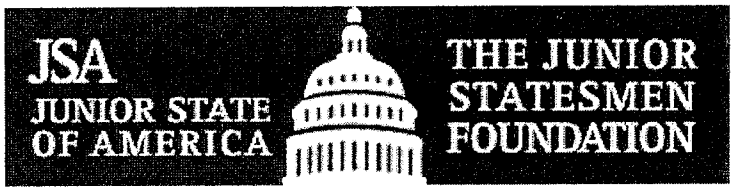

MOCK TRIAL PACKET

NUMBER 4

Murphy V. National Sheet Metal

Prepared by the American Bar Association

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CIVIL MOCK TRIAL

FACTS

For years, National Sheet Metal was one of the largest sheet metal producers in the country. It consistently secured numerous contracts from the federal government and many of the best-known corporations in the U.S. and overseas.

Because of the strenuous work involved in sheet metal production, National's non-clerical employees had almost always been men. This situation changed, however, during the past few years. Many more women applied for positions with the company, and many more were accepted. As a result, the percentage of women in non-clerical positions had increased from 1% to 12% in the period 1974-1978.

Despite this considerable increase, no woman had yet assumed a supervisory position within the company. The primary reason for this was that such positions were based in large part on an employee's length of service (seniority). Since women had not been with the company very long, they did not have the seniority of their male co-workers. As one might expect, the supervisory positions, while involving more responsibilities, were not as physically demanding and paid a significantly higher salary.

When a supervisory opening occurred in the Shipping and Receiving Department, the company executives believed it was time to promote one of their women employees, Gail Burton, to the position.

Ms. Burton had worked in Shipping and Receiving for four years and had an excellent work record. There was thus no question as to her qualifications, particularly her ability to get along with her co-workers, male and female.

Bill Murphy also felt that Burton would probably do a good job as the new supervisor. He believed, however, that under the union contract, he had priority over Burton for the position. Murphy had been with the company for twelve years and also had an excellent work record. In cooperation with the union, therefore, he filed a grievance against the company, seeking reversal of their decision to promote Burton over him. When the grievance was denied, he filed suit against the company.

WITNESSES AND THEIR STATEMENTS

For the Plaintiffs --

1. Don Bladstrom, a union official
2. Bill Murphy

For the Defendants --

1. George Fields, President of National Sheet Metal
2. Gail Burton

Bladstrom: In my mind, the issue is clear. There is a binding contract that was negotiated by the union and the company in good faith. That contract explicitly states that seniority is a primary factor in promotion decisions. Murphy has three times more years of service than Burton. He should get the promotion, not her. If the company is allowed to circumvent the contract on this issue, who knows what excuses they'll come up with to skirt the contract in the future? This issue is much larger than only Bill Murphy. It is a question of whether the company is going to keep its word.

Murphy: I'm the one who is being discriminated against. I've given the company twelve years of my life -- worked hard, been devoted to the company, my record speaks for itself. I thought that a contract was something you could depend upon. I thought the company would keep its word. I have a wife and a family to

support. If Burton or other women want to become supervisors, they should have to follow the same rules I have to follow. Why should women get any special treatment?

Fields: I am sympathetic to the concerns of Bladstrom and Murphy. However, for years are company did not give women an equal opportunity for employment. While this was done with the best of motives -- to protect women from very strenuous work -- it also kept them from moving up the seniority ladder. About one-eighth of our non-clerical work force are now women, yet none are in supervisory positions. This is not good for the morale of these workers, nor is it right that they should suffer for prior circumstances not of their making. It is also federal policy to rectify past discrimination, and while we have neither been charged with discrimination nor threatened with loss of federal contracts, we consider it essential to comply as best we can with the spirit and intent of that policy.

Burton: The company should be given a lot of credit for what they are doing. Many of the women who are working for National have been very concerned about our position at the bottom of the ladder. Clearly, we have been the victims of years of discrimination. It's unfortunate that Bill Murphy has to bear the brunt of my promotion, but we can't forget that countless women have suffered because of the actions and policies of the past. In any event, all men have benefitted in one way or another from the discrimination against us. I regard my promotion as a small but necessary step in insuring

equal employment opportunity. And that's far more important than a clause in a contract that only insures the continuation of past discrimination.

PREPARING FOR A MOCK TRIAL: Murphy v. National Sheet Metal

After teaching 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 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.

In the opening statement for the defense in the attached case, for example, the attorneys might begin by saying:

"Ladies and gentlemen of the jury, today we will present evidence which will show that the company acted in the best interests of its workers and in enlightened compliance with priority policies of our government. Our witnesses will testify that in light of the unintentional but very real discrimination against women over the years, the company has recently taken affirmative steps to remedy this situation, the latest being the first promotion of a woman to a supervisory position at National Sheet Metal..."

