

CLASSROOM STRATEGIES

From Classroom to Courtroom : The Mock Trial

Perry Mason move over—students throughout the country are waging exciting courtroom battles and learning about law and legal processes at the same time

Lee Arbetman and Ed O'Brien

Across the country, exercises are going on that look like trials, that deal with real facts and common situations, that feature judges, lawyers, witnesses, and jurors. Everything is as realistic as possible—except that the participants are youngsters who are learning about law and the legal system through a simulation known as the mock trial.

In many mock trials, students playing lawyers do so well that they could almost pass for the real thing. Judge Harold Greene, a District of Columbia jurist who has presided at many mock trials, says that some high school students perform better in these exercises than do attorneys in his courtroom. In other simulations, students playing lawyers work under the same constraints as real lawyers—having, for example, no more than 30 minutes to prepare for trial—and still manage a creditable job.

Why is it that the trial—something which for years was considered solely the province of the legal profession—is suddenly becoming a popularly accepted educational experience for non-lawyers?

Part of the mock trial's appeal lies in the fun involved in preparing for and participating in the simulated trial. Who doesn't want to become—if only for a brief time—a Perry Mason or a distinguished judge or the aggrieved plain-

tiff demanding justice? While television depiction of trials often distorts the reality of legal procedures, the courtroom drama which comes into our living rooms several times each week surely heightens the mock trial experience for students.

Rationale for Mock Trials

Mock trials are more than fun, however; they're first and foremost invaluable learning experiences. Participation in and analysis of mock trials provides students with an insider's perspective from which to learn about courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. And while obtaining this knowledge, students develop useful questioning, critical thinking, and oral advocacy skills, as well as significant insight into the area of law in question.

Participation in mock trials can help students better understand the roles which the various actors play in the justice system, including the difficult conflicts those persons must resolve daily in performing their jobs. On a more complex level, it is an excellent vehicle for the study of fundamental law-related concepts such as authority and fairness.

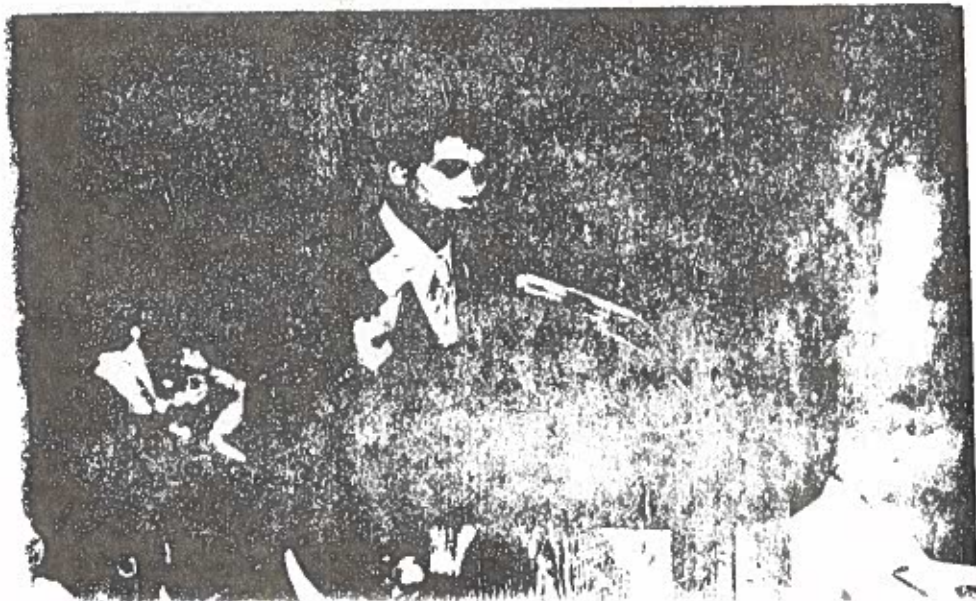
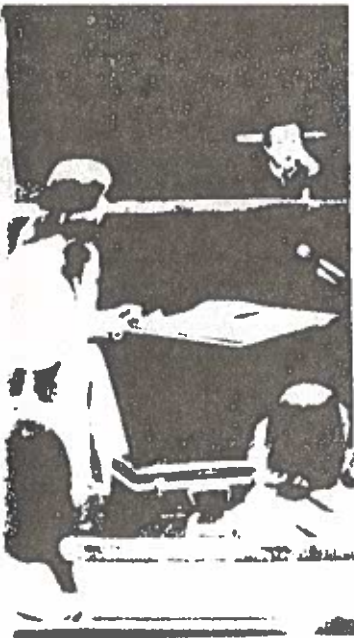
The mock trial also provides a natural opportunity to incorporate field experiences and community resource persons into the law-related curriculum. Visits to local courts either prior to or after classroom mock trials will make the activity

