



2017

Four Variations in Delivery and Design of Mock Trial for the Undergraduate Student

Kyle C. Kopko

Grant Keener

Paula Knudsen-Burke

Dianne McDonald

William S. Schweers

See next page for additional authors

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/jel>



Part of the [Legal Education Commons](#)

Recommended Citation

Kopko, Kyle C.; Keener, Grant; Knudsen-Burke, Paula; McDonald, Dianne; Schweers, William S.; and Vitlip, Michael (2017) "Four Variations in Delivery and Design of Mock Trial for the Undergraduate Student," *Journal of Experiential Learning*: Vol. 2 : Iss. 1 , Article 6.

Available at: <https://digitalcommons.tourolaw.edu/jel/vol2/iss1/6>

This Article is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Journal of Experiential Learning by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Four Variations in Delivery and Design of Mock Trial for the Undergraduate Student

Authors

Kyle C. Kopko, Grant Keener, Paula Knudsen-Burke, Dianne McDonald, William S. Schweers, and Michael Vitlip

FOUR VARIATIONS IN DELIVERY AND DESIGN OF MOCK TRIAL FOR THE UNDERGRADUATE STUDENT

KYLE C. KOPKO, GRANT KEENER, PAULA KNUDSEN-BURKE,
DIANNE McDONALD, WILLIAM S. SCHWEERS,
and MICHAEL VITLIP*

I. INTRODUCTION

A formal mock trial program at an undergraduate institution can be a powerful experiential learning opportunity for a wide range of students. Each year, more than 5,300 students from 350 undergraduate institutions throughout the United States participate in collegiate mock trial.¹ Although many institutions offer a formal mock trial program, there is no single best approach to structure and operate these programs. Colleges and universities vary in the program models that they implement for the benefit of their undergraduate students. For example, some undergraduate institutions conduct mock trials in conjunction with a credit-bearing class, while others organize mock trials as part of a student co-curricular club or activity; some institutions adopt the case created annually by the American Mock Trial Association (AMTA)² and engage in intercollegiate mock trial tournaments, while others utilize textbook cases for intra-institutional competition. These variations in mock trial programs largely depend on the resources, culture, and educational objectives of a given institution.

The purpose of this article is to discuss variations in the delivery and design of mock trial programs at four different undergraduate institutions. In profiling these institutions, it is our hope to provide readers with examples by which they can establish or revitalize a mock trial program to provide undergraduate students a rewarding experi-

* Kyle C. Kopko is Assistant Dean for Academic Advisement and Engagement at Elizabethtown College and President of the Northeast Association of Pre-Law Advisors. Grant Keener is Interim Dean for Enrollment Management at Syracuse University College of Law. Paula Knudsen-Burke is a news reporter for The Caucus and former Mock Trial Coach at Elizabethtown College. Dianne McDonald is the Pre-Law Advisor and Mock Trial Coach at Bucknell University. William S. Schweers is an Assistant Professor of Political Science at Carlow University. Michael Vitlip is the Pre-Law Advisor and Mock Trial Coach at Drexel University.

¹ See <http://www.collegemocktrial.org/about-amta/history/> (last visited Oct. 30, 2016).

² See www.collegemocktrial.org (last visited Oct. 30, 2016).

ential learning opportunity. In the following sections, we provide an overview of the basic characteristics of mock trial at the collegiate level. Then, we discuss the benefits of a mock trial program for both students and the undergraduate institutions that host these programs. Next, we profile the mock trial programs of Bucknell University, Carlow University, Drexel University, and Elizabethtown College. While there are some similarities among these institutions with regard to their mock trial programs, each institution offers a distinct approach to mock trial, unique to their institution's circumstances. Finally, we conclude by providing advice for institutions that wish to start or revitalize a mock trial program of their own.

II.

MOCK TRIAL OVERVIEW

Mock trial is a competitive experiential learning activity in which participants plan and execute a simulated civil or criminal court case. Organized mock trial is offered at the high school, college and law school levels. Although this article will focus on collegiate mock trial in the United States, many of the pedagogical, experiential and institutional benefits we discuss also apply to high school and law school mock trial.

Intercollegiate mock trial³ is governed by the American Mock Trial Association (AMTA). AMTA is a 501(c)(3) non-profit corporation organized under the laws of Iowa and headquartered on the campus of Missouri Southern State University (MSSU) in Joplin, Missouri.⁴ AMTA is governed by a self-elected Board of Directors.⁵ The Board elects AMTA's President, and the President appoints the members of AMTA's committees. The committees are responsible for much of AMTA's day-to-day work, including such varied tasks as

³ We focus on intercollegiate mock trial in this section because it is the most common type of mock trial program in the United States. Later in this article, we provide an example of a mock trial program that is not affiliated with AMTA.

⁴ AMTA was founded in Des Moines, Iowa, in 1985 by Dean Richard Calkins of Drake University Law School. AMTA's national office remained in Des Moines until the summer of 2014 when it temporarily relocated to the campus of Furman University in Greenville, SC. In the summer of 2015, AMTA entered into an institutional partnership with MSSU, whereby MSSU is to provide administrative support to AMTA and its member institutions, as well as conduct a series of studies and outcome assessments dealing with mock trial participation, barriers to entry, persistence, and student learning outcomes.

