

MANUAL FOR MOCK TRIAL



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REASONS TO DO A MOCK TRIAL

Both teachers and students need to know why they are participating in this project. Knowing the reasons adds value to the time spent in or out of class and points the way to putting the experience in an important educational context. Teachers and students can add to the list of educational outcomes before, during and after they complete the mock trial unit.

This strategy can be used with students at all ability levels and with students at multiple grade levels. Mock trials can also be used in disciplines such as social science, health, science, literature, history, ethics, religion, philosophy, world languages et. al.

Including standards and goals that are part of an education agency connects the mock trial with important objectives of the state education plan.

There is one point to remember that applies to mock trials at any level, the goal of this activity is not the precise replication of an actual trial but a learning experience for you, your students and for any resource persons who may be helping your group. The emphasis should not be on perfection, but on a non-threatening exercise with plenty of time for debriefing. The debriefing will enable the class to review the key points in the trial and to better understand the entire experience including the skills needed to be successful. To put it in another way, remember that mock trials should be both fun and a learning experience.

OBJECTIVES

1. To promote increased confidence, poise, oral skills, critical thinking skills and teamwork skills, plus increase proficiency in **basic skills** such as reading, writing, speaking, analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. To give students a better understanding of the legal system - from the rules of evidence to proper court decorum. This increases their awareness of the importance of law in a democratic society and strengthens understanding of their fundamental rights under the U.S. and Croatian constitutions.

3. Provide a hands-on experience outside (or inside) the classroom from which students can learn about **law, society, and themselves**. To offer students an opportunity to think about how society resolves its disputes and to measure the fairness of those decisions.

KEY



BEFORE THE TRIAL

I. Constitutional principles that are illustrated by mock trial

These principles form the core of democratic citizenship and they provide an opportunity to consider and act out procedures that ensure fairness in the judicial system.

- *Rule of Law*
- *Presumption of Innocence*
- *Burden of Proof*
- *Due Process*
- *Rights of the Accused*

These concepts are explained in the back of the mock trial case (Simon v Swift & Eastside) and rule of law is expanded on in *Elements of Democracy* pages 73-75.

See Corrective Justice and Procedural Justice from *Elements of Democracy*. These background pieces provide the principles on which judicial decisions are made. They would also be useful in the debrief part of the trial.

→ Appendix B: *Elements of Democracy*

II. Concepts of justice, authority, responsibility

These large philosophical underpinnings of democracy are the foundations upon which legal systems are based. They stretch students' minds and offer opportunities to apply democratic principles to daily life.

III. What is a trial? What is a mock trial?

Distinction between the two trials (real and mock) set the stage for adaptations in a classroom which would not happen in a court of law. Students are *not* learning to be

lawyers. They are learning to be thoughtful learners and effective citizens. It may be helpful to discuss the myths about trials perpetrated by television and film.

Which process to follow? Croatian, U.S. or both? If there is time and energy, doing the trial in both the Croatian and U.S. versions provides a deeper educational experience and an opportunity to look at both systems.

IV. Courtroom vocabulary

Taking the time to teach words that are used in trials such as witness statement, opening statement and closing arguments empowers students. Each trial has technical and scientific vocabulary that will also need to be defined and understood by students.



#1 GLOSSARY

V. Courtrooms

The formality of the court emphasizes the seriousness of the judicial process and encourages citizens to have respect for this institution where peoples' lives are changed forever by judicial decisions. Students can demonstrate this respect through professional attire, appropriate language, courtesy such as rising when the judge enters and rising whenever the judge speaks to you ("Thank you, Your Honor"), learning how to talk to each other and to the adults in the court room and, never arguing with anyone during a trial. A diagram of how the court is arranged for both the Croatian and U.S. provide students with a visual idea of how the system works.

→ Appendix C: *Tale of Two Courts* (pages 10-24)

Discuss courtroom personnel and their roles: judge, jury etc. This allows students to understand the role of the individuals who work in a court. Comparisons between HR and U.S. are informative.

NOTE

The court reporter in the U.S. system takes down every word spoken in the trial proceedings. In Croatia the judge instructs the "court reporter" what will be typed for the official record.

VI. Scripted mock trial for practice

Using a scripted mock trial gives students a kind of walk-through of the way a trial works so that they are competent and confident when they engage in a mock trial that is

not scripted. See *Tale of Two Courts*.

