

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 reenactments of historical trials in which scripts are heavily relied upon.

PREPARING FOR A MOCK TRIAL

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

*This Guide has been taken from the main article "From Classroom to Courtroom: The Mock Trial," written by Lee Arbetman and Ed O'Brien, both attorneys and former classroom teachers who are currently on the staff of the National Street Law Institute, 605 C Street, NW., Washington, D.C. 20001.

- 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 attorneys for each side. In addition, four students are needed as witnesses and twelve students can serve as the jury. Such a division of tasks directly involves approximately two dozen students¹ 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 use this time to outline the opening statements they will make. Because these statements focus the attention of the jury on the evidence, which will be presented, it will be important for these students to work in close cooperation with all attorneys and witnesses for their side.

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 if 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.

The closing arguments are rather challenging since they must be flexible presentations, reviewing not only the evidence presented for one's side but also underscoring weaknesses and inconsistencies in the other side's case which arise out of the trial proceedings.