⁵ As of July 2015, AMTA's Board consists of 27 Directors. Those wishing to join the Board must first serve a two-year candidacy period. As of July 2015, there are seven Candidate Directors. Both Directors and Candidate Directors must stand for reelection annually.

writing cases,⁶ drafting and revising the rules of competition, overseeing AMTA tournaments, raising money, increasing school and student participation, developing learning outcomes for mock trial, and conducting rigorous statistical analysis to inform Board decision-making.

AMTA-sanctioned mock trial teams consist of at least six and generally not more than ten students.⁷ In each trial, three students portray attorneys and three portray witnesses for each team. Some teams choose to have students exclusively portray attorneys and other students exclusively portray witnesses. On other teams, students portray an attorney on one side of the case and a witness on the other.

AMTA hosts three types of tournaments: Regionals,⁸ the Opening Round Championship Series (ORCS),⁹ and the National Championship Tournament (NCT).¹⁰ All timely-registered teams are assigned to a regional tournament. The top teams from each Regional advance to ORCS. The top teams at each ORCS advance to the NCT. AMTA tournaments consist of four “rounds.” In each round, each team competes in a trial against one other team.¹¹ Over the course of a tournament, every team competes in a total of four trials, two as plaintiff (prosecution) and two as defense.¹²

Many mock trial programs also host invitational tournaments. While not supervised by AMTA, virtually all invitational tournaments use AMTA’s case. The hosting institution decides which teams to

⁶ The case packet includes a variety of documents that are necessary to try the case. The documents typically include an introduction of the controversy, a list of charges/allegation filed against the defendant, a response from the defendant (if applicable), stipulated facts, applicable case law and statutes, witness affidavits, and evidence/exhibits that could be introduced during the trial.

⁷ AMTA rules require a minimum of six students per team: three attorneys and three witnesses. Since AMTA cases allow for a variety of witness selections, it is not uncommon for teams to have as many as ten members. When there are more than six students on a team, not every student competes in every trial.

⁸ There are 25 Regional tournaments, held at sites throughout the United States. Each Regional consists of approximately 20-30 teams.

⁹ There are 8 ORCS tournaments. Each ORCS tournament consists of 24 teams.

¹⁰ The NCT consists of at least 48, and not more than 56 teams. The NCT field is divided into two divisions of approximately equal strength. Each division competes in a four-round (trial) tournament. The winner of each division competes in a fifth trial to determine the National Champion.

¹¹ Round 1 opponents are selected randomly. Opponents in subsequent rounds are determined by power pairing; teams with stronger records meet other teams with stronger records and vice versa.

¹² AMTA alternates between criminal and civil cases. Civil cases are released in even-numbered years. Criminal cases are released in odd-numbered years. Beginning with the 2014-2015 season, AMTA released an entirely new case for the NCT.

invite, how much to charge for registration, the tournament format, and any tournament-specific rule variations.¹³

Each member institution¹⁴ determines how its team(s) are structured, governed and funded. Some teams are closely supervised by coaches. Some teams are almost completely student-run. Others employ a hybrid model where students and coaches share decision-making authority. AMTA volunteers write each year's case. The Board promulgates rules¹⁵ governing student eligibility and competition.

Mock trial can be a costly endeavor. Large, nationally-prominent programs can easily spend \$30,000 - \$50,000 per year. Other programs spend only a few thousand dollars annually. The primary cost drivers are: AMTA registration and tournament fees, invitational registration fees, team travel (including rental cars, airfare, hotels and - in some cases - meals), and costs to print the case packet and create demonstratives. In addition, some programs pay stipends to their coaches.

The following sample budget outlines a realistic financial framework for a new mock trial program consisting of two teams. While each school is different, this budget provides a reasonable starting point for funding discussions as of the 2015-2016 academic year.

Item	Budget
AMTA program registration	\$450
Regional registration (2 teams)*	\$275
Invitational registration (2 teams/2 tournaments)	\$600
Printing and duplicating case packet and revisions	\$200
Team travel	\$4,000
Annual team banquet	\$500
Total	\$6,025

*AMTA waives the \$125 regional registration fee for new programs' first team. Therefore, in year 1, regional registration fees would equal \$150.

¹³ Teams attend invitational tournaments to gain familiarity with the case problem, hone their case theories and sharpen their presentations. For these reasons, most invitational hosts closely follow AMTA's rules and tournament structure.

¹⁴ During the 2014-2015 competition season, 358 institutions registered a total of 656 teams with AMTA. Of these, 568 teams representing 322 institutions competed in one or more AMTA-sanctioned tournaments. Source: William Warihay, American Mock Trial Association, *Tournament Administration Committee Report*, July 18, 2015.

¹⁵ AMTA's complete Rulebook may be accessed at <http://www.collegemocktrial.org/resources/rules-and-forms/>.

