



Mock Trial Matters

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Why Do Mock Trials? A Good

Question (Pages 2-4)

King County (Seattle) Superior Court Judge William Downing reflects on 15 years of organizing, writing cases for, and presiding over mock trial competitions.

Overbrook High School's 2004 Mock Trial Team: Stereotype Busters (Pages 5-14)

A courageous and talented group of Students from Overbrook High School in Philadelphia prevailed against the odds, winning the 2004 Pennsylvania Mock Trial Championship and challenging a pernicious stereotype in the process. Two articles from the *Philadelphia Inquirer* provide the background, and another by Dorian Nelson, an attorney on the team, describes the experience from his perspective.

Mock Trial Matters in the States

The following were among the submissions received in response to the Survey Concerning State High School Mock Trial Competitions that may be of use in your 2005 competitions. Other fine examples of Codes of Conduct were also received, and they will be published along with the survey results in the next issue of *Mock Trial Matters*.

State Mock Trial Websites (Pages 15-16)

California Courtroom Journalist and Artist Competitions (Pages 17-23)

Colorado's Code of Ethical Conduct and Participant Oath (Pages 24-25)

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Mock Trial Comes To the Balkans (Page 28)

The East-West Management Institute is bringing mock trial competitions to high schools in the Balkans.

Winston Churchill, Free Lunches

And Mock Trial (Pages 29-34)

NHSMTC Board member and former mock trial coach Rick Nagel argues that the power-matching and team placement systems utilized in the National competition involve difficult tradeoffs, but that the result is a structure that is optimal: changing it results in creating more costs than benefits.

Board Matters (Pages 35-36)

Matters that were brought before the NHSMTC Board at its May and October meetings, and information concerning the Case Library; the 2005 Golden Gavel Award; and site selection for the 2008 competition.

Letters (Pages 37-39)

Joshua and Matthew Downer, brothers and attorneys on the Tennessee Team that became the first to win consecutive National High School Mock Trial Championships, reflect on the importance of humility in the courtroom and how participation in mock trial creates a bond that extends beyond one's team.

CALENDAR

- ✚ **February 1** Deadline to submit Golden Gavel nominations (see **Board Matters**)
- ✚ **March 15** Deadline for submitting letter of intent to run for the NHSMTC, Inc. Board
- ✚ **April 1** Deadline for states to submit bids to host the 2008 National High School Mock Trial Championship (See **Board Matters**)
- ✚ **April 1** 2005 National case available on the NHSMTC website
- ✚ **May 5-8** National High School Mock Trial Championship in Charlotte, North Carolina

WHY DO MOCK TRIALS? GOOD QUESTION!

by Hon. William L. Downing
King County Superior Court
Seattle, Washington



After fifteen years of convening high school mock trial competitions, making on-schedule deliveries of appropriate attitudes and platitudes, I recently surprised myself with a comment I made following our local event.

First, I gave the traditional, polite tip of the hat to the parents of the participants. I acknowledged their contributions, congratulated and thanked them. Next I did the same for the teachers. Then I asked all of the parents and teachers to please cover their ears as I gave what they might consider some subversive advice.

To the students, then, I said this: “You should never adopt opinions as your own simply because those are the opinions of your parents. You should never form opinions based solely on what your teachers’ opinions might be. Your friends and classmates are dangerous as well; you should be especially resistant to blindly buying into what seem to be their opinions.”

For years, loudly and to all who would listen, I have extolled the multifaceted values of the mock trial experience. In doing so, I have variously featured the respect students gain for their justice system and the insights they gain into their own abilities. Lately, however, and somewhat paradoxically, this arbiter has found himself especially focused on the capacity of the program to encourage questioning rather than to provide answers.

The law school experience is not so divorced from reality as some may think; in fact, there is much to commend it. Like the childhood Christmas presents described by Dylan Thomas, the law student receives, of course, the “useless stuff” along with the “useful stuff”.

In the useless category I might subjectively include such things as the feudal origins of property law and the lawful methods the wealthy can employ to minimize their tax burden (useless to me at least).

Somewhat more useful are the Latin phrases one picks up in law school. For instance, *habeas corpus* (“You have the body”) can come in handy as can *amicus curiae* (as a judge, it’s always nice to know you’ve got a friend). Then, there’s *semper ubi sub ubi* and you can figure that one out.

But the most useful lessons of law school are some that I have become convinced high school students, through the mock trial experience, begin to absorb without ever having to undertake the travails of law school. I have in mind three specific lessons:

1. Even the flattest pancake has two sides;
2. Courts cannot guarantee results, but can guarantee a fair process; and
3. Even basic assumptions deserve to be questioned.

Every legal and social issue can be, and should be, looked at from more perspectives than one. Preparing a case for mock trial gets students in the healthy habit of asking what are the vulnerabilities or weak points of a given position and what counterargument might exist? Practicing a trial with friends and teammates assigned the flip side breeds respect for those advocating opposing points of view and raising tough questions about one’s own stand.

In the sense of absolute truth, which may, on occasion, be truly unknowable, trials cannot be counted on to produce *correct* results. What they can do is provide a scrupulously and therapeutically fair process by which pot shots are taken at competing propositions until only one is left standing. Mock trials demonstrate this process by placing students smack dab in the middle of fictitious facts whose unknowability is, in fact, absolute.

Finally, as the saying goes, there are no bad questions only bad answers. If *stare decisis* (the principle by which the law remains static in order to promote the goal of predictability) were the only game in town, then Plessy v. Ferguson would still be the law of the land and segregated schools would still abound. Because some had the courage and imagination to challenge the accepted wisdom and conventional values embodied in the law of their time, our society has advanced. The capacity for considering bold and creative approaches to all issues, old and new, should be nurtured by the mock trial experience.

In Washington we have tried to use our hypothetical mock trial cases as vehicles for the examination of particularly thorny legal and social issues. In recent years, we have examined assisted suicide, domestic abuse, sexual harassment, and graffiti as art and sports violence. Our 2004 case – the one that prompted these reflections – had students wrestling with the balance between civil liberties and national security.

Yet, in dealing with our local press, I still seem to find myself frequently having to straighten out the assumption that what we're running is a law school prep program. *Non est factum!* My best guess is that perhaps one or two percent of mock trial participants will go down that path and gather up all that useful and useless information that law schools offer. They will both do well and do good but that is really not what our program is all about.

I maintain, and I maintain forcefully, that fully 100 percent of mock trial participants will go on to become better citizens, the type who will refuse to simply mimic the opinions of others on important social and political issues. This is because they have developed the tools they need to craft opinions that are truly their own, opinions developed through a careful examination of all relevant facts, through the asking of tough questions and insistence upon answers.

I am really quite certain about all this. But, if there is a mock trial participant out there who wants to challenge my authority and argue there's another side to this pancake, well, I'm delighted.

Judge Downing is a King County (the Seattle, Washington metropolitan area) Superior Court judge. Prior to that he was a King County prosecutor. He has written many of the cases that have been used in Washington's mock trial competitions and has devoted countless hours to organizing the county and state competitions.

“Not A Ball Team, But a Mind Team”

Three articles trace the odyssey of Overbrook High School as it defied the odds in capturing the 2004 Pennsylvania Mock Trial Championship, challenging in the process some unpleasant stereotypes concerning inner-city schools and their students.

Another Team to Cheer

By Acel Moore

Overbrook High School principal Ethelyn Payne Young was ecstatic as she sat in a popular seafood restaurant in Harrisburg on Saturday afternoon. She was celebrating her school's victory in the State High School Mock Trial competition.

Overbrook was among 268 high schools in the competition, held in the Dauphin County Court House in Harrisburg, and one of four local high schools that competed. It was the second state title Overbrook has won.

At the crowded restaurant Saturday afternoon, Young sat at a table surrounded by her players, the coaches, and two assistant principals. They brought the large trophy they had just won and placed it in the middle of their table.

A man came over to the table. "What basketball team is this? I thought I saw that boy on television, playing ball," he said, pointing to one of the two male members of Overbrook's mock-trial team.

"This is not a ball team but a mind team," Young replied.

Stereotypical responses to Overbrook's mock-trial team are typical. The team members, all black students, compete against some of the best academic schools in the state, and thus they are underestimated or their wins are considered flukes.

Overbrook's team consists of LaJuan Tucker, Tiona Christopher, Juanita Robinson, Dorian Nelson, and Christopher McFadden, all 18 and seniors. It was the only team competing with only five members, the fewest allowed.

To earn its victory, the team won the Public League and the Philadelphia regional competition sponsored by the Philadelphia Bar Association and Temple University's Law School and its Law Education and Participation (LEAP) program.

Since 1997, when it won its first state title, Overbrook has won three regional and four Public League mock-trial titles. That success is an extraordinary accomplishment. Overbrook is a large urban school that is on many people's worst-public-high-school-in-the-city list. It has a record of poor academic performance and lack of discipline among students, many of whom come from single-parent or dysfunctional families, many in neighborhoods burdened by crime and drug addiction.

Good mock-trial teams tend to come from the best college prep schools in the state. Members of these teams have done well on their SATs and likely will go on to college. Most come from affluent, two-parent households. Many are the children of lawyers, so they are fulfilling a tradition.