→ Appendix C: *Tale in Two Courts*

For a short mock trial to practice, see *State v Randall* (criminal case) and *Vickers v Hearst* (civil case) from Street Law. Both have only 4 witnesses and provide a short and satisfying way to practice questioning and to appreciate the importance of the witness statements as well as an opportunity to apply the law to the facts in the case.

→ Appendix D: *State v Randall*

→ Appendix E: *Vickers v Hearst*

VII. Select a case

A case such as *State v Randall*, which is a criminal case, works well for a limited time frame or as an introduction to the procedures for a longer case. Deciding which case to use should include considerations such as the number of students, the goals of the class or club, if the group meets during school or at another time, particular interests of the students, availability of translated materials, the complexity of the witness statements and/or the opportunity to demonstrate the trial for an audience.



#2 LIST OF TRANSLATED TRIALS

Read through *Simon v Swift and Eastside High School*. The first time students see the case materials should be an opportunity to become familiar with the rich resources inside!

Locate summary, Complaint and Answer, list of witnesses, witness statements, exhibits, explanatory materials, list of objections.

→ Appendix A: *Simon v Swift and Eastside High School*

VIII. Steps in a trial

The Steps Handouts create a “road map” for students so that the order of the trial is not a mystery. The order of the trial is also an illustration of the principles of due process.



#3 STEPS IN A U.S. CIVIL TRIAL

#4 STEPS IN A CROATIAN CIVIL TRIAL

#5 STEPS IN A U.S. CRIMINAL TRIAL

#6 STEPS IN A CROATIAN CRIMINAL TRIAL

IX. Preparing students to work together

Students need to acquire the cooperative learning skills they will use in the mock trial. Several exercises in working together for common goals are important.

“Of particular interest is the high level of cooperation among students needed for successful mock trials. Recent research findings indicate that such cooperative learning activities encourage significant cognitive achievement among students from a variety of backgrounds and also improve student attitudes toward school and each other.”

—→ Appendix F: *Cooperative Learning*

X. Adversarial and continental systems

This sets the context for comparing the systems in the U.S. and in Croatia, noting the similarities and differences. In Croatia, procedural changes are being implemented in war crimes trials incorporating leading questions during cross examination.

—→ Appendix C: *Tale of Two Courts* (pages 15-24)

XI. Overview of the mock trial unit

This is a sample of the allocation of activities to prepare for the mock trial.



#7 AT A GLANCE 18 DAY CALENDAR

—→ Appendix G: *Daily Lessons from Civil Croatian Trials*

—→ Appendix I: *Daily Teaching Notes*

XII. Web sites for additional research/support

- American Bar Association (www.abanet.org/publiced/mocktrialguide.pdf)
- National High School Mock Trial (www.nationalmocktrial.org)
- Street Law (www.streetlaw.org)
- Constitutional Rights Foundation (www.crf-usa.org/mock-trial-program)

THE TRIAL

XIII. Telling the story of the trial

An opportunity to warm-up the class. Be brief and engaging, a kind of summary but no hint as to outcome. Often there is a case summary or a list of stipulated facts at the beginning of the mock trial which can be used by the teacher to give a short plot summary with no arguments for either side and no opinions expressed.

—→ Appendix A: *Simon v Swift and Eastside High School* (see page 1)

XIV. Questions that relate to the trial

“What responsibility do schools have for their students? Why? What responsibilities do parents have for their children? Why?” Introductory questions such as these are designed to create connections with lives of students and to pique interest. Return to the questions after the witness statements are read to reinforce the themes of the trial.



#8 INTRODUCTORY QUESTIONS FROM SIMON V SWIFT AND EASTSIDE HIGH SCHOOL

XV. Facts of the case/summary of the case

See pages 3-6 of the *Simon* mock trial materials. These facts are so crucial that they should be reviewed often. Agreement about the facts of the trial is the starting point from which preparation begins. This agreement, also known as stipulated facts, forms the basis to think about facts that are not agreed upon. Sharing basic information from both sides is also a procedural guarantee. There should be no surprises and no invented facts. Adherence to the facts presented in the mock trial is crucial to the activity. Even if we wish to know more, we have to work within the framework of the material that is presented in the mock trial case.

XVI. Understanding the legal issues of the trial

Complaint/answer, charges or indictment. This is a challenging piece of the learning. It involves looking carefully at the law in the case so that evidence can be offered to either prove or disprove the complaint/charges. In Croatia, the formal indictment describes the legal issues.