Institutional funding of mock trial programs varies greatly. Some institutions fully-fund virtually all aspects of their mock trial program. Others provide a set budget each year; expenses in excess of the budget are borne by students. Still other schools provide no meaningful financial support. Students at these institutions must rely on fundraising and personal resources to fund the activity. Other potential sources of funding include student activity fees, college and departmental budgets, the institution's law school (if applicable), and local law firms and bar associations.

AMTA provides several helpful resources for institutions that are considering starting a mock trial program. Two of the most useful are AMTA's *New School Handbook* and *New School Frequently Asked Questions*.¹⁶ AMTA also sponsors a mentoring program through which newer schools are paired with an experienced mentor, normally a colleague from an established mock trial program. The mentor can answer questions, as well as offer advice and guidance.

III.

BENEFITS OF A MOCK TRIAL PROGRAM

A. *General Educational Benefits*

While mock trial programs are often perceived as a mechanism to prepare students for law school, the learning outcomes of a mock trial program can benefit a wide range of students, regardless of their intended career goals. Perhaps the three most important benefits for students participating in mock trial programs include 1) developing the ability to speak in public; 2) thinking critically to address a complex question or problem; and 3) learning to work as a team to achieve a common goal. No matter what role a student assumes in a mock trial program – that of an attorney or witness – they must orally present information in a persuasive manner to convince a judge and jury of the merits of their case. As such, it is necessary that students take time and effort to hone their public speaking abilities to successfully present their theory of a case and convince an audience of their position. Furthermore, given that students must prepare to argue both sides of a case, anticipate counterarguments, and respond spontaneously to arguments from opposing counsel that they did not anticipate, this requires a high degree of critical thinking and preparation. Students necessarily engage in critical thinking every time they present a case. Finally, working as a team to present and argue a case can

¹⁶ These resources may be accessed at <http://www.collegemocktrial.org/about-ama/getting-started/>.

be a rewarding educational experience. The Association of American Colleges & Universities (AAC&U) has recognized the importance of “high-impact educational practices” in enhancing student learning. Among the high-impact practices recognized by the AAC&U is collaborative assignments and projects.¹⁷ Mock trials certainly constitute a collaborative student project with a common goal of attaining success in a trial. Thus, if properly implemented and supported in an undergraduate setting, the mock trial as an experiential learning opportunity can serve as an impactful educational experience for many students.

These learning outcomes are applicable to virtually all undergraduate students. In fact, students in the natural and physical sciences, theater, and other disciplines often benefit from mock trial programs in unique ways. For example, students majoring in a science field can often play the role of an expert witness – perhaps that of a forensic scientist, accident reconstructionist, medical doctor, among many other possibilities. Furthermore, theater majors are afforded the ability to portray witnesses with distinct personality characteristics and hone their improvisational skills.

Mock trials also provide a means to assess student learning outcomes. Judges or members of a jury have the ability to score and provide comments on individual student performance, and rate their ability to master key skills in the context of a trial. These ratings and comments can then be used by mock trial instructors/coaches to help students understand their strengths and areas for improvement for future mock trials. This information also provides instructors/coaches feedback as to ways they can better assist students in carrying out their roles as attorneys and witnesses.

B. Benefits for Pre-Law Students

While students in general can gain much from participation in mock trials, pre-law students, in particular, have the ability to learn fundamental legal concepts and skills that will be of benefit in their 1L year of law school and beyond. The skills and knowledge gained through mock trial participation is especially useful for students who are potentially interested in careers as litigators.

Although the case facts and legal dispute will vary in each mock trial, students participating in a trial will learn basic trial advocacy skills. For example, attorneys must learn the difference between a

¹⁷ For more information, see George D. Kuh, *High-Impact Educational Practices: What They Are, Who Has Access to Them, and Why They Matter* (2008). See also, <http://www.aacu.org/leap/hips>.

direct and cross examination, and craft their questions of witnesses accordingly. Furthermore, students are introduced to other important basic litigation skills, such as introducing evidence during a trial, qualifying a witness as an expert, and raising and responding to objections. But perhaps the most important skill to be gained is familiarity with the rules of evidence. At least in those cases written by AMTA, the rules of evidence are based upon the Federal Rules of Evidence.¹⁸ This allows students to gain familiarity with topics such as the proper use of character evidence, exceptions to hearsay, authentication of evidence, and other important provisions.¹⁹ The ability to learn about these facets of trial advocacy as an undergraduate student presents a strong foundation for further study in law school.

In addition to the skills developed throughout mock trial, pre-law students can also benefit from networking opportunities. It is not uncommon for alumni attorneys, members of the local bar association, or judges to serve as guest speakers for a mock trial program, and it is often the case that practicing attorneys and judges will serve as mock trial judges during a tournament. The ability to connect with these individuals can prove helpful in securing undergraduate internship placements or summer placements during a student's tenure in law school. This benefit is often overlooked by students and administrators, but participation in mock trial can help a student build a professional network early in their academic career.

C. Institutional Benefits

Mock trial benefits institutions as well as students. Identifying and articulating these benefits to departmental, college and university administration is crucial to generating support for mock trial and developing the resources essential to program growth. While institutions have varying priorities, virtually all schools embrace initiatives that drive admissions, career development, alumni outreach, and public relations.