Most of the Overbrook five have sharply different stories. One student was in the ninth grade when she left her mother, a drug addict, to live with a relative. Another student has had to work every night to supplement her family's income. She attended practice sessions every day after school to prepare for the competition. One member had never considered going to college and had applied to culinary school. Now he wants to go to college and possibly become a lawyer.

The team's coach, social-studies teacher Phillip Beauchemin, was hospitalized with a serious staph infection in December and was in a coma for several weeks. His wife called two Overbrook alumni: Tyray Miller, a member of the 1997 state championship team, and Khadijah Scott, a Temple University graduate and now a lawyer. They helped keep the team in top competitive shape.

Beauchemin, who has taught at Overbrook for 18 years, was too sick to attend the state championship but is now back at work. The man deserves a teacher-of-the-year award. The team's next challenge is the national competition in Orlando, Fla., next month.

So Overbrook's success is no fluke. It is the work of a dedicated teacher, loyal alums, and a group of intelligent students who were told they could succeed. With expectations raised, they set goals and sought excellence.

There is a lesson in their success for all of us: This is not a ball team but a mind team.

[Mock Trial Matters](#) thanks Mr Acel Moore and the Philadelphia Inquirer for permission to reprint this article.

A witness to talent at Overbrook High Teacher Phil Beauchemin leads its mock-trial team.

By Susan Snyder

Tyray Miller's first encounter with teacher Phil Beauchemin almost turned into a fistfight at Overbrook High School.

Miller, then an 11th grader, entered a room where he didn't belong, and Beauchemin wasn't shy about telling him so.

But by a year later, their relationship had evolved dramatically. Beauchemin coached Miller into the role of star lawyer on Overbrook's 1997 state-champion mock-trial team.

"He taught me how to become a gentleman, how to respect people," recalled Miller, now 24 and a local television host/producer. He still sees Beauchemin regularly and even eats Christmas dinner at his home.

Now, Beauchemin - still teaching at Overbrook and coaching the mock-trial team - is working with another group of national contenders. This week, he will lead that team, which beat private and magnet schools to claim the state title, to Orlando, Fla. The team will compete in the national championship, with students trying cases, alternately as prosecution and defense.

Such success has become a habit for this 33-year teaching veteran of the Philadelphia School District. Beauchemin, 54, who has taught and coached at Overbrook since 1987, has developed a reputation for recognizing and cultivating young talent in a high school considered one of the city's toughest. Overbrook's team has gone to the state championships four times in the last seven years.

LaJuan D. Tucker, the senior who leads this year's team, said of her coach: "He could teach anybody to do anything."

Beauchemin credits his students. Despite dire home circumstances and obstacles that some students face, he finds those in every class who are willing to work to achieve great things.

"There is a silver lining to that, and you can really work with that," he said.

Nothing Beauchemin has faced has diminished that resolve, not even when a student he didn't know hit him in the head and knocked him out last school year - a time when Overbrook was rocked by violence and turmoil. Beauchemin, who stands 6-foot-1 and weighs 203 pounds, was attacked on a Friday and was back at work on Monday.

"Punched and unconscious - some would say that's worth at least a month" of disability, said Overbrook principal Ethelyn Payne Young, who is new to the school this year. "He said, 'I had kids to teach.' "

Beauchemin also is sensitive to the injustices his students face.

When the lawyer-coaches for a largely white Pennsylvania school district appealed Overbrook's win of this year's match, he dashed off a scathing three-page response.

"I think we get it - if a black team defeats a white team, there must be something unfair. This is not as infuriating as it is profoundly depressing. I have witnessed for months how hard my team worked under circumstances more trying than the appellants could begin to imagine."

Such a setback came in late December when the team lost Beauchemin. He missed two and a half months of school after contracting a life-threatening infection, but his team, unwilling to quit, visited his Upper Darby home regularly to practice.

The Pennsylvania Bar Association's Young Lawyers Division, which oversees the competition and will pay for Overbrook's trip to Orlando, quickly dismissed the other district's appeal. Overbrook was "very deserving of the award," said Todd Seelig, a Philadelphia administrative law judge who chairs that division.

Born in Boston, Beauchemin "loathed" school and found it "boring." Yet, after earning a bachelor's degree in history and English from the University of North Carolina at Chapel Hill, he pursued teaching. He entered a teaching-intern program at Temple University in 1970.

Early in his career, he got laid off six times in seven years. Seeking a backup career, he earned a law degree in 1983, which helped prepare him to coach mock trials. But the school district, which pays teachers more for doctorate degrees, refused to give Beauchemin a penny extra, saying the law degree was irrelevant to his teaching.

Beauchemin, who earns about \$69,000 a year, donates up to 500 hours a year as mock-trial coach. It is a nonpaying position, although Overbrook gives him about \$900 to use from the extracurricular fund.

Married with three children, Beauchemin, who also coaches baseball, has snubbed offers to transfer to Central High, a top magnet school: "I'm very pleased with the kids I teach."

In class, Beauchemin uses storytelling and visualization. He has a mind like an encyclopedia, colleagues say.

"He's so smart, and so dynamic and passionate, that kids listen to him," said Maria McNichol, English department chairwoman.

One morning last week, a cacophony filled Beauchemin's room before he began teaching his first-period political-science class. Once he pounded the lectern and called for attention, students fell silent and gave him their complete attention.

When he told them how a Secret Service agent follows the President every minute, one student quipped: "He ain't got no life." When he described how quickly people would die after a nuclear weapon was launched, students were riveted. And when he described the process of how a bill could become a law - using the example of expanding the mandatory school year from 180 to 220 days - students rolled their eyes. "I know. I'm with you," Beauchemin said.

Frank Lawson, 18, appreciates Beauchemin's approach.

"He treats you like you're an adult, like he's preparing you for college," he said.

In his third-floor classroom filled with mock-trial awards, Beauchemin and the team have been preparing to prosecute and defend a fictitious capital-murder case for the national competition.

The team is reviewing details of the case and its characters. They are studying their roles and practicing dialogue. In Orlando, they will be judged on their understanding of the case, communication and persuasive skills, ability to think on their feet, and poise under pressure.

Sipping his Diet Pepsi, Beauchemin huddled one afternoon with Tucker, the team captain, and member Juanita Robinson. "I just want it to be right!" Tucker said, after conducting a crucial cross-examination.

Beauchemin put his hand on her shoulder: "We're going to get there."

Mock Trial Matters thanks Ms. Susan Snyder and the Philadelphia Inquirer for permission to reprint this article.

DEFYING ALL EXPECTATIONS: The Odyssey of a “Mind” Team

By Dorian Nelson
Attorney, Overbrook High School
2004 Pennsylvania Mock Trial Champion
Class of 2004

If I could, I would like to briefly describe to you the experience of being a part of the Pennsylvania State Champion Mock trial team. For starters I'm going to start with just being a part of the Overbrook High School student body. Overbrook is an inner-city public high school. Overbrook, as I had heard, was not the school to go to. It was not the type of school from which you would expect to gain some sort of recognition when you graduated. That was the Overbrook that I was sent to attend.

This Overbrook had been expecting nothing more than another sub-par year with another mediocre graduation rate. This Overbrook was expecting another hundred arrests, another two hundred suspensions and an overall lack of school pride.

If I were not writing this, would you know that Overbrook was the home to the Panthers? If I didn't tell you that Overbrook High School was the Castle on the Hill, would you know of its majestic past? No wait, don't tell me. Wilt Chamberlain, right? Will Smith? Guion Bluford (the first black astronaut)? Of course you would remember them, and rightfully so. But how many of you know the people that have graduated from Overbrook who are in the State Legislature? City Council? The Mayor's office? Congress? The list of graduates who have made their mark in the country and the world would astonish most readers.

That a school like Overbrook could have such knowledgeable and diverse alumni couldn't be right. That was the sort of thinking that we as a team had to face throughout the mock trial competition. A school from Overbrook cannot win the Pennsylvania State Mock Trial Championship, despite the fact that the 1997 State Champions happened to be an Overbrook team. Perhaps they thought it was nothing more than a fluke.

Our first trial was one of the most nerve-racking and disappointing in which we participated. We were green, barely able to tell which side we were on. Our coach, Mr. Beauchemin, was in the hospital with a serious illness. We had only been able to participate in the competition thanks to the work of our interim coach Tyray Miller, who himself was the leader of the 1997 state championship team.

The actual trial itself was easy. We found that we had a knack for this sort of thing and happened to get the luck of facing a new team in the first round. Though we knew the team we had beaten that round was inexperienced, it was a great boost of confidence to know that we could at least get up in front of a jury and make our case. We were walking on air. There was nothing that could have happened which would dampen that day.

