

YOUR STEP-BY-STEP FINAL TRIAL

PRETRIAL CONFERENCES

Pretrial conferences will be held the last week of class. Each one will take no more than 20 minutes. Prior to the conference, you will exchange exhibit and witness lists, deposition designations and any pretrial motions with opposing counsel. Your faculty will be your judges at the pretrial. The orders at the conference will be binding on the judges you have for the final jury trial. Your final trial judge will have copies of everything filed at the pretrial conference and all orders entered including any realignment of the parties.

WITNESS PREPARATION

Your witnesses can use scripts to help them testify. Be sure to prepare them for what to expect on cross examination. You and they must stay within the facts of the case file. *Also make sure they understand that how they perform will not affect your grade.*

WHAT TO EXPECT AT THE FINAL TRIALS

Before the jury is in the courtroom.

You and your witnesses along with the lawyers and witnesses for 12 other trials plus 200-250 jurors will have to go through pretty tight security before getting to your courtroom by 8:00 a.m. Plan accordingly.

(All references to “judge” will be in the masculine for ease of reference.)

Your judge may ask for announcements or appearances. You will stand and announce your name and who you represent. If he asks if you are ready for trial, your only answer is “Yes, Your Honor.”

Be sure to confirm the exhibits that have been preadmitted with the judge. Have an extra set of your exhibits in case the judge wants them. If there are exhibits you want to use during your opening statement, first see if your opposing counsel agrees. (That should be done before you get to the courthouse.) If opposing counsel agrees to all the exhibits you want to use, tell the judge, “Your Honor, we would like to use Exhibits ____, which have been preadmitted during our opening. Opposing counsel agrees with our using them.” Get a ruling. Since they are preadmitted, he will most likely allow it, but if he doesn’t, just go with the flow.

Flinders can have the witness playing the part of Arthur Jackson sit at counsel table if you want. If you do not have a partner, you should plan on having someone sit at the table with you as a “corporate rep” to help you with keeping time, helping with documents, etc. Be sure to tell the judge if you are going to have someone other than counsel at your table.

Voir Dire

The judge will ask the jury to come in and be seated. (Since he does not have a baliff, he may ask one of the attorneys to ask the jurors to come in.) He should read an instruction to the jury (the one handed out to you previously in class), but if he doesn’t, don’t be concerned. If he doesn’t tell the jury what kind of case it is, the first attorney up should say something brief like “Flinders has filed this lawsuit, asking for damages for Mismo’s refusal to pay its claim for fire damage. Mismo has denied Flinders’ claim, alleging the fire was caused by arson.” It does not have to be that exact statement, but it should be that brief. If the judge tells the jury what the case is about, do not make that statement. Each side gets 10 minutes total for voir dire. Each team member takes no more than 5 minutes. You should each cover different “fears”.

You need to keep time for each other, not only for voir dire, but for everything throughout the trial. We are on a tight deadline and going overlong may

preclude you from doing what you want with a witness or even forgoing closing argument.

At the end of voir dire, the judge should give you just a few minutes to confer with your teammate and decide on one juror that if allowed, you would strike from the jury. You will not make any strikes, either peremptory or for cause. No jurors will be excused. This exercise is for you to make note of which jurors may or may not be favorable to your case so you can see if you were right when you later listen to them deliberate.

The judge may swear the jurors in and give them instructions about not talking to you, not accepting favors from you, etc. These are standard instructions given in real life, but if he forgets or decides not to do this, no worries.

Opening Statement

The judge will then ask the party who is going first if you want to make an opening statement. Ask your judge if he could give you a 1 minute warning or if he would prefer that your co-counsel do that and do whatever he wants. Please acknowledge the warning with a “thank you” so whoever gives you the warning knows that you heard it. Do not go over the one minute.

The judge will then ask opposing counsel to give their opening statement. He may ask if you want to reserve your opening for your case-in-chief. There is no good reason for you to wait to do that.

First Case-In-Chief

After opening statements, the judge will say to the party going first “Call your first witness.” Before the first witness is called to the stand, one attorney (it does not matter who) should “invoke the Rule”. That means that all witnesses except for parties (Arthur Jackson) and experts would be told by the judge to stay outside the courtroom until they are called to testify. That’s real life. In your trial, your judge will know that the witnesses want to observe and he will tell them to stay in the courtroom and listen if they want.

