

**The American Mock Trial Association**

**New Team Handbook**

*Online Version (for 2020-21)*

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## Introduction

This “New Team Handbook” (updated for the online 2020-21 competition season) is a publication from the American Mock Trial Association’s (“AMTA”) Academics Committee. In 2020-21, Regionals and ORCS will be held through the Zoom video communication app. This Handbook is geared toward new or developing programs, but more experienced programs might also benefit from its contents, especially given the big changes for this season. Our hope is that this document is easily accessible to a general audience and can help out with common questions you may have.

AMTA aspires to provide the opportunity for college and university students across the country to participate in intercollegiate mock trial. We know that one of the greatest challenges to expanding participation is the hard work it takes to get a new program off the ground. This can be a particularly daunting task if a student, faculty member, or other university supporter looking to establish a program does not have any experience with AMTA and does not know what to expect. That is why AMTA has created this Handbook as a resource to help new programs get started on the path to mock trial success.

The Handbook also ventures into territory where there is not necessarily a right answer. While there may be only one way to register, there is certainly not a single way to be successful at putting together a winning case. Nevertheless, we recognize that it is more helpful for new programs to have some suggestions on strategies in building and presenting a case. Thus, based on our collective experience, we have tried to provide some suggestions and examples of methods and tactics that have in the past been successful. But that’s not to say that your coach or captain or the judges who score you in competition will necessarily agree. After all, the subjectivity inherent in the scoring of trial performances and the fact that any program—from the newest to the most experienced—can win any given round is part of both the beauty and frustration of college mock trial.

One important reminder: the official rules that govern various aspects of AMTA—from registration to competition—are *not* found in this Handbook, and the Handbook may not be cited during a tournament. They are found, instead, in the official AMTA Rulebook: <http://www.collegemocktrial.org/resources/rules-and-forms/>. In our Handbook, we have tried our very best to reflect the most recent version of those rules (incorporating the temporary changes to the 2020-21 season) and make sure you know where to look to answer questions. But the Rulebook may be updated any time (unlike this Handbook), so make sure to go to the Rulebook for all official queries.

If you are already familiar with AMTA procedures but want to learn about changes to the 2020-21 online season and view some helpful resources and teaching links, see: <https://www.collegemocktrial.org/Video%20Examples%20from%20Online%20Mock%20Trial%20Competitions.pdf>

## A. Mock Trial

Mock trial is a competition that involves students performing as both attorneys and witnesses in a simulated trial based on a fictional fact pattern and law provided by the competition's governing body. In these simulations, students earn points by putting on a compelling presentation of a case to evaluators ("judges"), who score students based on their performances. Many states start mock trial competition as early as middle school, and mock trial is a phenomenon that has spread globally, particularly at the high school level.

Although many mock trials—from middle school to law school—are similar in their general structure, the rules often vary. For example, unlike some law school contests, AMTA competitions include scores for both attorneys and witnesses. All of this is to say that just because you know how one mock trial competition works, it does not necessarily follow that you know how they all operate.

As we will describe in this Handbook, AMTA competitions reward teams for winning trials by scoring more points than their opposing teams. At the core of every competition is the focus on a persuasive presentation of the facts and knowledge of the law to the evaluators. But the details of how participants are permitted to present the case and how that presentation will be evaluated can vary considerably.

## B. Intercollegiate Mock Trial

AMTA, a non-profit organization that is governed by an elected and volunteer Board of Directors, is generally recognized as the single national governing body of intercollegiate mock trial. It was founded by Dean Richard Calkins of Drake Law School in 1985. In its 35<sup>th</sup> Anniversary season of 2020, over 700 teams from more than 400 colleges and universities registered as members of AMTA. Unlike law school mock trial, which is governed by countless organizations, AMTA is privileged to have its case used for the vast majority of collegiate mock trial tournaments, crowning a national champion at the end of the competition season.

Each year, AMTA releases at least one case that is used for competition in that season. Undergraduate students compete in tournaments as members of six-to-ten person teams representing their college or university. (Currently, schools are not limited in the number of teams that they can register.) Cases include a variety of materials such as affidavits, deposition transcripts, expert witness reports, exhibits, statutes, and case law. AMTA cases generally take place in the fictional jurisdiction of Midlands. Over the course of a standard AMTA tournament, students from each team present the case four times: twice as the Prosecution (criminal) or Plaintiff (civil) AND twice as the Defense. In each round, three students will serve as attorneys and three different students will serve as witnesses. Both attorney and witness roles are scored.

The case AMTA teams argue at Regional Tournaments ("Regionals") is generally released in mid-August. Schools must pay to register their teams by October 15 to guarantee that they will be able to compete in a Regional Tournament in January or February. Although many Invitational Tournaments ("Invitationals") hosted by AMTA member institutions using the

AMTA case occur during the fall semester, Regionals are the first round of AMTA-sanctioned tournaments of the year. Currently, every team in AMTA—from the defending National Champion to the newest school in the Association—must compete in a Regional to qualify for further rounds of competition. The top teams in each Regional move on to compete in the Opening Round Championship Series (“ORCS”), which is hosted in several locations across the country in March. From there, 48 teams move on to the National Championship Tournament (“NCT”) in April, where AMTA’s national champion is crowned. Over the last few years, AMTA has provided a brand new case for the teams that advance to the NCT. All Regionals and ORCS in 2020-21 will be held online. The format for NCT has yet to be determined.

### C. Benefits of Mock Trial

It is hard to overstate the potential benefits of intercollegiate mock trial. Many of us who competed in mock trial still regard it as one of the best and most influential experiences of our lives. The same rings true for the joy of coaching or mentoring college students involved in the activity. Simply put, mock trial provides an invaluable educational and competitive experience that benefits participants and their schools. An exhaustive list of all the potential benefits would be impossible, but we have tried to include a few of the more common advantages of mock trial here.

***Public Speaking and Presentation Skills:*** Mock trial is not just for future lawyers. Although a number of AMTA competitors will go on to law school, a significant number pursue other careers. Regardless of what path an AMTA alum takes after graduation, the public speaking and presentation skills that AMTA helps develop are invaluable. Learning to make a compelling presentation to unfamiliar judges helps develop skills that are useful in any profession. We know of scores of alums who have noted that their AMTA experiences helped them feel comfortable and succeed in interviews, key presentations, client pitches, and other situations that involve presenting information to an audience. Future employers know this too.

***Critical Thinking and Analysis Skills:*** Developing a cohesive case strategy requires strong analytical skills. AMTA designs cases that typically provide participants with a number of potential witness combinations that can be used to prove their case, and finding the best case strategy is a substantial challenge. In addition to developing speeches, arguments, and examinations based on a team’s case theory, AMTA also encourages participants to think on their feet. When confronted at trial with a new competitor’s strategy, participants must react quickly to succeed.

***Teamwork:*** Successfully crafting a case theory and presenting a case is nearly impossible without working closely with the other members of your team. Learning to work alongside teammates with vastly different styles and personalities is an essential skill that mock trial promotes.

***Mentoring and Networking Opportunities and Alumni Connections:*** AMTA provides a tremendous opportunity for college students to meet potential mentors in the volunteers (such

as coaches, judges, and alumni) who are involved. These volunteers are usually extremely invested in wanting to see AMTA competitors achieve great success, and their mentorship often continues beyond the competition. What's more, college mock trial is an activity that often involves spending numerous weekends on the road in close proximity to other undergraduate students with similar interests. Students often develop lasting friendships—not only with teammates, but also with competitors from other schools—that last far beyond their competition years. Being a member of the AMTA community often opens up doors that would not otherwise exist.

***First-rate Academic Competition:*** AMTA draws many of the best and brightest young minds in the country. AMTA alums include Rhodes Scholars, Supreme Court clerks, and recipients of almost any other honor you could imagine. Given the high caliber of AMTA competitions, building a successful program is a source of great pride for many school administrations. And, as a remarkable learning experience with a strong competitive flavor, it is an exhilarating opportunity for all participants.

***Development of Legal Skills:*** Although mock trial is by no means just beneficial to students considering the law as a profession, it has obvious benefits for students interested in attending law school. First, it provides those students with access to a community that has a tremendous amount of knowledge about the law school application process and the practice of law. Competitions may help students determine if law school is the right choice for them and whether they are interested in pursuing a career in trial law. If they are interested, many students have also found mentors to provide letters of recommendation. Those who continue on to law school will gain familiarity with some (although certainly not all) legal concepts, and they will start to become versed in the language of the law. Even after law school, countless AMTA alumni have found their AMTA connections invaluable in securing career advice and, in many cases, employment. For students who do not pursue a career in the law, the understanding of the legal system gained through participation in AMTA is still valuable. Many of those students find themselves in an occupation where they regularly work alongside lawyers or are asked to speak publicly or act in an advocacy position, and mock trial provides a window into that world.

The Academics Committee has tried its best to include all of the things we wish we knew when we started out with AMTA without going into an overwhelming and unhelpful level of detail. That being said, the Handbook is best supplemented by finding a mentor or advisor with AMTA experience for your program. Indeed, AMTA has started a new team mentoring program to try to give new programs the assistance they need. If you have not yet been assigned a mentor, please contact [amta.mentor@collegemocktrial.org](mailto:amta.mentor@collegemocktrial.org) to request one.

We very much hope that you will get to experience the benefits of AMTA firsthand. What follows in these pages is an attempt to make these benefits more accessible to anyone who wants to become a member of the AMTA community.

## Chapter 1: Starting a Team

If your university (or future university) is not registered with AMTA, don't worry! We've included steps on how to start a mock trial program at your school. While the process of starting and sustaining a new program can be challenging, it is certainly rewarding.

### A. University Support

Most mock trial programs are driven by the students and coaches who start them. Some mock trial programs are started by a university. Either way, university support is necessary. For example, in order to register with AMTA, you will need an Institutional Authorization Letter. Each program around the country has evolved over the years to arrive at a balance that works for its particular needs. Some programs offer course credit and others do not. Some have both an educator coach (who navigates their school's rules, policies, and resources) and an attorney coach (who helps students improve their knowledge of the legal issues and trial procedure). Other programs are successful with a faculty advisor that serves in a more limited role. If you are a student-run program, we would also encourage you to seek coaching and faculty support and advice, even if you envision students having the primary responsibility for running your program. Or you may be able to establish a relationship with an academic department and find a faculty member to offer a class; this way, busy students can receive academic credit for all the work they will be doing. If you want to begin by starting a club, most universities have an Office of Student Activities. Here are some things you should ask yourself when starting a club program:

- Does your university require a specified amount of **student signatures**?
- Does it require a codified **constitution**?
- Can teams reserve a **meeting space** to practice? What is the procedure for booking rooms?
- Is your club eligible for a **budget**? If so, how much money can the team receive? Will your team be allowed to fundraise?
- Where can you post **recruitment flyers**?
- Does your university require an on-staff faculty **advisor**? (If so, are there professors willing to serve this role? Politics, pre-law, communications or philosophy departments are excellent places to start!)

If you have a faculty member who wants to offer a mock trial class, the professor, department chair, or department assistant will likely be able to manage these processes. (See Chapter 1h in this Handbook.) The faculty member can also view sample syllabuses on AMTA's website: <https://www.collegemocktrial.org/about-amta/getting-started/>.

### B. AMTA Registration

Make sure you register your program with AMTA. You may sign up any time (and many teams

register for the following year at the end of the spring for budgetary reasons). If you register after August 15, AMTA will send you the case and (eventually) your Regional assignment. The deadline for registering to guarantee a spot at a Regional Tournament is October 15, but if you miss that deadline, you should still apply, and AMTA will do what it can to accommodate your program. You can register with AMTA here:

<http://www.collegemocktrial.org/registration/general-registration-info/>

### C. Recruiting Team Members

***Use your school:*** Many schools have helpful recruitment resources for student clubs and activities. If your school has any public list of clubs and activities offered, make sure mock trial is on the list. Look out for information fairs early in the season where you can get exposure. Don't hesitate to reach out to school officials to ask what resources are available to you.

***Host an info session:*** Host an annual Information Session / Open House. This meeting should provide students with basic information about the nature of mock trial, how the season will work (e.g. any Invitational tournaments you plan to attend and the approximate date of your Regional) and what time commitment you expect from members. Short demonstrations of openings, directs, and crosses are also helpful.

***Get the word out:*** Advertise your information session online and around campus. Keep it simple—less is more. You can target pre-law groups, theater/acting groups, and debate clubs. (But before posting any ads, make sure you're not violating group or university policies.) Prepare a creative, funny presentation and ask a professor for a few minutes to talk to students while they're in class. Ask departments to circulate an e-mail to their students or post information about mock trial on their respective websites. Students in the following departments might especially be interested: Political Science, Pre-Law, Theater, Criminal Justice, History, Philosophy, English, Business, Communications, Speech, and Honors, among others. Use Facebook and Twitter to your advantage. Be proactive.

While time consuming, a good recruiting campaign is absolutely critical to assembling a talented, competitive team. Be straightforward about the time commitment. If possible, build a basic website so students can easily obtain information about the team.

### D. Setting a Budget and Fundraising

Mock trial expenses can pile up. Most of the costs are associated with traveling to a tournament, where you will most likely need to pay for lodging and travel, as well as meals and registration fees. If you plan on attending one or more Invitational tournaments, then those costs will rise. (Scrimmages with teams from local colleges are a great and inexpensive way to improve.) You will also need funds for things like recruitment flyers and demonstrative exhibits.

Think of how you plan to fund your program to try to defray out-of-pocket costs. Most teams



have dues paid by members, but they also look for other funding sources. You might check with your university and individual departments. Sometimes, courses have an available budget. Student government and funding for school clubs are also good places to check. Finally, you might try fundraising—law firms and alumni might be willing to contribute, and your school’s alumni association may be willing to help. But make sure to check with your school first regarding fundraising and travel policies.

