



CHAPTER FIVE

*INTRODUCING
MOCK TRIAL
TO YOUR TEAM*

Introducing Mock Trial to Your Team

This section is designed to help you introduce your students to the trial process and the participants of a trial, basic mock trial procedures, including preliminary trial matters, and the trial order.

In this section, the function of the judicial system and all its elements are introduced, alternatives to resolution between two parties, and how the preparation for the trial takes place. This overview of the trial process will build a foundation of understanding for your students as they begin to build their mock trial cases.

Several attachments are available in the *Student* and *Teacher Attachment* section of this packet to assist in the teaching of these concepts.

Mock Trial Basics

“Equal Justice Under Law” are words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person living in this country has the freedom and security to enjoy the benefits of life in a democratic society.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society. The solution might be a clarification of the rights of the parties; a determination of right and wrong, or guilt and innocence; a direction to one individual to take certain actions to make up for harming another’s rights; or even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes, although going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication, or with a third person, such as a mediator. Three common ways of settling disputes without going to court are 1) negotiation, in which the parties talk face to face; 2) mediation, in which the parties talk through a third person called a “mediator” who helps them find a common ground on which they can agree to a solution; and 3) arbitration, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an “adversary process”, which means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute, who then renders a decision. The “impartial” third party that renders the decision can be a judge or a jury. The judge or jury functions as the “trier of fact”.

The Parties

A trial involves around an argument involving two or more people. The people who bring their argument to the trial are called the “parties” to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the “plaintiff”, and the person who is the object of the complaint is the “defendant.”

In a criminal trial, a person is accused of a particular act that the law calls a crime, such as a murder, robbery or fraud. The person who does the accusing is the “prosecutor.” The prosecutor speaks on behalf of the government, which in turns represents the people of the state or nation. The person who is accused of the crime is the “defendant.”

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

The Facts of the Case

Long before a trial actually takes place, some argument or incident occurs. Perhaps it's a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the "case". Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the trier of facts is to decide which facts are correct.

The Evidence

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "evidence".

Evidence may take several forms including:

- a. Testimony: A person, called a "witness" tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
- b. Documents: Letters, notes, deeds, bills, receipts, etc., that provide information about the case.
- c. Physical Evidence: Articles such as weapons, drugs, clothing, etc. that can provide clues to the facts.
- d. Expert Testimony: A professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence and the way the judge or jury considers the evidence and make a decision.

One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the “burden of proof.”

In a civil case, the person who brings the case to court and does the complaining (the plaintiff) has the burden of proof. Plaintiffs must convince the judge or jury that these facts are correct “by a preponderance of the evidence,” meaning that their evidence is slightly more convincing than the defendant’s. Some refer to this as meaning that 51 percent or more of the evidence supports the plaintiff’s side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state’s case. Therefore, the prosecutor must convince the judge or jury “beyond a reasonable doubt” that the accused committed the crime. Some state that “beyond a reasonable doubt” means that the trier of fact (judge or jury) must be at least 95 percent sure the prosecutor is correct.

The Defense

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence that prevents the plaintiff or prosecutor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the plaintiff presents a witness who testifies that the defendant was speeding just prior to hitting the plaintiff’s car in an intersection. The defense could then present a witness who tells the court that the plaintiff, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the plaintiff’s case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways, including: 1) presenting evidence to show that the defendant was not present at the scene of the crime (called an “alibi”); 2) showing that the defendant was acting to protect him/herself (self-defense); 3) presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

Preparation for Trial

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney's job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief and TV) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorney for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called "discovery". Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make "affidavits," which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a "deposition," which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions are contained within this section. And these steps are part of your preparation for participation in the mock trial program.

All information is from the perspective of preparing your team for participation in the Colorado High School Mock Trial program.