a more meaningful learning experience. Inviting judges, attorneys, and law students to take part in mock trials not only helps students bridge the gap between simulated activity and reality but also gives them more empathy for these resource persons and enables them to ask thoughtful and direct questions—and it gives the resource people a natural vehicle for sharing their knowledge and experience. Finally, mock trials will give students some practical knowledge about courts and trials which can be invaluable should they ever be witnesses in a real trial or principals in a legal action.

Types of Mock Trials

The mock trial begins where actual trials begin—with a conflict or dispute which 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 (see box on pp. 46 and 47 for a sample criminal law mock trial from the Street Law curriculum). 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 reenactments of historical trials in which scripts are heavily relied upon.

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The format chosen depends, of course, upon the objectives which the teacher has established for the activity. But regardless of how mock trials are used, teachers often feel that training would help them feel more comfortable with this strategy in the classroom. For this reason a number of law-related teacher training programs have included mock trials in their courses or summer institutes. Many teacher education programs are described in the ABA's *Teaching Teachers About Law: A Guide to Law-Related Teacher Education Programs* (available for \$2.00), and a complete list of summer teacher education programs is provided free of charge by the ABA each spring. (Write YEFC, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.) Training sessions provided by these programs explore the rationale for using mock trials in the classroom, explain simplified rules of evidence and procedure, and offer teachers an opportunity to prepare for and "walk-through" a mock trial under the supervision of group leaders.

Not surprisingly, when law students are involved in law-related programs, the mock trial is frequently used. In this format the teacher doesn't have to locate additional community resources; law students have an excellent learning experience as they teach trial procedure to high school students; and high school students benefit from being exposed to knowledgeable resource people who happen to be close to them in age. We have information on law student programs around the country. Please write us at the address listed at the end of the article.

Training and community resources are a big help, but they're not essential. You can still begin to conduct mock trials with your students by following the basic steps we've outlined here and by doing further reading or becoming familiar with some of the commercially-prepared materials on the market. (See the bibliography on the facing page for some suggested resources.)

How to Prepare for and Conduct Mock Trials in the Classroom

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

Mock Trial Materials

patterns and witness statements (e.g., brief summaries of each witness' testimony), have students develop them, or use already published trial materials.

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 like the one we've provided on pages 46-47, *State v. Randall*. This case is based on a minor altercation, and it's very unlikely that an incident of this sort would actually go to trial, but that doesn't make it any less valuable as a learning device. 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. For example, *State v. Randall* could easily involve the entire class. The tasks for the prosecution team, in order of presentation at the trial are: opening statement, direct examination of James, direct examination of Arlene, cross-examination of Phillip, cross-examination of Randall, and the closing statement. Tasks for the defense team are: opening statement, cross-examination of James, cross-examination of Arlene, direct examination of Phillip, direct examination of Randall, and the closing statement. 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 this preparation time, jurors might explore the role of the jury, the historical development of the

(Continued on page 47)

There are a number of books and games that can help you conduct successful mock trials:

ABA Special Committee on Youth Education for Citizenship, *Gaming: An Annotated Catalogue of Law-Related Games and Simulations*, 1975. This catalogue describes a number of simulation games relating to trials, including information on cost and addresses for ordering. Teacher Resource. The cost is \$1.00; order from YEFC, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

Todd Clark, et al., *Kids in Crisis*, 1975. This simulation game focuses on how a juvenile court makes its sentencing decisions in delinquency, neglect, and child abuse cases. Secondary. The cost for a class set is \$32.50; order from Social Studies School Service, 10,000 Culver Blvd., Culver City, California 90230.

