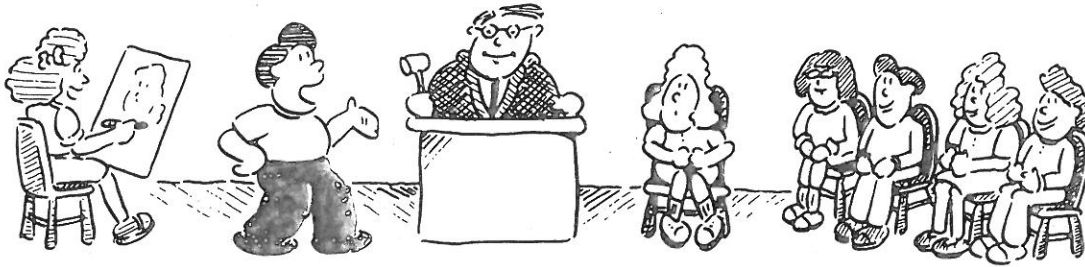


Due Process

Mini Mock Trials/Grades 5-12

Jennifer Bloom



Mock trials conducted within one or two class periods help students learn about courts and trials in an interesting and enjoyable way. Although students obviously will not be as polished as they are in more lengthy mock trial programs, their abilities to quickly become familiar with trial process, to learn their roles, and to discuss rules of evidence and constitutional protections will surprise even the most seasoned observer.

In addition to the value of the learning experience for students, mini mock trials are an excellent activity for lawyers who want a "guaranteed" success. With only little advance preparation, a lawyer can guide the students through the mock trial experience, helping them develop appropriate questions and then serving as the judge for the trial. Most lawyers are so comfortable with this activity, and find the positive student response so rewarding, that they are usually willing to schedule return engagements.

Use the procedure in this lesson with the situation included on p. 18, or use it with a more complex situation given on p. 31 for older students.

The time needed for conducting a trial is only 1½ to 2 hours. (If time is short, omit or greatly shorten the discussion in the next section.)

Beginning

Begin the class session by discussing trials. Because most students have seen television programs such as "People's Court" and "Divorce Court," they already have some basic information. Ask them if they watch these programs. Then ask them to list the people who are present in the courtroom. This list will include:

- lawyers
- judge
- jurors
- bailiff
- police officers
- clerk
- witnesses
- defendant
- plaintiff
- court reporter
- public
- sketch artist

Discuss what these people do in the courtroom. Depending upon the sophistication of the audience and the time available, short discussions of the following topics can be conducted: trial by judge or jury; civil v.

criminal trials; the need for a court reporter and court record; the constitutional right to a public trial; the controversy surrounding cameras in the courtroom; the reason for courtroom decorum.

Preparing

Read the one paragraph summary of the facts of the case with the students (see page 18). Ask the students to volunteer for the parts in the mock trial. Four students should be assigned to be the lawyers for each side of the case. One student may present the opening statement, one the direct examination, one the cross examination, and the other the closing argument. Reserve discussion of objections for later.

Students are also assigned to roleplay the witnesses, bailiff, court reporter, media representatives and sketch artists (these students can write articles and prepare drawings for the articles), and members of the jury and audience.

Before the start of actual trial preparation, briefly describe the steps of a trial. Remind students that they will be helped through the process by the judge and that confusion at this point is expected. If students have sufficient background and understanding of the trial process, explain the reasons and grounds for objections. (I recommend using only a limited number of objections.) If they lack knowledge, reserve discussion of objections until one occurs during the trial. (No matter what age the students are, one will object to a question during the trial. The objection might be made in the form of "She can't do that, can she?" or "This isn't fair!" Regardless of the language used, the students usually have made the objections at appropriate times. They are now ready to learn about objections.)

Role-Playing

Students are given approximately 15 minutes to review their statements and develop questions and opening and closing statements. Although this is a short period of time, the facts of the cases are simple and a longer period of time would result in a restless jury and audience. Quickly review the parts with the other "actors."

Begin the trial. The trial will take 45 minutes to 1 hour. Remember the goal of this activity is to increase the students' knowledge of courts and trials. Do not expect them to sound like experienced trial lawyers. You will enjoy watching them develop their questions and arguments on objections and listen to the answers with great care.

Instruct the jury at the end of the trial. Juries usually require only a few minutes to reach a verdict. After they have announced the verdict, ask them to explain how they decided on it.

Debrief the trial. Encourage all students to participate in the discussion of the trial. Questions that facilitate discussion include: Who was the most important person? Could the trial take place without the judge? (Yes, another judge could be used.) Without the lawyers? (Yes, other lawyers could be used.) Without the witnesses? (No.) Did any of the students change their minds during the trial? When and why? Who was the most believable witness? Why? Are there other ways that the problem could have been settled? What would have been the advantages or disadvantages?

Complete the activity with a short discussion of the need for citizens to participate in the process. Ask them what they will remember to do if they witness an action or are asked to serve on a jury.

Objections

Either the prosecutor or the defense counsel may object to a question or the admission of an exhibit. The judge will usually ask the person objecting "on what rule of evidence are you relying?" Then the judge either allows the objection, preventing the evidence from being introduced, or overrules the objection, allowing the question or exhibit to be admitted as evidence.

Reasons for objections (also known as grounds for objections or the rule of evidence being relied upon) include:

1. Leading question. Prosecutors must allow their witnesses to tell their own story; they must not lead their witnesses through the story. Defense attorneys must follow the same rule when questioning their witnesses.
2. Hearsay. The questions must limit witnesses to facts they know from personal knowledge. Other information they have is hearsay evidence.
3. Immaterial and irrelevant. The information is not closely related to the case, and is therefore not important.
4. Opinions and conclusions. Unless the witness is an expert, he or she should not give opinions or conclusions.
5. Nonresponsive answer. The witness is not answering the question asked.