### **E. Coaching**

Before seeking coaching, it’s important to consider the role you would like a coach to play on the team. Some mock trial teams are run by coaches who arrange practices, handle registration and travel, and assign students to roles on the team. Other programs are student-run and have coaches present at practice exclusively for advice. Some teams elect to keep faculty and coach involvement to a minimum by finding a hands-off sponsor (to help with things like the Institutional Authorization Letter required for registration), who has little influence on the team. Different arrangements work with different programs, and both coach-run and student-run teams (not to mention amalgamations of the two) have had great success in AMTA.

You might also consider getting coaches in multiple areas of expertise. Faculty and attorney coaches are a natural choice for mock trial, but anyone with experience in acting, speech, or debate can be very helpful.

You can start your search for coaches at your school. Email professors, explain what you’re looking for and ask if they’d be interested in attending a practice or two. Another coaching resource is law students; if there are any law schools in your area, reach out to the director of activities for the school and see if they can help you recruit interested student coaches. You can also reach out to local schools who have been involved in AMTA for many years to see if they have any alumni in your area who might want to get involved with a team.

### **F. Structure**

A sound structure is crucial to running a successful team, both in the short-term and long-term, so think about how you want to arrange the program administratively and competitively.

***Administratively:*** Have an executive board with well-defined responsibilities. Besides your typical officers like President and Treasurer, positions like a Fundraising Chair and/or Travel Coordinator can be very valuable. Remember to keep documents, as your hope is for the mock trial program to live longer than your time at the school.

***Competitively:*** There are a number of structures you can choose from to determine your team’s competitive roster (i.e. who performs which roles), but give it some careful consideration. Successful programs have used all of these structures and many have changed structures over time, so try to find what it best for you and your school.

- Student-run, concentrated power: One or two elected students make all personnel decisions without the input of a coach or faculty advisor.

- Student run, dispersed power: An elected student board (3-5 students) makes all personnel decisions with the advice of a coach or faculty advisor.
- Student & coach run: An elected student board (3-5 students) plus a coach or faculty advisor make decisions together. Or students might run the program, but delegate tasks (such as selecting teams) to coaches to minimize disputes.
- Coach/Faculty run: A coach or professor makes personnel and logistical decisions.

## G. Scheduling and Preparation

Once you've had a great recruiting turnout and you've determined your teams, start figuring out your schedule for the year. Keep in mind the following:

**Preparation Schedule:** You should schedule many meetings early on in the fall semester to go over the new case, plan strategies, rehearse witnesses, write (and re-write) direct examinations, cross examinations, openings, and closings. You will also need to teach new team members the ways of mock trial. Consistent meeting times are essential so that team members can block out a regular practice time on their schedules.

**Tournament Schedule:** Plan a rigorous practice schedule around your Invitational and AMTA tournaments. We suggest practicing one or two times each week for a few hours. Some teams practice more, but if you are starting a new team, then be careful about making the mock trial schedule so demanding that it leads to fast attrition. Plan scrimmages before your tournaments. Look for outside judging to make the experience more realistic.

Take advantage of different resources. There are always attorneys and judges in your local area who are looking to give back. It's your job to find them. Contact your District Attorney's office, the Public Defender's office, a local bar association, etc.

As described above, mock trial competitions differ in many ways. The best way to understand what good AMTA mock trial looks like is to see it, either by visiting a local Invitational tournament or by viewing successful teams from the past. You can see what AMTA's previous champions did best by watching them in action. To order a copy of AMTA DVDs, click here: <http://www.collegemocktrial.org/amta-store/championship-dvds/>. You can also view a couple championship rounds on AMTA's YouTube channel:

2003: <https://www.youtube.com/watch?v=jB1XmNwWbq4>

2006: <https://www.youtube.com/watch?v=xR1cxIKM6Ec>

## H. Course Credit

As we noted earlier, some mock trial teams come out of student-run clubs and organizations, while others are tied to college and university courses. If your school does not currently offer mock trial courses for academic credit and you want to try to have that as an option, here are some things to consider. Most importantly, it is imperative to have departmental support and a faculty instructor or instructors able to 1) structure and teach the new course; 2) propose the

course to appropriate school bodies; and 3) organize and coordinate (to varying degrees) the team's competition season.

Faculty members will have great insight on how best to navigate university procedures and manage resources. Various departments may have faculty willing to create new for-credit course proposals for a mock trial program. Criminal Justice, Political Science, and Pre-Law departments immediately come to mind. But faculty in Business Law, Communications, English/Rhetoric, History, and Philosophy departments might also be great assets. Don't hesitate to reach out to administrators (who may be able to help students with recruiting faculty), alumni affairs (which probably has a list of alumni who are attorneys), or nearby law schools.

Curriculum varies from school to school and the means of changing that curriculum will similarly vary. If a general "topics" course already exists on the books, then it might be possible to fit a "mock trial" course under that heading. It also might be possible to include a mock trial component in "Intro to Law" course or, for more developed pre-law programs, "Civil Procedure," "Criminal Procedure," or "Effective Courtroom Trial Practices" classes. Alternatively, many schools have established a separate mock trial course. For help with structuring the new course, AMTA has provided sample syllabuses here: <http://www.collegemocktrial.org/about-amta/getting-started/>. The syllabuses differ greatly, but they all share important common features. They might be helpful for programs initiating courses for credit or those simply looking for a template to better define their semester activities. Naturally, it is essential that departments and faculty members teaching the course put together the material, outline, and assignments that best work for their institution. For the 2020-21 online season, we strongly recommend that faculty incorporate such things as practicing and optimizing performances on Zoom, using and authenticating exhibits in a virtual format, and impeaching and refreshing recollection on Zoom. (We will discuss what all of these things mean later in the Handbook.)

For a new course, faculty will generally need to draft a "course proposal," which will be tied to a faculty's/department's area of expertise. Departments will need to determine if they have faculty available to teach this course in the present and the future. Depending upon the institution, the proposal will generally need to have an outline specifying "course content," student learning outcomes [SLOs], and assessment instruments, which will all vary according to the level of the course (introductory, upper-level, etc.). There are also many additional factors to consider:

**Accessibility:** Will there be prerequisites or major restrictions? Is the course open to all students or restricted only to those participating on the mock trial team?

**Curricular:** Will the course be solely for the year's mock trial case or will it be an introduction to law with a mock trial component? What are the topics to be covered by each class meeting? What readings are required for each topic?

**Procedural:** How many times a week will the course meet and for how long? How often will the course be offered? Will the course be repeatable for credit? If not, will there be different courses for the introductory and advanced levels? How many academic credits should the course count for?

**Funding:** How will the team activities and travel be funded? (Departments, deans offices, and administration, might provide *some* funding for a mock trial program, but it is often minimal support.)

**Grading:** Will the course be graded or pass/fail? What percentages of the final grade are covered by what evaluation mechanisms? Does the course require a final exam or other end-of-semester evaluation mechanism? What are the norms at your school for similar courses?

**Miscellany:** Does the university have any requirements that the syllabus address Title IX issues, academic honesty issues, disability rights for students, or other such issues?

One of the biggest difficulties will be navigating the discrepancy between semester timelines (usually late August-December and late January-May for colleges on the semester system) and the official tournament season (which begins in February and may or may not continue through March and April, depending on how well teams perform). Will you have a 3-credit course in the fall (preparing students and partaking in Invitationals) and/or a 3-credit course in the spring (competing nationally)? How will you organize the spring course if participation in ORCs and/or the NCT is uncertain? What if your school is on the trimester or quarter-system?

After all of these issues are worked out (and different models will work better depending upon individual schools), course proposals might need to be approved by any mix of department committees, school-wide curriculum committees, and possibly a college senate and administrative office, which will all make sure the course is viable and in the best interest of students. Once again, feel free to contact AMTA's mentorship program [[amta.mentor@collegemocktrial.org](mailto:amta.mentor@collegemocktrial.org)], which can help put you in touch with other instructors who have been teaching mock trial for course credit.

## Chapter 2: Summary of AMTA Competition Rules

AMTA competitions are governed by the official AMTA Rulebook, which can be found on the AMTA website: <http://www.collegemocktrial.org/resources/rules-and-forms/>. This chapter provides an informal summary of the tournament structure, as well as those rules that are most important to know when starting a new program. (Nothing in this Handbook replaces or overrides the official Rulebook, and teams are encouraged to review the Rulebook and other material available on the website prior to competing.)

### A. Tournaments

AMTA runs three levels of tournaments (known as “sanctioned tournaments”): Regionals, Opening Round Championship Series (“ORCS”), and the National Championship Tournament (“NCT”). Each team that registers and pays the registration fees will be assigned to a Regional tournament. Qualification to ORCS and NCT is based on the results of the preceding level of competition. In addition, many participating schools run scrimmages and/or compete in Invitational tournaments, which are welcomed but not officially sanctioned by AMTA. (Typically, though, Invitationals follow most AMTA rules and procedures.)

**Scrimmages:** After all the initial trial preparation is done, most teams begin the season by scrimmaging: with other local teams, between teams in their school, or among themselves. Scrimmages are basically free; they are a good way to meet other local programs, and they can be held at any point in the season. They provide great opportunities to try out new ideas and let you see how well your case theory coheres.

**Invitational Tournaments:** Invitational tournaments take place October through January and range in the level of selectivity, size, and competition. While they are welcomed by AMTA and usually follow AMTA procedures, they are not officially sanctioned. As these are non-AMTA events, hosts may elect to set their own policies on how teams are accepted (whether by invitation only or open to any teams).

Admission to some Invitationals can be difficult, so contact the tournament hosts as early as possible. A list of some Invitationals can be found [here](http://www.collegemocktrial.org/tournaments-/invitational/): <http://www.collegemocktrial.org/tournaments-/invitational/>.

**Regional Tournaments:** Traditionally taking place in February, Regionals are the first AMTA-sanctioned tournaments of the season. There are usually between 20-28 teams at each Regional, with the top teams moving on to the next level of competition—ORCS.

Regional assignments are usually posted at the end of November on the AMTA website. With rare exceptions, only two teams from a single school can compete at a given Regional site. If a school has more than two teams, then the school’s teams will be divided among multiple Regional sites. AMTA assigns teams to Regionals using a number of factors including: proximity, equalizing the number of teams, and equalizing

the competitive strength of each tournament. (Rule 2.9 of the AMTA rulebook provides more information about the criteria used to assign teams to Regionals.)

Give or take a few, the top 192 teams in the country from Regionals advance to ORCS. Typically, this means that the top 7 teams from each Regional advance to the next level of competition, but the specific number will vary. (Specific procedures for bid assignment are discussed in AMTA rule 6.6.) Only two teams from each school can advance to ORCS (even if more would have qualified). Programs are free to shuffle the students on each team roster before ORCS.

Teams that do not get a direct bid from Regionals may still qualify for ORCS through an open bid procedure based on their performance at Regionals (as well as a number of other factors). As spaces at ORCS become available, AMTA starts with the top team that did not receive a direct bid and offers it an “open bid” (or “indirect bid”) to ORCS. Complete information on this complicated process is provided in AMTA Rule 6.9. But the bottom line is simple: even if your team does not receive a direct bid to ORCS from Regionals, don’t lose hope!

***Opening Round Championship Series:*** Held in March, ORCS is the first level of the National Tournament. The top teams at each ORCS site will advance to the National Championship Tournament.

***National Championship Tournament:*** Of the hundreds of teams that compete at Regionals, only 48 will eventually advance to the National Championship. Teams at the NCT are divided into two divisions of equal strength based on their performance in past seasons. Those 24-team divisions operate as separate tournaments throughout the weekend. At the awards ceremony for the NCT, the top team in each division is announced, and those two teams face off following the awards banquet for the national championship.

## **B. People at a Tournament**

***Team Members:*** Each team (comprised of college students) must submit rosters to AMTA in advance of all AMTA-sanctioned tournaments and confirm those team members at registration. It is important to know who is registered on your team roster, as those are the only people from your school with whom you can communicate from the start to end of a round. (See Chapter 3 of the Rulebook for questions regarding eligibility.) This will remain the case for the online season.

***Captains:*** Most teams designate one or two members to be captains, wherein they’ll serve as points of contact for the team. Captains (or other team representatives) are required to attend the “captains’ meeting,” which takes place prior to each tournament round.

***Coaches:*** Many schools have coaches accompany them to tournaments. Although you may often see coaches helping out at tournaments, only the AMTA Representatives can enforce and interpret AMTA rules at sanctioned tournaments.

**Judges:** Judges are volunteers (members of the legal community and faculty) who are recruited by the hosts to be trial evaluators. At each trial, there will be two or three judges—one presiding judge and two scoring judges. (Presiding judges often double as scoring judges.) Judges choose to volunteer their time to help AMTA. They are not paid. Because they are generally not affiliated with AMTA, they are given a brief training presentation prior to the round in which they judge. Generally, they are unfamiliar with the case. Remember always to be respectful, as you never know when you will run in to one of them in the future.

**“Juries”:** Unless otherwise stated, AMTA trials are jury trials. Usually, this jury is fictitious (there actually won’t be real people sitting in a jury box), even though they are presumed to be there. Occasionally “scoring judges” will sit in a jury box; on rare occasions, hosts recruit non-scoring people to act as jurors to help fill the jury box.

**AMTA Representatives:** AMTA Representatives (“Reps”) are unpaid volunteers assigned by AMTA to administer AMTA-sanctioned tournaments. *They are the only people at the tournament who can interpret and enforce AMTA rules.* AMTA Reps are often not from the region where the tournament is held (in part because they are unaffiliated with the teams at the tournament), so they might be less helpful with local logistics.

