

GUIDE TO CONDUCTING MOCK TRIALS*

INTRODUCTION

The mock trial has proven to be an effective learning tool for elementary and secondary school students. It helps students develop useful knowledge about the law, questioning techniques, critical thinking, and oral advocacy skills.

Good mock trials will also leave student participants with an appreciation of the difficulties that judges, lawyers and juries face in attempting to present all relevant facts and legal arguments and insure the just resolution of the issues involved.

Below is a brief outline explaining the various types of mock trials that can be presented, how to prepare for and conduct mock trials in the classroom, and how to conduct mock trial competitions with other classes and schools.

TYPES OF MOCK TRIALS

The mock trial begins where actual trials begin – with a conflict or a dispute that the parties have been unable to resolve on their own. Mock trials may draw upon historical events, trials of contemporary interest, school and/or classroom situations, or hypothetical fact patterns. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and brief statements for each witness. Other mock trial formats range from free-wheeling activities where rules are created by the student participants (sometimes on the spot) and no scripts are used, to serious attempts to simulate the trial process based on simplified rules of evidence and procedure, to dramatic re-enactments of historical trials in which scripts are heavily relied upon.

ELEMENTARY MOCK TRIALS

Most of the suggestions in this section apply to secondary mock trials. Some of these are applicable to elementary students as well, but with modifications required by the age of the children.

Before the mock trial: Ask children to read the fairy tale, or read it to them. Ask them what happened in the story, and provide opportunities for questions and answers. Then the teacher (or lawyer) may want to introduce the children to the roles of people in the courtroom, and appropriate legal vocabulary. Explain that the children will be conducting a trial to determine guilt or innocence in a criminal trial or to determine liability (fault) in a civil trial. Then pass out the mock trial, and assign parts.

The trial itself: Kids will enjoy putting on the play—probably before an audience of

parents, siblings, and well-wishers. The trial can end with the verdict, or you could go on to ask each jury member to present reasons for reaching the verdict.

After the trial: If a guilty verdict is reached, ask students about appropriate punishment. In a civil case, ask what damages are appropriate if liability is found. Kids can follow up by converting other fairy tales to mock trials. An attorney could be a resource person throughout the writing process. This will help children learn more about procedures, appropriate questions, objections, and courtroom roles.

PREPARING FOR A MOCK TRIAL

After teaching students about the purpose of trials and the procedure involved, we suggest the following:

- A. Distribute mock trial materials to the students. The facts and basic law involved should be discussed with the entire class. Teachers may develop fact patterns and witness statements (e.g., brief summaries of each witness' testimony), have students develop them, or use the materials provided in this package.
- B. Try to match the trial to the skills and sophistication of your students. For example, if your students are unfamiliar with mock trials, you probably should begin with a simple exercise. Remember that the aim of mock trials isn't always to imitate reality, but rather to create a learning experience for students. Just as those learning piano begin with simple exercises, so those learning mock trials can begin simply and work up to cases which more closely approach the drama and substantive dimensions of the real thing.
- C. Students should be selected to play attorneys and witnesses, and then groups formed to assist each witness and attorney prepare for trial. A case could easily involve the entire class. For example, at least two could be assigned as witnesses and twelve students can serve as the jury.

Such a division of tasks directly involves approximately two dozen students, and others can be used as bailiff, court reporter, judge, and as possible replacements for participants, especially witnesses, in the event of an unexpected absence.

Still other students may serve as radio, television or newspaper reporters who observe the trial and then "file" their reports by making a presentation to the class in the form of an article or editorial following the trial.

- D. Students work in the above mentioned task-groups in class for one or more class periods, with the assistance of the teacher and an attorney or law student. During the preparation time, jurors might explore the role of the jury, the

historical development of the jury system, and other topics related to their part in the mock trial.

Student attorneys should develop questions to ask their own witnesses and rehearse their direct examination with these witnesses. Witnesses should become thoroughly familiar with their witness statements so that their testimony will not be inconsistent with their witness statements. (These statements, which may be considered to be sworn-to pretrial depositions or affidavits, can be used by the other side to impeach a witness who testifies inconsistently with the statement).

On direct examination (that is, either the plaintiff's or defendant's attorneys questioning their own witnesses), questions should not be leading – they should not have the answer included as part of the question. Leading questions may, however, be used in cross-examining a witness in order to impeach the witness' credibility in the testimony.