These are only a few objections. They are probably the most common ones used. They will adequately serve your needs.

Jennifer Bloom is a lawyer and director of the Minnesota Center for Community Legal Education at Hamline University School of Law in St. Paul, Minnesota.

Mock Trial Procedures

PARTICIPANTS

- Judge
- Prosecution (in criminal cases), or plaintiff's attorney (in civil cases)
- Defense attorney
- Witnesses for prosecution or plaintiff's attorney
- Witnesses for defendant
- Bailiff
- Jury

Opening of Trial. Bailiff enters and says: "Please rise. The Court of _____ is now in session, the Honorable _____ presiding." Everyone remains standing until judge is seated. The judge asks that the calendar be called and the bailiff says, "Your honor, today's case is _____ v. _____." Judge asks if both attorneys are ready.

TRIAL

Opening statement—prosecution or plaintiff's attorney introduces himself or herself and states what their side hopes to prove. State what facts on your side will show and ask for the verdict that you want.

Defendant's attorney then introduces herself or himself and explains the evidence on her or his side that will deny what the prosecution is attempting to prove. State the decision you hope the jury will reach.

Direct examination—prosecution calls its first witness.

Witnesses should have reviewed their statements. Witnesses may testify to additional facts that logically follow from their statements but should not contradict the given facts. Prosecutor asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words.

Cross examination—defense attorney questions witnesses for the prosecution to try to discredit their testimony. Ask leading questions and emphasize portions of testimony that favor your side.

After all of the prosecution witnesses have been questioned and cross-examined, the defense calls its witnesses and questions them under direct examination. Then the prosecutor cross examines.

Closing statement—prosecutor speaks to the jury and tries to convince them that the evidence presented during the trial has proved his or her side of the case. Then the defense attorney does the same.

Jury instructions—judge instructs the jury as to the law that applies to the case and then directs them to retire and decide upon a verdict.

End of trial—jury deliberates and reaches a verdict. They report the verdict to the judge after returning to the courtroom.

Due Process

Criminal Law Mock Trial/Middle/Secondary

Jennifer Bloom



(See article on pp. 16 for full run-down of this steps in conducting a mock trial. The same procedures can be used here.)

Facts

Mike and Diana are at a party. They are sitting on a couch talking. Nick approaches them. Saying he knows Diana, he tries to talk to her. Mike gets angry and asks Nick to go away. They argue and a fight breaks out. The police are called, and they arrest Nick for assaulting Mike. Nick claims that Mike caused the fight and that he was only defending himself.

WITNESS STATEMENTS

Witnesses for the prosecution are Mike and Diana. Witnessess for the defense are Nick and Jess, another partygoer.

MIKE: I was minding my own business, sitting with Diana at this friend's party, when this guy walked up and started hassling Diana. I asked her if she knew him and she said "No." So I told him to leave. The guy kept bothering her. He wouldn't leave. So I stood up and told him I'd have him thrown out of the party if he didn't leave. He squared off like he wanted to fight, and when I turned to walk away he hit me.

DIANA: I was sitting with my boyfriend Mike in the basement of a friend's house when an old friend Nick came over to the couch we were sitting on. Nick grabbed my arm and told me to dance with him. Mike asked me if I knew him and I said "No" because Mike is very jealous. Nick wouldn't leave after Mike told him there would be trouble if he didn't. Mike stood up to argue with him and the next thing I knew, they were fighting.

JESS: A boy and girl were sitting on the couch when Nick approached them. I've known Nick in school for a few months. I came with him to the party. Nick motioned to the girl to dance, and then he held her arm to help her up. The boy she was with got mad and began speaking loudly. Nick smiled and told him to be cool. The guy jumped and grabbed Nick. Nick hit him back and they both started swinging. After that, the cops came.

NICK: I was talking to Jess at this party when I saw Diana. I had been going with her for a couple of years, but I hadn't seen her in a few months. I went over to see how she was doing. I asked her to dance and the boy she was

with gave me a funny look. I know Diana well, and I figured she wanted to dance with me, so I took her by the arm. Then this guy started to confront me. I told him I didn't want any trouble. Then he jumped up and suddenly grabbed me and hit me.

Instructions. 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.

Objections

Either the prosecutor or the defense counsel may object to a question or the admission of an exhibit. The judge will usually ask the person objecting "on what rule of evidence are you relying?" Then the judge either allows the objection, preventing the evidence from being introduced, or overrules the objection, allowing the question or exhibit to be admitted as evidence.

Reasons for objections (also known as grounds for objections or the rule of evidence being relied upon) include:

1. Leading question. Prosecutors must allow their witnesses to tell their own story; they must not lead their witnesses through the story. Defense attorneys must follow the same rule when questioning their witnesses.
2. Hearsay. The questions must limit witnesses to facts they know from personal knowledge. Other information they have is hearsay evidence
3. Immaterial and irrelevant. The information is not closely related to the case, and is therefore not important.
4. Opinions and conclusions. Unless the witness is an expert, he or she should not give opinions or conclusions.
5. Nonresponsive answer. The witness is not answering the question asked.

These are only a few objections. They are probably the most common ones used. They will adequately serve your needs.

Jennifer Bloom is a lawyer and director of the Minnesota Center for Community Legal Education at Hamline University School of Law in St. Paul, Minnesota.