

INTRODUCTION - TRIALS AND AMERICAN SOCIETY

Whether the issue is teaching evolution in school, the kidnapping of the baby of a famous couple, or a Hollywood lovers' fatal quarrel, Americans have long relished the spectacle of the courtroom trial.

In the past fifty years, crowds have strained against police barriers, hoping to get into courtrooms where presidential counselors were being tried as part of the Watergate conspiracy. They have packed the courtroom where a school mistress was on trial for the murder of her lover, a famous physician. They have sat watching while the psyches of a would-be presidential assassin or the most private details of a famous athlete charged with murder were exposed to the world. In some recent cases, courtrooms have been replaced by highly public hearings by special counsels on the doings of a President and his friends and the Department of Justice itself. The names of the parties to cases like these move into American legal and popular history: John Ehrlichman and Robert Haldeman, Michael Jackson, John Hinckley, O.J. Simpson, Bill Clinton and Waco.

Then, too, the names of the most prominent role-players among the judges and attorneys edge into daily conversation, at least for a time: John Sirica, Barrington Parker, F. Lee Bailey, E. Bennett Williams. Scores of reporters, and, in recent years, miles of videotape - even inside some courtrooms - feed this public fascination. Perhaps the media's role in heightening the public's contact with the trial process is most clearly underscored by the fact that many of the nation's most well known trial celebrities are Hollywood creations or more recently, judges turned into public icons like Judge Judy!

Media hype aside, there are important reasons for the public attraction to the trial process, and these are undoubtedly inherent in the nature of our government and legal system. Perhaps the most basic of these reasons is the public's perception of the trial as one of society's principal vehicles for the achievement of justice for all citizens, a belief which is the cornerstone of our American legal system. In these times, apparent widespread distrust of the trial process surfaces whenever members of the public loudly protest a verdict, as happened in the John Hinckley and O.J. Simpson cases. Yet, all in all, Americans still cling to the belief that each citizen should have his or her own "day in court." Statistics on the rising number of case filings in civil court underscore the exercise of this right of access to the courts.

Some of the public fascination with trials also flows from the nature of a trial as great human drama. In the common view, few secrets can remain cloaked in a trial, or few emotions remain unraveled under the intensity of skillful examination of witnesses.

MOCK TRIAL – “THE ULTIMATE ROLE-PLAY”

Many teachers have discovered that American society's attraction to the trial process can be used to an educational advantage. More and more courts are implementing formal visitation programs for students. Bar associations, individuals attorneys, and judges willingly lend their time to teachers and students. Significantly, during the past twenty years the use of mock trials has taken root in schools' curriculum.

Two main reasons can be cited for this teaching phenomenon. One is the great public popularity of trials, already mentioned. The second (more significant educationally) is the recognition of the mock trial as a versatile, multi-dimensional teaching device. Because of the number of students a mock trial can involve in working toward the achievement of a wide variety of skills objectives, the mock trial as a teaching device might well earn a reputation for being the “ultimate role-play.”

PLANNING FOR A MOCK TRIAL

CONDUCTING MOCK TRIALS

A teacher new to the use of mock trials may hesitate to undertake a trial for reasons of time and complexity. Trial simulation is actually a flexible device, capable of being compacted into one or two classroom periods or expanded into a full unit several weeks in length. On a competitive level, attorneys statewide volunteer each year providing legal advice and training to mock trial teams and their advisors.

Mock trials may be based on historical events, cases of contemporary interest, school situations, or hypothetical fact patterns. The format of the mock trial can be formal or informal, depending on the objectives of the class and the skills and sophistication of the students. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and a brief statements for each witness.

There is a range of mock trial formats. Freewheeling activities can be done where rules are created by the student participants (sometimes on the spot) and no scripts are used. Or more serious attempts to simulate the trial process can be based on simplified rules of evidence and procedure. They also can be used to re-enact dramatic historical trials in which scripts are relied upon heavily.

Usually, however, scripts are not used. Instead, the students are given a statement of facts and legal issues. They may also be given a set of witness statements, which are not scripts, but affidavits on which the witnesses and attorneys build their witness examination questions and answers. Relevant documentary evidence (e.g. a contract) might also be included in the packet of trial materials. Analysis of the packet of materials and

strategic design of each step in the trial represent the most important parts of the student learning experience in the mock trial. For this reason, teachers should avoid scripting the material or doing most of the question and statement preparation for the students.

