Criminal Mock Trial: Getting Started

Never done a trial before? Don't fret: after this guide, you'll be well on your way to being the next Harvey Specter.

Step One: Assign Roles

Here is a sample of roles for a trial with two witnesses on each side. Each side's roles would be as follows:

- ☐ Witness 1
- ☐ Witness 2
- ☐ Opening statement
- ☐ Direct of witness 1
- ☐ Direct of witness 2
- ☐ Cross of opponent's witness 1
- ☐ Cross of opponent's witness 2
- ☐ Closing statement

Lawyers may, and usually do, have more than one role per side. In a standard tournament, you prepare both sides (crown and defense).

Step Two: Pick your angle/story.

You will base your whole case on this. Are you going to agree that your witness pushed the victim, but out of self-defense? Or did he not push her at all? What exactly is your story? What defense are you using?
You want to write out a solid story of your version of events before you start your script. This will make it much easier to write your questions.

Everything you need to know:

Part 1: The Timetable

Here's a play-by-play of what happens (note this is a sample and exact times vary by competition):

What	Who	Time
Introduction & Arraignment	Judges and Clerks	Approx. 5 mins
Opening	Crown	4 mins
Direct of 1st Crown Witness	Crown	5 mins
Cross of 1st Crown Witness	Defense	5 mins
Direct of 2nd Crown Witness	Crown	5 mins
Cross of 2nd Crown Witness	Defense	5 mins
Opening	Defense	4 mins
Direct of 1st Defense Witness	Defense	5 mins
Cross of 1st Defense Witness	Crown	5 mins
Direct of 2nd Defense Witness	Defense	5 mins
Cross of 2nd Defense Witness	Crown	5 mins
Time to edit closing (optional)	Both	2 mins
Closing	Defense	5 mins
Closing	Crown	5 mins
Deliberations (Recess)	Judge and Jury	15 mins
Verdict and Feedback	Judges	10 mins

Note: for some trials, you can split your time. E.g. the crown would have 10 minutes for both their directs, and could do 6 minutes and 4 minutes rather than 5 and 5 minutes. This is is called ***aggregate timing****.*

Note #2: You get to pick the order of your own witnesses. Try to order them so that any information needed to provide context and set the scene is first. If there is a police officer, it's often them, but not always.

Part 2: The Breakdown

- Arraignment
    - The accused will be told what crime they're charged with and will ask if they plead guilty or not guilty
    - In all mock trials you plead not guilty or there would be no purpose of the trial!
    - Pay attention to who the accused is; if you're on the crown you will have to identify them later.
- Preliminary matters
    - This is where you can clarify questions or certain procedural elements with the judge
    - Often, teams will ask what naming conventions the judge would like for evidence, and how they would like objections done
- Opening
    - Introduce yourselves and your co-counsel
    - Tell the court about the charge "Mr. Dallas is being charged with murder contrary to section xx of the criminal code"
    - Tell the court what you want (do you want an acquittal? etc)
    - As a crown attorney you must say that you will "prove beyond a reasonable doubt" that the accused is guilty of the crime in question.
    - On the contrary, defense counsel is expected to explain that they'll create doubt
    - Tell the court your position in a sentence or two. Ex: "This is a case of a tragic death that wouldn't have happened if the landlord did their due diligence to keep the property safe". This includes the defense you're using, if applicable.