Arlene Gallagher and Elliot Hartstein, "Pro Se Court: A Simulation Game," 1973. This game, included in a special children's issue of the *Law in American Society Journal*, couples role-playing and decision making in the legal context of small claims court. Elementary. The cost is \$2.75. Order the May, 1973 issue of *Law in American Society Journal* (Volume II, Number II) from Law in American Society Foundation, 33 North LaSalle Street, Suite 1700, Chicago, Illinois 60602.

Ronald A. Gerlach and Lynne W. Lamprecht, *Teaching About the Law*, 1975. Chapter 9 of this methods text contains a full discussion of mock trials and moot courts, as well as samples of each exercise. Teacher Resource. The cost is \$9.95; order from W. H. Anderson Co., 646 Main Street, Cincinnati, Ohio 45201.

Ethan Katsh, et al., *Plea Bargaining: A Game of Criminal Justice*, 1974. A game designed to help students experience the pressure of overcrowded city dockets and learn about the justice and injustice of plea bargaining. Secondary. The cost is \$17.50 for 18 student kits, \$25.00 for 35 student kits; order from Simile II, 1150 Silverado, P.O. Box 1023, LaJolla, California 92037.

Law in a Changing Society, *Upper Elementary Program*, 1978. This

comprehensive program for upper elementary students contains many activities and materials relating to jury selection and mock trials. For information on its cost, please contact Jim Miller, Education Service Center 13, 7703 N. Lamar, Austin, Texas 78752.

National Street Law Institute, *Street Law, A Course in Practical Law*, 1975. The teacher's manual to this text includes directions on how to do mock trials and contains sample trials with witness statements in seven areas of law. Secondary. The cost is \$5.95 a copy for one to nine copies, \$5.50 apiece for ten to ninety-nine copies; order from West Publishing Co., 170 Old Country Road, Mineola, New York 11501.

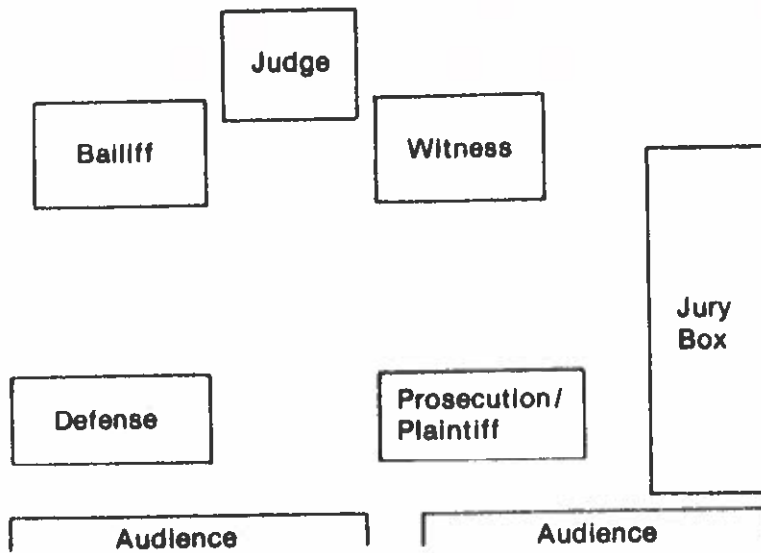
New York State Bar Association Committee on Citizenship Education, *Mock Trial Manual*, 1975. A booklet designed to help secondary school teachers prepare and present mock trials for civil cases, criminal cases, and appeals. It includes one sample script and follow-up questions. Teacher Resource. Single copies are free to New York residents; order from the New York State Bar Association, One Elk Street, Albany, N.Y. 12207.