Well, that's not true. Ms. Roberta West, who is the citywide coordinator for the mock trial competitions, came to us in mid-celebration and told us some of the hardest news we have had to swallow. She told us that even though we had clearly won, and even though our performance was superior, that we had lost on a technicality: one that stated that a team must have at least three active attorneys. We had won with two attorneys. So we lost our first trial in Pennsylvania. It was at that moment, when we were extremely downhearted, that Ms. West told us that she watched this trial and that she knows who won. But that didn't mean she was going to neglect her duties, either. She told us that day that she was under constant pressure to insure that every trial was done as fairly as possible- that everything was done according to the books. I didn't think it then, but I know now that I don't envy her job. There is never a way to insure that everything is done as fairly as everyone would like it to be. That's just a part of life.

Well, that's the veteran mock trial participant in me talking. It's also in hindsight, and we all know that's twenty-twenty. At the time I was shocked. That we could lose because of some rule that I didn't even know existed? That we could win the ballots of both judges and still have to go in the losers' bracket?

It was then that Tyray came to us and told us that we needed to debrief, that we had made mistakes that we shouldn't have, and that it was not going to be this easy for much longer. Now at that moment not a one of us was trying to listen to him. We were so angry that we had lost that we could not understand the concept of another trial. We didn't want to go over our mistakes. What we wanted to do was go home and sulk. Tyray Miller would not let us until he had debriefed us. He went through the dirty looks and the cut offs to insure that his views on what had went wrong didn't go unsaid. I didn't think about it then, but I never thanked him for that.

The rest of the city trials went smoothly. With the exception of that one trial, we defeated our opponents. We had made it to the City Championship. There we faced Masterman, which happens to be the hardest public school to get into in Philadelphia, the top rated public high school in Pennsylvania. I personally was put on the Masterman waiting list in fourth grade. Haven't heard from them since, and I can't for the life of me imagine why.

There we were, a five-person team going against a team that had the luxury - and perhaps the misfortune - to have a different team for each side of its case. I'm not going to lie to you and say that I was intimidated by their courtroom presence. I'm not going to say that we went into that trial feeling like underdogs. By that time, we felt like there was no team that could beat us. We had been on a winning streak since the first trial. We felt like champions already.

Well, we lost again. That's as simply as I can put it. We just plain lost. There has been dispute over who had actually won but in the end it didn't change the fact that we lost. That we had lost to Masterman in the city finals was saying something at least partly good. I myself thought at the time that their case was very strong in the sense that their team was very clean when it came to objections. We were, as well, but there was a point at which a simple problem about what was actually said, and the actual rule in question, made us look unprepared and disorderly.

Sometimes that's enough to sway a really close trial to the side of your opponent. We very well could have been deadlocked on everyone's scorecard. If I had seen a trial like that and been asked to pick a winner when my score was tied, I would have to pick the team that didn't make such an easily-corrected mistake. However, luck would not let us leave the mock trial competition. A rule that had been established only a few years ago let the city champion and the second place team from Philadelphia go to the state competition. It was put into place because of the large number of teams that participated in the Philadelphia area. We went through about 6-8 rounds in Philadelphia including the final city match. My only guess is that they felt the runner up deserved a chance as well. That chance was all that we needed. It was just enough to boost our spirits after our loss in the city finals.

So we dried our tears, licked our wounds and let Overbrook give us a big send off. Well big for a high school at least. It was good to see Overbrook proud of itself again, proud to be recognized for academics as well as athletics. It was good to be a part of that. To help push that boulder of pride up the hill of adversity-- the sort of thing poets write about.

The story continued as we headed for Harrisburg with our Philadelphia companions from Masterman. Not that we left together, or rode in the same bus, or anything like that. But Philadelphia is the City of Brotherly Love. Never mistake the competition between Masterman and Overbrook as anything but that. We are proud to have competed with them and we were proud to go with them to Harrisburg. That didn't mean we were going to pull any punches, though. When we went into those courtrooms we were certain that with both Masterman and Overbrook in the state competition, Philadelphia was a lock for first place in state.

We actually only saw them two times as a full team: once in the hotel when they gave us our ID badges, and again after our first trial. I can remember having a conversation with one of the team members. He had done the closing argument for them in the city championship. That being my own duty I had naturally gravitated toward him. I told him that no matter what happened we were bringing the state trophy back to Philadelphia. He agreed, and replied that Philly was going to be the state champion.

It was once again nerve racking after the first day of trials, as they had us sit down and eat dinner while the state coordinators played around with the microphone. I could have sworn I was making my fist so tight with anxiety that I had white knuckles. They went through three of the four finalists before they called our name. Three teams! Then they

said they couldn't read the fourth. I swear they didn't know how close I was to walking up there and reading it myself. We were the highest ranked team of the four picked for the state semi-final rounds. We defeated Abington Heights High School before meeting Pittsburgh in the state championship round. We had heard about them earlier, during the preliminary trials. Turns out they defeated Masterman. We couldn't stand for that of course.

We congratulated them and wished them luck before the trial began. Then we went to talk to Masterman and told them one more time that we were taking it back to Philadelphia for them. I have to give my respect to Masterman. Both their team and coaching staff. They stayed and watched the finals between our team and Oliver High School from Pittsburgh. How many people can honestly say that they would have done the same. I extend my fullest gratitude for that.

We made good on our promise. I can't tell you what happened to Pittsburgh that day. Maybe they felt the pressure that we had applied. We defeated them and became Pennsylvania State Champions. We brought the trophy back to Philadelphia. You only have to come to Overbrook High, the Castle on the Hill, to see it.

Now to say that mock trial made an impact on just our lives wouldn't be exactly right. To say that it had an impact on our entire community would be much more fitting. The effects of our win have been far-reaching. First, bringing our own school the recognition it deserves and then reviving our neighborhood. We can honestly say that our victory in the State Mock Trial Competition helped the Overbrook community survive the upcoming summer. The school had been marked for destruction. Another school was to be built where the once great Overbrook had risen into the sky.

We can say that we helped to keep this school around for a few more years. We can say that showing that students from this neighborhood are capable of competing on an intellectual level with students from prep schools not only from all around the state, but from around the country, too, helped keep Overbrook standing. We can be sure that the only school in Philadelphia with two Pennsylvania Mock Trial Championships will be around for a while longer. We look forward to a future Overbrook national champion.

As the members of our team head off to different colleges, we all share the sentiments expressed by our team captain, LaJuan Tucker:

"We have had the opportunity to stand on the shoulders of giants from our past. We can only be so lucky as to be a stepping stone for those that come after us. It should be our duty - no, our privilege - to do that."

Postscript: *The Overbrook team performed admirably at the National Mock Trial Championships in Orlando. A Florida attorney, who scored its second round match against Wisconsin, said it "was really the battle of the Titans." While Overbrook finished 32nd of the 44 state champions who competed, Coach Beauchemin said that "we barely*

lost [that round] to one of the two best teams.” LaJuan Tucker, the team’s captain, said she had no regrets: “I’m very satisfied with our performance. I’m very satisfied with the relationships I’ve made. I’m very proud of my teammates. To look at us when we started to now-I can’t say I’m a bit disappointed.”

Perhaps they accomplished something they should be equally proud of: bringing closer the day when those who see a group of young black students from an inner-city school celebrating the winning of a trophy will consider its victory as likely to have resulted from a competition of the “mind” as from one involving athletic prowess.

Author Dorian Nelson is currently attending Temple University in Philadelphia. He had no intention of going to college at all until his mock trial experience of this past spring. His teacher coach, Phil Beauchemin, convinced him that he was a uniquely gifted young man and should consider something more than his goal of becoming a cook. Dorian failed most of his classes during his first three years of high school and his graduation was the result of some unusual negotiation with Overbrook’s principal, Ms. Ethelyn Young. She was very sympathetic to the idea that Dorian was a special kid who required some special efforts to further his newfound ambition. Temple University, and especially a woman in the Temple Law , Education, and Participation (LEAP) program, Roberta West, were enormously flexible in granting Dorian a last minute acceptance when he all relevant deadlines had passed. He took the SATs late in the spring and was not actually accepted to Temple until August.

Clearly, Dorian is a very talented student. His SAT score of 1280 was 200 points higher than any other Overbrook student has scored in the past twenty years.



OVERBROOK HIGH SCHOOL TEAM PICTURE

The OVERBROOK HIGH SCHOOL team, coaches, and state coordinator are, from left to right:

Jillian Z. Duhl (PA State Coordinator)

Phil Beauchemin, Teacher Coach

LaJuan Tucker

Juanita Robinson

Madonna Delfish

Dorian Nelson

Tiona Christopher

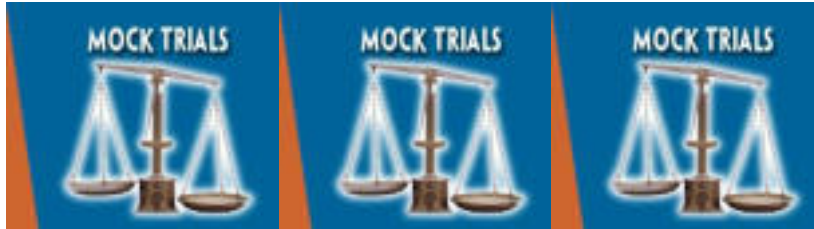
Christopher McFadden

Amina Calland

Derrick Reeves

Khadijah Scott, Esq. (Attorney Coach and 1995 Overbrook Mock Trial captain)

STATE HIGH SCHOOL MOCK TRIAL WEB ADDRESSES



You're just a click or two away from accessing most state high school mock trial web sites and those states' 2005 cases. If you have any trouble accessing a site or finding a state's case, email richard.nagel@comcast.net, and I'll do my best to help you.