    - **Tell the court a brief outline of your story *using your witnesses' predicted testimony*.** The opening is meant to set the stage and be a 'roadmap' for your arguments. E.g. "We expect Mrs. Trainor will tell us how Mr. Maxwell came banging on her door unprovoked".
    - You can even anticipate what the other side will say if you're the Crown and include this in your statement. Ex: "We anticipate that our friends (i.e., defense) will call Dr. Max Sharma, who examined Mr. Trotter's medical reports."
    - As the defense, you may choose to explain how your evidence will refute the points the crown has already presented
    - At the end of your statement, say you're prepared to call your first witness [name] to the stand
- Directs
    - Direct examinations allow you to get all the facts out of the witness statements. Ask simple open-ended questions that will lead them to the information you need. You can ask them how they know the defendant, where they were at a time, what they saw, etc.]
    - It's often best to start by asking the witness to introduce themselves, for example their job, where they live, etc (this depends on what's relevant for the case)
    - Your questions should have a nice flow to them. They need to tell a story from beginning to end. Ensure that they also allow your witness to speak uninterrupted - meaning avoid creating a series of short-answer questions.
    - Ensure should allow your witness to speak
    - You will have prepped with this witness so they should know roughly what you want them to say for each question. Should your witness forget to mention some key information during the trial, be prepared to create some questions on the spot to help your witness get back on track.
    - Generally, don't hide facts that make you look bad – just address them but try to downplay them.

- Crosses
    - Essentially, ask questions where the answers support your opinion.
    - Remember the opposing lawyer will have already questioned the witness so you shouldn't need to ask about their job, how they know the person, etc. unless it was left out and necessary
    - While you can't exactly ask the witness your theory, your questions should leave it to be inferred. Then in the closing you can tie this testimony to your theory. "You say you were at home that day? But no witness here has corroborated that? And your fingerprint was at the scene?
    - Make sure you ask questions based on what the witness' answers are, not their written statements – they're not going to answer identically to their affidavit, so you may have to adapt on the spot. Act like the court has never read the written statement.
    - Keep track of the important questions you want to ask in case you're short on time, the witness might ramble more than you expect
    - A lot of the time in cross-examination, the witness won't agree with you. THAT'S OKAY! You got your point in the judge's head. *Do not keep asking until the witness says what you want.*
    - Avoid making remarks (e.g., "mhm," "right," "okay" etc.) after a witness has answered your question. Most of us naturally make these comments to show people we heard them, but in court doing this can make you seem arrogant

- Closing Statement
    - Tie together your arguments: "this witness said this which supports our position, and this other witness corroborated it; and this case law tells us this evidence is relevant because…" Also include the motive if you're crown.
    - The crown sums up why they've proven their case, and the defense refutes why the crown hasn't.
    - Use the elements of the crime and case law ("we have to prove these elements, here is our proof of each OR here is the element the crown hasn't proven…").

    - This can be a little emotional and poetic, because you want to leave a lasting impression, but don't overdo it like you see on TV.
    - Remind us of what you're asking for (acquittal, guilty on this charge, etc)
    - Often, lawyers like to remind the judge why this case matters. Are you defending an innocent man who was just trying to protect his children? Or are you trying to keep a dangerous criminal off the streets?
- Verdict
    - Judge gives us the result and usually some feedback.

Part 3: The Procedures

Onus:

- The crown has to prove a case beyond a reasonable doubt, aka: there has to be no doubt in a judges mind that they're right. Think of how a jury has to be in 12/12 agreement, even 11/12 is not enough! The judge has to be 12/12 sure.
- Thus, the defense could hypothetically not compete and still win because if there's even a little doubt in the crown's case, the accused is automatically innocent (this is called a directed verdict, it never really happens in a mock trial but is good to know about)
- In most mock trials, the defense will win the verdict, but that doesn't mean they'll win the round! The judges know that the facts and/or onus may favour one side; which is why mock trials are scored by points. You get points for good questions, good answers, objections (sometimes even if they're overruled! As long as it was a reasonable objection) etc.
- This is why the crown case is first and the crown gets the last word. The crown is telling their story of events, and the defense is just poking holes in their story. The defense can pose one (or rarely more than one) version of events, or just disprove the crown's.

People:

- Make sure you're addressing the judge by "your honour" (or "your honours" if there's more than one).