This opening statement would then continue to explain the evidence to be presented in support of the defendant. The plaintiff's statement, of course, will outline the case against the defendants.

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 own 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 affadavits, can be used by the other side to impeach a witness who testifies inconsistently with the statement.) The attorneys for the plaintiff could begin with questions such as:

"Would you please state your name and address?"

"Please tell us where you work and what your position is."

"How long have you worked there and what, generally, are your responsibilities?"

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 (such as the plaintiff's attorney asking Murphy, "Isn't it true you have served the company three times longer than Burton has?"). Leading questions may, however, be used in cross-examining a witness in order to impeach the witness' credibility in the testimony (such as a plaintiff's attorney asking Burton: "Isn't it true that you have been fully aware of the seniority provision of the contract

and never made any attempt to challenge that provision?").

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. Questions along the following lines might be posed to George Fields:

"Do you think that contracts are an important part of doing business?"

"Is this not because contracts lay out in writing what each party promises to do, and serves as clear evidence of that agreement?"

"What would business be like for you if people were able to alter contracts at their whim?"

"How then do you justify, in light of the explicit language of the contract, promoting Burton over Murphy?"

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. The closing statement of Murphy's attorneys might include some of the following language:

"Ladies and gentlemen of the jury, you have listened patiently and carefully to the evidence which each side has presented in this trial. You have heard testimony which proved that Bill Murphy has been a hard working, loyal employee of National Sheet Metal for twelve years. During this time, he has established an exemplary work record and, in light of the contract negotiated freely by both the union and company, had every expectation of being a prime candidate for the supervisory position in the Shipping and Receiving Department. However, even though there is no evidence that he or the union ever discriminated against women, he is being penalized for some supposed discrimination by the company. I would suggest that the company rather than Bill Murphy should bear the burden of any such discrimination..."

By the way, don't be alarmed if your students aren't this proficient. Students will develop questioning and oral advocacy skills through repeated use of the exercise.

The judge may also compose instructions to the jury, for example: "This case presents troubling issues of first impression for this court. On the one hand, there is the long-held doctrine that when parties knowingly and voluntarily enter into a contract, the court will always seek to enforce the terms of

the contract and insure its integrity. On the other hand, we are all aware of the unfortunate history of employment discrimination against women and other minorities in our nation. Clearly, it is federal policy, embodied in our law, to affirmatively rectify such unfair employment practices. The problem in this case, of course, is that the company is voluntarily taking such affirmative steps -- it has not been accused either of past discrimination or of violating federal law. And there is no question that the contract is a valid agreement between the company and the union. It is thus left to you, members of the jury, to determine whether the company's action is in violation of the contract as charged or whether they are justified under the unique circumstances before us."

To conduct the mock trial, see the enclosure, Guide to Conducting Mock Trials, page 3.

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE*

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties recieve a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified below.

A. Witness Examination

1. Direct examination (attorneys call and question witnesses)

a. Form of questions: Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

Example of a direct question: "Mr. Hudson, when did you first meet June Harris?"

Example of a leading question: "Mr. Hudson, you don't have a steady job, do you?"

b. Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

*This is reprinted by permission of the National Street Law Institute. For further information on mock trials or teaching law in schools, contact the Institute at 605 G Street, N.W., 4th Floor, Washington, D.C. 20001, (202) 624-8217.

Example of a narrative question: "Mr. Hudson, what went wrong with your marriage?"

Narrative answers: At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question asked. Such answers are subject to objection on the grounds of narration.

c. Scope of witness examination: Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

d. Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but it is not an issue in a civil trial for breach of contract.

e. Refreshing Recollection: If a witness is unable to recall a statement made in the affidavit, or if the witness contradicts the affidavit, the attorney on direct may seek to introduce into evidence that portion of the affidavit that will help the witness to remember. (See Part B.5 on introduction of evidence).

2. Cross-examination (questioning of the other side's witnesses)

a. Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided (these usually begin with "how", "why" or "explain").

Example of a leading question: "Mr. Davis, you've given a lot of thought to giving Mr. Hudson information you have that would be helpful to him, haven't you?"

b. Scope of witness examination: Attorneys may only ask questions that relate to matters brought

out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example: If the plaintiff in a car accident case never mentions damages to the car, then the defense cannot ask questions on cross-examination about the repair costs.

c. Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions. Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

Example (Prior Conduct): "Is it true that you beat your nephew when he was six years old and broke his arm?"

Example (Past Conviction): "Is it true that you've been convicted of assault?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

3. Re-direct examination

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination.

B. Additional Rules of Evidence

1. Hearsay

Any evidence of a statement made by someone who is not present in the court which is offered to prove the truth of a fact, a piece of evidence or any witness' testimony is hearsay and not permitted.