Then the party going first says “We call _____ to the stand.” Have your witness go up to the stand. The judge should have them stand, raise their right hand and take an oath. However if he forgets to swear them in, do not worry. Assume the witnesses are all sworn.

Attorneys do direct, then cross, then redirect. There is no guarantee that the judge will allow re-cross. Remember that objections count against your time limits.

After the last examination, the party calling the witness should stand and ask if the witness may be excused. The judge will say “Yes. Call your next witness.”

Continue with witnesses until all have been called. You must present all witnesses and all evidence in your case. There will be no rebuttal after opposing counsel puts on their case-in-chief. Be sure to use your exhibits with your witnesses because if you don’t, even though the exhibits have been preadmitted, your judge may not allow them to go to the jury. Keep track of them on your exhibit list.

If there are stipulations that the parties entered into or have deposition designations, be sure to ask the Court for permission to read them into evidence and do so.

When you are through using the exhibit with the witness, leave it on the ledge in front of the bench for opposing counsel to use.

When the party going first has presented all their evidence, you stand and say “Your Honor, Plaintiff (or Defense) rests.”

After First Party Has Rested

The judge usually takes a break at this point. If opposing counsel believes that the first party has not proved every element in their case, they can move for a directed verdict. They stand and say “Your Honor, we have a motion to make

outside the presence of the jury”. The judge will have the jury take a break. You tell the judge you are making a motion for directed verdict and you argue that one or more elements have not been proven. The first party responds. Regardless of its merit, no directed verdict will be granted, but if it is appropriate, one should be made (briefly). Ask the judge if you can have a brief personal break if you need one. Be sure to come back on time.

Second Case-In-Chief

You do the same thing your opposing counsel did. After you have presented all of your evidence for your entire case, you stand and announce “Your Honor, Plaintiff (or Defense) rests.”

After Second Party Has Rested

The judge may ask the first party “Is there any rebuttal?” The answer is “No, Your Honor.”

Before Closing Arguments

The judge will probably give counsel and jurors a break at this point so you can gather whatever admitted (and used with jury) exhibits you want to use in closing argument and otherwise get ready. You should take a short personal break so be sure to ask the judge for time to do that. Before you go on the break, the judge may ask if there are any objections to the charge. Your answer is “No, Your Honor.” Also before going on break, you should ask if he will be summarizing the jury charge when he reads it to the jury or he will have time to read it in its entirety. If he plans to summarize it and there is a definition or instruction that you want him to read word for word, you should make that request and give him a copy of the instructions with the portion you want read word for word highlighted. The judge will read the jury instructions and verdict form (or a summary) to the jury before closing arguments. He will have a copy of everything.

Closing Arguments

After the charge is read, the judge will ask the party going first to make their closing. The party going first is entitled to reserve a minute or two for rebuttal

if they request it before starting the first part of their argument. You may ask for 2 minutes, but the judge may only give you 1 so be prepared for that. Have your partner keep strict time. If you go over your time, you may lose your rebuttal time.

The second party giving a closing argument needs to be sure to stay within their time limits as well.

After Closing Arguments / Jury Deliberations

You will be very relieved to be almost done, but stay in role. Resist the urge to do high fives, chat, etc. The judge will tell the jurors to come sit around counsel table which you should clear off as soon as possible. One of you should gather the exhibits used with the jury and confirm with the judge that you have the right ones. Those should be given to the jurors to look at during deliberations.

You are allowed to sit in the chairs away from counsel table, but close enough to hear the deliberations. Regardless of what is said, keep a straight face and remain silent. If you don't, the judge may ask you to step outside.

The judge may need to encourage the jurors to talk about the case. He will encourage them to reach a verdict if possible. If they cannot reach an agreement, that's okay.

If there is time, the judge may ask the jurors to talk about what they liked and didn't like about what happened during the trial. Don't take anything personally. Don't explain yourself or argue.

The judge will let the jurors leave and give you a brief critique and chance to ask questions.

Be sure to leave the courtroom as you found it including taking any trash, putting chairs back in place, etc.

Lastly, relax and have fun!