- Clerks can be called madam or sir clerk (if there is one).
- Always refer to the witnesses as Mr/Ms

Trial Process:

- Introducing evidence
    - **Always bring at least one copy of the case package including affidavits and exhibits!!!.**
    - First set the foundation. This can often be the hardest part. If you're going to introduce a knife, first make sure the witness has spoken about that knife. Then ask if they would recognize the knife if they saw it.
    - Ask to refer to the evidence. In the case manual, evidence will already be numbered and lettered. Thus, refer to the evidence by its pre-marked name when introducing it to the court. "Your honour, may I refer to pre-marked exhibit 3."
    - After asking the judge to refer to a piece of evidence, ask to approach the witness with this evidence.
    - The witness must establish what the evidence is with open-ended questions. Just ask them "do you recognize this document? Can you tell me what it is? When was it made? Do you know who signed it?".
    - Once the witness has orally identified what it is, you can ask for it to be admitted (remember before, it was just marked) into evidence. "Your honour, I'd like the map of central park to be admitted into evidence as the crown's exhibit (1, 2, 3.... etc)."
        - You must keep track of the exhibit names so you know how to ask for admitted evidence throughout the trial.
- The types of evidence
    - Direct
        - Direct evidence is, if believed, proof of a fact. It is stronger than circumstantial evidence, and ideal, but not always available.
        - The only inference involved in direct evidence is whether the testimony is true.
        - Examples: fingerprints on the murder weapon, witness testimony of the crime, ballistics reports

    - Circumstantial
        - Circumstantial Evidence allows a fact to be inferred.
        - Examples: browser history, opportunity, motive
- Expert witnesses
    - These are the only witnesses allowed to give an opinion.
    - Ask about their qualifications, again using open-ended questions.
    - Show their resume/cv, if applicable, and follow the 'introducing evidence' process for this.
    - Ask the judge to qualify them as an expert in their field: You must say what their field is. If they're a doctor, specify if they're being deemed an expert in surgery or dermatology. They can only give opinion evidence in that specific field.
    - Remember that you cannot ask any expert opinion questions until after the judge has agreed to qualify the witness.
- Impeaching witness
    - This is for when the witness has said something inconsistent with their sworn statement.
    - Affidavits don't have to be admitted into evidence, but you still have to ask to refer to it and to approach (it's also good to let the court know what page and line you're referring to so they can follow along).
    - Have the witness confirm that they made a statement to the police, and that the document you are presenting is their statement. This part can vary by judge, but typically you read out the line from their statement and have them confirm that they said it. Then you can move on; you don't have to get them to acknowledge it's inconsistent – the court will know that. You can mention this in the closing to ruin their credibility.
- Swearing in Witnesses
    - You will be asked to affirm or swear on a holy book.
    - Clerk will ask "Do you (affirm or swear) that the evidence you're about to give is the truth, the whole truth, and nothing but the whole truth" while you raise your right hand. Then you say yes, and they'll ask you to state and spell your *witness* name. **This means you don't have to ask witnesses their names in your examination.**
- Identifying accused
    - Crown witnesses must identify the accused in their examinations.

    - “Do you see Tom here in this courtroom today?” “Yes, that’s him over there wearing ___.”
    - “Your honour, please let the record reflect that (witness's name) has identified the accused.”
- Re-examination
    - After a witness is cross-examined, the judge might ask if there is any re-examination by the initial direct lawyer. This doesn’t happen in most mock trials so you can just say no.
- Calling Witnesses
    - The judge will ask if you have witnesses to call, and the direct lawyer should say “we’d like to call [name] to the stand”. *The witness should not start walking up until the judge says yes.*
    - Once your witness has been both direct and cross-examined, and the judge asks them to step down, the judge will ask if you have more witnesses. This is where you call your next one.
    - This keeps repeating until you have no more witnesses, and then you just say “the defense has no more witnesses to call, your honour:”
    - Important: Crown only. Once you have no more witnesses to call, you say “we have no more witnesses to call and the crown rests”. That means the crown’s case is done, and the defense can start its opening with the judge's approval.
        - Remember, this is because the crown is technically the only one who came here to introduce their case. The defense is just there to poke holes in the crown’s case.
- Legal Words to Use
    - You don’t *think* something happened, you *contend*
    - You are *submitting* your points, e.g. “the defense respectfully submits that the crown has failed to meet the burden of proving ___ beyond a reasonable doubt.”
    - Your opposing counsel are your friends. “Our friends on the other side have submitted that…” (as you can tell this is a very Canadian thing and does not happen in the U.S.)
    - Refer to yourself as Counsel for ____ (the Crown, Mr. Dallas, etc).
    - When you walk up to the stand you might ask “Your honour, may I proceed” unless they’ve already indicated that you can start.