#9 SAMPLE CROATIAN INDICTMENT

XVII. Burden of Proof

See pages 59-60 in *Simon* mock trial materials. Students need to understand which side

has the major role in proving the complaint or charges and what the opposing side is required or *not* required to do. This is tied to the concept of presumption of innocence in a criminal case and the notion of proving fault in a civil case.

NOTE

In a criminal case, prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty.

This is an opportunity to review the law in the case and make sure that students understand all the parts of the complaint or charge which need to be proved.



#10 BURDEN OF PROOF

XVIII. Reading the witness statements again and again

If we were to give only one hint to teachers, this would be it! Students need to learn the witness statements **before** they can think about themes or strategies. Rereading the witness statements before roles are assigned is also very important in understanding the entire case rather than just their individual roles.



» *Read the witness statements alternating between P and D so that students have a chance to hear both sides of the trial and do not get a fixed idea of what the result should be.*

» *As each witness statement is read, notice important dates to create a timeline for the entire trial.*



#11 TIMELINE FOR *SIMON V SWIFT AND EASTSIDE HIGH SCHOOL*

XIX. Looking at additional evidence

See pages 40-54 in *Simon* mock trial materials. Using written material such as medical reports, published rules, maps, graph, posters and records is vital to providing all the information that is needed for a fair decision. Students will need to think about which witnesses should refer to these documents.

Introduction of exhibits on page 64. There are specific rules for the way that exhibits are introduced in a trial. These steps provide an opportunity for both sides to have the

same information and are part of the rules for a fair trial.

XX. Analysis of the witness statements

Often one witness statement will contradict another statement. Thinking about credibility of these statements is part of the preparation. Reviewing the strengths and weaknesses of each witness is key. This analysis provides the background for establishing the themes for each side that will be used during the trial.



» *Go through witness statements paragraph by paragraph (using line numbers is also helpful). Highlight important information and summarize facts for later use in opening and closing.*



#12 SAMPLE OF A WITNESS ANALYSIS FOR STRENGTHS AND WEAKNESSES



» *Use IMPROV SKITS. This strategy uses the natural dramatic skills of students to do a very short (no more than one minute) skit based on the material in the mock trial. If it is helpful, students can read the witness statements before they do the skits. Here are some examples:*

- *Terry Simon and Jordan Simon: parent comes to the gym to speak to Jordan about money withdrawn from trust.*
- *Morgan Pearce and Coach Swift: Coach warns Morgan to work hard to keep scholarship.*
- *Jamie Hagar and Coach Swift: After death of Jordan, they talk about how it happened.*
- *Jordan Simon talks to himself about his decision to pay for EPO.*

XXI. Questioning

See pages 57 and 58, *The Direct Examination and Cross Examination* in Simon mock trial materials. These are conventions that are used to ask questions in a trial.

The form of these questions (direct or cross-examination) differs substantially in the U.S. trial and reflects the roles of the opposing parties in the trial. The role of the direct examination is to help the witness tell his or her story and the cross examination tests the credibility of the witness. These different questioning forms should be practiced. In Croatia, only direct, open-ended questions are used on cross examination (except in war crimes trials).



#13 NOTABLE DIFFERENCES BETWEEN U.S. AND CROATIAN LEGAL SYSTEMS

Remind witnesses and their lawyers (when they practice) to include both direct examination questions and a guess at what they will be asked on cross-examination so that they will be prepared to deal with adversarial questions.

» *How to rescue your witness on direct examination if they answer incorrectly and/or forget the facts. Ask the question again using slightly different language. Provide clues in your question which would help the witness remember what you had planned for this testimony.*



» *During practice, switch roles and have attorney be the witness and vice versa so that both are comfortable with how the questioning will go.*

» *Have the entire class question a witness to develop as many questions as possible. Then select the best questions that relate most to your case theory.*

XXII. Rules of evidence and objections

See pages 63-67 in *Simon* mock trial materials. These rules define what is acceptable and what is not. Looking at the rules provides another opportunity to talk about due process.

Special Rule for Mock Trials: Witness cannot create new facts that would change the outcome of the case, although witnesses may add minor details. If the attorney believes a witness has gone beyond the information provided and is providing new information that is totally out of character and will change the outcome of the trial, use the following objection: “Objection. The witness is creating a material fact that is not in the record.” Or, “beyond the scope of the mock trial”.

HR trial: “May I have a word?” during the trial gives lawyers a check on questioning strategies of the judge or opposing attorney. In Croatia, the reasons to ask for “a word” with the judge are based on the same reasons listed in the U.S. objections.

