

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 role-play of 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.

PREPARATION OF MATERIALS FOR STUDENTS

The student materials in this manual include an Introduction to the Trial Process, Steps in a Trial, Simplified Rules of Evidence, and Case Materials. Before starting the mock trial unit, teachers need to determine which materials to give the class and when. The teacher may copy and distribute the entire packet at once or give out only sections at a time. A few suggestions that can help with this decision:

- a. **The Trial Process** is a general introduction for students who have not previously studied trials in detail, or for those needing refresher reading. It is a good first handout.
- b. **Steps in a Trial** is a guide designed to assist students with their preparation for mock trial roles.
- c. **Simplified Rules of Evidence** is recommended for distribution only to classes in which the teacher plans to devote a substantial amount of time to trial preparation. For the sake of time and simplicity, teachers may prefer not to use these rules for short, informal mock trials.
- d. **Case Materials** are separate packets with the facts and pieces of evidence for the specific trial the class will conduct. All students should receive a copy of this material.

LEGAL ASSISTANCE

The mock trials presented in the cases include hypothetical laws appropriate for use in any classroom. However, teachers may prefer to use a law actually on the books in the jurisdiction where the school is located.

To obtain information about an appropriate law that would work for a mock trial, teachers should consult with a local attorney or attorneys. The Bar Association in the area can often assist teachers in identifying attorneys who could help out.

Attorneys and law students are also valuable resources to assist students in the actual preparation for a mock trial. When using attorneys or law students as class presenters, team advisers, or judges, the teacher must take the time to brief them so that they understand the educational objectives of the program and recognize that the class will necessarily be using simplified procedures and rules of evidence.

JUDGING

Two important early decisions for the teacher are who will judge the trial and whether to use a jury. These decisions are influenced by time and learning objectives, as well as by class size. A few suggestions might help with this decision:

- a. If the judge is to be a student, he/she should be able to learn the trial process well, have the capacity to be decisive, and be able to give directions to other students.
- b. The teacher may choose to serve as the judge in situations where substantial control over the actual process is important. Such situations may apply with the very first trial, where everyone is a novice; where time is unusually tight; or where the teacher wants to have a free hand in interrupting to explain or drill witnesses during the trial.
- c. An attorney, law student (preferably beyond first year), or local judge may be invited to act as the judge. This arrangement is most appropriate for the more formal trial where the class has spend much time preparing. As with other situations using an outside resource person, the teacher should make arrangements well in advance. A full week is minimal. The resource person agreeing to take the judge's role will need to know the date, time, and place. Equally important, the judge needs to gain a thorough familiarity with the educational objectives of the class and with the simplified procedures that will be used in the mock trial. It is also advisable to pass the actual trial facts and statements onto the judge prior to the trial date.
- d. With a large class, the teacher may wish to place the students who are not participants in the trial on a "jury." The jury then has the task of deciding the outcome of the case. When the time comes for jury deliberations, the teacher may find it advantageous not to have the jury go out but have it deliberate fishbowl style right in the classroom. This gives non-jurors the opportunity to observe the decision-making process, but of course they may not participate in the juror's discussion.

CLASSROOM ARRANGEMENT

For the actual trial, the room should be arranged as follows:

If the trial will attract a sizable group of spectators, a teacher might wish to hold the proceedings in a larger room or auditorium. Such larger rooms will usually require microphones at the attorney's lectern, judge's bench, and the witness box. All such details should be firm several days before the trial, and audio equipment should be tested and adjusted before the trial.

SELECTING AND INSTRUCTING THE BAILIFF

Every trial should have a bailiff (often called a clerk) who takes care of announcing the entrance of the judge, calling the case, keeping time, marking evidence, and swearing in witnesses. The teacher should instruct the student selected at least one day before the actual trial. A section entitled "Clerk's Directions" is included as part of Lesson Plan #7: The Mock Trial. See Bailiff/Courtroom Host explanation in the Competition Procedures section of this kit.

PREPARING THE OBSERVERS

Because there may be more students that can have attorneys and witness roles, or that can assume such other roles as bailiff, the teacher may wish to designate overseers. This is not just a "catchall" role. The observers will be valuable in debriefing the trial. They will have the job of observing the trial as it unfolds, of looking for good points and errors and deficiencies, and of making notes that can be referred to afterwards when it comes time to analyze the event.

Lesson Plan #6 reminds the teacher to hand out the Mock Trial Observation Sheet to each observer before the trial begins.