ALABAMA: <http://www.alvig.org>

ALASKA: <http://www.anchoragebarassociation.org>

ARKANSAS: NONE

ARIZONA: www.azflse.org/mocktrial

CALIFORNIA: NONE, mainly because we sell the case and the Daily Journal (California's legal newspaper), donates the costs of printing to the program. However, if the Journal ever decided to stop printing the cases, we would probably make the case available online via password protection so that a team may download the case. Our Mock trial website is www.crf-usa.org (click on programs and mock trial).

Commonwealth of the Mariana Islands: <http://www.cnmibar.org> (currently down)

COLORADO: <http://www.cobar.org>

CONNECTICUT: <http://www.cclce.org/>

DELAWARE: <http://www.delrec.org>

DISTRICT OF COLUMBIA: NONE

FLORIDA: http://www.flrea.org/mock_trial/index.html

GEORGIA: <http://www.gabar.org/mtpub.asp> is the direct link, but you can also access it by going to the home page of the Georgia Bar <http://www.gabar.org/mocktrial.asp%20> and clicking on the Publications link.

GUAM: NONE

HAWAII: <http://www.hawaiiifriends.org>

IDAHO: <http://www2.state.id.us/isb/gen/lre.htm#MT>

ILLINOIS: <http://www.isba.org/Sections/2005mocktrialinfo.html>

INDIANA: <http://www.inmocktrial.org>

IOWA: <http://www.iowabar.org>

(look for the link to "Mock Trial," and then either Middle School or High School

KANSAS: <http://www.ksbar.org/public/mocktrial.shtml>

KENTUCKY: will begin putting case on website in 2005;

LOUISIANA: NONE

MAINE: <http://www.Mainelaw.maine.edu/mice>

MARYLAND: http://www.cirep.org/default.asp?page_name=mocktrial

MASSACHUSETTS: <http://www.massbar.org/mock> (PASSWORD PROTECTED)

MICHIGAN: NONE

MINNESOTA: <http://www2.mnbar.org/mocktrial/>

MISSISSIPPI: <http://www.msbar.org>

MISSOURI: <http://www.bamsl.org>

MONTANA: NONE

NEBRASKA: <http://www.nebarfnd.org>

NEVADA: <http://www.nvbar.org/LRE/LRE.htm>
NEW MEXICO: <http://www.civicvalues.org>
NEW JERSEY: <http://www.njsbf.com/njsbf/student/mocktrial/mocktrial.cfm>
NORTH CAROLINA: <http://www.ncatl.org?p=15288>
NEW HAMPSHIRE: http://www.nhbar.org/about_text.asp?C=151&SectID=6
NEW YORK: <http://www.lvcny.org>
NORTH DAKOTA: NONE
OHIO: NONE
OKLAHOMA: <http://www.okbar.org/publicinfo/mocktrial/>
OREGON: <http://www.classroomlaw.org>
PENNSYLVANIA: <http://www.pabar.org/>
RHODE ISLAND: <http://www.rilep.org> (The current case is always password protected; only registered teams have access until the competition is over.
SOUTHCAROLINA: <http://www.scbat.org/pdf/LRE/2005case.pdf>
SOUTH DAKOTA: NONE
TENNESSEE: <http://www.tba.org/vld%20>
TEXAS: NONE
UTAH: <http://www.lawrelatededucation.org>
VERMONT: NONE
VIRGINIA: NONE
WEST VIRGINIA: NONE
WASHINGTON: NONE- case not distributed via the Web
WISCONSIN: <http://www.legalexplorer.com/education/education-mock.asp>
WYOMING: <http://wyomingbar.org>

The 2004 National High School Mock Trial Champions: South Carolina's Bob Jones Academy High School



South Carolina's Bob Jones Academy Mock Trial Team Celebrates Winning the 2004 National High School Mock Trial Championship

Pictured, left to right, are: Richie Patton; Daniel Hindman; Alex George; Elizabeth Sowers; Daniel Nickerson; and Emily Sowers.

There has been considerable interest in adding courtroom artist and journalism components to existing competitions, and below are the rules, scoring criteria and score sheets, and some exemplary performances by California students



Constitutional Rights Foundation's
Los Angeles County Mock Trial Program



Journalism Contest
Official Rules

1. All contestants must be affiliated with a participating LA County Mock Trial team and enrolled at the team's school.
2. All participants must pay a \$10.00 entry fee & complete the entry form.
3. All participants must sign a code of ethics promising to work independently on the contest entry.
4. All participants must sign a release form authorizing the publication or reprinting of their Journalism Contest submissions for educational purposes. No financial compensation will be awarded.
5. Contestants may only watch and report on their team's trials.
6. All contestants are invited to watch their team's first trial during Round 1.
7. All contestants must write their articles based on their team's Round 2 trial.
8. When attending Rounds 1 and/or 2 of the LA County Mock Trial Competition, all contestants must wear a "press badge," as provided by CRF at check-in.
9. During the trials, all contestants must sit in the jury box in a row below the scorers. If a scorer or the presider asks you not to sit in the jury box, you may sit in the front row of spectator seating, away from witnesses.
10. Please introduce yourself to the scorers (they will be sitting in the jury box) and the presider (she/he will be sitting on the bench).
11. Once you are seated, you **MAY NOT HAVE ANY CONTACT WITH ANYONE FROM YOUR SCHOOL** (parents, teachers, or fellow students). You must draft your article completely independently.
12. All contestants will have 24 hours to complete their articles and deliver them to CRF, beginning at 5:00 p.m. on the day of Round 2. All entries must be completed and received by CRF via facsimile, email or hand-delivery by 5:00 p.m. the following day (senior division – Nov. 12, junior division – Nov. 14).

13. Typed submissions must be a 12 point Times New Roman font, with one-inch margins, double-spaced, and a page limit of two pages. Any articles over two pages will not be read. If submission is handwritten, article must not exceed 500 words.
14. Submitted articles should be in the voice of a reporter covering a criminal trial.
15. Use of dictionaries and thesauruses will be permitted.
16. Contestants may refer to the California Mock Trial case materials, the Journalism Contest rules and Judging criteria during the contest.
17. Awards for the Journalism Contest are independent of the LA County Mock Trial Competition; an individual may win a Journalism award regardless of the Mock Trial team's final ranking.

**Constitutional Rights Foundation is located at 601 South Kingsley Drive,
Los Angeles, 90005.
(213) 386-0459 fax and the email address is sylvia@crf-usa.org.**



Constitutional Rights Foundation's
Los Angeles County Mock Trial Program



COURTROOM Art CONTEST

Official Rules

- All contestants must pay a \$10.00 entry fee & complete the entry form.
- Sit in the jury box in a row below the scorers. If a scorer or the presider asks you not to sit in the jury box, you may sit in the front row of spectator seating, away from witnesses
- Introduce yourself to the scorers (they will be sitting in the jury box) and the presider (she/he will be sitting on the bench)
- Once you are seated, you **MAY NOT HAVE ANY CONTACT WITH ANYONE FROM YOUR SCHOOL** (parents, teachers, or fellow students). You must create your drawing completely independently
- You are encouraged to use R1 as a practice round. Official judging will begin with R2 submissions

- Your sketch must depict an actual courtroom scene that you observe during Round 2. You may not submit your R1 “practice” sketch for judging
- **At the conclusion of R2 you must submit your work to the presider after the debriefing remarks** (5-10 minutes after the verdict). The judge will deliver the drawing to Mock Trial staff, so be aware of the possibility of smudging, should you choose to use charcoal or pastel
- The drawing must be on paper of the dimensions 11" X 14", with a horizontal format. Any dry medium may be used
- **Be sure to stick your name label onto the back of the drawing you submit**
- **Only drawings submitted to presiders will be entered in the contest. DO NOT BRING YOUR DRAWING TO MOCK TRIAL STAFF, YOURSELF**

Good Luck!



Constitutional Rights Foundation's
Los Angeles County Mock Trial Program
Courtroom Art



Judge's Name: _____

Entry #: _____

Please clearly circle your score for each category.

Art Work Shows:

1. Overall Composition

The overall drawing should include aspects of the interior of a courtroom or courtroom procedures. The artist uses artistic license to make the composition work. Realism in the people and objects drawn are paramount to a successful illustration.

Needs Improvement		Average		Outstanding					
1	2	3	4	5	6	7	8	9	10

2. Knowledge of Human Figure and Clothing

Drawings of subjects should look like the people depicted. Observe the folds in the clothing, creases in the hands, facial features, body language, etc.

Needs Improvement		Average		Outstanding					
1	2	3	4	5	6	7	8	9	10

3. Animation of Figures

The artist draws more than just a portrait. Subjects should be in motion, gesturing, speaking, pointing, etc.—Tell a story in your drawing.

