



New Jersey State Bar Foundation

Law Fair/Law Adventure Teacher's Webinar

November 23, 2020

Background Information: Elements of a Mock Trial

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Opening Statements to the Jury

1. Prosecution (in criminal case)/Plaintiff (in civil case)

The prosecutor in a criminal case (or plaintiff's attorney in a civil case) summarizes the evidence which will be presented to prove the case.

2. Defendant (in criminal or civil case)

The defendant's attorney in a criminal or civil case summarizes the evidence which will be presented to rebut the case the prosecution or plaintiff's attorney has made.

Direct Examination by Prosecution or Plaintiff's Attorney

The prosecutor(s) or plaintiff's attorney(s) conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the prosecution's or plaintiff's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

NOTE: The attorneys for both sides, on both direct and cross-examination, should remember that their **only function is to ask questions which elicit the most important facts of the case**; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-Examination by Defendant's Attorney

After the attorney for the prosecution or plaintiff has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out through cross-examination

Direct Examination by Defendant's Attorneys

Direct examination of each defense witness follows the same pattern as the preceding which describes the process for prosecution's/plaintiff's witnesses.

Cross-Examination by Prosecution or Plaintiff's Attorneys

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

Closing Arguments to the Jury

1. Defense

The closing statement for the defense is essentially the same as for the prosecution/plaintiff. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a finding (verdict) of not guilty (criminal case) or judgment for the defense (civil case). The defense will give its closing argument first, followed by the prosecution/plaintiff, as done in real trials.

2. Prosecution or Plaintiff

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the case, and ask for a finding (verdict) of guilty (criminal case).

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Mock Trial Program Outline Valley View Elementary School

Montville Township School District

Jessica Burke and Carolyn Ford, advisors

Club or part of class?

1. Do mock trial activities meet Learning Standards?
 - 1.NJSLA Reading - informational text
 - 2.NJSLA Writing- text types and purposes, research to build knowledge
 - 3.NJSLA speech/language- comprehension and collaboration, presentation of knowledge and ideas
 - 4.Core Content Standard Social Studies- Active citizenship in 21st Century
2. Do mock trial activities meet Curriculum requirements?
3. Do mock trial activities fit within the structure of school day in the district?
 - 1.Are there district resources/programs to support development of a trial?
 - 2.Does the class schedule allow for development of a trial?

As a club

1. Clear expectations
 1. Club will meet 2x week during lunch and recess for months of October, November, December & January, then a 2 month break, then again for months of April & May
 2. Cases will be civil cases (to avoid inappropriate topics)- explain
2. Application/permission slip
 1. Students must complete an application stating why they want to join the club and submitting an idea for a case
 2. Application requires a parent signature for 2 reasons, 1 the time commitment (taking away free time) and to encourage family discussion
3. Meeting schedules/structure of student work
 1. First meeting review- expectations, goals and timeline; answer questions
 2. 2-3 meetings- discuss case ideas submitted with applications, narrow down by interest first, then is there a civil case? When reduced to 2-3 choices, discuss possibilities- can there be two sides to the story? Finally the students vote on which case to work with.
 3. 2-3 meetings- discuss basics (facts) of the case; determine general scenario and witnesses for each side
 4. 4-6 meetings- break students into 5 groups to write 4 witness testimonies and 1 group to research laws relating to case. Encourage creative writing here to make the role believable. At the end of each meeting, come together as whole and review how pieces fit together; are witnesses credible? What makes a witness credible? are there contradictions? where are the weak spots?
 5. Final 2-3 meetings- put the pieces together, brainstorm names, discuss/add in legal terms, discuss and complete sub-issues and concepts sections (research group weighs in a lot here)

Presentation Meetings

1. April & May- assign roles, including witnesses, attorneys, judge & bailiff
2. Write opening/closing statements and witness questions/answers
3. Present case for 4th & 5th graders to create interest for next year's club, Anyone without a role, acts as jury coach for audience to remind them of key issue and facts

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HOW TO DEVELOP A LAW ADVENTURE CASE

John Shanagher, Retired Teacher, Bloomfield Middle
School

Cases may be civil or criminal, must be original, and must be proofread for content and grammar. All required elements must be included or the case will be disqualified.

The judges pick two themes. You must write a case which addresses one of those themes.

Prep Work

Time frame: Two to three weeks of using part of several classes per week.

I introduced the themes and defined any necessary terms for the class. I then gave them a week to think of a scenario which uses one of the themes. We then reviewed all of the suggestions and made a list of the ones we thought should be further discussed. Once we had narrowed down the field, we broke into groups and tried to develop several of the ideas. After discussion, the students chose which subject was most likely to produce a good case.

Writing the Case

Time frame: Hard to say, it can take several weeks or several months depending on how much class time you can spare. I did current events on Friday so I used part or all of that period with the honors class to work on mock trial.

I divided the class into three groups: one works on the facts, one works on the plaintiff/prosecution witness statements, one works on the defense witness statements. We compared notes at the end of each session so that all three groups were writing statements that were consistent with each other. Once we had statements and facts completed, we decided the issues, sub-issues, concepts, and law. The instructions are based on whether your case is civil or criminal.