**Tournament Host(s):** Tournament hosts perform the thankless job of agreeing to organize and help run the tournament, despite usually having teams competing at the tournament. Hosts are often wonderful at helping with logistical issues. *However, unlike AMTA Representatives, they cannot interpret or enforce AMTA’s rules even if they are esteemed members of the AMTA community.*

**Again, talk to the AMTA Reps about anything related to rules or mock trial, and talk to the tournament host about anything related to logistics or the local area.**

**Guests:** Guests are welcome at all AMTA events. There is no rule against having your friends and family come watch you compete. But there are rules against speaking with them during the round (including during trial breaks). Team anonymity extends to guests, so make sure to tell them (before the trial) not to wear a school sweatshirt, etc.

### C. Trial Roles

Each school may have as many teams as it wishes, though there are increasing registration fees for each team. A team consists of a minimum of six and a maximum of ten students. A student may compete on only one Regional team, and each student must meet the eligibility criteria set forth in Rule 3.6.

Each team competes as both the Plaintiff/Prosecution and the Defense at a tournament. Six students on a team compete in any given round—three as attorneys and three as witnesses. Accordingly, on a six-member team, all six students will compete on both sides of the case.

When a team has more than six members, some of the students will compete only on Plaintiff/Prosecution, some of the students will compete only on Defense, and some will compete for both. (A student competing on both sides of the case may be an attorney on both sides, a witness on both sides, or an attorney on one side and witness on the other. This is a strategic decision left up to each team.)

**Attorneys:** During the case, each attorney must give one direct examination and one cross examination. Additionally, one attorney will give the opening statement and a second will give the closing argument. The third attorney (sometimes called the “middle” or “swing” attorney) will not have a speech.

While a witness is on the stand, only the attorney conducting the direct or cross examination of that witness may make or argue objections. Objections are not permitted during opening statements or closing arguments. (See Chapter 4g in this Handbook.)

Attorneys are permitted to use notes during their examinations and speeches, but they may be scored lower for doing so. At Regionals, most teams do not use notes. Attorneys are expected to wear professional attire, such as business suits.

**Witnesses:** Unlike high school mock trial, there are more witnesses provided in the case packet than will actually be called in the trial. Regardless of the number of witnesses available, each team will call exactly three witnesses in a particular round.

In most years, some of the witnesses provided are available to both sides (“swing witnesses”), while others may be called by only one side (“side-constrained witnesses”). If you intend to call any of the witnesses that are available to both sides, you need to prepare backup witnesses in case the other side takes the witnesses you want.

The witness selection order is provided in the case packet. At the captains’ meeting prior to each round, teams select their witnesses in the order provided in the case packet. For example, if the witness selection order is P-D-P-P-D-D, the Plaintiff/Prosecution will first select one witness, then the Defense will then select the second witness, then the Plaintiff/Prosecution will select its other two witnesses, and finally the Defense will select its last two witnesses.

In the example above, if the Defense wants to call one of the swing witnesses (say, Smith), it would not be able to guarantee that it would get that witness, since the Plaintiff/Prosecution has the first choice, and could take Smith with that first selection. Accordingly, the Defense needs to prepare a backup witness in case the Plaintiff/Prosecution takes Smith before the Defense gets a chance. If the Plaintiff/Prosecution wants to call Smith and two side-constrained witnesses, they do not need a backup prepared because they can take Smith with their first choice, and the other witnesses they want are not at risk of being stolen. However, if the Plaintiff/Prosecution wants to call two swing witnesses, they can guarantee only one of them before the Defense gets to make a selection, so they would need a backup witness prepared in case



the Defense takes the second one. (More information regarding the strategy for selecting witnesses can be found in this Handbook's Chapter 3d and 4f.)

If a team has backup witnesses ready, the team may choose to have the same student prepared to play the team's first choice and the backup, or may choose to have different students prepared to play each of the witnesses the team might call on that side of the case. Teams should make sure that they are prepared for all contingencies so that they don't find themselves having to call a witness that nobody is prepared to play.

Witnesses are not permitted to use notes or have their affidavits with them while they are on the stand, unless the affidavit is shown to the witness during impeachment or to refresh the recollection in accordance with the Midlands Rules of Evidence ("MRE"), which is used at AMTA competitions. Witnesses are allowed to use accents and wear any costume or attire they consider appropriate for the characters they are portraying, as long as they are not in violation of Rules 1.4 through 1.10. (For the MRE, see: [http://www.collegemocktrial.org/resources/rules-and-forms/.](http://www.collegemocktrial.org/resources/rules-and-forms/))

**Timekeepers:** Each team has a timekeeper, who must be one of the students on the team's six-to-ten person roster. The timekeeper times each element of the trial, gives signals as to how much time is remaining, and announces when time has expired. Teams often prepare timecards for the timekeeper to use to show the remaining time. Timekeepers are usually not permitted to use cell phones to keep time, but they may do so during the 2020-21. Instead, timekeepers usually use (silent) kitchen timers or stopwatches. Teams are allowed to communicate with timekeepers about timekeeping matters during the trial (though they should not do so in a disruptive way).

Rule 7.17 states: "The timekeeper shall announce aloud to the court when the time for any part of the trial has expired. Timekeepers for opposing teams shall cooperate with and assist each other to ensure accurate timekeeping and to eliminate any interruption of the trial due to errors in timekeeping."

On a team with more than six members, the timekeeper is typically a student who is not competing in the round. On a team with only six members, the timekeeper must also compete. Typically, one of the witnesses will serve as timekeeper until he or she is called to the stand, at which time he or she will switch places with another witness, who will then serve as timekeeper.

Here is a hypothetical example of a team with 6 students:		
	Plaintiff/Prosecution	Defense
Opening Attorney	John	Ashley
Middle Attorney	Mary	Lucas
Closing Attorney	Jane	Mary
Witness 1	Lucas	John

Witness 2	Brian	Brian
Witness 3	Ashley	Jane
Timekeeper	Brian/Ashley	Brian/Jane

Here is a hypothetical example of a team with 10 students:		
	Plaintiff/Prosecution	Defense
Opening Attorney	Larry	Brandon
Middle Attorney	Joseph	Kristin
Closing Attorney	Francis	Michael
Witness 1	Julie	Sarah
Witness 2	Kristin	Daniel
Witness 3	Zach	Zach
Witness 4 (backup)	Brandon	Larry
Timekeeper	Michael	Francis

#### D. Tournament Structure

Each AMTA-sanctioned tournament consists of four rounds, and your team is guaranteed to compete in all four rounds; there is no “elimination” of teams between rounds. Each team will compete twice as the Plaintiff/Prosecution and twice as the Defense. For the first round, sides are determined randomly. In the second round, you will be on the opposite side as the first round. The third round *side* is again determined randomly (even though the matchup is paired based on a set formula), and the fourth round side is the opposite of the third round.

For example, if your team represents the Defense in Round 1, you can be certain you will represent the Plaintiff/Prosecution in Round 2. Likewise, if you represent the Plaintiff/Prosecution in Round 3, you know you will represent the Defense in Round 4. There is no relationship, however, between the side of the case you perform in Round 2 and the side you will perform in Round 3.

Most sanctioned tournaments follow either a 2-2 or a 1-2-1 format. A 2-2 format means that there are two rounds on the first day and two rounds on the second day of the tournament (either Friday-Saturday or Saturday-Sunday). A 1-2-1 format means that there is one round on Friday, two rounds on Saturday, and one round on Sunday.

***Registration and Opening Ceremony:*** The first event at each tournament is registration. At least one representative of your team needs to arrive at the tournament site during the registration window in order to check your team in. Always be sure to contact your tournament host or AMTA Representative if you are running late.

At registration, you should confirm that your team roster is correct, and make any necessary changes. Only students on your official roster may compete during the tournament or serve as timekeepers.

Following registration, there will be an opening ceremony. The first round pairings will be determined by random draw. The host and AMTA Representatives may also have announcements regarding rules and procedures for the tournament.

***Captains' Meeting:*** One or two members of each team shall be designated as captains. Prior to each round, the captains of each team (or different designated member) must attend the captains' meeting, which will be hosted in a Zoom room. It is essential to be on time to the captains' meeting, and penalties may be assessed if you are late. (Some Invitational tournaments do not run or allow you to skip captains' meetings. This is NOT permitted for AMTA tournaments. At AMTA tournaments, ALL teams must send a representative.)

At the captains' meeting, the AMTA Representative will call roll to ensure that each team is present, and may have announcements to make as well. The team captains will receive their ballots for the round, and will then meet with the captains of the opposing team. The captains select witnesses in the order provided in the case packet and fill out any forms required by the case materials. The order in which witnesses are selected during the captains' meeting need not be the order in which they are called to the stand during the trial. Captains shall also inform their opponents of the gender of their witnesses.

Following witness selection, each team must show the opposing captains any demonstrative aids (often just called "demonstratives") they might use during the trial. Demonstratives can include enlargements of exhibits in the case packet, other graphics or writings (such as statutes) printed on poster board, or physical items an attorney or witness may use or show the jury. Demonstratives are not limited to those provided in the case packet, but they may not be used to introduce material facts not included in the case materials. Electronic and light projected demonstratives are usually prohibited, but will be allowed during the 2020-21 season.

If you believe that your opponent's demonstrative is improper, you should bring it to the attention of the AMTA Representative during the captains' meeting for a ruling. (During the captains' meeting, you cannot challenge demonstratives that are simply blow-ups of case materials.) AMTA Representatives will determine only whether the demonstrative is proper under the Rulebook, not whether it may be used in accordance with the Midlands Rules of Evidence. So, if an AMTA Representative does not immediately disqualify a demonstrative, you may still object—to the judges, during the trial—to its use. Demonstratives not included in the case packet may not be entered into evidence.

Prior to the round, each team shall fill in its team number, witnesses, and student names on both sets of ballots the captains received at the captains' meeting. Those ballots are then provided to the scoring judges at the start of the round. This year, the judges will

use virtual ballots. (Usually the ballots are carbon copies, so you should not stack them when writing, or the bottom copies will be illegible.)

At the fourth round captains' meeting, the captains must turn in their completed Spirit of AMTA forms. You will be asked to rate each of your first three opponents on their adherence to AMTA's ideals of civility, justice, and fair play. The team with the highest combined score will receive a plaque. (See Chapter 3g in this Handbook.)

The captains will also be emailed tournament evaluations. These must be submitted at the conclusion of the awards ceremony in order to receive your ballots.

AMTA does not use tournament byes, so if there are an odd number of teams, students not competing in the round will be asked to volunteer for what is called a "bye-buster team." Any team with more than six students should volunteer those not competing in the round. The bye-buster team competes as a normal team, although much of the material is improvised. It is a good no-pressure way for students to gain experience in roles they do not normally have a chance to play. If the tournament has a bye-buster team, students competing on that team will be asked to gather at the captains' meeting.

**Judges:** Each round will have either two or three judges. At Regionals and ORCS, there will be two scoring judges per trial; sometimes the NCT uses three or more scoring judges per trial. Each scoring judge fills out her or his own ballot and scores independently of the other judge. If there are three judges assigned to your round, two of them will score and the third will serve as the presiding judge. If there are two judges assigned to your round, both will score and one will also serve as the presiding judge.

When the judges arrive for your trial, if you recognize that there is a conflict, inform an AMTA Representative or tournament helper immediately so that the judge can be switched to another room. A judge is not permitted to judge the same team twice during a tournament, so if you recognize that you had a judge earlier in the same tournament, notify the AMTA Representative of the conflict. It is not considered a conflict if the judge previously judged your team at a *different* tournament or if the judge previously judged one of your team members while competing for the bye team.

To prevent possible bias, judges are not permitted to be told which teams they are judging. Accordingly, you may not announce your school to the judges until after the round is completed and ballots have been accepted. You also may not identify your school in any other way, such as through clothing or items with the school name. Any such items should remain out of sight until the conclusion of the round. Remember, team anonymity extends to guests.

While the captains' meeting is taking place, judges receive an orientation. If you have coaches present at the tournament, they may be required to judge in the event that insufficient judges check in for the round. Accordingly, coaches should check at the judge registration desk to see whether they are needed. Coaches may not refuse to judge if needed.

**The Round:** Usually the entire trial round, including all timed and untimed activities, must be completed within 3 hours. For the 2020-21 season, this will be 2½ hours. So if a round begins at 2:35, the “all-loss time” will be 5:05. This is crucial, because if your trial is not completed by the all-loss time, both you and your opponents will be penalized by having a ballot win deducted from your final totals. It is both teams’ responsibilities to know the all-loss time and make sure that the trial is keeping pace.

The structure and time limits for each round are as follows:

- Pre-trial [Untimed]
  - There are no specific obligations for pre-trial, but many teams choose to:
    - introduce their attorneys and party representatives to the judges (known as “making appearances”);
    - provide the judges with copies of documents for their reference;
    - invoke Rule 615 of the Midlands Rules of Evidence to constructively exclude witnesses other than party representatives (students will not actually leave the room; they just will not be able to comment about another witness’s testimony);
    - ask for permission to move freely about the well of the courtroom;
    - ask for the presiding judge’s preference on whether attorneys should ask for permission before approaching opposing counsel, the witness, or the bench.
  - Teams are not permitted to make new motions *in limine* (see page 32 of this Handbook). The only motions permitted during the trial are a motion to constructively exclude witnesses and a motion to strike testimony (which generally follows a sustained objection). Teams are not allowed to make any other motions (including those for summary judgment, directed verdict, etc.).
- Plaintiff/Prosecution and Defense Opening Statements [For this year of online tournaments, teams will have 12 minutes cumulative for the Opening and the Closing (it’s usually 14 minutes total). Any unused time will be rolled over for Closing. So if a team gives an Opening that’s 5 minutes and 5 seconds, it will have 6 minutes and 55 seconds remaining for its Closing.]
- During captains’ meeting, each side will allocate 38 total minutes for its case-in-chief and crosses. Each side may allocate between 20-24 minutes (must be whole minutes) for its case-in-chief, and the remaining time (which will be between 14-18 minutes) will be its total time on cross. These minutes may not be rolled over, so if a team allocates 23 minutes for its case-in-chief and 15 minutes for its crosses, but only uses 21½ minutes for its case-in-chief, it will still only have 15 minutes total for its crosses.
- There is typically a 5-minute recess between the Plaintiff/Prosecution’s case-in-chief and the Defense case-in-chief.
- Plaintiff/Prosecution and Defense Closing Arguments [see “Openings” above.]
- Plaintiff/Prosecution Rebuttal [Up to 5 minutes]

- The Plaintiff/Prosecution is permitted a rebuttal, as long as time remains. (The Plaintiff/Prosecution need not officially “reserve” its rebuttal time.)