Needs Improvement		Average		Outstanding					
2	4	6	8	10	12	14	16	18	20

4. Detail

Detail is important, but should not be overdone. Use of court items to tie figures into court setting (flags, wood paneling, charts, monitors, etc.) Don't attempt to put everything into one sketch—leave "Breathing Room" in illustration. Allow the eye to focus on main points.

Needs Improvement		Average		Outstanding					
2	4	6	8	10	12	14	16	18	20

Total Score _____

**COURTROOM ART COMPETITION
CRITERIA AND SCORESHEET**



Constitutional Rights Foundation's
Los Angeles County Mock Trial Program
Journalism Contest



Judge's Name: _____

Entry #: _____

Please clearly circle your score for each category.

Article shows:

- Proper use of Mechanics**
 - Applied good grammar (syntax, usage, punctuation).
 - Used correct spelling.

Needs Improvement	Average					Outstanding			
1	2	3	4	5	6	7	8	9	10

- Accuracy**
 - Wrote accurate and graphic descriptions of courtroom setting, participants, their behavior.
 - Provided accurate and complete background of the case (what, who, when, where, how, why).
 - Understood legal procedures and case rulings.

Needs Improvement	Average					Outstanding			
1	2	3	4	5	6	7	8	9	10

- Journalistic Quality**
 - Presented the story in clear, concise language (active verbs, strong nouns).
 - Created strong one-idea sentences (active-voice) and well-structured paragraphs (important information first).
 - Developed strong lead paragraph (simple, understandable, catches reader's attention).
 - Observed fairness and accuracy (balanced reporting).
 - Promoted most newsworthy elements to create high interest and an "angle" without editorializing or drawing opinionated conclusions.

Needs Improvement	Average					Outstanding			
2	4	6	8	10	12	14	16	18	20

Total Score _____

**COURTROOM JOURNALISM CONTEST
CRITERIA AND SCORESHEET**

EXAMPLES OF OUTSTANDING COURTROOM ART WORK AND JOURNALISM

2004 WINNER OF THE CONTRA COSTA COUNTY COURTROOM JOURNALISM CONTEST

Casco Convicted of Theft and Fraud

by Amy Hsiung (California High School)

Coach: Ms. Metcalf (California High School)

MARTINEZ— Former Mansfield High School student Madison Casco was found guilty Tuesday for the sale of stolen goods and credit card fraud.

In his verdict, the Honorable Judge Harlan G. Grossman found Casco guilty as charged. About a year ago, Casco was charged on three counts: grand theft, theft, and receiving stolen property.

In the end, Judge Grossman found Casco guilty “primarily because she had access to the computers during third period.” He was referring to Casco’s use of the internet to buy electronic goods with stolen credit card numbers.



Frances Yun (Northgate High)

The incident began about a year ago with the call of Mansfield High’s librarian, Pat LaPoint, to Officer Rory Brosnan on April 3. She had just seen Casco hurrying into the library, heading for the rarely used Russian section. At the time, Casco was her aide. A short time before, LaPoint had reported Casco and her best friend, Devon Wilshire, of acting suspiciously and was directed to report them the next time she noticed their shady behavior.

After LaPoint notified Brosnan that second time, they found a box labeled “Mammon C350 Digital Camera” lying on a shelf in the Russian section. Brosnan immediately confiscated it.

As the librarian’s aide, Casco had access to every student’s log-on username and passwords, as well as the extra accounts for students who transfer to Mansfield High during the course of the school year. She aided from 10:00 a.m. to 10:50 a.m., roughly the time the fraud was committed, leaving Casco as a possible perpetrator behind the scheme.

“I believe [Casco] is hardworking...over the summer she took on extra shifts to help the workers who called in sick,” said K.C. Cline, Casco’s employer at Crius Restaurant and a family friend, in Casco’s defense.

“This is a girl of honesty and integrity, with no reason to steal,” said Defense Attorney Chi Nguyen in her closing statement. “Why would any girl work extra shifts to make money if she wanted to [steal]?”

It was around the middle of February when Brosnan first became aware of credit card fraud in Mansfield, California. He had been receiving numerous calls from Mansfield residents, but was unable to locate a prime suspect until Lola Wilshire, Devon’s mother, and Mansfield High’s chemistry teacher, Chris Conley, called.

Ms. Wilshire had seen Devon returning home with expensive and, in Devon's case, unaffordable electronic goods. She believed that Devon was receiving these goods from a friend at school.

On the other hand, Conley called in to report a fraudulent purchase made on his credit card. He also claimed that a receipt with his credit card information was stolen from his desk drawer at school, most likely during lunch since that was the only time he would leave the room unattended. On top of that, people ate in his room. Those people were River Lenox, Wilshire, Casco, and one other friend.

"Can we believe K.C. Cline to risk friend and family ties by exposing Madison?" said Prosecution Attorney Sarah Garbers. "The defendant has all the motives and opportunities that Devon lacks."

**2004 WINNER OF THE CALIFORNIA COURTROOM ARTIST
COMPETITION** Beatrice Guo, Santa Clara County



The purpose of high school mock trial competitions is more than the demonstration of rhetorical and analytical skills; ethical considerations and the importance of good sportsmanship must always be paramount in the minds of teacher and attorney coaches as they instruct their students. Colorado's Code of Conduct, modeled on that of the Georgia High School Mock Trial Competition, manifests those values, as do its Mock Trial Oaths.

Memorandum

To: All Mock Trial Team Members, Attorney Coaches, Teachers, and Observers
From: Colorado Bar Association
Date: October 15, 2003
Subject: **CODE OF ETHICAL CONDUCT for all Participants of the Colorado Mock Trial Competition**

The purpose of the Colorado Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities. As a means of diligent application of the Colorado Mock Trial Competition's Rules and Competition, the Colorado Bar Association's Law Education Committee has adopted the following Code of Ethical Conduct for all participants and their observers:

- §1 Team members and all student participants in local and state Mock Trial programs promise to compete with the highest standards of deportment, showing respect for their fellow team members and participants, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel. All competitors and participants will focus on accepting defeat and success with dignity and restraint. Trials, contests, and activities will be conducted honestly, fairly, and with the utmost civility. Members and participants will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Members and participants will not willfully violate the Rules of the competition in spirit or in practice.
- §2 Teacher Coaches agree to focus attention on the educational value of the Mock Trial Program. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's Rules and this Code of Ethical Conduct.
- §3 Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's Rules and this Code of Ethical Conduct. They will emphasize the educational value of the experience by requiring that all questions, objections, responses, opening statements, and closing arguments be substantially the work product of the team members. Attorney Coaches are

reminded that they are in a position of authority and thus serve as positive role models for the students.

§4 All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Team members and Attorney and Teacher Coaches are responsible for insuring that all observers are aware of and abide by the Code. Students, teacher coaches and attorney coaches will be required to sign a copy of this Code. This signature will serve as evidence of knowledge and agreement to the provisions of the Code. Violations of this Code of Ethical Conduct, either by participants and/or observers, may be grounds for reductions in scores, disqualification from a contest, and/or suspension or expulsion from the Mock Trial Program.

§5 Presiding judges and evaluators are asked to observe the trials with an objective eye. Interjecting one's own personal style and biases adds no value in the education process. Team members have agreed to abide by the Rules and this Code in spirit and in practice; therefore, violations should result in a lowering of the score. All judges and evaluators promise to be prepared and knowledgeable about this Code of Ethical Conduct, the Rules of the Competition, the problem, and the procedures. The appearance of impropriety, bias, or favoritism shall be avoided. Presiding judges will conduct trials with objectivity and honesty.

COLORADO MOCK TRIAL OATHS

NOTE: Because of the new Code of Ethical Conduct, there is a new procedure this year. Ask all members in the courtroom to stand for the swearing in and explain that in an effort to maintain a level of professionalism and to uphold the code of ethical conduct during and after these mock trial proceedings, all members of the gallery, scoring panels, and teams shall stand for the swearing in on the oath of Ethical Conduct.

"Please raise your right hands.

"Team members, do you promise that the presentation you are about to give will faithfully and truthfully conform to the facts, procedures, and rules of the mock trial competition?"

"Gallery members, including teacher and attorney coaches, family members and friends, do you promise to represent yourselves as positive role models, and to behave in a manner that exemplifies ethical and professional sportsmanship during and after this mock trial round?"

"Scoring Panelists, do you promise to judge the mock trial competition as fairly and objectively as possible in accordance with the facts, procedures and rules of the mock trial competition?"

Once all have been sworn to the Code of Ethical Conduct, the presiding judge will ask all but the witnesses to sit. Then the witnesses shall be sworn in as follows:

"Witnesses, do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts, procedures, and rules of the mock trial competition?"

SUGGESTED RESOURCES FOR MOCK TRIAL COACHES AND STUDENTS

Below are resources that have proved useful to one or more state mock trial coordinators who have responded to *A Survey Concerning State Mock Trial Competitions* and for whom purchasing information is available. If you have resources that should be added to this list, please send the name of the publication or video/DVD, along with purchasing information (price, if available, and publisher) to richard.nagel@comcast.net.