Many high school mock trial competitors are eager to continue their mock trial involvement in college. Such students are likely to be particularly interested in colleges that field mock trial teams and promote these teams in admissions publications, at open houses and through social media. A number of collegiate mock trial teams host summer camps for high school students. These camps provide an excellent opportunity to bring talented prospective students to campus for a "deep dive" into college life. Consider inviting enroll-

¹⁸ See, <http://www.collegemocktrial.org/resources/rules-and-forms/>.

¹⁹ See, <http://www.collegemocktrial.org/AMTA%20Rules%20of%20Evidence.pdf>.

ment management staff to host a presentation on college admissions, financial aid or some other topic. The admissions office may be willing to host a meal in exchange for face time with prospective students.

Career development offices benefit from mock trial in several ways. Most broadly, the problem-solving, analytical, public speaking and interpersonal skills that are critical to success in mock trial are directly transferrable to the workplace. This is true whether students pursue careers in law, business, education, STEM, or another discipline. The increased confidence that comes from addressing judges and opposing counsel benefits students at career fairs, networking events and during interviews.

Mock trial also provides opportunities for institutions to connect with alumni and other community leaders. Hosting scrimmages and tournaments requires recruiting significant numbers of judges. Judges can be recruited from the local bench, bar and business community. Once contact is established and relationships forged, these individuals can be encouraged to support the institution in other ways. For example, a volunteer “judge” who owns a business can be encouraged to hire an intern, co-op student or recent graduate. An attorney could advise an aspiring law student. A judge may be willing to connect a criminal justice student to a mentor in the law enforcement community. These connections could lead to deeper involvement with the college or university in the future.

A number of established mock trial teams rely on their alumni for financial support. Direct team support can range from modest gifts to offset travel costs to endowments that can support a team in perpetuity. Regardless of the size of a particular gift, mock trial support increases the institution’s participation rate and helps to reinforce a culture of giving.

Mock trial teams provide a rich source of material for campus newspapers, alumni magazines, websites and social media platforms. Campus media can generate excitement (and support) for new teams, tout the success of teams that perform well at tournaments, and celebrate students who win individual awards. Ambitious campus information departments may wish to chronicle the mock trial team’s season, from tryouts and practices, through invitational tournaments and into AMTA competition.

IV.
PROFILES OF MOCK TRIAL AT FOUR UNDERGRADUATE
INSTITUTIONS

The four mock trial program profiles that we present in this section – Bucknell University, Carlow University, Drexel University, and Elizabethtown College – are intended to demonstrate the variation in program structures and delivery methods across undergraduate institutions. Admittedly, there are many other ways to organize a mock trial program than the four programs that we discuss in this article. However, these programs offer a range of common approaches to undergraduate mock trial, and these programs could serve as models for other institutions. Each of the four institutions profiled here vary in the size of their undergraduate student body, institutional setting (urban vs. rural), length of program history, whether their mock trial program is organized as a class or club activity, and whether the program relies on cases created by AMTA.

A. Bucknell University: New Student Club and AMTA Case

Bucknell University is a small, private, liberal arts school located in Lewisburg, Pennsylvania, a rural town about 60 miles north of Harrisburg. There are approximately 3,600 undergraduates at the university, which hosts 27 Division I sports teams (part of the Patriot League) as well as 150 student organizations. Despite this large number of student clubs and organizations, there were no clubs dedicated to developing public speaking skills at the time of the mock trial team's inception.

In February of 2015, the Bucknell Mock Trial Team competed in its first regional mock trial tournament in Baltimore. Although Bucknell has a short history with mock trial, it is one which highlights the challenges and rewards of starting a new club team. The club had been in the works for several years prior to its realization in the 2014-2015 academic year. On several occasions, students interested in potentially going to law school expressed interest in beginning a mock trial club, but often found that their time commitments to classes and other student organizations prevented them from taking the necessary steps to begin the program.

Like many colleges and universities, Bucknell requires that student clubs be initiated and run by students. The club's inception is the result of a very shy student who believed that mock trial would serve as an excellent opportunity to help her develop public speaking skills. Although she was not sure of her career path, this student knew that she would benefit from learning to think on her feet, and orally pre-

sent a cohesive and persuasive argument before an audience. In her view, mock trial would be an enjoyable and educational opportunity to develop these skills. But forming this club meant that students interested in sustaining a mock trial club would have to overcome several challenges.

One of the first challenges the team faced was student recruitment. Athletic teams, Greek organizations, and other student clubs are popular on campus, and often require a major time commitment of students. Recruiting students to join a new club would not be an easy task. To overcome this problem, a core group of students interested in starting a mock trial team created posters, attended club fairs, and sent out emails to students to build interest in the team. Additionally, a notice about the team was included in each week's pre-law newsletter that was sent to all students involved with the pre-law office in career development. Interest built over time, but out of the 40 students who signed up to join the team, only 12 were able to attend the meetings regularly or commitment to continuing club participation into the spring semester when the regional competition would be held.

