

From Classroom to Courtroom

Mock Trial Four Day Program

MOCK TRIAL PROCEDURE

Student Handout

NOTE TO ALL PARTICIPANTS: Always address the judge by saying “Your Honor.”

Opening of Trial:

Bailiff: Please rise. The Court of the Second Judicial Circuit, Criminal Division, is now in session, the Honorable _____ presiding.

Judge: Everyone but the jury may be seated. Ms./Mr. _____ (Bailiff’s name), please swear in the jury.

Bailiff: Please raise your right hand. Do you solemnly swear or affirm that you will truly listen to this case and render a true verdict and a fair sentence as to this defendant? (Jury should answer “I do”). You may be seated.

Judge: Mr./Ms. _____ (Bailiff’s name), what is today’s case?

Bailiff: Your Honor, today’s case is _____.

Judge: Is the prosecution ready?

Prosecuting Attorneys: (stand up) Yes, your Honor. (Be seated)

Judge: Is the defense ready?

Defense Attorneys: (stand up) Yes, your Honor. (Be seated).

Opening Statement

The prosecuting attorney introduces himself or herself and states what their side hopes to prove. Begin with “Your Honor, members of the jury...” then state what the facts on your side will show and ask for a verdict in favor of your side.

The defense attorney then says, “Your Honor, members of the jury,” and introduces himself or herself and explains the evidence on his or her side that will deny what the other side is attempting to prove. Ask for a verdict of not guilty.

Attorney: Your Honor, members of the jury, my name is _____ and I and my classmates are representing _____ in this case. We intend to prove _____

Please find _____ . Thank you.

Direct Examination (Prosecution)

The Prosecution calls its first witness to the stand and asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. Witness may make up answers to questions that are not included in the witness statements or the witnesses may say "I don't know."

Judge: Prosecution, you may call your first witness.

Prosecuting Attorney: Thank you, your Honor. I call to the stand _____.

The Oath

All witnesses are sworn in before they begin answering questions. This is to remind them that they must tell the truth.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Prosecution begins Direct Examination)

Suggestions for questions:

- | | |
|---|------------------------------|
| <i>How do you know the defendant?</i> | <i>What do you remember?</i> |
| <i>What do you know about the case?</i> | <i>What happened next?</i> |
| <i>What happened?</i> | |

Remember to ask questions that will let the witness tell the complete story.

PROSECUTION'S QUESTIONS for WITNESS #1

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Cross Examination (Defense)

The Defense questions the prosecution's witnesses to try to prove that the witness is lying or can't remember. For example, the lawyer may ask "Isn't it true that you really couldn't see because it was almost dark outside?"

Suggestions for questions:

- Isn't it true that...*
- If possible, ask questions that call for a yes or no answer.**

DEFENSE QUESTIONS for WITNESS #1

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Second Prosecution Witness

Judge: Prosecution, you may call your second witness.

Prosecuting Attorney: Thank you, your Honor. I call to the stand _____.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Prosecution begins Direct Examination)

Suggestions for questions:

***How do you know the defendant?
What do you know about the case?
What happened?***

***What do you remember?
What happened next?***

Remember to ask questions that will let the witness tell the complete story.

PROSECUTION'S QUESTIONS for WITNESS #2

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Cross-examination of Second Prosecution Witness by Defense

Suggestions for questions:

***Isn't it true that....
If possible, ask questions that call for a yes or no answer.***

DEFENSE'S QUESTIONS for WITNESS #2

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Third Prosecution Witness

Judge: Prosecution, you may call your next witness.

Prosecuting Attorney: Thank you, your Honor. I call to the stand _____.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Prosecution begins Direct Examination)

Suggestions for questions:

How do you know the defendant?

What do you remember?

What do you know about the case?

What happened next?

What happened?

Remember to ask questions that will let the witness tell the complete story.

PROSECUTION'S QUESTIONS for WITNESS #3

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Cross-Examination of Third Prosecution Witness by Defense

Suggestions for questions:

Isn't it true that....

If possible, ask questions that call for a yes or no answer.

DEFENSE'S QUESTIONS for WITNESS #3

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

Direct Examination (Defense)

The Defense calls its first witness to the stand and asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. Witness may make up answers to questions that are not included in the witness statements or the witnesses may say “I don’t know.”

Judge: Defense, you may call your first witness.

Defense Attorney: Thank you, your Honor. I call to the stand _____.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Defense begins Direct Examination)

Suggestions for questions:

How do you know the defendant?	What do you remember?
What do you know about the case?	What happened next?
What happened?	

Remember to ask questions that will let the witness tell the complete story.

DEFENSE’S QUESTIONS for WITNESS #1

- ?
- ?
- ?
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- ?

Cross Examination (Prosecution)

The Prosecution questions the Defense’s witnesses to try to prove that the witness is lying or can’t remember. For example, the lawyer may ask “Isn’t it true that you really couldn’t see because it was almost dark outside?”

Suggestions for questions:

**Isn’t it true that...
If possible, ask questions that call for a yes or no answer.**

PROSECUTION'S QUESTIONS for WITNESS #1

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Second Defense Witness

Judge: Defense, you may call your second witness.

Defense Attorney: Thank you, your Honor. I call to the stand _____.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Defense begins Direct Examination)

Suggestions for questions:

- | | |
|---|------------------------------|
| <i>How do you know the defendant?</i> | <i>What do you remember?</i> |
| <i>What do you know about the case?</i> | <i>What happened next?</i> |
| <i>What happened?</i> | |
| <i>Remember to ask questions that will let the witness tell the complete story.</i> | |

DEFENSE'S QUESTIONS for WITNESS #2

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Cross-Examination of Second Defense Witness by Prosecution

Suggestions for questions:

- Isn't it true that....*
- If possible, ask questions that call for a yes or no answer.*

PROSECUTION'S QUESTIONS for WITNESS #2

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Third Defense Witness

Judge: Defense, you may call your next witness.