    - When you finish questioning, you say “I have no further questions, your honour.”
    - Don't call the person “my client” in Canada. If you're the crown, you can say “the accused” or “the defendant”. If you're the defense, call them Mr. Dallas, Mrs. Sandy, etc, to humanize them.

Objections

- Say “objection, your honour” and wait for the judge to acknowledge you, then say your objection.
- Depending on the judge’s position, the other side may have an opportunity to defend their question (similarly, if you get objected, you may have to defend yours!) They might even ask you to reply to their reply – this sounds more complicated than it is.
    - Objection Sustained = objection is accepted and the lawyer skips to the next question (or depending on what the judge says, they might just ask you to reword it e.g. for a vague objection)
    - Objection Overruled = objection is not accepted, so the lawyer continues their question
- Example:
    - Crown: Dr. Matthews, would you say the victim’s chest wounds are consistent with a stabbing?
    - Defense: Objection your honour, the question calls for an opinion.
    - Judge: Crown counsel?
    - Crown: Your honour, since we have qualified Dr. Matthews as an expert in the field of emergency medicine, we contend that his medical knowledge qualifies him to speculate if the injuries are consistent with a stabbing.
    - Judge: Objection overruled. Crown counsel may continue with that line of questioning.
- Another
    - Defense: Ms. Finley, you saw the accused initiate the fight, right?
    - Crown: Objection your honour, counsel is leading its witness.
    - Judge: Objection sustained. Defense please proceed to your next question
- When the other side asks to introduce evidence, the judge will ask if you have any objection to it. These objections could be: the witness hasn’t explained

what it is/who took the photo/when it was taken etc, or that the piece of evidence itself is invalid.

- Types of Objections
    - While the majority of objections are towards questions, you can also object to the introduction of evidence or qualification of an expert witness. This would typically be if the other team did not follow proper procedure.
    - Not relevant
        - E.g. Asking a witness if she cheated on her husband when her case is about her employer firing her unfairly. Whether she did or didn't doesn't impact the case.
    - Hearsay
        - This one always trips people up. You can't tell the court what someone else said; that person has to say it themselves.
            - E.g. "Stacey told me she saw Mark kill his wife" – Stacey should be telling the court this.
            - Note there are some exceptions e.g. when a witness is dead
    - Witness uncooperative
        - This is a rare and atypical objection that some trials have, but if the witness is behaving so out of line and not answering questions you can object to them.
    - Leading
        - A yes or no question that feeds the answer you want to the witness. This is not allowed in direct examination (you can't tell your own witness what to say), but it is *encouraged* in cross-examination to get the other side to agree with your position.
            - E.g. "Did you see John screaming at his wife through your window?" Instead say: "What could you see from your window?" and let the witness tell you the contentious information.
            - You <u>can</u> ask leading questions in direct examination if it's about *non-contentious issues* (not something under dispute). E.g. "Mr. Warren, you work as a bank teller

right?" This saves time because the facts already prove he works there; the other side is not arguing that he isn't.