May It Please the Court: A Video Resource for Mock Trial Teams (GEORGIA)

This resource was singled out for praise by many of the state coordinators. It includes not only the video, but a written guide to every aspect of the mock trial process, beginning with “Putting a Team Together,” and proceeding to discuss every aspect of a mock trial from opening statement to closing argument, as well as the rules of evidence and effective use of objections.

Available from the Georgia Mock Trial Competition for \$25.00 at <http://www.gabar.org/pdf/mt/vporderform.pdf>

Mock Trial Videos and DVDS from the Constitutional Rights Foundation (CALIFORNIA)

People v. Casco (Middle School) DVD \$19.95 ea.
People v. Casco (Middle School) VHS \$19.95 ea.
People v. Tanner, 80 min., VHS \$19.95 ea.
People v. Tanner, 80 min., DVD \$19.95 ea.
People v. Martin, 80 min. VHS \$19.95 ea.
People v. Martin, 80 min., DVD \$19.95 ea


California’s Constitutional Rights Foundation has produced videos and DVD’s of the California state championship matches for the past two years. The CRF also has the printed copies of the cases available for purchase at <http://www.crfusa.org/marketing/catalog.html#mock>


Mock Trials: Preparing, Presenting and Winning Your Case by Steven Lubet and Jill Trumbull-Harris (National Institute of Trial Advocacy- NITA)

This National Institute of Trial Advocacy (NITA) publication was praised by one coach as “being an outstanding text that, though intended for college mock trial and law school students, is accessible to high school students as well. The suggestions and examples are easy to comprehend and extraordinarily helpful. Available from the National Institute of Trial Advocacy for \$34.95 at <http://www.nita.org/bookorder.asp?Action=Show&Part=1-55681-713-4>

Irving Younger Videotapes on Cross-Examination and Hearsay

Available at the Professional Education Group Incorporated: The Irving Younger Video CLE Series at <http://www.proedgroup.com/programs/details/iy1.cfm>

 ***Justice by the People: An Interactive Curriculum***
CD curriculum is available to schools free of charge to schools from the American Board of Trial Advocates, (ABOTA). Call 1-800-779-5879, or access the ABOTA web site at http://www.abota.org/education/archive/jbtp/jbtp_index.asp. “It may be too elementary for experienced mock trial teams, but it is a good introduction for beginning teams,” according to Susan Roberts, the Indiana state coordinator.

 ***Trial Technique, Sixth Edition by Thomas A. Mauet***
Available from Aspen Publishers for \$55.00 at <http://www.aspenpublishers.com/Product.asp?catalog%5Fname=Aspen&category%5Fname=&product%5Fid=0735532400&Mode=SEARCH&ProductType=T>

Mock Trial Competition Project for the Balkan Region

By Nicholas Mansfield and Catherine Sykes

In 2004, the East-West Management Institute (EWMI) received a grant from the Open Society Institute (OSI) to create mock trial materials for competitions in secondary schools in the Balkan region.

As a not-for-profit organization that focuses on legal and economic reform in developing countries, EWMI works on projects that promote equal justice for all people. This mock trial project in the Balkan region is one way to work towards this goal, as it provides individuals at an early age with an understanding of due process and fair trials. Especially in a region that has undergone severe ethnic and religious conflict in the recent past, EWMI recognizes that mock trial competitions can both teach tolerance and promote the resolution of disputes through peaceful means.

From a pedagogical perspective, it is widely recognized that secondary school education in the Balkan region provides little information that is directly relevant or of practical value to students. In addition, the teaching methodology in the Balkans is based almost entirely on lecture, leaving little room for interaction amongst students and teachers. Mock trial competitions can introduce students and teachers to more interactive forms of learning, while at the same time enhancing the students' knowledge, understanding, and respect for the law and legal procedures. It also provides them with practical skills by training them in communication and advocacy.

Two cases have been created for mock trial competition. While these cases involve fictitious countries and events, they are meant to represent larger issues pertinent to the current political/legal climate in the region. The judicial forum for both cases is the International Criminal Court.

The first case is called 'The Shelling of Belligerentia School'. In this case, an army commander in the fictitious country, Utopia, is charged with the killing of students and damaging a school. The setting of this trial involves Utopia, a country that has undergone an armed insurgency centered in the province of Rebellia. The school is known to be politically linked to the rebels and has served as a rebel training ground.

The second case is called 'The Rock Singer of Alakrity'. This case brings charges of genocide against a prominent musician in the fictional 'Alakrity', a state divided by two ethnic groups. The Rock Singer is charged with inciting ethnic violence in Alakrity by writing a song that demands that the minority ethnic group leave the country.

At present EWMI does not have funding to implement the Balkan competition, but EWMI's partner in this effort, the OSI-sponsored International Debate Education Association, is working to organize a competition in the region through its local affiliates. Because the case materials are applicable to other regions that have suffered from ethnic strife, EWMI is also exploring their use in countries outside the Balkans.

Individuals who may be interested in helping EWMI implement future overseas mock trial competitions are welcomed to contact Catherine Sykes in EWMI's New York office at csykes@ewmi.org. Additional information about EWMI can be found at www.ewmi.org.

Nicholas Mansfield is Washington Director of the East-West Management Institute. Catherine Sykes is Project Director.

WINSTON CHURCHILL, FREE LUNCHES, and MOCK TRIAL

By Rick Nagel

Winston Churchill once commented that, “democracy is the worst form of government except for all those others that have been tried,” and economists remind us that, contrary to common sense, “there’s no such thing as a free lunch.”

Democracy is based on a trust in the ultimate reason and good sense of the electorate, despite its often being ill-informed and its sometimes succumbing to the ranting of demagogues. Even with these faults, most would rather place their trust in “the people” rather than in Lenin’s “vanguard of the proletariat” or what Judge Learned Hand called “a bevy of Platonic guardians.” Why? Because history has shown us that human happiness is maximized to a greater extent in a democracy than in fascism, communism, a monarchy, or by leaving decisions that affect all to a “council of the wise.”

And even if someone buys you lunch, you incur a cost: the time devoted to that lunch might have been spent in a way that ultimately proved more rewarding: a student might have studied for a one o’clock exam; an attorney might have honed her cross-examination questions of a witness to be confronted that afternoon; or a parent might have been able to spend an additional two hours with his family that evening had he not had to catch up on the work left undone as a result of the “free” lunch. We all need to make many choices – choices that inevitably involve costs as well as benefits- many times each day. We hope that those choices, which are based on the values each of us holds dear, maximize our happiness by producing bountiful benefits, minimal costs, and a greater net “profit” than the alternatives. But eliminating costs is no more possible in designing rules of a game or competition than it is in producing an automobile. The question in both cases is whether the costs and benefits of the process have been so carefully considered that no reasonable, lower-cost alternative is available.

What has all this to do with mock trial competitions? Well, a mock trial system of matching teams and placing them after four rounds of competition is also based on a set of values and premises, values and premises on which the rules of the competition are based.

Over the past few years the Board of Directors of the National High School Mock Trial Championship has received a number of suggestions for altering the way teams are placed following the four rounds of competition. These are usually described as modifications of the “power matching” system that is used in the national competition, *when in reality they are suggestions for modifying the way teams are placed, and trophies awarded, following the four rounds of competition.* It is thus essential that the two processes, and their rationales, be understood.

Power matching [for a more complete description of power matching access the NBSMTC website at <http://www.nationalmocktrial.org/scoring.htm>] is simply the method by which teams are matched in each of the four rounds of the national competition that precede the fifth, championship round. There being no basis for “seeding” the competing teams for the first round, as is done in the 64-team NCAA

Basketball Tournament each March, teams are matched randomly. From the second through the fourth rounds teams are “power matched,” which involves having teams with similar won-loss records face each other. So, after the second round of competition, teams that won their first two competitions would be matched, as would teams with 1-1 and 0-2 records. Within each bracket (within which won-loss records are identical), those at the “top” of the bracket are generally paired against those at the “bottom,” with the number of ballots won (3 ballots cast in each round, with two being necessary to win the round) being the primary criterion for these intra-bracket placements, and cumulative points, and then net point differential between a team and its opponents being considered, in that order, to break ties between teams having the same won-loss record and the same number of ballots.

Thus, following Round Two, in the 2-0 bracket, a team that had won all six ballots (three per round) might face a team that had won four, having prevailed 2-1 in each of its first two matches. All of this must be qualified by the fact that the power matching system used is a modified one in which each side (prosecution/plaintiff and defense) is guaranteed performing in at least one of the four rounds preliminary to the national championship. The “benefit” of deviating from a “pure” power matching system is that it maximizes student participation. How could we justify asking these young men and women to work tirelessly for five weeks and never have a chance to perform? The “cost” is that some matches may deviate from what the optimal power match would dictate. No one has argued that the purity of power matching is a more important value than maximizing, within reason, student participation. Some have argued that each side should be guaranteed performing in two of the four trials, but it has been accepted that such a guarantee would too greatly undermine the integrity of power matching, a loss that was unacceptable even though it would have assured greater student participation. Winston Churchill and the “no free lunch” economists would have understood.