Behind the challenge of recruitment was also a challenge of time. Given class and other club obligations, the team had difficulty agreeing on regular meeting times that suited a majority of interested students' schedules. Of the 12 students who were consistent, active members, only nine had schedules that allowed them to compete in mock trial tournaments over a weekend. Fortunately, this number was sufficient under AMTA's rules to support a team. The club decided to meet two evenings per week, using one meeting for organizing the case and developing theories, and the other meeting to work on learning the rules of evidence and the developing trial advocacy skills. In addition to the written materials provided by AMTA, the team relied on video footage of previous AMTA national championships and *Trial Advocacy Basics* (2006) by Dent Gitchel and Molly Townes O'Brien.

Beyond these challenges, the mock trial team also needed official recognition as a student organization to receive funding from the university. All student organizations at Bucknell are funded by the Bucknell Student Government (BSG). To receive recognition, the mock trial team created a budget, complete with a calendar of events of planned activities, including attendance at mock trial tournaments and scrimmages hosted by area institutions. After documenting the cost of these events, the club was then able to receive funds from BSG. Upon approval, many students and administrators were excited

to see that Bucknell would have a mock trial team – the last of the Patriot League schools to do so.

A third major challenge was the lack of experience in running a mock trial program. No one in the club, including the advisor, had mock trial experience at the collegiate level. Of the nine competing members, only two had participated in high school mock trial. These students assumed the role of “lead attorneys” to help guide the team in its infancy. Fortunately, AMTA provided much help and mentorship to the club president as she worked to build and establish the team. Additionally, there were several schools within driving distance, notably Drexel University and Elizabethtown College, willing to allow the team to scrimmage against them or join tournaments which the school hosted. These experiences were instrumental in motivating students to learn the rules of evidence, and deliver opening and closing remarks without the aid of notes.

Because the club is so new, there will inevitably be changes in the club’s structure, especially as the club grows in size. Set meeting times have already been established and published for the student body, so that students can arrange schedules to accommodate the team. In addition, local attorneys are being recruited to help provide coaching advice and to judge scrimmages on campus. This will help the entire team acquire more experience prior to competing at the AMTA regional tournament.

Although the mock trial club is new, students realized many benefits through their participation. For example, students learned to work cohesively as a team to accomplish common goals and ensure that individual team members were adequately prepared for tournaments. In addition, students developed their public speaking skills in a competitive environment. Even the club’s founder, who struggled with public speaking, learned to deliver an opening statement with confidence and poise, and the strength of her opening statement was recognized by multiple judges at the regional tournament. These are just a few examples of the successes that the club experienced in just a year’s time. While there were some obstacles in beginning this program, the club has generated a critical mass of students who will carry the program forward, and they will be able to build a skillset that will serve them for years to come.

B. Carlow University: Credit-Bearing Class and Textbook Case

Carlow University is located in Pittsburgh, Pennsylvania. Founded in 1929 by the Sisters of Mercy from Carlow, Ireland, the institution was originally named Mount Mercy College. In 1969, the

name was changed to Carlow College, and later changed to Carlow University in 2004. The current undergraduate population is nearly 1,400.

In the spring of 2013, a new course was proposed to the Carlow Undergraduate Curriculum Committee - *Mock Trial and Court Advocacy*. The course was developed in response to an increasing student interest in pre-law and careers in criminal justice. The proposal was approved, and the following year *Mock Trial and Court Advocacy* was offered as a 3-credit course through the Department of Justice Studies. Although new, the course quickly established itself as a fixture in the curriculum. During the 2014-2015 academic year, *Mock Trial II* was offered as an 1-credit option for students wishing to repeat the experience. The class meets once per week for three hours, and it is open to all majors.

Since its inception, the course was designed to achieve a balance between the empirical and theoretical. Unlike law school, the goal is not that of acquiring a set of professional skills to be used in practice. Students are not yet learning to be lawyers. They are learning to be thoughtful and engaged citizens. The great benefit of a trial advocacy course is that gives students, no matter their career interests, a conception of what it means to be critical and creative thinkers. Enhancing the ability to speak, analyze, reason and the development of interpersonal skills such as listening and collaboration are central to our purpose.

Given the nature of the subject matter, however, one of the objectives of the course must necessarily be to acquaint students with the fundamental process of the adversarial system of justice, including the basic rules of trial procedure and evidence. At the undergraduate level, this presents a daunting challenge. In most instances, a law student enrolled in a second or third year Trial Tactics seminar will have had the benefit of completing classes in Torts, Criminal Law, Civil Procedure, and Evidence. The typical undergrad has little familiarity with these foundational subjects. The peculiarities of the hearsay rule and its numerous exceptions, for example, are largely unknown to students. For this reason, the emphasis during the first third of the semester is on the substantive law underlying the components of a trial: direct examination, objections, cross-examination, examination of expert witnesses, submission of documentary evidence, opening statements and closing arguments. With this in mind, the weekly class sessions are designed as follows:

- Week 1: Introduction to Trial Practice and Procedure, Order of Proof/Burden of Proof in Criminal & Civil Cases, Pretrial Discovery & Motions