Simplicity in approaching a mock trial is critical, particularly for a teacher who has not used the device previously. The skills-building objectives should always be in the forefront of the teacher's activities in the mock trial. While real-life simulation is certainly desirable to a point, teachers should be aware that too much legalizing over the issues, too much jargon, too much emphasis on the rules of evidence and procedure tend to diminish the learning value of the mock trial by stifling student interest and making the process too cumbersome for all involved.

TIME FACTORS

A successful mock trial can be a largely impromptu event taking place right in the classroom and occupying one or two class periods at most. It can also be an intricately planned event with class preparation taking a full week or even more and trial presentation requiring two or more complete class periods.

Both types of mock trials, and many variations on them, have demonstrated their value as strategies for learning in the high school classroom. Each teacher needs to exercise discretion in selecting which approach to use. A key criterion is the amount of time available for this activity. Another is the specific learning objectives the teacher is aiming for at that particular point.

The lesson plans provided in this manual are built around the time sequences for each activity that have proven realistic on the basis of experience with hundreds of mock trials of all kinds.

Throughout, the references to class periods assume 50-minute lengths of time.

A natural prelude to or follow-up activity for the mock trial are trips to local courts to observe real attorneys, witnesses and judges in action. In addition, many attorneys, law students and judges are happy to volunteer to come into classrooms to help students prepare, act as judges and/or debrief the trial.

STUDENT INVOLVEMENT

A mock trial project should involve every student in the class for the entire unit. Careful planning is essential to achieve this goal of total involvement. Students not assigned specific, active roles quickly lose interest. However, not every student in a large class can play an attorney or a witness. Realistically, then, in classes larger than fifteen or twenty, how can every student be actively involved? To a large extent, the answer depends on the individual teacher and the classroom situation.

Suggestions to aid teachers in arranging total involvement include:

a. Number of Attorney and Witness Roles

In each mock trial case, each side uses two witness roles and six possible attorney roles. In sum, there are sixteen principal roles.

b. Alternates

Alternate witnesses are essential to safeguard against last-minute absences. Since attorneys can usually cover for each other, teachers can also assign alternate attorneys. With alternates for each attorney and witness role, as many as thirty-two students could be assigned roles.

c. Teams *

Cooperative learning is one of the important objectives of the mock trial process. The team and small group activities essential to mock trial preparation provide the vehicles for cooperative learning.

d. Role Assignments

Note that specific role assignments for attorneys and witnesses are not mentioned until Lesson Plan #4. Unless the mock trial is to be a fairly short, informal classroom event, there is no need to rush into role assignments. The longer every student remains a candidate for any role, the higher the level of student interest in the mock trial preparations will be.

*Lesson Plan #3 provides instructions for dividing the class into teams. For the purposes of active involvement in trial preparation, every student should be assigned to one team or the other, and should then be expected to participate fully in the small group discussions and team strategy sessions. The lesson plans call for small groups at certain points and also indicate which principal roles are involved at each stage. The principal role players and alternates, as well as, other students to assist them, should all be assigned to small groups and participate in them.

e. Juries

In large classes it may be preferable to include all unassigned students on the jury. (Note, however, possible other roles, under f.) Using a jury is a good way to keep all students actively involved during the actual trial. However, during the trial preparation stage, students who will be serving on the jury should be assigned to work with the teams. Even though real life jury members start a trial impartially with no prior knowledge of the case, the educational value of having jury members assist with case preparation outweighs the need to simulate reality.

Activities designed to demonstrate the importance of an impartial jury are valuable. (One way is to conduct a "voir dire" exercise--this is when lawyers or the judge ask prospective jurors questions to gauge their impartiality. A lawyer could help us with this.) If the class strongly desires a truly impartial jury for their trial, another class can be invited to sit as the jury.

f. Other Roles

The trial itself has room for roles other than attorneys and witnesses. These roles include:

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| 1. Judge or Judges | 4. Clerk or Bailiff |
| 2. Formal Observers | 5. Members of the Jury |
| 3. Court Artist | 6. Reporters from the media |

Again, the goal is to involve every student. All students in the class, whatever their eventual role in the trial, should participate on trial preparation teams.