Robert H. Ratcliffe (ed.), *Great Cases of the Supreme Court and Vital Issues of the Constitution* (both 1975). Each of these books contains a mock trial and trial script. *Great Cases* is intended for seventh and eighth graders, *Vital Issues* for high school students. The faculty editions of *Great Cases* and *Vital Issues* cost \$2.43 apiece; the student edition of *Great Cases* is \$3.24, the student edition of *Vital Issues* \$3.60. Order from Houghton Mifflin Company, Dept. M, One Beacon Street, Boston, Massachusetts 02107.

Richard Weintraub, et al., *The Jury Game*, 1974. In this game, students play roles of justice system personnel and citizens involved in the pretrial jury selection process. Secondary. The cost is \$15.00 for a class set (\$22.50 for sets containing eight-page players' booklets); order from Social Studies School Service, 10,000 Culver Blvd., Culver City, California 90230.

Mock Trial Outline: *State v. Randall*

Layout of Classroom



Participants

judge (could be a visitor to class with legal experience)
 4-6 prosecutors
 4-6 defense attorneys
 2 witnesses for the prosecution
 2 witnesses for the defense
 1 bailiff
 jury composed of twelve persons, one of whom should be named jury foreman; alternates may also be designated.

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 cases) or plaintiff's attorney (civil cases), 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 Instruction (Jury Trials Only): The judge explains to the jury appropriate rules of law which 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 non-capital 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.

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.

Facts

James and Arlene go to a night club to have a drink. Randall, who has been drinking, comes up to their table and, saying he knows Arlene, tries to talk to her. James gets angry and asks Randall to leave. An argument takes place and a fight then occurs. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and he was only defending himself.

Witnesses and Their Statements

For the Prosecution

1. James
2. Arlene

For the Defense

1. Phillip, a waiter in the night-club
2. Randall

James: "I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him and she said 'No.' So I told him to split. The man was blind drunk, and he kept bothering my girl. So I stood up and told him to leave before I called the manager on him. About that time he squared off on me and when I turned to walk away he hit me."

Arlene: "I was with my boyfriend, James, at this club when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said 'No' because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting."

Phillip: "This guy was sitting with this girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall had only two drinks. I know because I was waiting on his table. Randall motioned to the girl to

dance, and then he held her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back; they really went to it. After that, the cops came."

Randall: "I was at this club, walking around, checking the place out. I saw Arlene. I had been going with her for two years, but I hadn't heard from her for a couple of months. I went over to ask her how she was doing. I had had a couple of drinks, but I wasn't even a little high. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her started to confront me. I told him I didn't want any trouble. Then he jumped up and before I knew it, he grabbed me and hit me."

Jury Instructions

(1) Defining Assault and Battery. Generally, the law holds that assault is an unlawful threat to injure another person, coupled with an ability to do so and a display of force sufficient to make the victim fear immediate harm. ("Unlawful" means either contrary to law or without legal justification.) Battery is an unlawful use of force on the physical person of another. Thus the least touching of a person may constitute a battery.

(2) Defining Self-Defense. The law recognizes the right of an individual to defend himself, and he need not wait to do so at his peril. That is, he need not delay his defense until the alleged aggressor has made the first move. The test is reasonableness. If a person has a reasonable fear for his own safety, he may take reasonable—not excessive—steps to defend himself.

Jury Deliberation

Once instructed, the jury deliberates the verdict. They must decide from the evidence whether the prosecution has shown Randall to be guilty beyond a reasonable doubt. The jury foreman writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

Mock Trials (Continued from page 15)

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, for example, the attorney might begin by saying:

"Ladies and gentlemen of the jury, today we will present evidence which will show a man is being charged with assault for his activities in connection with an incident in which any one of you would have reacted the same, reasonable way he did. Our witnesses will testify that the defendant, Randall, approached an old friend at a night club and politely asked her to dance, but that he had the misfortune of encountering the woman's date, who had, on that night, had too much to drink. When that man unreasonably confronted and began attacking the defendant, we will show that my client responded reasonably and in his own self-defense . . . as any one of you would have done."