During the round, from the time the judges enter the room until the time the blue ballots have been accepted into the Tab Room, members of the team may communicate only with each other, the opposing team, the judges, and tournament officials. Team members are not permitted to speak to coaches, family members, or spectators during the round. All communication is prohibited, *including during recesses*.

Usually, all student competitors’ cell phones, computers, and other wireless communication devices must be *powered off* during the round, but this rule will not be in effect during the 2020-21 season. (See: AMTA rule 7.1)

AMTA will announce more rules for the online format following its midyear meeting in December.

If you believe that any rules have been violated during your round, bring them to the attention of the AMTA Representatives at the first opportunity. Usually, this means you should go to the tabulation room (where the AMTA Representatives reside) during the next recess in the trial. If necessary, you may request that the AMTA Representatives intervene in the trial to address the issue. Typically, interventions may be requested only by members of the teams in the round. (Generally, coaches may not request interventions.) Evidentiary issues are solely within the province of the judges and should not be brought to the AMTA Representatives.

AMTA provides closed-universe case problems. Teams are not permitted to cite outside authority, such as case law not provided in the case packet. Additionally, witnesses are not permitted to contradict their affidavits or to invent material facts not included in or reasonably inferred from their affidavits or other case materials with which they are familiar. Witnesses are permitted to invent background information about themselves to develop their characters, as long as it is not material to the case. On cross examination, witnesses are permitted to invent facts if they are asked questions not answered in their affidavits, as long as their answers are responsive and not contradicted by anything in their affidavits.

Improper invention of fact is considered cheating. During trial, the only remedy for improper invention is impeachment. AMTA Representatives will not intervene in a trial or impose tournament penalties because of invention. If you believe that a team has engaged in egregious invention of fact, you may report them to AMTA for post-tournament review in accordance with Rule 8.9(6).

***After the Round:*** Following the end of the trial, the judges have to complete their virtual blue scoring ballots, and those ballots will be sent to the tabulation room. The judges may ask the teams to leave the room while they complete the ballots.

Usually, judges give some oral comments at the conclusion of the round, after the blue scoring ballots have been turned in.

***The Tabulation Room:*** The tabulation room (“tab room”) is where ballots are added and pairings are done for the next round. It is also where you are most likely to find an AMTA Representative to address any problems that arise during your round. Details about the virtual tab rooms for the 20-21 season will be announced following AMTA’s midyear meeting in December.

At sanctioned tournaments during in-person trials, the tab room is typically open at all times except after the fourth round. Each team is permitted to have one or two members in the tab room, who can look at her or his team’s ballots for completed rounds and observe the pairings for the next round. (Teams may not look at comment sheets for other teams.) The ballots must remain in the tab room. You will receive your ballots at the conclusion of the awards ceremony.

There is a 30-minute review period following each round, meaning that one representative from your team should come to the tab room during this time to check that your ballots were added and recorded correctly. During this time, you are required to bring any tabulation errors to the attention of the AMTA Representatives. (AMTA Reps work very, very hard to avoid errors, but they still occasionally occur.) Any errors not identified during the 30-minute review period are deemed waived. Because the tab room is closed after the fourth round, the 30-minute review period for that round takes place after the awards ceremony.

Each team is scored on fourteen parts of each trial: opening statement, directs of 3 witnesses (by attorneys), crosses of 3 witnesses, each witness’s performance on direct, each witness’s performance on cross, and closing argument. Each part is scored on a 1-10 scale, with 10 being best, for a maximum of 140 points. The team that receives the most points out of 140 wins the ballot. The result of a ballot is recorded by placing the point differential on the side of the ballot corresponding to the winning team. For example, if the Plaintiff/Prosecution receives a total of 130 points and the Defense team receives a total of 135 points, the tab room will write “+5” on the Defense side of the ballot. During the 30-minute review period, it is important to make sure that the differential is written on the correct side, as this is one of the most common errors made.

Each ballot is scored separately, and a team is given a record of how many ballots it won, lost, and tied. For example, a record of 1-0-1 after the first round means that the team won one ballot and tied the other. A record of 0-2 means the team lost both ballots that round. After four rounds there are eight ballots, so 8-0 is the best possible record.

In addition to the scores for each part of the trial, each scoring judge is asked to rank the top four attorneys and the top four witnesses in the round. Those rankings are used to calculate individual awards, which are independent of team awards. A first rank is worth 5 points, a second rank is worth 4 points, a third rank is worth 3 points, and a fourth rank is worth 2 points. A student’s ranks on the four ballots on each side of the case are added

together for a maximum of 20 points on a side. The students with the most points out of 20 are given outstanding attorney and witness awards.

After all of the ballots have been added, the AMTA Representatives will conduct the pairings for the next round. First round pairings are decided by random draw. Following the first round, all pairings are conducted according to strict rules; no discretion is allowed. The second and third rounds are power-paired, meaning that the teams with the best records are likely to face each other, and the teams with the worst records are likely to face each other. At Regionals and ORCS, the fourth round is paired in a bracket system such that teams in contention for bids to the next level of competition are paired against other teams in contention for bids, and teams that are not in contention or are already guaranteed to receive bids face other teams that are not in contention or are already guaranteed to receive bids. A complete explanation of pairing procedures can be found in the AMTA Tabulation Manual:

<http://www.collegemocktrial.org/resources/rules-and-forms/>

***Awards Ceremony:*** Once all of the ballots for the fourth round have been tabulated and any tiebreakers have been determined, the awards ceremony will take place. In addition to the team trophies, individual awards are given to the top attorneys and witnesses. The Spirit of AMTA award is also given to the team with the highest rating of civility and fair play as determined by the other teams at the tournament. (Teams sometimes feel they should skip the awards ceremony if they know they will not be receiving a team trophy; however, teams should keep in mind that they remain eligible for the other awards.) At Regionals, details about reserving ORCs bids and other information will be related.

At the conclusion of the awards ceremony, teams may collect their ballots. Teams must turn in their completed tournament evaluations in order to receive their ballots. The final 30-minute review period will also take place after the awards ceremony. This is your opportunity to raise any concerns regarding your ballots from the fourth round or the calculation of tiebreakers.



## Chapter 3: Practicing for Competition

### A. Accessing the Case Material

After you register with AMTA, you will be able to access the year's case on the AMTA website: <http://www.collegemocktrial.org/resources/case-materials/>. AMTA alternates between civil and criminal cases each year. In this chapter, we describe helpful ways to begin analyzing the case.

Each school is provided with a username and password, and the official contact person for each school can log in to the case access page, download the case materials, and provide them to competitors at the school. Case access is only granted after teams have registered with AMTA for the season, and it is a sanctionable offense to provide case access to programs that have not yet registered. (See: AMTA rules 2.11-2.12)

Throughout the year (typically mid-September and early December but also at other times as circumstances dictate), AMTA will release changes to the case aimed at clarifying it and ensuring that it works fairly in competition. At the close of Regional competition in February, AMTA oftentimes releases substantial changes to the case in preparation for ORCS. Finally, at the close of ORCS in March, AMTA usually releases another set of substantial changes to the case (or introduces an entirely new case) for use at the National Championship Tournament. All of these changes are released on the AMTA website, so programs should regularly check the website to ensure that they are using the most updated version of case materials.

AMTA typically marks each document with a "Last Updated" signifier so teams can be sure that they are using the most updated version of documents in competition. The "Last Updated" signifiers cannot be used in trial for substantive purposes (e.g. in an affidavit to suggest that a witness has changed his or her story).

### B. Parts of the Case

***Case and Witness Summary:*** This is usually found at the beginning of the case. From the summary, you can typically learn which witnesses are available, what evidence may be used, and what other information or exhibits exist. This sheet is a great reference; however, it is not to be used in an actual trial.

***Special Instructions:*** These are rules set by the case authors that govern how the case is used in competition. Usually, Special Instructions dictate the order of witness selection (and availability), provide guidelines that help direct the course of the trial, and provide guidance as to how witnesses and evidence may be used during trial. Special Instructions supplement the rules of competition found in the AMTA Rulebook and the evidentiary rules found in the Midlands Rules of Evidence. Together, these three documents govern trial procedure in the state of Midlands.

***Indictment/Charge/Complaint/Answer:*** Depending on whether it's a civil or criminal case, there will be an indictment/charge (criminal) or a complaint and an answer (civil). These documents provide the roadmap for the trial, outlining both the legal claim and, in legal terms, what must be done to win the case.

***Penal Code/Statutes/Case Law:*** A case generally has one or more documents that set forth the applicable law. Excerpts of relevant statutes (from the Midlands Penal Code) are generally provided. In addition, a document outlining "applicable case law" in the form of paragraph-length cases also summarizes governing law. These are fictional cases that explain the relevant statutes and other legal principles that may apply in trial.

***Special Court Orders:*** Cases often contain special orders addressing motions that have been made prior to your team's involvement with the case. Often, these are motions to suppress evidence and/or testimony. These documents are often tendered to the judge during the pretrial conference.

***Stipulations:*** These are facts agreed to by both parties. Neither party should argue against the truth of a stipulated fact. Teams may highlight favorable stipulations to the jury to make sure they are "on the record."

***Exhibits:*** These are documents (lab reports, e-mails, text messages, photographs, etc.) that will help you prove your case. As you go over these documents, start thinking about how such evidence might be helpful to you. Look for names, dates, and times (who made these documents? when were they made? how much time passed between documents?). For example, if a piece of evidence is a series of text messages, examine who the individuals in the conversation are, how long the whole conversation took, and how much time passed between each text message (were they sent immediately following each other? was there a lull in the conversation? for how long?).

Just because a piece of evidence is included in the case packet does not mean that it is automatically admissible at trial. Like in a real case, attorneys must lay a foundation for the evidence and answer any possible objections. (See Chapter 4c of this Handbook.)

***Witness Affidavits/Depositions:*** A witness's affidavit, deposition, and/or expert report provides the set of facts that a student playing a witness is responsible for knowing; some witnesses may also be responsible for knowing other documents in the case. Affidavits are sworn statements written by witnesses. Depositions are transcripts of attorney examinations of witnesses. These documents tell witnesses' stories (what do they know? where were they? what did they see? what did they hear?). Affidavits provide helpful information for all aspects of the trial. Also remember to pay attention to what you would expect to know that is "missing."

***Expert Reports:*** Expert reports are reports containing opinions of expert witnesses. Expert reports sometimes supplement affidavits and, in other cases, are included as the sole basis for an expert's testimony. If you plan to call an expert witness, you should treat the expert report much like sworn testimony.

### C. Reading the Case

Reading the case cover to cover can be daunting. Different things work for different people, but here is a suggested plan:

1. Read the case summary and list of witnesses to get a broad sense of the narrative.
2. Read the indictment or complaint/answer to get a general sense of what the Prosecution/Plaintiff needs to prove in order to win its case.
3. Look at the name of the case (e.g. *State v. Perry*) and find the affidavit(s) or deposition(s) of the individuals named in the case (the Defendant in a criminal case; the Defendant and the Plaintiff in a civil case). Read these statements to get a sense of the case.
4. Read through the other witnesses' affidavits and the exhibits in tandem, reading the exhibit(s) mentioned by the witnesses as you read their affidavits. Try to figure out what each witness adds to the case. Take notes and pay special attention to inconsistencies. Where do the witnesses disagree? Are there statements that put a witness's credibility in doubt? One technique that is helpful for many competitors is to make a T-Chart, with one column indicating the Plaintiff/Prosecution and the other column indicating the Defense. In each column, list the facts in the affidavit that are helpful to that side of the case along with the line number on which that fact is found (for easy reference).
5. Read the case law, thinking about how the facts (as you've just read) apply to the law (as explained by the cases).
6. Refer back to the affidavits with the law in mind, making a list of the most helpful facts for each element of the claim. You'll want to assemble a list of facts that support (and rebut) each element.
7. Read the special instructions, stipulations, and orders, making note of any restrictions regarding how the evidence and testimony you have read may be used in trial or how other pieces of evidence and/or testimony are automatically admissible.

Here are some things to remember as you read the case for the first time:

- Your first impressions are really important. Your first time reading the case is the only time that you'll have the chance to approach the case like the judges will—fresh and with no ideas about who the characters are and what happened. Pay really close attention to what you feel when you're reading the case. What's confusing? Whatever is confusing you might be exactly what is going to confuse the judges.
- No witness or document in the case is unimportant, but not all witnesses or documents are equally important. Try to figure out why certain witnesses and documents are important and focus your efforts on deciphering them. Read expert witness reports extra carefully.
- Dates and times matter (and witnesses often disagree about them). It is very helpful to make a list of dates and times so you can easily understand the flow of events and to determine if any inconsistencies exist.

***Developing a Theory and Theme:*** Your case theory and theme determine the story that your side tells as a team. A case theory is a summary of how the facts support your side. Everything else your team does should depend upon the theory you choose.