Example: Ms. Mills says, "Mr. Hudson's neighbors have often told me that they heard Ms. Harris threaten their son."

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

a. it was said by a party in the case and contains evidence which goes against his side (e.g., in a murder case, the defendant told someone he committed the murder). This is sometimes called the "Admission against Interest" Exception; or

b. a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind (sometimes called "State of Mind" Exception).

2. Opinions of Witnesses

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts". An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses have first-hand knowledge. (Example: Ms. Mills says, "June Harris takes her anger with her husband out on their son by beating him.")

No witness may give an opinion about how the case should be decided. (Example: "Mr. Davis, is it ever ethical for newspaper reporters to reveal their sources?") This is called the "ultimate issue" question.

3. Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

   Example: If Mr. Davis had no business dealings with Randy Bates, he could not say, "Randy Bates is a competent reporter."

4. Relevance of Evidence

   Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

   Example: The defense asks Mr. Hudson on cross-examination, "How old are you?" (This question is permitted only if his age is relevant to the case.)

5. Introduction of physical evidence

   There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence.

   a. "Your honor, I ask that this newspaper article be marked for identification as Petitioner's Exhibit A." (Show article and hand it to bailiff for marking.)

   b. (Show newspaper article to opposing counsel, who may make an objection to the offering at this time.)

   c. (Show newspaper article to witness.) "Mr. Davis, do you recognize this document which is marked Petitioner's Exhibit A for identification?" (The witness should say yes and identify the document.)

At this point, the attorney may proceed to ask the witness a series of questions about Exhibit A.

d. If the attorney wishes to place the document into evidence, say, "Your honor, I offer this newspaper article for admission into evidence as Petitioner's Exhibit A, and ask the court to so admit it."

e. Get ruling from the court on admission and hand the document to the judge.

C. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Following are standard objections:

1. Irrelevant evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

2. Leading questions: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

3. Improper character testimony:

   a. "Objection. The witness' character or reputation has not been put in issue."

   b. "Objection. Only the witness' reputation/character for truthfulness is at issue here."

4. Beyond the scope of direct examination:

   "Objection. Counsel is asking the witness about matters that did not come up in direct examination."

5. Hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

6. Opinion: "Objection. Counsel is asking the witness to give an opinion."

7. Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

D. Miscellaneous rules of procedure

1. Re-direct and re-cross examination are permissible; re-direct is limited to the scope of cross; re-cross is limited to the scope of the re-direct.

2. For mock trial purposes, motions for dismissal at the end of the plaintiffs' case are not to be used.

3. Order of closing arguments: first - plaintiffs; second - defense; rebuttal by plaintiffs is permitted.

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 clasroom, 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 reeanactments 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 G Street, N.W., 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 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 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 swornto pretrial depositions or affadavits, 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.

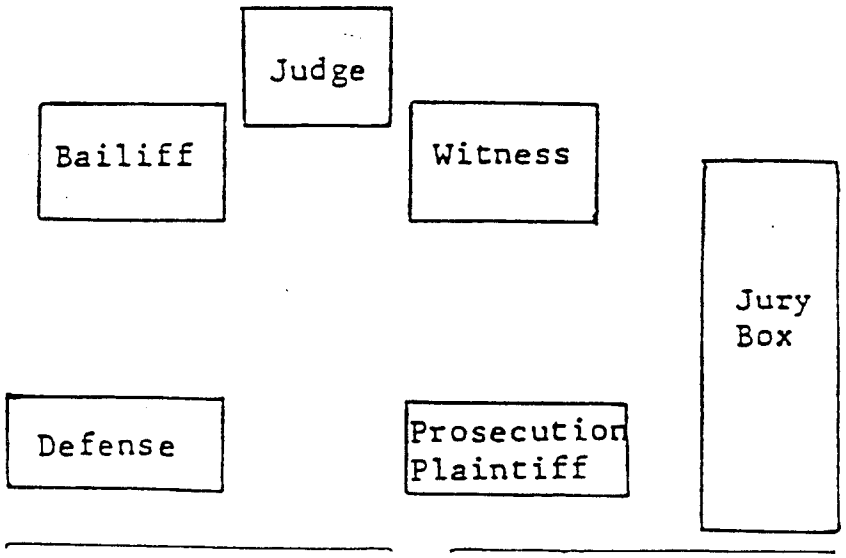
During cross-examination, for example, the attorneys for the plaintiff might try to suggest that the testimony of the defense witnesses is inconsistent.

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.

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 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

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.) The Street Law project has been conducting city-wide mock trials in Washington since 1972, and we'd be glad to send you information on how you can set up your own competition, just write to us at the National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001.

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.

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