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

Student attorneys should develop questions to ask their own witnesses and rehearse their direct examination with these witnesses. In *State v. Randall*, the prosecutors should carefully develop their questions with both James and Arlene (as the defense attorneys should do with Phillip and Randall). James and Arlene, both thoroughly familiar with their witness statements, should practice answering the prosecutor's questions with testimony not inconsistent with their witness statements. (These statements, which may be considered to be sworn-to pretrial depositions or affidavits, can be used by the other side to impeach a witness who testifies inconsistently with the statement.) For example, after James takes the stand, the prosecutor could begin with a line of questions such as:

"Would you please state your name and address?"

"James, please tell us where you

were on the night of _____?"

"Can you tell us what happened at the night club on that night?"

On direct examination, questions should not be leading; that is they should not have the answer included as part of the question (e.g., "Isn't it true that you were at the Blue Bird Cafe on the night in question?" is a leading question). Leading questions may, however, be used in cross-examining a witness in order to impeach the witness' credibility in the testimony (e.g., a defense attorney could ask James: "Isn't it true that you hit Randall because he was asking Arlene to dance?")

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 witness 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. In cross-examining Phillip, the waiter, the prosecution might try to suggest to the jury his inability to see and hear clearly the events he has testified to in favor of the defendant. Questions along the following lines might be employed:

"Is the night club a place for people to relax, listen to music and dance?"

"Are the lights there kept low in order to encourage an intimate atmosphere?"

"On the night in question, weren't you also busy waiting on other tables?"

"Then isn't it true that because of the darkness, the music and your other activities, you could not be absolutely certain of what you just testified to seeing and hearing at James' table?"

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 prosecution's closing statement in

dance, and then he held her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back; they really went to it. After that, the cops came."

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Once instructed, the jury deliberates the verdict. They must decide from the evidence whether the prosecution has shown Randall to be guilty beyond a reasonable doubt. The jury foreman writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

Mock Trials (Continued from page 15)

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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 prosecution's closing statement in

the *Randall* case 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 beyond a reasonable doubt that on the night in question, Randall did approach James and Arlene, harassing them for no good reason, and that the defendant did, in fact, physically assault James. The defense has only been able to present testimony from the defendant, whom the evidence suggests was actually drunk at the time of the assault, and Phillip, a waiter at the club who was not only a friend of the defendant but who also claims to have seen and heard what transpired in a room which was noisy and dark while he was located in another part of the club."

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.

e) Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks as shown in the diagram on page 46. It is also helpful to have long tables for each attorney team to work from; the teacher's desk can serve as the judge's bench.

f) 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. For example, in *State v. Randall* the judge will explain assault and self-defense, the two legal issues involved in the case, to the jurors.

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.

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. Specific jury instructions for the *Randall* case have been included in the materials in the box. Simplified steps in the trial have been included to assist teachers in organizing the trial process.

g) 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 trial 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.

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.

Mock Trials for Elementary Students

While mock trials have probably found greatest acceptance in secondary school classrooms, an adaptation of the technique for elementary school students has been developed by Arlene Gallagher and Elliot Hartstein of the Law in American Society Foundation in Chicago. The "Pro Se Court" simulation provides for roleplaying coupled with decision-making activities in a simplified procedural context which can serve as a stepping stone for later mock trials.

Somewhat more elaborate materials in this area have been developed by Margaret Caylor of the Law in a Changing Society Project in Dallas. That teaching unit, "The Mock Trial," is actually a kit for upper elementary teachers which contains everything from a judge's robe and gavel to roleplaying situation sheets for students. This kit uses historical situations such as those involving Roger Williams and Anne Hutchinson as well as staged classroom incidents which can quickly be converted into trial exercises. This kit has been widely used by teachers across the state of Texas and by some in Oklahoma. (See bibliography on p. 15 for more information on these and other materials.)

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 understand the whole experience. To put it another way, don't forget that mock trials should be both fun and a learning experience.

For additional information and assistance on mock trials, mock trial competitions, and materials, write or call the National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001 202-624-8217. □