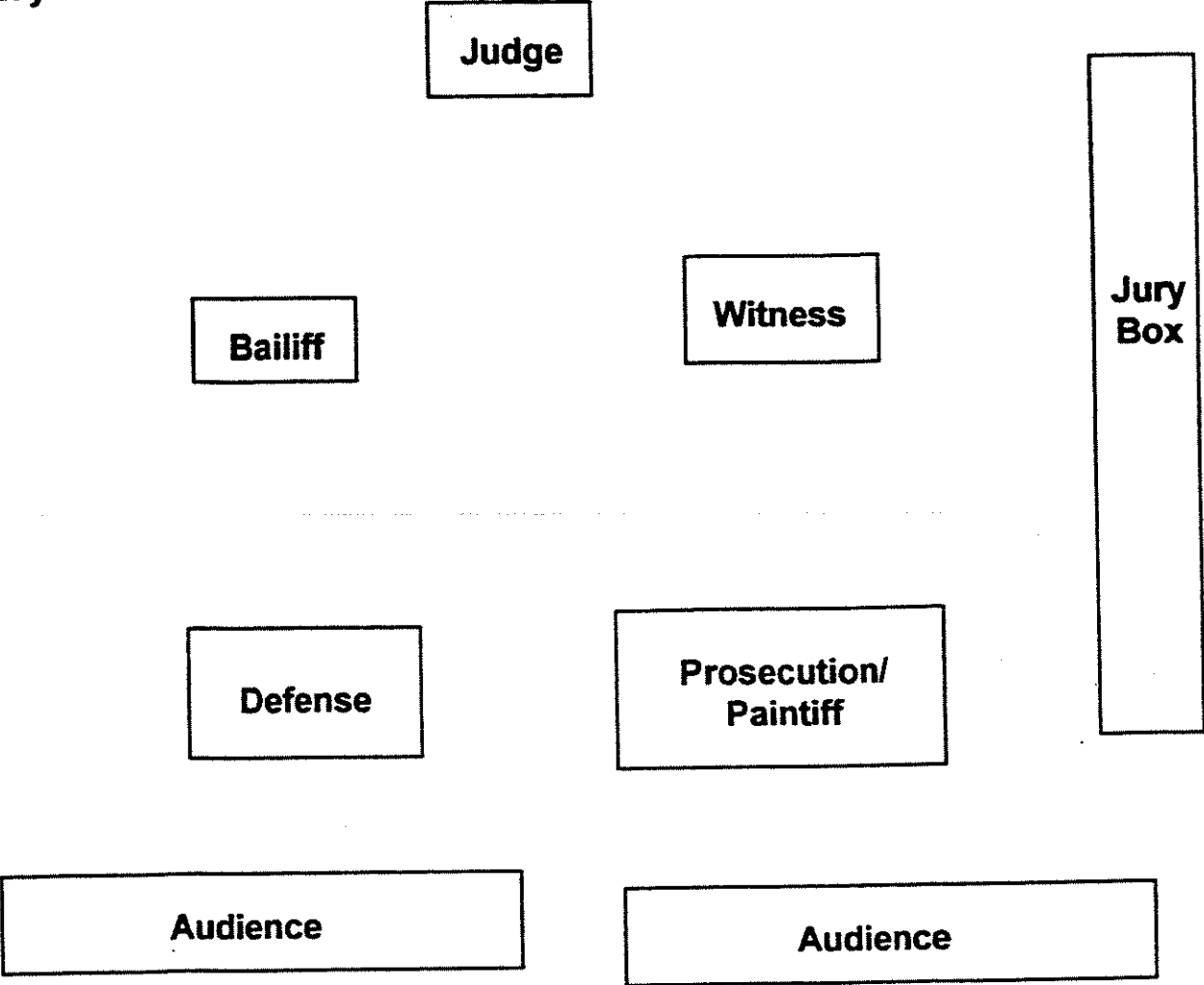
While some attorney-witness groups are constructing the questions and testimony for direct examination, other attorneys should be thinking about how they will cross-examine the witnesses for the other side. As mentioned, the purpose of cross-examination is to make the other side's witnesses seem less believable in the eyes of those determining the facts of the case (i.e., the jurors in a jury trial or the judge if no jury is used). Leading questions, sometimes requiring only a yes or no answer, are permitted. Frequently it is wise to ask relatively few questions on cross-examination so that the witness will not have an opportunity to reemphasize strong points to the jury.

During cross-examination, for example, the attorneys for the plaintiff might try to suggest that the testimony of the defense witnesses is inconsistent.

CONDUCTING A MOCK TRIAL

- A. Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks as shown in the diagram. It is also helpful to have long tables for each attorney's team to work from; the teacher's desk can serve as the judge's bench.

Layout of Classroom



- B. Conduct the trial with a teacher, students or resource person (perhaps a law student, lawyer or actual judge) as a judge. A student jury may be used. The role of the jury is often minimized in television trials. Students should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law and explains to the jurors the key legal issue in the case.