- Week 2: Direct Examination, Documentary & Demonstrative Evidence, Cross Examination
- Week 3: Opening Statement, Closing Statement
- Week 4: Direct Examination – Student Demonstrations
- Week 5: Direct Examination – Student Demonstrations
- Week 6: Expert Witnesses, Direct Examination – Student Demonstration
- Week 7: Cross Exam - Student Demonstration
- Week 8: Cross Exam - Student Demonstration
- Week 9: Expert Witnesses, Cross Examination – Student Demonstration
- Week 10: Opening Statement – Student Demonstration
- Week 11: Closing Statement – Student Demonstration
- Week 12: Full Trial #1
- Week 13: Full Trial #1 (Continued)
- Week 14: Full Trial #2
- Week 15: Full Trial #2 (Continued)
- Week 16: Full Trial - Scholarship Day Presentation

The text chosen for facilitating the substantive portions of the course is *The Trial Process: Law, Tactics and Ethics* (2009) by J. Alexander Tanford. Written in language appropriate to the undergraduate, the text serves as an excellent introduction to trial law and procedure. In addition, demonstrations of each trial segment are offered by the instructor.

Although explanations of the law of evidence and procedure comprise the majority of the initial sessions, every class also involves student participation. The emphasis here is on asking questions in a logical sequence, marshaling facts in a persuasive fashion, and storytelling. Beginning on day-one, students are encouraged to develop the cooperative learning skills they will use in the mock trial. One exercise simply involves having students question each other on background, academic interests, and what they did over the break. The information obtained is then presented to the class in a narrative form.

In these early sessions it is also helpful to discuss the myths about trials contrived by television and film. Excerpts from films as varied as *The Verdict*, *Philadelphia*, *To Kill a Mockingbird* and *My Cousin Vinny* can provide interesting examples of what *not* to do, as well as what may or may not be permissible in real life.

When student performances begin in week 4, we turn to Professor Tanford's companion text *Trial Practice Problems and Case Files* (2009) as a source for hypothetical fact patterns. The text provides a variety of civil and criminal cases and supporting materials to choose from. The cases can be used either as full trials or as bases for

individual exercises. During the section on direct examination, for example, each student is assigned a witness to examine from a case in the text, and every student plays the role of the witness they are to examine. In this way, every member of the class is required to depend on the other to be fully prepared and conversant with the material. An unprepared student not only diminishes their own performance, but that of their fellow classmate as well. Indeed, it is the degree of preparedness that provides a means for assessment early in the course. Thereafter, process becomes one of do and review. This is to say, learning through doing, of course, but most essentially, learning through deliberation on doing as guided by the instructor.

The highlight of the spring semester at Carlow is Scholarship Day. Conference-style student presentations and exhibitions are presented throughout the university. It is on this day that the *Mock Trial* class demonstrates what it has learned during the semester. A full trial is held and the entire school is invited to attend. The class is divided into teams and each member of the team is assigned a component of the case. Witnesses are recruited from outside the class, and a jury is selected from volunteer members of the student body. The trial is preside over by the instructor and conducted in close accord with the applicable rules of procedure. Following closing statements the jury is charged, deliberates, and renders a verdict.

The advantages to this model are many. The format is pedagogically flexible. Traditional, hybrid, and flipped classroom methods are relied on to deliver content. Students from outside the department are attracted to the course. Most importantly, however, a course for credit has been created which develops valuable life skills by actively involving the student in the experience.

C. *Drexel University: Student Club and AMTA Case*

Drexel University is a private, not-for-profit research university located in Philadelphia, Pennsylvania, with an undergraduate enrollment of approximately 16,000 students. Over the past five years, Drexel has seen a decline in the number of law school applicants, following the trend seen at many institutions throughout the country. Despite this decline, the number of students interested in participating in Drexel's undergraduate mock trial program has never been higher. For the past two years, no fewer than thirty students have entered the program's tryout process (to be discussed in greater detail later in this article) each year, competing for approximately fifteen available spaces in the program.

Drexel's Mock Trial program is not a credit-bearing class, but rather it is a recognized student organization under the Office of Campus Activities, within the Office of Student Life. Additionally, the organization is a registered member of AMTA. As a student organization, undergraduate students from all majors and colleges are eligible to participate in the program. The program is comprised of four competitive teams, and at any given time the organization has no more than forty members. This limitation is to ensure that every student member is on one of the four teams' rosters, and, per AMTA policy, each team's roster includes no more than ten individuals.

As a competitive co-curricular organization, and given the limited number of available spaces on the program's rosters, Drexel's undergraduate mock trial program holds tryouts at least once per year to fill any available seats in the program. Students deciding to try out for the program are provided excerpts from elements of a mock trial case, typically a case written by members of the program for use in a high school summer camp administered by the organization's membership each year. The prospective members are also provided a brief introduction on how to draft an opening statement, a direct examination, and a cross examination. Those who decide to move forward with the tryout will then play the role of an attorney giving a brief opening statement, play the role of a witness in a brief direct examination, and play the role of an attorney performing a brief cross examination before a limited number of the program's coaches and student leaders. Students are then admitted to the program based upon the number of seats available and their performance during tryouts.