REQUIRED ELEMENTS

Facts: This is where you describe what happened. In this part, there should be no bias towards either side, just the undisputed facts which occurred.

Issue: Why is this case being brought before the court?

Witnesses: Be sure to list **only two** witnesses for the plaintiff/prosecution and **two** for the defense. It is important that you **not** add additional witnesses.

Required Elements Continued

Witness Statements: This is where the facts get slanted towards one side or the other. The testimony cannot contradict the facts, but it should present them in the most favorable light for either side. In other words, the testimony of the defense witnesses will help the defense; the testimony of the plaintiff/prosecution witnesses will help their side.

Instructions: What must be proved to the jury?

Sub-Issues: Any additional aspects of the case which may bear on the jury's decision.

Concepts: Educational terms, etc. which help to decide and develop the case.

Law: Actual or made-up law which supports one side or the other in your case. You can have fun making up your own laws, but they must not be inconsistent with actual laws.

I know that this looks like a lot of work, and it is, but it was also my favorite activity. The students learn a great deal about the Constitution, civil and criminal law, and current events in the process. They also have a lot of fun. Students who returned to visit years later always brought up their mock trial experience as the highlight of history class.

Response to Frequently Asked Questions

Prepared by Carole B. Moore, Chair, Law Adventure Committee

- We have submitted entries in the past, but are we doing them correctly?
- Is the trial to be written in a story form?
- Do we include testimony questions and answers?
- Is there a way to see what a winning entry looks like?
- I attended the workshop in the past but I am unsure if our submissions are done correctly. Can you help me?

The format for the submission is well established in the Law Adventure rules booklet, which can be downloaded from our website, njsbf.org. There is a sample in the booklet that illustrates what should be included in each section.

The initial submission has several distinct sections. It is **very** important that the format be followed. This gives students an understanding of how cases are structured in a formal way. It is not a "story."

Following are important matters to consider:

Title: *Jones v. John Wallace Middle School* You can add an interesting title, such as “Putting a Lid on Living History.”

Facts: This section gives the facts of the case. It can be written as a descriptive section with a factual story line to make it interesting. No conclusions are drawn, no testimony, simply facts. Make sure the facts are balanced on both sides.

Issue: What is to be investigated and decided upon? This section states the question your case is addressing.

Witnesses: Each side is allowed **ONLY TWO** witnesses. Cases that have less or more witnesses for each side will be disqualified. In this section, list the witnesses and how they are related to the case. For the plaintiff: Mrs. Jones, mother of Tommy, the plaintiff; Mr. Smith, history teacher. For the defense: Roger, student at JWMS, Ms. Harris, guidance counselor.

Witness Statements:

For the Plaintiff/ Prosecution:

Mrs. Jones – [Provide her statement of the facts.]

Mr. Smith – [Provide his statement of the facts.]

For the Defense:

Roger – [his statement]

Ms. Harris – [her statement]

Instructions:

The wording of this section is critical. If the case is civil, the instructions to the jury must include the charge that the plaintiff must prove “by a preponderance of evidence that....” If the case is criminal, the prosecution must prove "beyond a reasonable doubt." Cases are often eliminated if this section confuses the charge between civil and criminal instructions.

Sub-Issues:

This is a list of facts/questions that should be considered when determining the outcome of the case with the facts presented.

Concepts:

A list of concepts of law that should be considered.

Law:

This section is like a bibliography or works cited section: a listing of laws or cases that were referenced in preparing the case or illustrate the law in question. This can be factual or created by the students. Rather than just listing sources, a short description of the case or law should be given. Make sure the law relates to your case.

Following are matters that judges consider heavily. The case must be:

- Related to the themes for this specific year: In 2020-2021, First Amendment Rights and Public Health Law and Privacy Concerns (for Law Adventure only).
- A balanced case. From reading, it is not tipped one way or the other. The outcome should not be readily apparent.
- Well written. Check grammar, spelling, punctuation, syntax, consistency of names, dates, facts. When cases have multiple errors, they are not in a form that can be posted by the State Bar Foundation.
- Interesting. Many cases present the same set of issues; so a twist or a creative view will make the case stand out from other cases dealing with similar issues.
- Length. Cases that are too long or too short may affect whether the case moves on in the process.
- Student work. A case that raises question as to whether it was written by students or professionals may require a second look. While many of the cases are submitted by G&T groups or just really creative kids, there is a marked difference between student-generated work and work of an attorney or professional. While dialogue with attorneys and professionals is encouraged and helps students understand the process, the product should be that of the students.

If the submission is selected to be presented, that is when the script/dialogue (opening statements, testimony of witnesses, questioning by attorneys and closing arguments) is needed. However, doing this in advance will give you a head start in preparation for presentation, whether at the Law Center or at your school.

There are many great examples of winning cases posted on the Law Adventure page of NJSBF's website. Just click on the links at njsbf.org.

Questions? Please contact Sheila Boro, director of Mock Trial Programs, at sboro@njsbf.org.