Participants:

judge (could be a visitor to class with legal experience)

prosecutor(s) or plaintiff's attorney(s) in a civil case

defense attorney(s)

witnesses for the prosecution

witnesses for the defense

bailiff (swears in witnesses and marks evidence)

jury composed of twelve persons, one of whom should be named jury foreman; alternates may also be designated.

C. *Simplified Steps in a Trial:*

1. *Calling of Case by Bailiff:* "All rise. The Court of _____ is now in session. Honorable Judge _____ presiding."
2. *Opening Statement:* First the prosecutor (criminal case) or plaintiff's attorney (civil case), then the defendant's attorney, explain what their evidence will be and what they will try to prove.
3. *Prosecution's or Plaintiff's Case:* Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined (questioned so as to break down the story or be discredited) by the defense.
4. *Defendant's Case:* Same as the third step except that defense calls witnesses for direct examination; cross-examination by prosecution/plaintiff.
5. *Closing Statement:* An attorney for each side reviews the evidence presented and asks for a decision in his/her favor.

6. *Jury Instructions (Jury Trials Only)*: The judge explains to the jury appropriate rules of law that it is to consider in weighing the evidence. As a general rule, the prosecution (or the plaintiff in a civil case) must meet the burden of proof in order to prevail. In a criminal case this burden is very high. In order that innocent persons do not lose their freedom, the prosecution must set out such a convincing case against the defendant that the jurors believe "beyond a reasonable doubt" that the defendant is guilty. In a civil case, plaintiff has burden of proving his/her case by "a preponderance of the evidence." In most states the entire jury has to be convinced, though a recent Supreme Court case permits (but does not requires) 9-3 verdicts in state noncapital criminal cases. Understanding that a unanimous (or 9-3) decision by the jury is required will help students understand why jury deliberations are sometimes so lengthy.

7. *Deliberation and Decision*: In making a decision, the judge or jury considers the evidence presented and decides which witnesses were most credible.

For educational purposes, it may be best to have the jury deliberate in front of the entire class, instead of retiring to a private place as occurs in actual trials. This will enable students to see first-hand the process of decision making, enabling them to learn what evidence was persuasive and why. Since the student jury may be representative of the community, their deliberations should provide a good analogy to real jury deliberations.

Once the jury reaches a verdict, the jury foreman writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

8. *Sentencing (Criminal Trials Only)*: After a defendant is found guilty, a study of the defendant's background is usually prepared by a probation officer, who then makes a sentencing recommendation. The judge pronounces sentence.

D. Don't interrupt the trial to point out errors. If a witness comes up with an off-the-wall comment, or if a student playing an attorney fails to raise an obvious objection, let it go. Wait until the debriefing, when you'll be able to put the whole exercise in perspective.

E. Set aside sufficient time for debriefing what happened in the trial. The debriefing is the most important part of the mock trial exercise. It should bring the experience into focus, relating the mock trial to the actors and processes of the American court system.

Students should review the issues of the trial, the strengths and shortcomings of

each party's case, and the broader questions about our trial system. Does our judicial system assure a fair trial for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?

If a resource person has participated in the mock trial, the debriefing is an excellent way to make the most of his or her experience and insights. Since the mock trial is a common frame of reference, the resource person has a natural vehicle for expressing ideas and observations, and students should be better able to grasp the points that are being discussed.

MOCK TRIAL COMPETITIONS

A variety of spin-offs have come from mock trials. One of the most rewarding is the area-wide mock trial competition. These competitions are like single elimination basketball tournaments. That is, teams from different schools compete against each other, with the losers eliminated and the winners proceeding to the next round. (Of course, the same model could be used for competitions between classes within a school.) Many state and local law-related education (LRE) projects have been conducting mock trial competitions for many years. For information, contact the LRE Clearinghouse, Division for Public Education, American Bar Association, Mail Stop 15.3, 541 N. Fairbanks Court, Chicago, IL 60611-3314.

These competitions are real attention-grabbers, which build students' interest, involve volunteers in a creative way, and provide excellent public relations and publicity for your program. The competitions need not be expensive. They can usually take advantage of time donated by lawyers and judges, and judges or law schools can often make courtrooms available at no cost.

There is one point to remember that applies to mock trials at any level. Don't forget that the objective is not the precise replication of an actual trial but a learning experience for you, your students, and even for any resource persons who may be helping out. The emphasis shouldn't be on perfection, but on a nonthreatening exercise with plenty of time for debriefing, enabling the class to go over key points in the trial and better understanding the whole experience. To put it another way, don't forget that mock trials should be both fun and a learning experience.