

#### **1. Objective**

To obtain information from favorable witnesses your attorneys call in order to prove the facts of your case.

#### **2. Advice for Preparing**

- Know the case inside out, especially your witness statement (or affidavit).
- Know the questions that your side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
- Practice with the attorney.

#### **3. Advice in Presenting**

- Be as relaxed and in control as possible. An appearance of confidence and trustworthiness is important.
- Don't read or recite your witness statement verbatim. You should know its contents beforehand.
- Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or affidavit).
- Don't panic if the attorney or judge asks you a question you haven't rehearsed.

### **Cross-Examination**

#### **1. Objective**

To make the other side's witnesses less believable in the eyes of the trier of fact.

## 2. Advice for Preparing

- Learn the case thoroughly, especially your witness statement.
  - Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, and problems in your testimony, and be prepared to explain them.
  - Practice, practice, practice.

## 3. Advice for Presenting

- Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- Be sure that your testimony is never inconsistent with the facts set forth in the witness statement.
- Don't read or recite your witness statement word for word.
- Cross-examination can be tough, so don't get flustered.
- Your job as a witness is to tell the truth, as you know it, about what happened. It is not your job to be an "advocate" for your side or to argue with opposing counsel.
- **DON'T MAKE UNFAIR EXTRAPOLATIONS!!** Unfair extrapolations are a mock trial phenomenon; they do not exist in real trials. Rule 2.3 is designed to make sure that witnesses do not unfairly go beyond the bounds of the problem. Because the issue of extrapolations – fair and unfair – continues to present a problem for some teams, the Judge's Orientation includes instructions to judging panels taking directly from Rule 2.3 about how to evaluate extrapolations: presiding judges are encouraged to deal with unfair extrapolation objections by instructing the objecting attorney to address the matter through impeachment on cross-examination or during closing arguments (if appropriate); scoring judges are told, "A witness may neither object nor refuse to answer any question posed. Such a response is a violation of the rules and Scoring Judges may adjust the witness' score accordingly; and, all judges are advised when an attorney objects to an extrapolation, the judge shall rule in open court to clarify the course of further proceedings and the Scoring Judges may consider whether such an objection is frivolous and adjust the attorney's score accordingly.
- Don't be obstreperous! While you want to "give up" as little as possible when you are being cross-examined, you must not appear to be defensive, evasive or non-responsive. Judges don't appreciate such conduct and behaving this way can have a very negative impact on your credibility in the eyes of the jury.