Mock trial is about being a compelling storyteller. An attorney’s challenge is to present her or his case in a way that judges will understand, remember, and believe. This becomes especially daunting for a Zoom trial where you will really need to keep the judges’ attentions. A good attorney takes complicated sets of facts and presents them in a simple, coherent, memorable way. A good witness relays the facts into a fully realized narrative. Judges may struggle to remember all of the facts and details. They may forget how all of the evidence fits together. It is the job of your attorneys and witnesses to weave the case facts into a storyline that is both easy to follow and compelling.

As an example, let’s look at the fictional case of *State v. Perry*: a child named Bailey Reynolds was kidnapped against her will, and a family friend named Tyler Perry was arrested and tried for the crime. We will use this example in many places in the Handbook. Here is a viable Prosecution theory for that case:

“Tyler Perry kidnapped Bailey Reynolds because he needed money for his wife’s operation. So on October 22, he invited Bailey’s parents to his house for dinner, snuck out under the pretense of buying a bottle of wine, and crept into the Reynolds home. He used a drug called chloroandromine to knock Bailey unconscious, dropped a ransom note in her room, and drove Bailey to a motel as he waited to collect his ransom money.”

Notice how this theory answers many of the “newspaper questions.” Who did it? Tyler Perry. What did he do? He kidnapped Bailey Reynolds. When? On October 22, the night he invited Bailey’s parents, Mr. and Mrs. Reynolds, to his house. Where? He took Bailey from her home and dropped her at a motel. Why? Because he needed the money for his wife’s operation. How did he do it? With an incapacitating drug called chloroandromine. Ideally, a theory describes the events and circumstances more concisely than the above example. Here is a tighter case theory:

“Tyler Perry kidnapped Bailey Reynolds by using a dangerous, incapacitating drug. He needed money for his wife’s operation, so he kidnapped his best friend’s oldest daughter and held her for ransom.”

In many cases, you will be able to select between multiple theories. For example, in *State v. Perry*, the Defense had the choice between many theories, including the following two examples:

- On October 22, Peyton Bralow was charged with babysitting Bailey Reynolds and her siblings. Bralow was the only adult in the house that night. And Bralow, a 19-year old college student, owed a \$20,000 fine. After Bralow put Bailey’s siblings to bed,

Bralow kidnapped Bailey and stashed her at the Hampton Hotel where Bralow worked as a maid.

- Tyler Perry could not have committed the crime because Perry did not have the time. Perry left Perry's home at 9:15 p.m. to drive to Freeport's Fine Liquors, over 20 minutes away. Liquor store owner Frankie Gustavo saw Perry arrive at the store at 9:45 and remain until 10 p.m. Perry then drove back to the dinner—another 20 minutes. Perry arrived back at approximately 10:20 p.m. In the little over an hour Perry was away from home, Perry barely had enough time to get to Freeport's Fine Liquors and back. Perry could not possibly have also detoured to the Reynolds home, crept in without the babysitter noticing, carried Bailey to the car, taken her to the Hampton Hotel, slipped her into a room (again without anyone noticing), and left.

On the Defense side of the case—especially in a criminal case—Defendants often have the ability to build a theory around multiple “holes” in the other side's case. For example, a Defendant could present both the alternative suspect and alibi/impossibility theories above. In addition, the Defendant could cast aspersions on the police investigation. The key is to try to tie the pieces of your theory together in a coherent way so that the jury is not confused.

Once you have your theory, you can decide on your theme. A theme is simply a word, phrase, image, or concept that encapsulates your side of the case. It should be simple, clear, and powerful. It should support your theory of the case, and it should be something you can repeat over and over (both easily and without starting to sound silly). Your theme should be woven throughout opening statements, closing arguments, direct examinations and cross examinations to remind the judges about your theory of the case. It is, in effect, the rhetorical trick that brings your presentation together.

Themes on the Prosecution or Plaintiff side often focus on the Defendant's motivation or a key piece of evidence. For example, in *State v. Perry*, many teams emphasized Tyler Perry's desperate need for money with themes like “desperate times, desperate measures.” Another theme might be “You always leave something behind,” which could focus on the evidence that Tyler Perry left behind, such as the chemical found in his car that was confirmed to have been used to incapacitate Bailey Reynolds.

Defense themes generally highlight an alternative theory of the case, suggest a lack of evidence against the Defendant, or emphasize that nothing illegal occurred. In *State v. Perry*, there was no question that Bailey Reynolds was kidnapped, but teams still had to decide whether to focus on a lack of evidence against Tyler Perry on an alternative suspect (Peyton Bralow). One successful theme based on the lack of evidence was “blinded by the need to blame,” which was directed as an attack on the police's investigation and the sufficiency of the evidence. Another variation was “it doesn't add up,” which applied to both the evidence and the timeline. Another team that strongly pushed the alternative suspect defense effectively used the theme, “The wrong man is on the stand.”

## D. Selecting Witnesses

After you have read the case and developed a theory and theme, the next step is to determine which witnesses provide the best opportunity to prove your theory of the case. You will have six opportunities to question witnesses during the trial: your team will call three witnesses and you will cross examine the other side's three witnesses.

Strategies differ among teams as to the best way to select witnesses for competition (and remember that you might not be able to call the witnesses you want). Some programs prefer to select the witnesses they feel will make the best legal argument, regardless of how well roles “fit” individual students, while other programs prefer to find witnesses that best fit students and engineer a case theory around those witnesses. Still other programs decide to call witnesses based on “type”—a party to the case, a character witness, and an expert witness, for example—to make each witness seem different to the judges. Each strategy has its own strengths and weaknesses; with this in mind, it is often useful to experiment with different witnesses in scrimmages or at Invitational tournaments. (See also Chapter 2c “Trial Roles.”)

***Assigning Roles:*** One of the most difficult tasks involved in assigning roles to students is parceling out cross examination responsibilities among student attorneys. Because teams do not know which witnesses they will need to cross examine until the captains' meeting right before the round begins, teams need to be prepared to cross examine all possible combinations of witnesses.

It would be difficult to have every attorney learn every cross examination. One popular way to solve this obstacle is for each attorney to have a “primary” witness to cross, and for all of the attorneys to know the cross examination for the remaining witnesses. Thus, if there are six possible witnesses that the Defense could call, each Prosecution attorney would know four cross examinations: their primary cross examination and the three shared cross examinations.

## E. Practicing

As with any competitive activity, mock trial requires consistent practice. The structure and format of your practices will depend largely on the structure of your program. There is no “right” way to practice, and every program will find the method that works best for its goals and team composition. For the 2020-21 season, it is crucial that practices include working within the constraints and capabilities of the Zoom format.

A lot of practice will be time spent—either as a large group or in pairs—working through competition parts and roles. Other times, a coach or faculty member might lecture on a mock trial topic (“drafting a direct examination,” for instance), and then ask students to draft examples. Some mock trial programs consist of a for-credit college course in addition to competitions. For programs that are linked to a course, practice might include faculty lectures, homework, quizzes, etc. You will also want to practice and experiment with the Zoom app in order to determine what types of presentation nuances work best for you, your teammates, and those watching—

namely, the judges. Among other things, you will need to refine how you present and authenticate exhibits, how you work with demonstratives, and how you impeach and refresh recollection.

If you are meeting in person, remember to stay safe—wear masks and practice social distancing. If you are holding virtual practices, you might consider inviting faculty, law students, practitioners, or mock trial alumni to attend and provide comments and feedback. Virtual practices can also include guest lectures from trial attorneys, scrimmages between teams, national championship video review, skills drills, or anything else that the faculty member, coach, or team finds productive.

The best practices are structured, and they give all students an opportunity to do something. Thoughtfully taking an hour or more to plan a practice goes a long way toward ensuring that students do not leave feeling as though they were not given opportunities to improve. At the beginning of the year, practice is often general and skills based. That is, practices in August and September may focus more on teaching the team about the basics of mock trial. As the year progresses, practices often become more complex, and introduce topics like objections, case law, and advanced skills. Additionally, practices later in the year may be used for practice trials (scrimmages) or for students to give their performances in front of outsiders with fresh perspectives. And, remember, sharing drafts with team members (Google Docs works well) will be very helpful for everyone.

Students should be encouraged to practice out loud and on their feet. While it is certainly necessary to spend some time drafting and writing examinations and speeches, the vast majority of students' time should be spent talking through their performances just as they would in a competition. Mock trial is, in essence, a public speaking and advocacy competition that uses trial advocacy and the law to test student skills. Here are a number of activities that can be helpful during practices:

- Review of AMTA National Championship Videos;
- Skills lectures and workshops on mock trial basics: direct examination, cross examination, opening, closing, objections, etc.;
- Public speaking drills;
- Objection and evidence drills or games;
- Scrimmages within the program (trials between two teams from the same school);
- Review of actual competition footage (many programs record their own performances at competitions and review those performances at practice);
- Becoming familiar with the Zoom format.

## **F. Public Speaking**

The art of persuasion, essential for mock trial, requires a great skill in public speaking. With a lot of practice, you can develop skill sets suitable for any public speaking forum. Aspects of the trial depend upon good oratory, such as: storytelling, building themes, appealing to sympathy, and selecting and modulating voice tones. You should work on speaking clearly and with

confidence, and you should be able to project your voice while maintaining courtroom etiquette and style at all times.

### **G. Spirit of AMTA**

Since 2000, AMTA has awarded recognition to the team that best exemplifies its ideals of civility, justice, and fair play. In recent years, that recognition has included a plaque known as the Spirit of AMTA Award. Spirit of AMTA forms are to be used to determine the winner of this award at each AMTA-sanctioned competition.

At the conclusion of the third round of an AMTA Tournament, each team is asked to evaluate the teams they faced in Rounds 1-3 on a scale of 1-10 and return the completed evaluation form at the 4th round captains' meeting. Opportunities to demonstrate civility, justice, and fair play are not limited to the encounters with the teams you competed against. The form also permits you to list any team that exhibited AMTA's ideals and, therefore, should receive additional consideration for the Spirit of AMTA award. During the awards ceremony, the AMTA Reps will identify the team with the highest overall score. To review a copy of the form go to: <http://www.collegemocktrial.org/resources/rules-and-forms/>.



## Chapter 4: Trial Skills

### A. Pretrial

Most trials start with a number of (un-scored) “pre-trial matters” before the opening statements are delivered.

Judges typically expect participants to be prepared to start the round when they enter the trial room. That means that, before the round starts, you will need to work with the opposing team to fill out student and character names on the scoring and commenting ballots and organize the materials you plan to use. (This procedure might change for the online format. Updates will be provided following AMTA’s midyear meeting in December.)

Once the presiding judge is prepared to begin the round, most teams will have a few pre-trial matters they wish to address with the court. These are generally confined to procedural issues and providing the judge with reference materials. For example, attorneys usually introduce themselves and their client, offer to provide the judge with a bench book including relevant statutes or complaint, and ask about the judge’s preferences for courtroom procedure, such as whether permission must be requested to approach opposing counsel, the witness, or the bench. (These proximity questions will be mostly inconsequential for Zoom trials.) Motions *in limine* (pretrial motions, without the jury present, usually to exclude or include evidence) are not permitted.

Again, none of pre-trial is scored or required, but you should not be surprised if the opposing team has a few pre-trial matters. Remember that any pre-trial matters you decide to raise will be the judges’ first impressions of the round.

**B. Opening Statement** [For this year of online tournaments, teams will have 12 minutes cumulative for the Opening and the Closing. Any unused time will be rolled over for Closing. So if a team gives an Opening that’s 5 minutes and 5 seconds, it will have 6 minutes and 55 seconds remaining for its Closing.]

After pre-trial matters have concluded, the trial proceeds to opening statements. This will be the first time many judges will hear about the case (an opener’s presentation might take that into account). This will also be the first opportunity to present the team’s case theory to the judges (acting as the hypothetical “jury”). As competitors become immersed in the details of the case over the course of the year, things may become complicated. A simple, clear statement that provides the jury a roadmap of your team’s theory, but does not overwhelm the jury with unnecessary details, is often the most successful approach. For our online trials, teams are allowed 12 minutes cumulative for the opening and closing. So, for example, if your opening goes 6 ½ minutes, you will only have 5 ½ minutes for closing. Or if your opening goes 3 minutes, you will have 9 minutes for closing. Teams are able to decide for themselves how best

to divide that time. Effective opening statements are constructed differently, but the majority share most, if not all, of the following elements:

***Theme:*** Developing a persuasive and memorable theme is covered in the previous chapter of this Handbook. Competitors typically convey their theme in the opening statement and often use it several times in the opening, but not so often that it is distracting.

***Case Theory:*** In addition to communicating the theme, most successful teams will clearly present their theory of the case in their opening statement. Trying to break down that theory into simple, easily understandable pieces will help the jury absorb the purpose of your direct and cross examinations later in the trial.

***Narrative of Events:*** Opening statements are often the only time to present a complete narrative of events before the closing argument. As a result, teams often use the opening statement to highlight the key facts of the case in a narrative form. In some cases, such as a “whodunit,” the narrative of events and the case theory are the same.

***Introduction of Expected Testimony and Evidence:*** Opening statements generally forecast the testimony and evidence that will be presented by the witnesses who will be called on your side of the case. Some teams blend anticipated testimony and evidence into their narrative of the case. Others will come up with a number (often three) of the key points they will prove or the questions they want the jury to consider, and then incorporate the expected testimony and evidence. Either way, most successful opening statements focus on presenting only the key facts to understanding the case and do not get bogged down in the details unless they are incredibly important. Leave the jury understanding the big picture of what you want them to focus on during trial, even without having to explain every detail you plan to prove.