- Badgering
  - Almost like bullying the witness
    - E.g. "Ms. Fields, wouldn't you agree you're a pathological liar". Instead say, "Based on the evidence today, wouldn't you agree that you have a pattern of making false claims?"
- Facts not in evidence
  - The *lawyer* is making up information. If the witness is making up information, see '*how to impeach*'.
    - E.g A lawyer asking a witness if they have seen a video of the time of the incident that was not entered into evidence.
- Vague/ambiguous
  - pretty self-explanatory.
- Compound
  - Two questions in one
    - E.g. "Did you tell him that he was stupid and then push him down the stairs?"
- Argumentative
  - The lawyer is essentially testifying rather than properly conducting questioning. They should not be making their own arguments, just eliciting them out of the witness!
- Asked and answered
  - you can't reword a question and ask it again once the witness has answered it (but you can seek clarification, just be careful).
- Narrative
  - Similar to vague, the lawyer asks a question that would allow the witness to narrate a series of occurrences that may not be relevant
    - E.g. the lawyer asks "Start at the beginning and tell me what happened that night."
- No Foundation
  - The background facts relevant have not been established
    - E.g If a lawyer asks a witness why they wrote a letter without the facts establishing that the Witness wrote it.

    - Speculation
        - Some speculation is allowed, e.g. “How far were you from the scene?” “Maybe 10 feet”. Not “does this seem like something Celia would do?”

Part 4: How to be a witness

- Don’t make up facts, but you can extrapolate a bit. E.g. if your character is a firefighter, you could use that to say you’re reasonably fit and strong.
- Know your case super well. The opposing lawyers are going to try to get you to agree with what they say, but you just have to keep standing by your facts and/or story.
- You can ask for clarification or a question to be repeated if you don’t understand, or if you don’t know, you can say that too (just be careful with that).
- You want to ‘ramble’ a little to waste their time, but don’t go off-topic from what the question asked or you’ll lose points. Just keep steering your answer back to your position.
- Make sure you clearly say yes or no for the record, don't just nod or say mhm.
- It is good practice to look at the judge when you’re answering questions. Doing this enhances your credibility as it demonstrates that you know your stuff.

Part 5: Other Notes

- NEVER INTERRUPT A JUDGE EVER. They might interrupt you, but the procedure for that is to just let it happen.
- When at the lawyer’s bench, be very quiet! You will lose points if the judge can hear you chatting with your co-counsel. We usually minimally whisper and pass notes to each other instead.
- Don’t talk if it’s not your turn! E.g. don’t defend an objection if the judge hasn’t asked you to.
- If you have written down your direct and cross questions, read them first and then ask them. Doing this allows you to look down at your notes less and in turn makes you seem more confident.

- Mock trial witnesses are *effectively sequestered.* This means you have to pretend they haven't heard the other witnesses testimony (this is how it is in real court to avoid bias; the witnesses leave the room).
- Stipulated facts are mutually agreed upon by both sides, don't argue against them.
- Do research! Look at case law, what is required for proving the crime, even do some research to be a believable expert witness (if you have them).
- Be confident! This is one of the most important things. If you're not sure, how can the judge be?
- It's best practice not to cut off a witness and to apologize if you do. There are very few instances where it should be used.
- Treat everyone in the courtroom with respect, especially your opponents! This is not a TV show; judges don't like hostility!
- **Stand when addressing a judge, answering a question, <u>anytime you speak!</u>**
- Don't object in an opening or closing, only during questioning (and don't object to your own lawyers' questions – I've seen it happen!)
- Watch the time limits carefully – usually you get a 1 minute and a 30-second warning, but this varies.
- It's always a good idea to almost memorize your opening and closing statements so you can make good eye-contact with the court and convey your message with confidence.
- Take notes! This will be helpful for your cross examinations and closing. Also, take note of how the judge/clerk has ordered the evidence so you know what number or letter to refer to. Ex: toxicology report is exhibit A.
- If you need a brief moment to collect your thoughts, find an exhibit, look through your notes etc, let the judge know! The worst thing you can do is sit there in silence. Even real lawyers need a pause sometimes.
- You might want to designate who on your team will answer misc questions, e.g. if the judge says "how many witnesses does the crown have", or who will rest the case.
- The biggest thing you will learn in mock trials is that the script and/or timetable is just a guideline. Even sometimes judges want you to introduce yourself separately from your opening or other things that are not consistent with what you've learnt. Just go with it!

Good Luck! This doesn't cover absolutely everything, but it should give you a good foundation. Don't hesitate to reach out to us if you have any questions