Defense Attorney: Thank you, your Honor. I call to the stand _____.

Judge: Will the witness please stand to be sworn in by the bailiff. (Witness stands)

Bailiff: (to the witness) Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Witness: I do.

(Witness goes to the stand and sits down)

(Defense begins Direct Examination)

Suggestions for questions:

How do you know the defendant?

What do you remember?

What do you know about the case?

What happened next?

What happened?

Remember to ask questions that will let the witness tell the complete story.

DEFENSE'S QUESTIONS for WITNESS #3

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Cross-Examination of Third Defense Witness by Prosecution

Suggestions for questions:

Isn't it true that....

If possible, ask questions that call for a yes or no answer.

PROSECUTION'S QUESTIONS for WITNESS #3

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Closing Argument

Each side summarizes the testimony presented during the questioning in a way that will convince the jury to believe his or her side of the case. In a criminal case, the prosecution asks the jury to find the defendant guilty. The defense asks the jury to find the defendant not guilty.

Judge: Both the prosecution and the defense have now rested their cases. The attorneys will now present their final arguments. Please remember, what the attorneys say is NOT evidence. However, do listen closely. They are intended to aid you in understanding the case. Prosecution, you may begin.

Prosecuting Attorney: Thank you, your Honor. Members of the jury, today you have heard testimony about _____

I would like to remind you of some important information that you should consider in your decision. These facts include _____

Please find the defendant guilty of the charge of _____. Thank you.

Defense Attorney: Your Honor, members of the jury, today you have heard testimony about _____

I would like to remind you of some important information that you should consider in your decision. These facts include _____

_____ Please find (name of the defendant) not guilty. Thank you.

Jury Deliberation

After hearing the judge's instructions, the jurors must decide guilty or not guilty and then give their decision to the judge.

Judge: Members of the jury, you have heard all of the testimony concerning this case. It is now up to you to determine the facts. You and you alone, are the judges of the fact. Once you decide what facts the evidence proves, you must then apply the law as I give it to you to the facts as you find them.

The defendant is believed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty. The defendant is not required to prove his innocence.

The prosecution has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden remains on the prosecution through the trial. The prosecution must prove that a crime was committed and that the defendant is the person who committed the crime. However, the prosecution is not required to prove guilty beyond all possible doubt or to a certain percentage. Nor is the prosecution required to disprove every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof that would convince you to rely upon a fact enough to make an important

decision in your own business or personal affairs. However, if you are not satisfied of the defendant's guilt to that extent, then reasonable doubt exists and the defendant must be found not guilty.

The LAW (Choose appropriate box for case you are doing):

For Jesse Sunderson Case

Section 609.595 DAMAGE TO PROPERTY: Aggravated criminal damage to property. Whoever intentionally causes damage to physical property of another without the latter's consent may be sentenced to imprisonment for not more than five years or to payment of a fine not more than \$10,000, or both if the damage to property caused a reasonably foreseeable risk of bodily harm.

Section 624.61 SALE AND USE OF FIREWORKS PROHIBITED. Except as otherwise provided in sections 624.20 to 624.25, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, possess, advertise, use, or explode any fireworks.

OR

For Alli McGraw Case

Section 1213.12 POSSESSION OF MARIJUANA. It is a petty misdemeanor to possess or give away a small amount of marijuana. A small amount of marijuana is defined as 5 grams or less. For the first offense, the court may fine the person up to \$200 and require him or her to participate in a drug rehabilitation program.

In just a moment, the bailiff will take you to the jury room to consider your verdict. One of the first things you will want to do is to select a foreperson that will preside over your deliberations the way that a chairperson does at a meeting. It will be the foreperson's duty to sign the verdict form when you have agreed on a verdict. Whatever verdict you render must be unanimous. That is each and every person must agree on the same verdict. The Bailiff will now escort you to the deliberation room.

(When the Jury Returns)

Judge: Have you reached a verdict?

Jury Foreperson: We have, your Honor.

Judge: What say you?

Jury Foreperson: (Read the verdict form)

Judge: Thank you, jury, for your work (continue with discussion from Judge's Instructions).

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OBJECTIONS

Student Handout

Any attorney may object to a question asked of a witness on the stand or the admission of an exhibit if s/he feels that it does not follow a rule of evidence. The judge is the deciding factor and will determine whether the witness' testimony or the evidence is admissible.

Reasons for objections (also known as grounds for objection or the Rules of Evidence being relied upon):

Leading question: Prosecutors must allow their witnesses to tell their own stories; they must not lead their witnesses through the story. Defense attorneys must follow the same rule when questioning their witnesses.

Immaterial and irrelevant: The information is not closely related to the case, and is therefore not important.

Calls for an opinion or calls for a conclusion: Unless the witness is an expert (such as a doctor testifying about medical issues), he or she should not give professional opinions or conclusions.

Non-responsive 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.

When you feel that an attorney has asked a question that breaks a rule of evidence, stand up and say "Objection, your Honor" and give the rule of evidence that you feel was broken.

The opposing attorney may state why he/she feels he is not breaking the rule.

The judge will then **SUSTAIN** the objection (the judge agrees that the rule has been broken, the jury should disregard the question, and the witness should not answer the question) or **OVERRULE** the objection (the judge does not think a rule has been broken and the witness can answer the question that was asked).