Drexel's undergraduate mock trial program is run by a group of elected student leaders. The governing body of the program is the executive board, comprised of a president, vice president, secretary, treasurer, and the chairs of the organization's three standing committees – the recruitment committee, the fundraising committee, and the tournament committee. The pre-law advisor also serves as the mock trial team's advisor and head coach. The executive board, in collaboration with the head coach, performs all the administrative tasks of the organization, including scheduling tournaments, fundraising, budgeting, recruiting, and planning developmental programs for the membership.

The mock trial program has grown significantly in recent years, and with the growth of the program has come increased expenses. The current budget of the program falls between \$25,000 and \$30,000 annually. This budget funds all travel and competition expenses, AMTA registration fees, and trial materials for each of the four teams, as well as general program expenses such as the program's annual

end-of-year banquet. Each year, the program's fundraising committee is responsible for producing a fundraising plan, detailing how the organization intends to raise all the funds necessary for their intended travel and tournament schedule. This plan must be approved prior to the organization spending money or beginning their travel for the season. Examples of fund sources the organization has used in recent years include institutional student organization allocations, donations from university departments and local law firms, the administration of a summer camp for high school students interested in mock trial, the hosting of a tournament for other collegiate mock trial programs, individual team fundraising activities, and individual membership dues.

Drexel's mock trial competition season is divided in two halves, roughly coinciding with the fall and spring semesters of most institutions. During the first half of the season, all returning members of the program are divided into three teams of roughly even skill and experience. Each of these three teams will compete in two or three tournaments during the course of this half of the season. Throughout the season, all teams practice roughly twice per week for three to four hours per practice. The first goal of the program during this first half of the season is to develop younger and less experienced members by having them work with the older and more experienced members of the program. The second goal of the program throughout this time is to observe the growth of individual members of the program in order to determine the appropriate team for which they should compete during the second half of the season.

In the second half of the mock trial season, Drexel's program places its returning membership on teams based upon their level of skill and experience. This process is called "stacking," and through this process Drexel creates three teams. The most skilled and experienced members of the program are stacked onto the flagship "A Team." Once the A Team has been formed, a "B Team" is created from the most skilled and experienced members not already assigned to A Team. A "C Team" is then created from those members remaining who have not already been assigned to either of the other teams. Stacking the teams in this way allows for team-based developmental activities targeting the current skill and experience levels of the various members of the program. From each team, two members are appointed "Captains," and these two Captains will be responsible for the leadership and administration of their team throughout the year. All new members of Drexel's mock trial program are placed on a single "D Team" for the entire season, allowing for all new members to receive the same instruction and development upon entering the program.

Both before and after stacking teams, each team in the program is assigned one or more coaches. These coaches include the pre-law advisor (again, who also serves as the head coach/advisor for the entire mock trial team) and other coaches recruited from recent Drexel alumni and the greater Philadelphia legal community. The pre-law advisor/head coach is responsible for recruiting and managing the program's coaching staff. Ideally, each of the program's four teams is assigned at least one coach from the pool of alumni and local attorney volunteers. These coaches are assigned to teams based upon their level of mock trial and/or trial experience, with the most experienced coaches generally being assigned to the A Team and the least experienced coaches generally being assigned to the D Team. If there are enough volunteers to provide at least one volunteer coach to each team, the pre-law advisor/head coach of the program will float between all four teams, providing instruction and support to aid in the team's development. If there are not enough volunteers to provide at least one volunteer coach to each team, the pre-law advisor/head coach will serve as the primary coach for the team not assigned a volunteer coach.

D. Elizabethtown College: Hybrid Credit-Bearing Class/Student Club, and AMTA Case

Elizabethtown College is an independent, residential coeducational college located in south central Pennsylvania. Chartered in 1899, the College today educates approximately 1,900 students from nearly 30 states and 40 foreign countries. Students at Elizabethtown College are encouraged to learn through civic engagement and practical experiences, such as Mock Trial.

Mock Trial is not a new experiential learning opportunity at Elizabethtown College. Along with debate and forensics, Mock Trial has been a staple at Elizabethtown for decades. The history of oral debate can be traced to the establishment of the Keystone Literary Society, a student debating club, in 1901. Debating at the College was so popular that a number of other clubs were created, including the Men's Debating Association in 1925 and the Women's Debating Association a year later. Debate grew into forensics, with the eventual creation of the Elizabethtown College Forensic Tournament in 1964. Building upon the history of debate and forensics, in 1995 the College added a Mock Trial program supervised by a local attorney.²⁰

²⁰ Elizabethtown College Department of Political Science, *Department Self-Study*, (2002). Additional historic information provided by Professor Jean-Paul Benowitz.

In its early years, Mock Trial was a one-credit course offering in the Department of Political Science. Today, Mock Trial is both a two-credit course and a student club. As a class, Mock Trial is offered in both the fall and spring semesters (PS 301 and 302). PS 301/2 is described in Elizabethtown College's course directory as a class designed "To prepare and conduct a criminal jury trial in the American Mock Trial Association (AMTA) regional and national competition."²¹ The class may only be taken once for credit but may be repeated and listed on the student's transcript. It is graded Pass/No Pass. Students in PS 301/2 are required to participate in one evening class a week, but team members frequently meet several other times during the week. Team meetings include students' discussions of themes, witness question structure, costuming and discussion of exhibits.

