

Advanced Trial Advocacy Concepts for Mock Trials students

Aoning Li, Associate Lecturer, Murdoch University School of Law

Start with your Case Theory

The Case Theory should be what you spend at least half or more of your preparation time on.

The Case Theory is your side's version of the story. It's useful have two levels: the **quick/broad** case theory; and the **detailed** case theory.

Sometimes the case theory is obvious, but often it is not, especially for the defence.

Do not aim too high with your case theory. It should be just enough to get the conviction/acquittal and nothing more.

Your **detailed** case theory needs to explain every single fact and piece of evidence heard in the trial. If it doesn't, you should work more on your case theory.

Openings and Closings – what's the point?

In your Opening, you are answering the judge's imagined question **What is this trial about?**

In your Closing, you are answering the judge's imagined question **Why should I believe your case theory over the other side's case theory?**

Note that Openings and Closings are completely different and should not sound similar, or cover the same information.

Typical Openings cover law, elements, basic facts, witnesses, focus or issues of the trial. **Opening no-no's** are typically evidence, submissions on findings, contentious facts.

Typical Closings cover facts, more facts, factual analysis, case theory. **Closing no-no's** are anything that was in the opening, the law again, telling the court you've won, wasting time with things the court already knows.

Evidence in Chief/Examination-in-Chief: Tell me a story

Try throwing away your script when you do your XM.

Otherwise, don't try and make your case yet. Just get the information out.

Don't lead . . . but also 'lead' in a permissible way.

Don't try and be clever . . . but don't be boring or too clinical/rigid.

Be conversational.

Go back to before you were interrupted when objected to!

An advanced skill is **pacing the evidence** (for example, slow down the evidence over the important parts.)

Cross-examination techniques and strategy

ONLY cross-examine consistent with your case theory and NOTHING ELSE!

XXM is not about discrediting the witness (contrary to popular belief.)

It is about collecting and highlighting evidence required to support your case theory in Closing ('collecting ammunition'.)

Generally, ask only leading questions. Generally, ask only questions you know the answer to.

Listen to the answers you get, make sure the question was actually answered, and if it wasn't, **ask it again.**

Again, throw away your script . . .

More on XXM

Try making your points through **inference**, rather than directly putting it to the witness.

Prosecution example:

Don't ask the accused whether or not they did it. They will say they didn't.

"And then you shot Mr Smith didn't you?"

Don't ask the witness directly.

Instead . . .

“And you had a gun in your hand didn't you” - Yes

“And it was loaded wasn't it?” - Yes

“And Mr Smith had just called you a dickhead earlier didn't he?” - Yes

“So you were really angry at him at that stage right?” - Yes

Then sit down. Don't ask the ‘one question too many’.

Speaking in court – slow down please

As a general rule, most students speak too fast in court.

Generally, half or a third of the normal speed is best.

This will sound uncomfortably slow when you are not used to it.

The idea is to speak very deliberately. Don't use ‘filler’. It is better to use pauses, and to slow down for emphasis.

You can and should still **change your speed and tone for emphasis**.

In Opening/Closing, your sentences should be very short, or at least very easy to follow.

This rule is just as important when questioning witnesses.

Witnesses – the most important role

Witnesses should **prepare together** with the barristers regarding case theory.

Witnesses in the Mock Trial Competition have the opportunity to make up certain facts under XXM that may assist the case theory

Similarly, they need to be careful not to be drawn into giving evidence that hurts their team's case theory. They must do all this while memorising their evidence as well!

This set of notes was adapted by Annie Warburton from a presentation given by Aoning Li at the Murdoch University Mock Trial Competition Training Seminar and Workshop, Saturday, 6 April, 2019.