

Activity Idea: Mock Trial Analysis of the 2017 Gladiator Final Round

Video links

Opening Statements: <https://www.youtube.com/watch?v=LxJRKi77BZY>

Government Case in Chief: <https://www.youtube.com/watch?v=lqfbT5AUAKM>

Defense Case in Chief: https://www.youtube.com/watch?v=0gMHQoxfO_k

Closing Arguments: <https://www.youtube.com/watch?v=a9Zt7XNPt2c>

Background information

Gladiator is a one-on-one high school competition that has one witness per side in the preliminary rounds. Each student plays each role once (P and D attorney; P and D witness). In the championship round, the top two students go head-to-head as attorneys; experienced college and law school “mockers” serve as the witnesses. For this final round, the government called two witnesses, while the defense called one witness. Each side had the same total length of time for all witness questioning (direct and cross examinations).

Preliminary Matters

The first two minutes are “off the clock” while the attorneys introduce themselves and ask judge preferences about documents, approaching the judge and witnesses, etc. You can skip these first 2 minutes if you like.

Opening Statements (begin ~ 2:00)

As you’ll see, the prosecution attorney speaks first. Opening statements give the attorneys a chance to preview the case for the jury, to make the jury more inclined to believe their side of the case, and to “forecast” the evidence the jury will hear in the trial.

1. How is each opening statement structured? What are the main topics each attorney covers?

Prosecution:

Defense:

2. Are there certain phrases that you hear repeated throughout each attorney’s statement? If so, what are they? Why do you think they use these phrases?
3. What is each attorney’s “theme” – a phrase they use to describe their case theory?

Prosecution:

Defense:

2. Which statement did you find to be more effective? Why?

Direct Examination of First Prosecution Witness: FBI Agent Avery Carlisle

The prosecution also calls its witnesses first. When an attorney questions a witness that their side has called to the stand, the questioning is called a “Direct Examination.” Note that in this competition, attorneys may stand as they question witnesses. In our state competition, attorneys must remain seated during questioning at Regionals and may stand at State Finals.

1. What is the format of the questions used in Direct Examination? What words are used to begin these questions?
2. Generally speaking, who talks more – who is the “star of the show” – in direct examination: the witness, or the attorney?
3. The FBI agent was entered as an expert.
 - a. What types of questions were asked in order to show that the witness was qualified to testify as an expert?
 - b. What is the difference in the types of testimony that experts can give, versus what a lay witness can give?
4. Listening to the witness, did you think the witness seemed credible as an FBI agent? Why or why not?

5. At 4:10, the defense attorney raises an objection, and the two attorneys argue the objection before the judge for several minutes.
 - a. What is the procedure during an objection? What do the attorneys do? To whom do they speak when making their argument?
 - b. What was the basis given for the defense attorney's initial objection? Did she give the rule number from the Rules of Evidence? If not, can you?
 - c. Did she continue to argue the same basis for her objection, or did her basis change as she kept talking? How did the prosecution attorney respond?
 - d. What was the judge's ruling? Based on that ruling, did the attorney ask her question again, or ask a new question?
6. At ~ 9:20, the prosecution attorney played an audio excerpt (Exhibit 2) and entered it into evidence. Please list the steps she took and the questions she asked in order to enter the Exhibit into evidence.
7. Did the attorney ask questions that told a chronological story, or questions that were topical in nature, or a mixture of both? Why do you think the attorney organized the examination in this fashion?

Cross Examination of First Prosecution Witness: FBI Agent Avery Carlisle

1. Is the format of these questions the same as for direct examination? If not, what type of questions is the attorney asking? Please define this type of question if you can. What techniques does the attorney use to vary or make her statements sound like questions?
2. Generally speaking, who talks more in cross examination: the witness, or the attorney?

3. At 19:00, the defense counsel begins the steps to enter a document into evidence (which can be done on direct or cross examination). List the steps the attorney followed and the types of questions she asked prior to entering the document into evidence. How are her questions both prior to and after entering the document different from the types of questions the prosecution attorney asked when she entered documents on direct examination?
4. How would you describe the structure of this cross examination: chronological? Topical? Was it effective? Did it help create “reasonable doubt” in your mind?

Direct Examination of Second Prosecution Witness: Cooperating Witness Sonny Osborne, aka Sasha Levin

This witness is the spouse of the defendant and allegedly is cooperating with the government as part of a plea deal for a reduced sentence.

1. How are the initial questions in this examination different from those of the FBI agent?
2. Is this witness an expert witness or a lay witness? What difference does that make in terms of the types of testimony the witness can give?
3. Did you find this witness to be credible on direct examination?

Cross Examination of Second Prosecution Witness: Cooperating Witness Sasha Levin

1. How does the defense attorney raise doubts about the credibility of this witness?
2. At 30:35 the defense attorney asks a question that she didn't specifically know the answer to. The prosecution attorney objected. How did the judge rule? How did the witness respond to the question? What did you learn from this exchange (lessons for attorneys and witnesses)?

Direct Examination of Defense Witness: Cory Osborne, Daughter of Defendant

As you'll see, this lay witness is an emotional witness.

1. The prosecution attorney objects to foundation or hearsay several times in the first few minutes of this direct examination. How does the defense attorney respond? What is the judge's ruling?
2. Do you find this witness's story and emotions to be credible / believable, or not? Why?

Cross Examination of Defense Witness: Cory Osborne, Daughter of Defendant

Notice that the format of these questions is different from the questions on direct examination and the same as on the previous cross examination.

1. Compare / contrast this cross examination with the crosses of the two prosecution witnesses. Is the crossing attorney's demeanor the same as earlier? Why or why not?
2. It pays to think carefully about how you phrase your questions. It's also important to listen carefully to opposing counsel's questions. Explain how we see this in action from 16:47 - 17:20. What was defense counsel's objection? What did the judge rule?

Closing Arguments

Again, the prosecution goes first. In closings, the attorneys can "argue" – discuss the implications of the evidence that came into trial to convince the jury that their case theory is correct.

1. How is each closing structured? How does it differ from each attorney's opening statement? What topics did the attorney cover, and in what order? Who was more effective?

Prosecution:

Defense:

2. The prosecution attorney can give a rebuttal if time is remaining. What did this attorney focus on? Was it effective/persuasive?

Overall Evaluation

1. Discuss each attorney's use of pacing, gestures, use of the courtroom. What did each do well? Where could each improve? Was anything particularly effective or distracting?

Prosecution:

Defense:

2. In this competition, judges don't give numerical scores; instead, the attorneys are evaluated head-to-head on each aspect of the trial. Put an "x" by the attorney you feel won each aspect of the trial:

Opening statement:	Prosecution _____	Defense _____
Direct Examination:	Prosecution _____	Defense _____
Cross Examination:	Prosecution _____	Defense _____
Closing Argument:	Prosecution _____	Defense _____
Objections:	Prosecution _____	Defense _____
Improvisation:	Prosecution _____	Defense _____
Use of Exhibits:	Prosecution _____	Defense _____
Who won? Total score:	Prosecution _____	Defense _____