Mock Trial Courtroom Participants

1. **Presiding Judge:** The person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of the law which apply to the case or, in a bench trial, serves as the finder of fact.
2. **Scoring Panelists (“Jury”):** Typically a two-three person panel, these are the volunteer adjudicators of the mock trial presentation; they do not render verdicts but score each team’s performance and knowledge of trial proceedings, rules of evidence, procedures and the passion of advocacy and persuasion in their respective roles.
3. **Attorneys (3 per team):** May give his/her opening statements for his/her side of the case, cross examines the opposing side’s witnesses and objects to improper questions asked by the opposing attorney. Also examines own witnesses in order to build a strong case. Tries to show that there is not enough evidence to justify judgment against the defendant.
4. **Witnesses (3 per team):** Gives his/her account of what he or she believes to be the facts in the case. Is asked questions by attorneys from both sides.
5. **Timekeeper (1 per team):** Keeps time for their own team, and notes time records so that each teams’ members doesn’t go over time for their opening statements, closing arguments, and for their direct examinations or cross examinations of the witnesses.
6. **Courtroom Monitor:** Provided by the tournament coordinator (at State), serves as the bailiff who calls the court to session and serves as a clerk/runner for the presiding judge when the round needs assistance from the state coordinator. Also collects score sheets and oversees after chat critiques.

For a copy of the layout of the Mock Trial Courtroom, please refer to **Student Attachment #1**. Also use **Student Attachment #2** on Mock Trial Participants as a handout. Also see **Teacher Attachment #1** for a quiz on the courtroom participants.

Introduction to the Trial Process

BASIC MOCK TRIAL PROCEDURES

Beginning the Trial

1. The parties in the civil case are the plaintiff (one who brings a complaint to the court) and the defendant (against whom the complaint is brought); and in a criminal case, the prosecution (the government, e.g., State of Colorado vs. Doe) and the defendant (one who is accused of the crime).
2. Courtroom Monitor (acting as Bailiff) announces: "All rise. Court is now in session. The Honorable _____ presiding." Everyone remains standing until the presiding judge enters and is seated.

Preliminary Mock Trial Matters (may vary at regional tournaments)

The presiding judge will handle the following pretrial matters by:

1. Asking each side if it is ready for trial.
2. Asking each side to provide the judge and the scoring panel with copies of its Trial Rosters **with the school tournament code, not the school name, listed at the top.**
3. Confirming that if video recorders are present, and asking that both teams have approved the taping of the round.
4. Informing teams, as well as gallery members, that the Colorado Bar Association may be taking historical photos during the mock trial, and that team participation in the state tournament grants automatic permission and use of these photos by the CBA.
5. Asking if anyone in the gallery connected with other schools (other than the schools competing in the trial round) is present in the courtroom (See the Colorado Mock Trial Rules for more information and its one exception.) If so, the presiding judge will ask them to leave and report to the registration desk, where they can be informed of trial locations involving their school teams.
6. Reminding the teams that no recesses will be allowed with the exception of those for a health emergency, and especially not between the end of witness examination and the beginning of closing arguments.
7. Asking the scoring panelists if they recognize either team or any of the team members. If any panelist or team recognizes a team (or a team member) or a scoring panelist, the judge will hold further proceedings and notify the tournament coordinator so arrangements will be made to replace the panelists. (Team members and team coaches may raise an objection regarding a particular scoring panelist at this time as a preliminary matter. The objection is deemed waived if it is not made as a preliminary matter.)
8. Reminding the teams and their coaches that any disputes arising out of this competition must be reported in accordance with the Rules of the Competition.
9. Reminding the teams that their compliance with time requirements will be considered in scoring individual performances.
10. Confirming that no coach or team member (other than the timekeeper, if a timekeeper is not provided by the tournament committee) is seated in the jury box or inside the bar.
11. Asking each team to introduce themselves, both student attorneys and witnesses.
12. Swearing in the witnesses, the gallery and the scoring panelists.

The teams may also request in preliminary matters permission to move about the courtroom during opening and closing arguments, as well as direct- and cross-examinations.