Student Learning Outcomes include reading carefully and critically analyzing legal arguments and rules; effectively communicating legal arguments in a compelling and persuasive manner; demonstrating mastery of the Federal Rules of Evidence; developing critical thinking skills by arguing both sides of a legal dispute; and performing in an adversarial environment by trying a case at an AMTA invitational tournament.

Students who participate in Mock Trial come from a range of academic majors, although many are political science majors. Other majors have included English, business, criminal justice and science majors. Some students have had previous mock trial experience through their high schools, and among those students, some have significant, award-winning experience. Class size can range from 20 students to more than 25. The Mock Trial Club usually includes slightly more students than the class. Students who participate in the club may not have enough time to dedicate to the class, or simply may have an interest and wish to gain mock trial experience without having the commitment of a Pass/No Pass course.

The course is typically taught by a local attorney serving as an adjunct professor. The instructor works collaboratively with the Mock Trial Club officers (elected by their peers at the conclusion of each spring semester). Mock Trial Club officers include a president, vice-president, treasurer and secretary. In addition to working with the

Adjunct Professor of History and Director of Student Transition Programs at Elizabethtown College.

²¹ See PS 301 Mock Trial I course catalog description, http://catalog.etown.edu/preview_course.php?catoid=8&coid=8565&print. See also PS 302 Mock Trial II course catalog description, http://catalog.etown.edu/preview_course_nopop.php?catoid=8&coid=8566&print.

instructor on the course syllabus and tournament planning, Mock Trial Club officers also interface with the College to obtain funding and represent the College at events, such as recruitment fairs and Homecoming.

The course syllabus is largely structured around the timing of tournaments. Early classes introduce students to basic concepts and ideas. Returning students are already familiar with vocabulary and AMTA practice so those students help coach their more junior teammates. Team captains also help direct and coach their teammates. Elizabethtown College has fielded two competitive teams for a number of years.

The primary written materials for the course are the AMTA case packet, rules of evidence and case law. Additional materials are assigned from a variety of sources and include materials on public speaking, structure of opening statements and closing arguments, direct and cross-examination techniques, objections etc. For instance, one reference text provided for students' consideration is Steven Lubet, *Modern Trial Advocacy: Analysis and Practice* (4th ed., 2009).

Students prepare for fall invitational tournaments and the regional competition through hours of practice and scrimmaging. Students on each team drill against each other and then against neighboring colleges. Area lawyers and judges volunteer to help the students prepare for tournaments by providing constructive criticism. Judges' comments ideally should match judging criteria that will be used in AMTA competitions.

Funding for students' competition in AMTA is provided through the College's Office of Student Activities and the Pre-Law Program (approximately \$5,000 annually). Monies are allocated for the academic year and from those funds the Mock Trial Club must pay for registration for AMTA dues as well as registration, lodging and travel for tournaments and regional competitions. Mock Trial Club officers and members have sought additional funding through fundraisers. For instance, students have designed and sold t-shirts with a mock trial theme during homecoming and other College events.

For twenty years, the Elizabethtown College Mock Trial program has provided students with a solid foundation in team dynamics, public speaking, and a thorough understanding of modern trial advocacy. The College is proud of its program and many students who have achieved success as "Best Witnesses," and "Best Attorneys," as well as the teams' multiple designations as Sprit of AMTA winners.

V. CONCLUSION

As the profiles presented in this article demonstrate, there are many potential ways in which an undergraduate institution can organize a mock trial program. While these programs can serve as examples to institutions wishing to establish their own mock trial program, it is important to note that undergraduate institutions should structure their mock trial programs in whatever manner best meets the educational needs of their students. Providing a high-quality experiential learning opportunity for undergraduates should be the primary goal of a mock trial program.

To accomplish that goal, institution will face their own unique challenges in starting a mock trial program based upon such considerations as institutional funding and time commitment of faculty mentors or coaches. Certainly, institutional resources will be needed at some level, and to a greater degree if a team wishes to travel extensively to participate in AMTA-sanctioned tournaments. For readers who are interested in beginning a mock trial program at their home institution, they should know that many faculty, staff, and coaches throughout the country, or AMTA officials, will be happy to offer advice and mentorship when building a program. We encourage readers to reach out to these individuals who are willing to share advice based upon their past experiences.

Regardless of whether a mock trial program is organized as a credit-bearing class or a student club, the educational benefits provided to students and institutions are consistent. Mock trial provides students the opportunity to hone their ability to speak in public, think critically about legal concepts and questions, and learn to work as a team to achieve a common goal. Pre-law students can also learn basic elements of trial advocacy, civil and/or criminal procedure, and the Federal Rules of Evidence. Institutions may benefit by supporting a mock trial program in a variety of ways, including increased interest in applications from students who participated in mock trial in high school, publicity for the institution through mock trial competitions and successes, and fostering connections with alumni who are interested in mentoring mock trial students.

In conclusion, the potential benefits of this experiential learning opportunity are many, and applicable to a wide array of students. We encourage undergraduate institutions to consider mock trial as a means of achieving these learning outcomes, which are valued in a variety of post-graduate educational programs and career fields.