The question often asked is, “why the emphasis on the number of ballots won rather than on the number of points accumulated in determining who won a particular round, whom that team will face in the ensuing round and, as we shall see, in the ultimate ranking a team is given at the conclusion of the competition?”

The reason is that a system that places primary emphasis on ballots more accurately reflects the considered judgment of the three-attorney panel. At least two of the three attorneys on the panel have determined, through their scoring of each opening statement, direct and cross examination, and closing argument, that one of the two teams has given the better performance. Thus, as shown in the table below, even though the decision of the two giving Team A the victory was a close one, with each giving the winning team only a three-point margin of victory, it is a more accurate reflection of the judgment of the panel than would be a system based on cumulative points where the third panel member could unilaterally determine the outcome despite not being determined to be the best team by two of the three attorney scorers. Here is how Teams A and B would fair under a system that used ballots as the determining factor versus one that used cumulative points:

	<u>Team A</u>	<u>Team B</u>	<u>Ballot To:</u>
Attorney Evaluator 1	95	92	Team A
Attorney Evaluator 2	88	85	Team A
Attorney Evaluator 3	<u>90</u>	<u>98</u>	Team B
Cumulative Points	273	275	

With ballots as the primary criterion, Team A wins 2-1. When cumulative points are given primacy, Team B wins 275-273 despite being declared the winner by just one of the three attorney scorers.

The power matching system used in the National Mock Trial Championship, with its emphasis on the number of ballots won rather than the cumulative points awarded, has not been controversial as means of matching teams in rounds two through four (as mentioned earlier, teams are randomly matched in the first round). Nor has the fact that it is common for three undefeated teams to remain after the four rounds of competition, with the one having the fewest ballots placing third while the other two face off in the championship round for first and second. It is when the four rounds of power matching have concluded and, say, eleven teams have 3-1 won-loss records and must be ranked from four to fourteen (the three undefeated teams taking rankings one through three), that the total number of ballots won by the team over the four rounds, and sometimes the cumulative points won, determine which team finishes fourth and which fourteenth. It is using total ballots, rather than some other criterion, to differentiate the top echelon of teams, that is at the center of the calls for change. Before looking a few different suggestions, let's briefly examine how the process of ranking the 3-1 teams is done under the current rules.

Final ranking in the competition is determined by the following criteria:

1. **Won-loss record:** a team with a 3-1 won-loss record will *always* finish ahead of a team with a 2-2 record even though the 2-2 team may have 8 ballots to the 3-0 team's 7 and have garnered more total points than the 3-1 team.
2. **Ballots:** A team can win as many as 12 ballots (3 in each of the 4 rounds). Among teams with the same won-loss record, the team with the most ballots *will* always place ahead of a team with the same won-loss record but with more total points.
3. **Total Points:** If two teams have the same won-loss record and have each garnered the same number of ballots, the team with the most total points will place ahead of one with the lesser cumulative point total.
4. **Point differential:** In the unusual case in which two teams have the same won-loss record, number of ballots, and cumulative points, the one with the greatest cumulative net margin of victory over their opponents (or, if both are net point losers, the one with the lowest cumulative margin of loss).

The suggestions for change, always well-intentioned and articulately presented, most often have their source in what is perceived as an unjust final ranking of a team coached by the person advocating change. It is understandable that (as happened recently) a team

that finished in the second ten, though defeating three teams in the top ten, and losing only to the eventual national champion, would find the system that reached such a result unfair (particularly when an opponent it defeated three ballots to none beat no opponents who finished in the top ten yet was itself a top-ten finisher). Another coach wondered why his team, despite winning all three ballots from a team finishing in the top ten, finished far lower than that team, though that team had a 3-1 record while his finished with a 2-2 record.

The suggestions for changing the system for the final ranking of teams is always given careful, respectful consideration by the Board, and have to this point been rejected- not because the Board is defending some *ancien regime* whose time has passed, but because no alternative that has been suggested better serves the interests of the participating students.

What are those interests? Is it really inevitable that we should have to suffer these “costs,” these seeming anomalies that result in a perception that the “system” is unjust, in our efforts to promote the basic values of mock trial within the constraints of a truly national competition? Can’t we do better? The answer is not without sacrificing some of the values and considerations that have animated the National competition since its inception. Those values and considerations, all of which have the purpose of enhancing the experience for students, include the following:

1. That the competition be a truly national one involving all state champions, and that efforts are made to encourage states not participating to consider doing so. This precludes reducing it to a “Final Four” format where the winners of regional competitions held in different venues compete for the national championship.
2. That the competition be conducted in two days so as to minimize the cost to students, both financially and in terms of days lost from school, and to assure the availability of courtrooms, attorney scorers, and presiding judges.
3. That all teams compete in each of the four rounds (no single or double elimination).
4. That every team member has an opportunity to perform in at least one of the four rounds, and that every effort is made to provide two such opportunities.
5. That the system be such that scores can be tabulated in a timely manner, each round begin on time, and the final rankings of the teams can be determined in the period between the conclusion of Round 4 and the awards banquet.
6. That the system be easy to comprehend and internally consistent.

Couldn’t these values and considerations be adhered to in a format that eliminates all anomalies and perceptions of injustice, one which, as one coach remarked, sometimes manifests characteristics of what physicists call “the butterfly effect where, in a chaotic, unstable closed system, a tiny event in one place can have enormous consequences elsewhere (e.g., a loss of one ballot making the difference between finishing fifth and fifteenth in a mock trial competition), the popular example being when the flap of a butterfly’s wings in Tibet causes a hurricane in the Caribbean because the global climate is a chaotic, unstable system.” After all, many states have high school basketball

tournaments in which the first round is also determined by a random draw as in mock trial, but whom a team will play if it wins or loses in each subsequent round, and the path to attaining a ranking of one through eight is clearly laid out in pre-determined patterns of advancement through one of two brackets. This format does not lead to disputes based on the final rankings of teams. Couldn't we emulate this format?

The answer is, "not without violating some of the essential values mentioned earlier, many of which concern maximizing the number of students who have an opportunity to participate." Such a system would accommodate no more than 32 teams in our two-day, four-round format. But our National competition, which regularly attracts more than forty state champions as well as the champions of Guam and the Northern Mariana Islands (and is hoping to eventually to attract all 50 and the District of Columbia), is too large to utilize this format. Moreover, such a system of advancement would preclude guaranteeing that each side of each team perform at least once and make it less likely that each side would have an opportunity to perform in two of the four rounds.

If changing the format of the competition to improve the perceived fairness of the final rankings is not a viable option, what about the suggestions offered by those who feel their teams deserved a higher ranking than they ultimately received?

Three suggestions for determining the final rankings of the teams have been offered:

1. "No team should rank higher than a team that defeated it."
2. "No team should finish higher than a team that defeated it by taking all three ballots regardless of the latter team's record."
3. "Points, rather than ballots, should be the tiebreaker to determine the final rankings of teams with the same record."
4. "Teams with the same won-loss records should be ranked according to the cumulative number of wins of their four opponents, with those whose opponents won the most matches placing higher than those whose opponents were less successful. Ballots and points would serve as secondary tie breakers."

While most of these suggestions were made in the context of determining the final rankings of the 3-1 teams, there is no principled basis for not applying the same criteria to the 2-2, 1-3, 0-4 and even the three 4-0 teams.

What all these suggestions have in common is that they assume that "defeating an opponent" in a particular trial is synonymous with demonstrating one's superiority, at that point in time, over the defeated team. The flaw in this reasoning is that if A's Plaintiff defeats B's defense, this says nothing about what would have occurred had B's Plaintiff faced off against A's Defense, nor what the cumulative outcome would be if both matches were to take place. Teams generally have one side that is stronger than the other. It is not anomalous that Team A's Plaintiff lost each of the three ballots to Team B's Defense by a few points and, because its Defense is considerably stronger, finish higher in the final rankings than Team B. Would it be more just to elevate a 2-2 team, Team B, which garnered eight ballots, to a higher final ranking than Team A, with a 3-1

record and nine ballots, simply because it lost all three ballots to Team B in the first round of the competition?

The reason for preferring ballots to points was explained earlier, but the suggestion that the record of one's opponents be the primary tie breaker is both novel and interesting. The fact that the coach who made the suggestion would have seen his team advance eight places in the final rankings does not mean that his proposal is based solely on self-interest or, even if it were, that that it should be dismissed out of hand. The proposal should be judged on its own merits with its acceptance being conditioned on its meeting the burden which those changing existing systems face: that the existing system is made better as a result of its adoption.

Another coach, without suggesting that the won-loss record of one's opponents as a tie breaker, indirectly asserting a rationale for doing so:

“Power matching is the best system that anyone has devised; it also has the odd effect of knocking strong teams into the losers' bracket after the first round. They then roll over relatively weak teams in the next three rounds and finish higher in the standings than the teams that defeated them.”

What would have been the results of the 2003 competition had record-of-opponents, rather than ballots, been used to rank teams with the same won-loss record?

In 2003 the adoption of the record-of-opponents criterion as a tiebreaker would have resulted in elevating two teams finishing in the second ten, with seven ballots each, to top ten finishers on the basis of the performance of their opponents rather than their own. They would have placed higher in the final rankings than two teams that each won ten ballots. Would this result in a more just outcome than the existing system? It is difficult to see how.