» *Go through all the listed objections on page 63 and check for understanding. Then ask students to select which objections they want to include for the mock trial. You can choose to shorten number of objections to top 3. The only objection that must be included is “beyond the scope of the mock trial”. Ask students why the trial includes objections and how they illustrate fair procedure.*



» *What is the correct form for making an objection? Practice!!*

The teacher can practice with the entire group asking questions both objectionable and not objectionable so that students get practice identifying those that are objectionable

by courteously saying “Objection, your honor” or “May I have a word?”

XXIII. Developing themes for both sides: Case Theory

See pages 55 and 56, *Using the law to develop a theme for each side of the case*.



#14 VENN DIAGRAM

A venn diagram provides the opportunity for students to (1) brainstorm of all the evidence; (2) put the evidence in categories (plaintiff and defense); and (3) analyze for themes. Establishing a theme or themes for both sides allows a coherent presentation and helps teams from both sides of the case coordinate the testimony. This is the equivalent of a topic sentence in the writing process.

XXIV. Opening statements

See *The Opening Statement*, pages 56 and 57. Stress short punchy sentences and the importance of vocabulary: Script both opening and closing so that students can fill in the material pertinent to the trial. If students can create a meaningful opening statement for both sides, they are truly familiar with the facts of the trial.



#15 SCRIPTED OPENING

XXV. Closing arguments

See page 59 in *The Closing Argument*. Since this is the last part of the trial; it plays a very important part in summarizing the issues. See rebuttal option for prosecution.



#16 SCRIPTED CLOSING

XXVI. Strategies to review the case

See handouts Who said what, timeline “Who said what” witness quiz is another review opportunity for the basic facts of the case and it can be used as a pair activity or a mini-quiz. The timeline is designed to help students see the sequence of events and develop a case theory.



#17 WITNESS QUIZ *SIMON V SWIFT & EASTSIDE HIGH SCHOOL*

#18 WITNESS QUIZ *SIMON V SWIFT & EASTSIDE HIGH SCHOOL* – KEY

Who said what? See student page followed by answer key.

XXVII. Selection of roles

What does each role do? See page 70 of the *Team Roster*. There are several ways to assign roles to the students: random, applications for each role, teacher decision, etc.

» *Fill out applications for roles in the mock trial. Describe roles and skills needed but be very encouraging. Consider an in-class “walk around” that affirms skills of classmates prior to filling out applications. “You would be a terrific lawyer because you know how to convince others.”*

» *How to involve an entire classroom, Roles:*



- *Judge(s) 1 or 2 or more in Croatia. Adults only or adults and students together. (Note: there are lay judges in HR in Criminal cases only, none in Civil cases.)*
- *Witnesses (6 or 12) including defendant, back up roles adds to number*
- *Lawyers P and D (8 for each side)*
- *Clerk (1) Bailiff (1)*
- *Jurors: whoever is not assigned a role or students from another class. U.S. Trial only.*
- *Other options: court reporter, courtroom artist, representative of the press*

» *Another option is to put roles in a hat and have students pick or the teacher may pick students based on knowledge of work ethic.*

Students should have a very “quick and easy” way to exchange roles if they think that they need this option. Ask the students to verify what they will do in their roles.



19 ROLES IN THE MOCK TRIAL AND APPLICATION FORM

XXVIII. Work in teams to develop roles

There are various group options to work on the trial. Entire sides may need to work together to develop themes. Lawyers may need to work with their witnesses to develop questions. Opening and closing lawyers may want to coordinate their speeches. Witnesses on each side may want to listen to each other and help prepare for cross-examination.

→ Appendix H: *Job Responsibilities*

» *Review the law before beginning to work on parts.*



» *Lawyers and direct examination witnesses pairs might practice exchanging roles in order for both to be convincing when asking and answering questions.*

XXIX. Timing options

See page 62 in *Simon* mock trial materials. Teams should know the total amount of time allotted to each phase of the trial and plan to allocate time according to the importance of each witness. Select which order you will call the witnesses on your side and let the other side know the order by giving the list to the bailiff/clerk.

» *Try to use all the time you are allotted because the other side will have an advantage if you do not bring out all the facts. (Note: see timing options in back of mock trial casebook)*



» *Ask students to decide how they will use the 40 minutes for their side most effectively. Some witnesses require more time and others less. Also order witnesses for maximum effectiveness.*

XXX. What does the Prosecution/Plaintiff have to do? What does the Defense have to do?

The job responsibility handout describes what each participant must do to prepare for the mock trial. This is a blueprint for the work that needs to be done before the trial can be presented.