Again, the goal of the opening statement is to present your theme and expected evidence as clearly and persuasively as possible. The best way to accomplish that goal often varies based on an individual’s strengths as a public speaker and the team’s theory of the case. The suggestions below are merely a few guidelines to consider when constructing a speech:

***Do Not Oversell:*** Opening statements are about building trust with the jury and setting expectations. It is important not to overstate what you will prove. For example, if you think it is likely that a piece of evidence will be deemed inadmissible, it is often advisable not to mention it in the opening statement. Otherwise, if the testimony does not come out, the jury might feel like a promise has been broken.

***Opening Statements Are Not Arguments:*** Judges often comment that opening statements were too “argumentative.” Attorneys are expected to preview the facts in a way that is compelling to their case without arguing. This is a fine line to walk. A couple of ways competitors often try to avoid being too argumentative in the opening is to state that the “the evidence will show” or “you will hear” certain potentially disputed facts from various witnesses. Another method some teams employ is to frame key arguments as questions that the jury should consider instead of attempting to argue them.

***Do Not Argue about the Law:*** Some teams summarize the basic legal principles and the elements that they must prove in the case; some teams do not. Judges are often divided on whether it is appropriate (or desired) to introduce legal concepts in the opening. Explicit arguments as to how the law applies to the facts of the case can be viewed as improper (because they are “argumentative”), so they should possibly be avoided.

***Provide a Roadmap:*** In addition to providing a roadmap for the overall case, many successful opening statements include a part near the beginning that provides a roadmap for the rest of the opening statement. For example, an opener may say state that she will prove three facts, quickly list them, and then go through the facts one-by-one with an explanation of what anticipated testimony and evidence will support them.

***Make It Easy for the Jury To Listen and Remember:*** One way to help the jury understand the opening statement is to describe your case with details that are easy to remember when hearing for the first time. For example, if you’ve spent hours preparing the Bailey Reynolds case, you will be intimately familiar with the fact that Frankie Gustavo is the proprietor of Frankie’s Fine Liquors. The jury will be hearing that name for the first time, and context may be helpful. For example, “Today, Frankie Gustavo will tell you that Tyler Perry was nervous on the night of October 22, 2004” is likely to resonate with the jury than, “Today, Frankie Gustavo, the owner of Frankie’s Fine Liquors who saw the Defendant on the night Bailey Reynolds was kidnapped, will tell you that the Defendant kept checking his watch and appeared nervous that night.”

- C. Direct Examination** [During captains’ meeting, each side will allocate 38 total minutes for its case-in-chief and crosses. Each side may allocate between 20-24 minutes (must be whole minutes) for its case-in-chief, and the remaining time (which will be between 14-18 minutes) will be its total time on cross. These minutes may not be rolled over, so if a team allocates 23 minutes for its case-in-chief and 15 minutes for its crosses, but only uses 21½ minutes for its case-in-chief, it will still only have 15 minutes total for its crosses.

Direct examination is an opportunity to present facts to help prove your case. Each attorney will conduct one direct examination of a witness during the team’s case-in-chief. This witness will be a member of your team, so there should not be any surprises. The goal of a direct examination is to tell a logical and compelling story and present facts that support your theory of the case. A little background will help introduce the witness to the jury. Afterward, you should focus on the facts that support your theory. Here are a few tips to get off to a good start:

***Prepare in Advance:*** By the time an attorney and witness start a direct examination in the round, they should know what to expect. Some attorney-witness pairs like to script their direct examinations verbatim, while others practice walking through a list of topics. In any case, the witness should not be surprised by any of the questions in a direct examination, and the attorney should not be surprised by any answers. For example, if

you think that a question may draw an objection, work with your witness to be prepared on how you will adapt.

***The Witness Is the Star:*** During direct examination, the witness should be at the center of the jury's attention. A good directing attorney moves the conversation along and has a good rapport with the witness, but does not try to take center stage. Rely on the witness to bring out the facts. This is in contrast to cross examination where attorneys want to be the star.

***Ask Short, Non-Leading Questions:*** Questions on direct examination cannot be leading. That means that the question should not suggest the answer to the witness. Rather, the best questions for direct examination are typically ones that begin with "Who," "What," "Why," "When," "Where," and "How." The witness should be supplying the facts. For example, "When did you see Mr. Perry?" is a good, open-ended question. In contrast, "You saw Mr. Perry at 8:00 that night, right?" is a leading question that should be avoided on direct examination.

***Organize Carefully and Logically:*** Direct examinations should be organized in a way that easily makes sense to someone who has never heard the case before. Think about the questions that will be in the minds of the jurors and try to ask those questions. Also, remember that you will need to have a "foundation," or an explanation of how the witness knows various facts. This will help you explain to the jury why the witness should be trusted. It also helps avoid evidentiary problems. For example, you would not ask a witness, "Why did Mr. Perry need money?" before the witness has testified that she or he knows Mr. Perry, that he needed money, and that the witnesses knows that Mr. Perry needed money. Building appropriate foundation is particularly important for expert witnesses, who must establish their expertise and the reliability of their methods prior to offering opinion testimony.

***Use Transitions:*** To help move from one topic to the next, attorneys can use transitions to signal to the jury where the direct examination is headed and that the topic is changing. For example, when moving from the introduction to events of a certain day, the attorney may say "Let's talk about the night of October 22, 2004. What were you doing that evening?"

***Take One Step at a Time:*** It is important to build direct examinations one step at a time. Direct examinations are less effective when witnesses attempt to insert multiple facts in response to each question and appear to be rambling and non-responsive to what was asked. Remember that the jury has never heard your case before, so you need to make sure that important facts do not get buried in answers.

***Emphasize Key Points:*** It is inadvisable (for both rhetorical and time considerations) to go through an affidavit line-by-line. Focus on what advances your case theory. Not every question and answer in a direct examination is of equal importance. Attorneys should try to emphasize key points. One method of doing this is called "looping" and involves using a key answer as part of the question. For example, when a witness states, "I

concluded that the chemical chloroandromine, which was the substance used to incapacitate Bailey Reynolds, was present on the steering wheel of the Defendant’s car,” a follow-up question may be “After you determined that chloroandromine was on the steering wheel of the Defendant’s car, what did you do with your results?” This focuses the jury’s attention on the key fact in case it did not fully sink in during testimony.

***Listen and Respond:*** Direct examination should be like a conversation rather than an attempt to remember lines from a script. Listen to the witness, give the jury a second to let the information sink in like in a natural conversation, and ask a reasonable follow-up question. Competitors sometimes start thinking about the next question and awkwardly end up asking a follow-up question that is nonsensical or introduces facts beyond the witness’s testimony.

***Consider Using the Witness to Enter Exhibits:*** If the witness has knowledge about a piece of evidence—such as a document—you may want to use the witness to enter the evidence and then discuss it. (Remember, you cannot submit a witness’s affidavit into evidence.) After identifying and laying the foundation for the witness’s knowledge of the exhibit (and expertise if necessary), you will want to move the exhibit into evidence before you start discussing its specific contents. This becomes a bit more complicated with the online format, so make sure to practice. The general steps for moving to enter evidence are:

1. Let opposing counsel and the judge know which exhibit you are showing the witness. In AMTA all exhibits are usually pre-marked with numbers for the sake of clarity.
2. Establish that the witness is familiar with the document and have the witness briefly describe its general contents (without reading from it) and confirm that it is authentic.
3. If there is a “foundation” that needs to be established to show that the exhibit is admissible, then ask the witness questions designed to meet those elements.
4. Ask the court to admit the document into evidence (e.g. “Plaintiff moves exhibit 3 into evidence.”)
5. If admitted, consider whether to “publish” the document by showing it to the bench and jury at that time. This is helpful if you want the jury to read along and review the document. For the 2020-21 season, this will entail using the “screen sharing” function of Zoom. While only the directing attorney may offer an exhibit into evidence, other attorneys on the team may help with the screen sharing function so that things move more quickly and efficiently. If the document is unnecessary for the jury to understand the exhibit and you plan to move on quickly, you may want to wait to publish the exhibit so the jury is not distracted by reading it while you move to a different topic.

**D. Cross Examination [See “Direct Examination” above for rules about time limits.]**

Cross examination has your attorneys asking questions of the other side's witnesses in an attempt to bolster your case theory and detract from opposing counsel's case. Each attorney will conduct a cross examination of one of the other side's three witnesses. Cross examination is very different than direct examination because the witness is generally hostile and the attorney's goal is to be the center of attention and get the witness to concede facts. Here are a few tips to building an effective cross examination:

***Ask Leading Questions:*** Unlike direct examination, cross examination should generally be conducted by asking specific, leading questions. Leading questions are designed to make the witness answer "yes" or "no," leaving them little-to-no room for explanation. Essentially, the crossing attorney is attempting to testify through the witness and should avoid open-ended questions such as, "Mr. Perry, why did you need money?" The following is an example of a series of leading cross questions:

- Q: Mr. Perry, your wife had cancer?  
 A: Yes, I was heartbroken.  
 Q: In the fall of 2004, an experimental surgery became available to treat her cancer?  
 A: Yes.  
 Q: With successful surgery, doctors projected your wife would live 20 years?  
 A: That's right.  
 Q: She was expected to live only 2 years without the surgery?  
 A: Yes.  
 Q: The surgery cost \$300,000?  
 A: Yes.  
 Q: Your company's health insurance did not cover the \$300,000 surgery?  
 A: That's right. I could not believe it.  
 Q: You love your wife very much?  
 A: Of course, she's the light of my life  
 Q: You promised her you would get the money one way or the other?  
 A: I did.

***One Fact at a Time:*** Each question on cross examination should elicit one and only one new fact. The best way to do this is to make the questions as small in scope as possible. Some attorneys may work a fact the witness has previously admitted into a question or use transitions to change topics. But a question such as "In the fall of 2004, your wife needed a surgery to live 20 more years that would cost \$300,000 you did not have, but promised her you would get?" is likely to be ineffective and confusing to the jury. It will also be particularly messy if the witness disagrees with one of those assertions. A corollary to this is asking "one question too many." Cross examination is the time to secure admissions of fact, but trying to draw conclusions or make arguments about the meaning of those facts is generally best reserved for closing argument.

***Build an Examination from Key Subjects:*** Many successful attorneys create "pockets" of cross examination questions that address three or four key subjects. The questions above, for example, are a pocket of questions on the financial motive for the kidnapping. (Remember, you don't need to ask the often ill-fated final question: "thus you had a

financial motive?") Preparing logical lines of questions on important topics is often much more effective than asking a scripted series of questions, which jump between various topics. More advanced attorneys are often able to change the order of their questions within a pocket to better respond to the answers received from the witness.

***Control the Witness:*** A key skill in cross examination is witness control. The goal is to prevent the witness from rambling on to add irrelevant material or seeming “in control” of the exchange. Asking tight, pointed, leading questions, along with effectively using your voice and body are ways to attempt to control a witness (or make the witness look evasive and lose credibility). If the witness does not answer the question, then follow up to get an answer.

***Be the Star, but Listen to the Witness:*** Unlike for direct examination, a crossing attorney should not attempt to blend into the background. Here, the attorney’s goal is to keep the jury’s focus on herself or himself. This can be done through courtroom positioning, voice, and witness control. Even though the attorney is the center of attention, the attorney should still listen to answers on cross. The witness may provide the fact that is in the next question the attorney was planning to ask (so it can be skipped) or try to wiggle out of your carefully crafted leading question.

***Be Prepared to Impeach:*** On cross examination, attorneys should rarely—if ever—ask questions to which they do not already know the answer. It is important to have verification for all of your questions (and be able to quickly find it in trial with the help of your teammates) so that you can impeach a witness who fails to testify truthfully. Know the line in the affidavit/deposition/evidence that has the answer to the question you were asking. If a witness contradicts his or her affidavit or makes up an entirely new fact in response to a cross examination question, you should be prepared for impeachment. In AMTA, there is no in-trial objection for “invention of fact,” and impeachment is the only in-trial remedy for an invention. The basic steps to impeach a witness are *first*, to lock the witness in to the testimony; *second*, to show the witness his or her sworn testimony; and *third*, to show the contradiction. Attorneys will need to practice how to impeach a witness in the online format. While only the crossing attorney may impeach her or his witness, other attorneys might need to help to make the possible impeachment more effective. This means having the witness’s affidavit/report at hand. The impeachment should be accomplished with leading questions. Here is an example:

Q: The surgery cost \$300,000?

A: No. It only cost \$10,000, and we could definitely afford it.

Q: Mr. Perry, your testimony is that the surgery only cost \$10,000, and you could afford it?

A: Yes.

Q: Let the record reflect I am showing opposing counsel Mr. Perry’s affidavit.

Q: Mr. Perry, I’ve just shown you a copy of your affidavit, correct?

A: Yes.

Q: Your signature is on the back page? [Ask witness to open a copy of their affidavit on their computer. Have co-counsel present the signature via “screen sharing”]

A: Yes.

Q: When you wrote this affidavit, you were under oath to tell the truth, correct?

A: Yes.

Q: Just like you are under oath today?

A: Yes.

Q: Mr. Perry, please read silently while I read aloud from lines 28-29. “We could not afford the \$300,000 procedure, but I promised K.C. that I would get the money one way or another.” I read that correctly?

A: Yes.

Q: \*Continue questioning\* [And avoid the “so I was right?” question.]

### **E. Closing Argument [See “Opening Statement” above for rules about time limits.]**

After the witnesses have testified and the evidence has been presented, each side is given an opportunity to make one final plea to the jury. Your final summation is known as the closing argument. In AMTA, the Prosecution/Plaintiff presents first, followed by the Defense. If the Plaintiff/Prosecution elects, it may speak one final time in a rebuttal after the Defense closing.