The Trial Order

1. Plaintiff/prosecution (P/P) opening statements.
Rising, "May it please the court," then deliver the Opening Statement.
2. Defense (D) attorney opening statements.
Rising, "May it please the court," then deliver the Opening Statement.
3. Testimony of Witnesses.
 - a. Direct Examination of P/P witnesses.
 - b. Cross Examination by D of P/P witnesses.
 - c. Redirect Examination of P/P witnesses.
 - d. Re-cross by D of P/P witnesses.
 - e. P/P rests its case.
 - f. Direct Examination of D witnesses.
 - g. Cross Examination by P/P of D witnesses.
 - h. Redirect Examination of D witnesses.
 - i. Re-cross by P/P of D witnesses.
 - j. D rests its case.
4. Closing Arguments
 - a. P/P closing arguments
 - b. D closing arguments
 - c. P/P rebuttal of D closing arguments (if time has been reserved).
5. Deliberation

The presiding judge will deem the mock trial over, congratulate the teams and call a brief recess; the scoring panel and presiding judge will leave the room to complete their score sheets. When the judge and panel return, they will offer a 15-minute critique to the teams about their performances.

For a student handout, please see **Student Attachment #3**. Please see **Teacher Attachment #2** for a quick quiz on the Steps in a Trial.

STRATEGIES FOR TEACHING ABOUT MOCK TRIAL PROCEDURES

1. Have the students brainstorm the order of events in a mock trial and list them on one side of the blackboard. On the other side of the board, list the steps of the mock trial as they actually occur, noting any errors or omissions in the students' lists as you do so. Explain the differences between the two lists.
2. Once the whole trial process has been introduced, have students make a list or brainstorm and write on the board the steps in a trial, first from the P/P's point of view (e.g., opening statement, direct examination of P/P's witnesses, cross examination of defense witnesses, and closing arguments). Do the same from the defense perspective.
3. Have the students check newspapers and magazines for articles that mention a trial that is currently being conducted. Paste the articles to a large sheet of construction paper with the trial step that is mentioned in the article written in large letters at the top of the sheet. Have students post these around the classroom in their proper order.
4. **Teacher Attachments #1 and #2** and **Student Attachments #1, #2 and #3**, which can be completed and discussed in the classroom, are designed to familiarize students with the steps in a trial, the physical layout of a courtroom, and the participants in a trial.
5. A courtroom visit is a good idea at this point (or after the class has begun working on the case problem). If you can arrange for the group to visit a courtroom during a trial, hold a debriefing session following the visit and/or have the students write for homework: What part(s) of the trial did you observe? What happened before the part(s) you observed? What happened in the trial after you left? Have the students list these answers on the board in class with the step of the trial that your group observed in the middle, or the "before" and "after" lists on either side.

If you can't arrange to hear a real trial, arrange for the students to visit a courtroom so they may become comfortable with the setup and environment. Quiz the students on where participants of the trial are positioned in the courtroom. If you've not begun work on the case problem, consider giving the students a scripted (elementary) mock trial case (available through the Colorado Bar Association) to read and play out their parts in the courtroom setting.

In setting up a visit to the courthouse, contact your attorney coach for assistance OR your local bar association OR the local courthouse administrator.

6. Students could be assigned to watch a television program or see a movie having to do with a trial, then write a composition and/or report to the class on what the case was about, what parts of the trial they observed, and whether the depiction of the trial procedure was accurate and realistic.
7. Invite your attorney coach, or a trial attorney or local judge to the class to review basic trial procedure and describe different types of litigation, such as arbitration hearings, worker's compensation hearings, school board hearings and juvenile proceedings. How and why do they differ from the basic civil and criminal trial procedure?
8. After general trial procedure has been covered in class, distribute the mock trial case problem and have the students read them thoroughly. At this point, you can assign or "audition" the various roles of the attorneys and witnesses, though you may wish to wait until you've covered the rules of evidence. (This also helps ensure that the students have read all of the trial materials, instead of just reading those for their parts or sides of the case.)