Perhaps, in the end, we are left to explain to our students not only the reasons behind the system for ranking teams, but also the fundamental truth expressed by former U.S. Supreme Court Justice and legal scholar Benjamin Cardozo:

“In the end the great truth will have been learned: that the quest is greater than what is sought, the effort finer than the prize (or, rather, that the effort is the prize), the victory cheap and hollow were it not for the rigor of the game”

Their final standing in the competition cannot in any way diminish what students have learned from the “rigorous game” that is mock trial experience. It is theirs forever, and it is the ultimate prize, one available to all who have the courage and opportunity to compete.

Rick is on the NHSMTTC Board and was the teacher coach of the mock trial team at Franklin High School in Seattle for 16 years. His team won the year 2000 National Mock Trial Championship.



NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP

BOARD MATTERS

Board Minutes

Issues that are discussed and decisions that are made at the Board of Directors' meetings will be reported on the NHSMTC web site following the adoption of the minutes for that meeting, which will take place at the meeting following that at which the issues were discussed and the decisions made. For example: when the minutes for the May, 2004 Board meeting were adopted at the October, 2004 meeting, they were posted on the web site.

The Case Library

State coordinators are requested to send an electronic copy of this year's case, together with a brief synopsis of the case to Dee Runaas, the Board archivist, for inclusion in the case library. Please double-check cases for correct pagination and missing pages, and the inclusion of exhibits and jury instructions. It is preferable that you e-mail your cases to Dee at drunaas@wisbar.org. If sending an electronic copy is not possible, please send her a disk or hard copy. Her mailing address is:

Dee Runaas
LRE Coordinator
State Bar of Wisconsin
5302 Eastpark Blvd.
Madison WI 53718-2101

Educators and others wishing to order a case may do so at <http://www.nationalmocktrial.org/cases/index.html>. You may request a maximum of five cases in a single school year. The cost is \$5 per case, or \$20 for five cases. The fee covers administrative costs associated with maintaining the library.

The case library is being updated and the new Board Chairman, Pete Jones, has received 19 cases that were used in competitions for 2003-2004.

Larry Bakko, the Board's Computer Consultant and Power Matching "guru," indicated that he is working on a search engine for the case library which now numbers over 200 cases. The search engine would make it easier to separate civil from criminal cases by categories as well as by the use of key words. The library

of cases, administered by Dee Runaas, NHSMTC Archivist, can be accessed at <http://www.nationalmocktrial.org/cases/index.html>.

Golden Gavel Nominations Wanted

Is there someone in your state who has displayed “exemplary dedication and commitment to the goals and ideals of the national high school mock trial program?” If so, please take the time to nominate that person for the Golden Gavel, the National High School Mock Trial Championship’s most prestigious award, which the Board presents each year at the National Championship awards banquet. Judy Yarbrow, state coordinator of Texas, won the 2002 award for her prodigious efforts on behalf of mock trial both in Texas and nationally. In 2003, Dee Runaas, Wisconsin state coordinator and Board archivist, and Justice George Carley of the Georgia Supreme Court, shared the award for their extraordinary commitment and dedication to mock trial both in their states and at the national level. The 2004 award went to Justice Gene Franchini of New Mexico, a national legend for his tireless work for mock trial both in New Mexico and at the National competition to which he travels each and every year to participate as a judge.

Nominations and supporting letters are due no later than February 1, 2005.

You can access the nomination forms at <http://www.nationalmocktrial.org/NominationForm.PDF>.

The Site- Selection Process

The 2005 National High School Mock Trial Championships will be in Charlotte, North Carolina, May 5-8. Oklahoma City, Oklahoma will host the 2006 competition, and Texas was chosen to be the 2007 host. States desiring to host the 2008 competition should submit a Letter of Intent to Bid no later than April 1, 2005. Each will make a presentation to the Board at the May, 2005 meeting in Charlotte, following which a selection will be made.

If your state is interested in bidding for the 2008 competition, is considering a bid for a subsequent year, or if you are merely interested in the process, you can access relevant information concerning the bidding and selection criteria at <http://www.nationalmocktrial.org/BidGuidelines.htm>.

LETTERS

Letters from state coordinators, teachers, attorneys, judges, students, or parents commenting on the value of the mock trial experience, or in response to articles or issues raised by an article in *Mock Trial Matters*, are encouraged. Please e-mail yours to richard.nagel@comcast.net.

A Winning Mock Trial Strategy: Be Not Just Highly Competent, But “Confidently Humble,” Too

Mr. Nagel,

I wanted to drop you a note to tell you how our state competition came out. Our team this year was made up of three of the original National Champions, (Anna Downer, Amber Gruber, and me) and four more novice competitors who served as the witnesses. By the time we arrived at the State Competition, we felt like we were in as good a position as we had been in the last two years. After four rounds of competition it was announced that our team would compete in the final round. (The State system is identical to the National system.) We competed in the final round against a local magnet school from Nashville, Hume-Fogg, and they were impressive. They reminded me of the Iowa team we faced at Nationals last year. They were aggressive but not overbearing, polite rather than angry, and exercised professional courtesy rather than intimidation tactics. They were a good, solid team.



Joshua Downer

At the conclusion of the trial, when the jury went out of the courtroom to count the scores, I went over to congratulate their team on a job well done. Before I could say anything, two of their attorneys almost simultaneously said, “You are Josh, the guy who wrote that article in the {*Mock Trial Matters*} newsletter, right?” Somewhat surprised, I responded that yes, I was. They told me that their coach had read the article and wanted his team to emulate our style. “We liked what you said about being confidently humble. We tried to mold our team after the way you described your team.” I was very surprised and humbled that people I had never met before took what I had written and used it with their team. I expressed my gratitude for their kind words and then awaited the announcement.

Several minutes later it was announced that Hume-Fogg was the champion. We would return home with the second place trophy and they would go on to Nationals. The competition coordinator handed the other team the traveling trophy that had been in our possession for two years. Hume-Fogg was a previously unknown team to us, which, for as long as I could remember, had not been a part of the competition. There was no mistaking the irony that after molding their team after ours, they beat us in the State finals. But as I thought about it, this happening reaffirmed in my own mind everything that I wrote. That we are not the only ones who follow those principles is a good thing, and the fact that we lost to a team that follows the same principles is a testimony to their correctness. As we were handed the second place cup, I was grateful for the opportunity I had to share from my heart in the National Newsletter.

Needless to say, I love to win. But I knew that if I were to be gracious in victory, I must also be gracious in defeat. For two years we had lived the Mock Trialers’ dream. Now maybe it was

someone else's turn. I deeply regret that we won't be able to participate in a competition that has meant so much to me for two years. I am glad, however, that I have no regrets about how our team performed both in and out of the courtroom. I wish Hume-Fogg the best as they attempt to defend Tennessee's title. I also take solace in this: I have one year left, and there is no shame in three out four.

Joshua Downer

Rick Nagel is a member of the NHSMTTC Board. Josh Downer was a member of the Tennessee team that won the National Mock Trial Championship in both 2002 and 2003, the first team ever to win consecutive national titles. He was a Senate page for Majority Leader Bill Frist in 2003-04 and is currently a high school senior hoping that his team will return for a shot at a third national championship.

Mock Trial's Benefits Are Enduring

Dear Ms. Runaas,

Congratulations on another successful year in mock trial. I am about to finish my first year at Harvard and can't believe how time flies.

I have many, many fond memories and valuable experiences from my years in mock trial and can't wait until I can give back to the program in some way. Among my friends here at school are members of the state championship teams from Nebraska and Michigan (a girl I cross-examined in the third round in 2002), and a member of next year's freshman class from Iowa, against whom we competed in the third round of 2003. I am also keeping up with a friend from the Alabama team who is a freshman at Yale.

I just thought I'd share that with you so you knew that in addition to the many memories and experiences we all gained from mock trial, we also have lasting friendships; they are especially meaningful because they are some of the few people who understand how amazing mock trial really is.

I was just on the website checking out this year's standings, saw your e-mail address, remembered our conversations over the past two years in Minnesota and Louisiana, and thought I'd drop you a note to say hello and thanks.

Hope you are doing well.

God bless,



Matthew Downer
Tennessee

P.S. I am thinking of coaching one of the local teams around here next year. If there is ever anything I can do to help out, please let me know,

Dee Runaas is a member of NHSMTTC Board and Board Archivist. Matthew Downer was a member of the Tennessee 2002 and 2003 National Mock Trial Championship teams.



PLEASE SHARE YOUR VIEWS CONCERNING WHY MOCK TRIAL MATTERS

It is hoped that students, teachers, attorneys, and other participants for whom mock trial has been a vehicle for personal, intellectual, or professional growth (or non-participants, such as parents who have witnessed such growth), will share their reflections in future issues of the newsletter.

Please e-mail comments, corrections, suggestions for future articles, requests for information, and offers to write an article for a forthcoming issues, to

[richard.nagel.@comcast.net](mailto:richard.nagel@comcast.net)