Much like the opening statement, a closing argument is a relatively long speech in front of the jury. This is your opportunity to *show* the jury exactly why the facts presented mean your side should prevail. Closing arguments can be exciting to watch and fun to create. Every successful closing argument is constructed differently, but the majority of closing arguments share most, if not all, of the following elements:

***Case Theory or Story:*** A good closing argument tells your story of the case. If you were giving a closing argument for the Prosecution in the Perry case, your story might revolve around a desperate man who needed to find a large sum of money for his sick wife’s cancer operation. Or it might be about a young, vibrant, innocent young woman who was kidnapped and held for ransom for days. The Defense, on the other hand, might tell the story of “the real kidnapper” Peyton Bralow, the babysitter. Whatever the case, it is important in closing argument to craft your story persuasively through the lens that you want the jury to use. You don’t have to tell a neutral story!

***Theme:*** Just like the opening statement, the closing argument should be crafted around your theme. (See Chapter 3c of this Handbook.) Competitors typically convey their theme in the closing and repeat it throughout, but not so often that it is distracting. Don’t ignore your competitor’s theme if you can use it to your advantage. Twist it, turn it, and use it to your benefit by explaining how their metaphors and analogies don’t work in this instance.

***Burden of Proof and Law:*** At some point in all closing arguments, attorneys discuss the law. If you have a burden of proof, you should explain exactly what the law requires you to prove. For example, the Prosecution in the Perry case might say something like, “as the Prosecution, we bear the burden to prove beyond a reasonable doubt that Tyler Perry kidnapped Bailey Reynolds.” Since both sides have to explain the law to a certain extent, the Defense should also mention the burden of proof.



In a criminal case like *State v. Perry*, it's usually the law that the Defense has no burden. If that is true, the Defense might argue "as the Defense, we bear no burden of proof.... We didn't have to prove anything. The burden in this case rests squarely with the Prosecution." AMTA cases are full of statutes and case law designed just for this purpose. All of the information you need to explain the relevant law is contained in the case packet or the Midlands Rules of Evidence. Importantly, though, it is not necessary to cite many specific cases or statutes by name. You should use the law to create your roadmap, but you don't have to use it so frequently that it becomes the entire closing.

***Provide a Roadmap:*** You should always provide the jury with a roadmap of your argument (this is also true in the opening, as we discussed previously). There are many ways to organize a closing argument, but take some care to explain exactly what the jury can expect to hear from you. Some closings are organized around the elements of law that a particular side may have to prove. Other closings are organized around a few key facts of the case that may point very favorably to one side. Still other closing arguments are organized around a series of questions. (Perhaps in the Perry case, the Defense might ask questions like "who really had the motive to commit this crime? and who had access to the hotel room where Bailey was kept? and who had access to illegal drugs?). There is no right or wrong way to organize your closing. The important point is that you are organized, and that you provide a roadmap for the jury.

***Argue your Facts:*** Closing arguments are unlike opening statements in that you are permitted and encouraged to argue. Instead of simply stating facts like you would in the opening statement, argue to the jury exactly why those facts are important. As you are crafting your argument, you should constantly be thinking about how you are going to answer the question "why does this fact help our side win?"

Let us take an example from the Perry Case. You likely know by now that the Defendant's spouse needed an expensive cancer surgery in order to save her life. In the Prosecution opening, the fact might be stated like this: "the evidence will show that Ms. Perry was suffering from an advanced form of cancer, and without \$250,000, she wouldn't be able to get the treatment she needed to survive." That's a pretty neutral way of stating the fact, which is exactly right for opening statement. In closing, however, you should state the fact and argue that fact's importance to the jury. In closing you might say, "You heard that the Defendant's wife needed a \$250,000 surgery. You also heard that the Reynolds family had the money. The Defendant needed money and the Reynolds family had it. The Defendant needed money to save his wife's life, and that gave him the motive he needed to kidnap Bailey Reynolds and hold her for \$250,000 ransom." There, you are arguing the facts as opposed to simply stating them.

***Don't Harp on the Law:*** It is very easy to find yourself wrapped up in the legal issues. Your case packet is full of statutes, law, and other legal documents. You should resist the urge to spend your entire closing argument stating legal principles. Instead, use the law as the outline, and fill in the body of the closing with the facts from the case. The jury

members are not lawyers, and you will keep their interest by explaining the importance of the many facts that they heard during the course of the trial.

**Keep it simple:** Perhaps the hardest but most important task that you have in preparing a closing argument is that of simplifying the case. Think about it: you've been in trial now for likely more than two hours; the jury has heard from six witnesses; they've heard two opening statements; and you have probably presented them with some evidence. There is no way that you can recount every piece of testimony or explain every piece of evidence in the nine minutes you have. Instead, you should synthesize the case down to the few important facts and most important pieces of evidence.

**Use Your Strengths:** You called three witnesses to the stand and probably entered some evidence. Use it! *Remind* the jury about your very credible witnesses and their very important testimony. *Show* the jury those documents that you entered into evidence and explain why they matter for your theory. Your closing should focus on the strengths of your case and the reasons why you should prevail. This does not mean that you cannot respond to your opponent in your closing argument; you absolutely should! Many successful closing arguments spend some time explaining why the other side's theory does not make sense or is wrong under the law. It is common to see a closing argument that discredits the testimony of an opposing witness because of something the witness said on the stand. This is where closings can be really fun. Just be sure that you spend the bulk of your time on the offensive arguing your case.

**Tie it All Together:** An exceptional closing argument is a simple, clear, and logical explanation of the most salient facts that the jury should consider when deliberating. As you think about your closing, remember that it is your job to synthesize everything the jury heard during the course of the trial into a persuasive and easy-to-remember argument. That's a big challenge, but, done right, it can lead to big rewards!

## F. Witness Performance

Many new programs overlook the massive impact witnesses have on the round. Strong witness performances are critical to success. Unlike in some competitions where witnesses are not scored or only count for a small part of the score, witnesses in AMTA are often the difference between winning and losing. AMTA witnesses are scored for their performances on both direct and cross examination, accounting for 60 of the 140 total points on the ballot. Furthermore, they also affect the scores for their directing and crossing attorneys.

Unlike many other trial competitions, witnesses are encouraged to embrace their role. Costuming and acting are permitted.

In each trial, each team must call three witnesses portrayed by three different students. As noted throughout the Handbook, witness portrayals by even the most successful teams (and sometimes even within those teams) vary wildly. The common thread among most successful witnesses is that they are well-prepared, credible, memorable, and clear in presentation. Combining all these

elements, great witnesses create believable presentations of the characters portrayed and help (often in unassuming ways) the parties that called them. Although every witness is different, they are often grouped into a few general types:

- **Experts:** Experts are witnesses hired by the party to present complicated testimony. Successful expert witnesses are able to convey complex topics in a clear manner to the jury. The best expert witnesses often devote substantial time to learning the actual underlying field of expertise so that they can present the most credible answers. Expert witnesses also often use demonstrative aids to help present their testimony and opinions to the jury. By their nature, experts have generally been hired by one party or the other, but they still must work hard to seem unbiased to the extent possible.
- **Interested Witnesses:** Interested witnesses include the parties, representatives of the parties (such as the CEO of a sued corporation), and other witnesses who have an obvious stake in the case. For example, in *State v. Perry*, Tyler Perry is clearly an interested witness, as is Tyler’s spouse. The police officer who conducted the investigation is also clearly interested in convicting Perry.
- **Disinterested Fact Witnesses:** Disinterested fact witnesses (such as eyewitnesses or unbiased observers) have no real interest in the outcome of the case. For example, Frankie Gustavo, the proprietor of Frankie’s Fine Liquors who saw Tyler Perry on the night of the kidnapping has no real interest in the verdict. Disinterested fact witnesses are often portrayed as “character witnesses,” who bring a bit more personality to the case (while maintaining proper courtroom decorum).

Legally speaking, any non-expert witness is a “lay witness,” but they often come in different forms. For example, sometimes teams refer to certain witnesses unofficially (and outside the courtroom) as “criers,” because these witnesses allow a good performer to weep emotionally (and try to gain jury sympathy).

As noted above, there is no one right way to portray any of these witness types, but here are a few tips and considerations for a successful portrayal:

***Know the Facts:*** The first thing a successful witness needs to do is learn the facts of the case. A witness should be the master of his or her affidavit. This will allow the witness to focus more on performing during direct and cross examinations, rather than trying to remember answers. You never know when another team might quiz you on the minutest facts of an affidavit, and you do not want to get impeached simply because you were unprepared. During practice, it is important to try to get attorneys to cross examine you on all of the topics in your affidavit and relevant exhibits—even if the actual cross examination your team has written is focused on only a few of these topics.

***Effectively Communicate the Facts to the Jury:*** Witnesses should remember that they are communicating facts to the jury. On direct examination, most witnesses direct a majority of their answers to the jury and should remember to speak clearly so that they are heard. On cross examination, witnesses should also try to remain the star of the show and

communicate substantial answers to the jury. It is often a matter of preference from team to team, however, whether the witness should address less substantial answers (such as a quick “yes” or “no”) to the jury or attorney.

Witnesses should work to understand the case theory, so that they are able to highlight important facts. Changing pacing or tone (or even repeating key points) helps the jury understand that not all facts are created equally. In addition, witnesses should think carefully about whether they are highlighting bad facts on cross examination by belaboring the point. Although it is not a universal recipe for success, many successful witnesses admit major points without drawing attention to them or getting into a fight when they know that they must concede the testimony. Some teams opt to disclose negative facts on direct examination if there is truly no way around them. This often minimizes the impact and allows a measure of control.

***Be Memorable:*** Witnesses should try to convey their testimony in a way that sticks with the jury. It is hard to keep a jury’s interest through three long, monotonous direct examinations. The more you can do to make the facts interesting and focus examinations on important points, the more likely you are to maintain the jury’s attention. If your direct examination seems to be dragging on, the jury is likely to lose interest.

***Build a Realistic Character and Performance:*** Think about how your character would actually behave as a witness and try to portray that character as realistically as possible. Try to find ways to play a character that best fits your own personality. This is why it is critical to try to assign witness roles to people who are well-suited to playing them.

The amount of “acting” varies significantly from witness to witness and team to team. Try different portrayals in practices and scrimmages, but be cautious: one of the fastest ways to lose a round is by having an offensive witness portrayal. Think carefully about how judges you do not know personally might react to your performance.

It is also important to remember that a realistic trial witness will have to search his or her own memory for answers. It would be strange in an actual trial for the witness to be answering without the slightest pause after each question. So slow down a bit (especially on cross examination).

***Maintain Credibility:*** Maintaining credibility in your role is critical to success. In addition to having a firm grasp of the facts, credibility is earned by acting in the way that one would expect from your witness. Many students work hard to build a credible and excellent character for direct examination, but they fail to “stay in character” for cross examination and lose points as a result.

One of the most difficult decisions is how much to “fight” on cross. For example, a disinterested fact witness should not necessarily be fighting minor details in a combative way. On the other hand, if an interested witness is directly confronted with whether he or she committed a crime, a neutral and bored response may seem out of place. Some successful teams suggest that a student should only give anything other than a very brief

answer every four or five questions unless the question is misleading or open-ended. Other teams suggest giving more lavish responses regularly. Finding the right balance is something you can only do with practice.

***Be Responsive:*** Witnesses should remember that they are tasked with answering the questions that are posed. Many witnesses hurt their own scores and the scores of directing attorneys by rambling on about topics not even remotely related to the question to “sneak in a point.” Make sure that the last sentence of your answer is actually on point. Similarly, on cross examination, failing to answer questions asked will sometimes just make the witnesses seem evasive and will allow the crossing attorneys chances to display witness control skills.

In addition to being responsive to questions, witnesses should be responsive to trial situations. For example, if time is running out and you are the last witness, be prepared to perform a shortened direct (without rushing). Or if you see a judge is responding a certain way to various tactics, be prepared to testify in a way that avoids any issues that the judge has already noted. It is important to work with your directing attorney to be prepared for situations like these so that the two of you are on the same page.

***Know the Law, but Don't Be a Lawyer:*** Like attorneys, witnesses should learn the law. For one thing, many witnesses also serve as attorneys. Also, knowing the law will help witnesses understand how to modify answers based on a judge's rulings to get in important testimony. It will also allow help witnesses respond to cross examination questions in a credible way that leaves opposing counsel unsatisfied. That being said, witnesses should not speak in legalese and should not try to fight with opposing counsel or speak to the judge like they are attorneys arguing the case. For example, a cross examination answer should not start with “I don't think that's relevant” or “that sounds like hearsay,” just like a direct examination answer would not be “I then had a present sense impression.” Witnesses are masters of facts, but they should not be getting into arguments or trying to “make points” for their side—especially if they are unbiased.

***Witnessing Is a Challenge:*** Try not to get discouraged. It often takes many tries and different variations to find the optimal witness portrayal. And remember, you are being judged by people who often have very different views on witnesses. The fact that one judge does not like a witness portrayal does not make it “bad,” but should be a sign that you can continue to improve. Teams vary drastically over whether they try to diversify risk by presenting their three witnesses in very different ways or amplify judges' preferences by presenting the same “style” of witness across the board. There is no right answer here.

## **G. Objections and Rules of Evidence**

AMTA competitions are governed by the Midlands Rules of Evidence (MRE), which is a set of rules modeled after the Federal Rules of Evidence. Knowing the rules is important to making proper and timely objections, and to making sure you can admit the evidence helpful to your

case. Most objections are based on the MRE, but occasionally other sources such as statutes provided with the case (or potentially Special Instructions) will provide a basis for an objection. Note that the AMTA Rulebook describes several grounds for intervention by the AMTA Representatives. Unless otherwise stated, the Rulebook is an inappropriate source to cite to a trial judge. If you suspect a violation of the rules has occurred, the AMTA Representatives are nearly always an appropriate first point of contact, even if they might need to direct you to someone else in AMTA.