» *Lawyers for opening and closing should try not to read their statements. Eye contact is important even if you need a few notes. All other lawyers should read their previously written questions.*

XXXI. Rehearsal of trial and problem solving

Rehearsing the trial gives students a chance to work together to improve their performances. Create an atmosphere that is similar to the final rehearsals of a play. Speaking skills should be practiced: volume, eye contact, and gestures.



» *Encourage students to "stay in role" if they are witnesses.*

XXXII. Conducting the trial: jury or no jury

Teachers should make the decision about the location of the trial. Whether it is done in a classroom, media center, auditorium or courtroom will depend on convenience and

availability. The role of the jury (HR lay judges, and one judge alone, or with a jury in U.S.) provides options. Some teachers use other classes of students to decide the outcome of the trial. Teachers may want to partner with local judges or lawyers to serve as judges.

» *Suggestions for mock trial judges' comments to students after the trial*

- *Basic message: begin with positive comments. Be specific about participants' role: e.g. defense lawyer.*
- *Your opening statement was clear and well organized. You included your case theory, the law, a preview of evidence and your request to the jury*
- *You were convincing/believable as the witness and stayed in role during the entire mock trial. You remained confident during cross-examination.*
- *You were an effective advocate for your side and you chose questions which demonstrated your case theory.*
- *Your cross-examination effectively demonstrated the weak points in the witness testimony.*
- *Your closing argument was a complete summary of your case. You mentioned points on your side as well as weaknesses in the arguments for the other side.*
- *Your demeanor was courteous and professional and showed that you understand the conventions of a court procedure.*
- *You worked well as a team and emphasized your case theory.*



» *Make comments to each member of the mock trial teams including bailiff and clerk.*

AFTER THE TRIAL

XXXIII. Debrief of the trial

Debrief has two, possibly three, sections: (1) individual; (2) whole class; and (3) small working groups.

Role analysis: importance of reflection. This gives students a chance to be insightful about their own performances and about what makes a mock trial worth doing. Always begin by asking students to talk about their successes first! For example, “If I could do this again, I would...” or “What did I learn from the mock trial?”



#20 DEBRIEF MOCK TRIAL

XXXIV. Return to the constitutional principles

Identified at the beginning: (Rule of law/presumption of innocence/burden of proof in both criminal and civil trials/ due process/ rights of the accused in a criminal trial)

Which did you see in action? Why do they matter?

Class discussion: What made this a fair trial?

→ Appendix J: *Amnesty International*

Fair Trial Rights A Mock Trial. Purpose: To allow participants to understand what is meant by a “fair trial” and an “unfair trial.” Through this activity, participants will become aware of a fair trial as a basic human right, and of the various components that make up a fair trial.

This is an excellent piece dealing with international concepts of a fair trial. An appropriate follow-up activity.

XXXV. Use of resource person in the classroom

See ABA guide for use of resource persons in the classroom, downloadable at www.abanet.org/publiced/mocktrialguide.pdf. These resource persons can be used throughout the preparation of the trial.

Teachers should communicate clearly with resource persons by explaining the purpose of their visit to the classroom.



#21 HOW A RESOURCE PERSON CAN HELP



» *Resource lawyers or judges are most effective when they have read the case ahead of time and do not lecture to students. Give them a specific task such as assist the class in understanding the law and help lawyers ask good questions. Plan to have students formulate questions before resource people arrive.*

XXXVI. Comparison between trials in Croatia and U.S.: Similarities and Contrasts

Conduct a class discussion comparing trials in the U.S. and Croatian systems. The emphasis is on looking at both systems to understand why they are the way they are. Be

careful not to evaluate which is “better”.

XXXVII. Extension of mock trial topics

Examples include: steroid use by young athletes, racism, cheating in school, driving while drinking. Ask a counselor or outside resource person to provide current information on these issues.

XXXVIII. Important trials

History and current events.

XXXIX. Alternative dispute resolution

Mediation



#22 MEDIATION AND TRIAL COMPARISON SHEET

See Mediation and the Adversary Process (Grades 5–8; 9–12) pages 37 & 38 in ABA mock trial guide.pdf.

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

This strategy is intended to contrast mediation with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

CELEBRATE YOUR ACHIEVEMENTS!