Objections are not permitted during opening statements or closing arguments. They are primarily reserved for direct and cross examinations. Only the attorneys responsible for the direct and cross examinations of the relevant witness may object. Although most objections will occur while a witness is on the stand, opposing counsel may sometimes attempt to enter evidence without the use of a sponsoring witness before or during the trial. In that case, it is proper to make an objection if appropriate at that time. For in-person trials, attorneys should always stand while making objections and remain standing until a judge makes a ruling. For online trials, this is not the case. (There is no need to say “thank you” after the ruling.)

It is important to make timely objections. If a question asked by opposing counsel is objectionable, you should object before the witness answers. When the witness makes an objectionable response, objections should be made as quickly as possible. This might get a little tough with technological issues in an online trial, so you will really need to be ready to make an objection. If a witness is clearly about to venture into a key subject that is objectionable in response to a question, objecting prior to the answer and asking to be heard on your objection may be appropriate. But judges are often divided on whether this is appropriate. Some feel that this is the proper course of action to prevent the jury from ever hearing the anticipated inadmissible testimony, while others prefer an objection to be based on actual testimony. If a timely objection is sustained and the witness has made a statement on the record, the prevailing attorney should move to strike the testimony. Note that questions are not evidence and there is no need to move to strike anything from the record if no testimony has been elicited from the witness.

This Handbook does not attempt to cover all of the possible objections in the MRE or discuss any particular one in great detail. However, the chart below highlights some objections that frequently arise in trial. As the MRE is based on the Federal Rules of Evidence, there are countless resources discussing these rules. One notable difference between Midlands and other jurisdictions is the existence of privileges against testifying. Under MRE 501, no privileges exist in Midlands unless granted by a statute or case law.

<b>Objection</b>	<b>Rule (MRE)</b>	<b>Brief Description</b>
Relevance	401	Evidence is irrelevant if it does not make a fact that a party is trying to prove as part of the claim or defense more or less probable than it would be without the evidence.
Substantially more prejudicial than probative	403	A court may exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice. By its nature, all relevant evidence is prejudicial to one side. This rule generally applies to evidence with minimal value other than to inflame the jury.

Improper character evidence	404; 608-609	A number of rules govern whether it is appropriate to introduce affirmative or rebuttal evidence about the character of a witness and the notice required to introduce such evidence.
Lack of personal knowledge	602	A witness may only testify to a fact after foundation has been laid that the witness has personal knowledge of that fact through observation or experience. Many teams refer to testifying to an assumption or fact without personal knowledge as “speculation.” Whenever proper foundation has not been laid under this rule or others for testimony, “lack of foundation” is also a proper objection.
Beyond the scope	611	In Midlands, the initial cross examination is not restricted to the content of the direct examination. All subsequent examinations (starting with re-direct) must be within the scope of the prior examination.
Form objections: Leading, compound, vague, narrative	403, 611, others	Teams will sometimes object to the form of the question. For example, a leading question on direct or re-direct is objectionable. A question that is compound (You needed the money and could not pay it) is objectionable as confusing since the attorney is asking the witness to answer two questions. Vague questions or narrative, non-responsive answers may also be objectionable. Form objections like these are objections regarding how the question was asked rather than the admissibility of the contents.
Improper lay opinion	701	A “lay witness” (non-expert) may only testify to conclusions (rather than facts) based on her rationally-based perception. Conclusions that go beyond this into the realm of specialized expert opinions (or opinions without a basis) are improper.
Improper expert opinion	702	If an expert is not qualified in the field in which the opinion is being offered, the expert’s opinion will not assist the jury, the expert’s opinion is not based on sufficient facts or data, the expert’s opinion is not a product of reliable methods, or the expert fails to apply such methods to the facts of the case reliably, an objection for improper expert opinion is appropriate. You must lay the foundation required by Rule 702 (and relevant case law interpreting it) prior to offering an expert opinion.
Hearsay	802	An out-of-court statement (including a statement by the witness on the stand) may not be used to prove the truth of the matter asserted. That said, there are many exemptions and exceptions to the hearsay rule.
Non-hearsay	801(d)	Rule 801(d) provides several statements that are not hearsay (such as a statement by the opposing party).
Hearsay exceptions	803; 804	<p>Rule 803 provides exceptions to the hearsay rule for instances where the evidence is technically hearsay, but the circumstances suggest that it will be reliable. Frequent exceptions include:</p> <p>803(1): Present Sense Impression  803(2): Excited Utterance  803(3): Then-Existing Mental, Emotional, or Physical Condition  803(4): Statement Made for Medical Diagnosis or Treatment  803(6): Records of Regularly Conducted Activity  803(8): Public Records</p> <p>Rule 804 provides hearsay exceptions for when the witness is unavailable. Note that unavailability on its own is not a hearsay exception. It is a threshold condition to Rule 804.</p>

Each objection you make should be supported by a rule from the MRE or other case law. Selecting the correct rule is crucial for a successful objection. Judges will often only sustain objections brought on the proper grounds. As a general rule, objections should be voiced succinctly, such as “Objection, hearsay.” Particularly for common objections, attorneys may wish for the judge to invite further argument. If the objection is more complicated, an attorney

may ask “May I be heard,” but this should not become a reflexive reaction to every objection argument. Teams are often divided as to whether it is best to cite rule numbers when making objections. Whether you cite the rule number or not, it is important to try to know where the relevant rules are located (particularly for less common objections). In some cases, a judge may ask you to cite the rule that forms the basis of your objection or even provide a copy.

When responding to objections, you should respond to the objection actually raised (rather than a different objection you may have anticipated). Be prepared to use objections persuasively to explain why facts are important to your case. In addition, if the importance or admissibility of a fact will only become evident later in trial, be prepared to make an “offer of proof” to tell the judge the expected testimony that provides the basis for admissibility. This means one piece of evidence might be relevant based on a fact a later witness is anticipated to disclose. This happens a fair amount in Midlands because witnesses cannot be recalled. Also, you should listen carefully to the judge’s ruling. If the objection was based on a foundational issue or the form of the question (or if it only dealt with part of a question or answer), then you can often ask additional or different questions to elicit some (or all) of the relevant testimony.

***Example of Objection and Motion to Strike:*** The following is an example of a longer, speaking objection to inadmissible testimony.

**Q:** What did you do after you found the drug on Bailey Reynolds’ pillowcase and Tyler Perry’s car?

**A:** I concluded my investigation because it seemed clear to me that Tyler Perry was clearly guilty.

**DEFENSE COUNSEL:** Objection, your honor, improper opinion, relevance, and if there were any probative value, it would be substantially outweighed by unfair prejudice under Rule 403.

**JUDGE:** Sustained.

**DEFENSE COUNSEL:** Your honor, motion to strike all statements after “I concluded my investigation.”

**JUDGE:** Granted.

***Example of Objection Sequence:*** The following is an example of a frequent objection sequence from the Perry case. Remember that if an objection is overruled, you should re-ask the question.

**Q:** What did Mr. Perry yell?

**A:** I heard him yell,

**DEFENSE COUNSEL:** Objection, hearsay.

**JUDGE:** Response?

**PROSECUTION COUNSEL:** Your honor, Mr. Perry is a party opponent, which makes his statement non-hearsay.



**JUDGE:** Overruled.

**Q:** Ms. Reynolds, what did you hear Mr. Perry yell?

**A:** “Why didn’t you give me this promotion, you know that I need this money??”

## Additional Resources

### A. Mentoring Program

AMTA's New School Mentoring Program pairs each new school with an experienced member of the AMTA community, such as an AMTA Board Member, a coach of an established program, or a former competitor. The mentor is available throughout the year to answer any questions you have about how competitions work and what to expect at your Regional. You should feel free to contact your mentor at any time with questions or to seek advice on any issues you face in getting your program off the ground and ready to compete.

If you have not yet been assigned a mentor, please contact [amta.mentor@collegemocktrial.org](mailto:amta.mentor@collegemocktrial.org) to request one.

### B. Video Resources

To access AMTA's YouTube channel, which contains helpful links, see:

[https://www.youtube.com/channel/UC8hnWrzL6oDI44GtJfm\\_5OA](https://www.youtube.com/channel/UC8hnWrzL6oDI44GtJfm_5OA)

For the specific "How AMTA Works" video series, see:

<https://www.youtube.com/watch?v=eQfcw11lcNw&list=PL5jguead0wPxJMEIxMNPbNKkx11CTJEam>

To view the 2003 National Championship Final Round (*Lee and Andi Smith v Thompson*) [civil case], see: <https://www.youtube.com/watch?v=jB1XmNwWbq4>

To view the 2006 National Championship Final Round (*State of Midlands v Tyler Perry*) [criminal case], see: <https://www.youtube.com/watch?v=xR1cxIKM6Ec>

To order copies of AMTA DVDs, click here: <http://www.collegemocktrial.org/amta-store/championship-dvds/>

### C. Further Reading

Many useful resources can be found on the subject of collegiate mock trial. If you found the content of this Handbook to be helpful but are looking for additional information to prepare for competition, consider the following two texts, which have been used my many throughout the years (more information on these resources is available on the AMTA website):

Lubet, Steven and Jill Koster. 2014. *Mock Trials: Preparing, Presenting, and Winning your Case*. National Institute for Trial Advocacy.

Vile, John R. 2012. *Pleasing the Court: A Mock Trial Handbook*. 5<sup>th</sup> ed. Cengage Learning.

If you are seeking to review some literature published by academic journals on the subject of collegiate mock trial, the following articles are good places to start:

- Beck, Charles R. 1999. "Francine, Kerplunk, and the Golden Nugget: Conducting Mock Trials and Debates in the Classroom." *Social Studies* 90: 78-85.
- Bengtson, Teri J. and Katrina L. Sifferd. 2010. "The Unique Challenges Posed by Mock Trial: Evaluation and Assessment of a Simulation Course." *Journal of Political Science Education* 6: 70-86.
- Farmer, Kevin, Steven I. Meisel, Joe Seltzer, and Kathleen Kane. 2013. "The Mock Trial: A Dynamic Exercise for Thinking Critically About Management Theories, Topics, and Practices." *Journal of Management Education* 37: 400-430.
- Herron, Daniel J., Ruth Wagoner, and Jo Ann Scott. 2012. "Enhancing Critical Thinking Skills through Mock Trial." *Atlantic Law Journal* 14: 147-166.
- Karraker, Meg Wilkes. 1993. "Mock Trials and Critical Thinking." *College Teaching* 41: 134-144.
- Noblitt, Lynnette S., Sara L. Zeigler, and Miranda N. Westbrook. 2011. "Bias on the Bench: Sex, Judges, and Mock Trial Simulations." *Feminist Teacher* 21: 124-138.
- Shepelak, Norma J. 1996. "Employing a Mock Trial in a Criminology Course: An Applied Learning Experience." *Teaching Sociology* 24: 395-400.
- Spader, Dean J. 2002. "Two Models and Three Uses for Mock Trials in Justice Education." *Journal of Criminal Justice Education* 13: 57-86.
- Vile, John R. and Thomas R. Van Dervort. 1994. "Revitalizing Undergraduate Programs through Intercollegiate Mock Trial Competition." *PS: Political Science and Politics* 27: 712-715.
- Walker, Felicia R. 2005. "The Rhetoric of Mock Trial Debate: Using Logos, Pathos and Ethos in Undergraduate Competition." *College Student Journal* 39: 277-286.
- Wagoner, Ruth R. and R. Adam Molnar. 2012. "How Attorneys Judge Collegiate Mock Trials." *Speaker & Gavel* 49: 42-54.
- Zeigler, Sara L. and Sheena M. Moran. 2008. "Revisiting Adam's Rib: Student Performance, Gender Stereotyping, and Trial Simulations." *Journal of Political Science Education* 4: 187-204.

#### **D. Resources for Online Competition**

AMTA's "One Last Time" tournament [on Zoom]:

[https://www.youtube.com/channel/UC8hnWrzL6oDI44GtJfm\\_5OA](https://www.youtube.com/channel/UC8hnWrzL6oDI44GtJfm_5OA)

Baylor Law School's "Top Gun" tournament [on Zoom]:

<https://www.youtube.com/channel/UCuIAtG0WdAHYkxYkGDB2VHw/videos>

Drexel University Kline School of Law and UCLA School of Law's "Trial by Combat" 2020:

<https://www.youtube.com/channel/UCuIAtG0WdAHYkxYkGDB2VHw/videos>

UCLA School of Law's online opening statement competition:

[https://docs.google.com/forms/d/e/1FAIpQLScQ\\_GdIXjWaA-ecKQqeVv95RkfMr5ypD9bDscdEyUHiX3X8Uw/viewform](https://docs.google.com/forms/d/e/1FAIpQLScQ_GdIXjWaA-ecKQqeVv95RkfMr5ypD9bDscdEyUHiX3X8Uw/viewform)

UCLA School of Law's college closing argument competition:

<https://docs.google.com/forms/d/e/1FAIpQLSdKAKv6QT9ID9I2-PULsDwD5WVQwaOwkkvG0wJnXJ9mlIDF5w/viewform>

Gladiator 2020 (hosted by Justin Bernstein; on Zoom):

[https://www.youtube.com/channel/UC1vMK\\_ohDuRWIS7rjXBN86g/videos](https://www.youtube.com/channel/UC1vMK_ohDuRWIS7rjXBN86g/videos)

Robert Little, Abbie Heller, and Justin Bernstein's *Hosting Online Trial Competitions: Proposed Model Rules, Best Practices, and How-To-Tips*

[https://docs.google.com/document/d/1oaY5\\_WskPsIsXdVWzeb27\\_Mr9YNv1RaEvpQehnmMedE](https://docs.google.com/document/d/1oaY5_WskPsIsXdVWzeb27_Mr9YNv1RaEvpQehnmMedE)