



# Mock Trial Matters

The official newsletter of the  
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*Mock Trial Matters*, the official newsletter of the National High School Mock Trial Championship, endeavors not merely to inform state coordinators and prospective participants concerning upcoming national mock trial competitions, the competitions in the various states, and related “matters.” It also endeavors to demonstrate *why* mock trial *matters* – that is, why it is an activity that deserves the enthusiastic support of educators, parents, and the public, as well as of the legal community.

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.

The NHSMTC Newsletter Committee: Renee Hildebrant, Andy McVey, Rick Nagel, Chair

Please e-mail comments, corrections, suggestions for future articles, requests for information, and offers to contribute to forthcoming issues, to [richard.nagel@comcast.net](mailto:richard.nagel@comcast.net).

## **Why Mock Trial Matters: Two Student Perspectives**

Gary Look was an attorney on a Washington state mock trial team that was second in its state competition in 1996, never had the opportunity to participate in a national competition. Nevertheless, he found mock trial to have been the most significant experiences of his high school years. Many of the colleges and universities to which he applied require a personal statement of such an experience, and what follows is his.

### **A Personal Statement** by Gary Look

In my junior year, I joined my school’s Mock Trial team, never expecting the experience to have such a considerable impact on me. During the team’s first meeting, the teacher/adviser informed us that many past team members had found their involvement with Mock Trial to be one of the most worthwhile experiences in their four years of high school. Upon hearing this, I was at first incredulous. I had joined the team because I had taken this teacher’s introductory law class and had really enjoyed the teacher and the mock trials which we held in that class. This was my motive for joining Mock Trial, not because I was looking for any particularly profound experience. However, as I continued to work with my teammates, I discovered how truly enriching it was to participate in Mock Trial, and in turn, it did indeed become one of the most significant experiences in my high school career.



The defendant in our fictitious case, whom we had to both prosecute and defend, was a college student accused of malicious mischief and burglary. The coaches assigned me the role of prosecutor. In constructing, from scratch, a case against the defendant, my co-counsel and I worked in close conjunction with each other and with the attorneys for the defense in order to gain a more comprehensive view of the evidence. Together, the four of us would exchange our theories of the case, explain why, or why not, the defendant was guilty, and support our views with facts from the case. Inevitably, this process would lead us to uncover weaknesses in each other’s arguments, thus

causing us to continuously re-examine our thinking. In doing this, we were able to gain a more holistic view of the case and make both our prosecution and defense cases even more strongly. In this sense, Mock Trial taught and reinforced one of the most important skills I could ever learn: to be able to convincingly argue your case, you must possess a thorough understanding of your opponent's argument.

Mock Trial was more than just an intellectual experience though. There was a special camaraderie, intangible yet ubiquitous, which every member of the team shared with every other member. Although I am a part of many clubs, I rarely ever experience the same sense of unity and vibrancy as there was on that Mock Trial team. At no time did the bond we share manifest it more clearly than when we competed for the state championship. For some inexplicable reason, the foremost event that comes to mind occurred on the second night of the competition. It was 11 PM when the defense attorneys came knocking on the door to my hotel *room*. "Is it too late to go over the case?" they asked.

Even though I had readied myself for bed, I said that it was never too late, and invited them in. We then spent the next half hour making final refinements to the defense case. I learned how to correctly pronounce "vehemently" (I had been mispronouncing it until then). Admittedly, there is nothing especially profound in tinkering on a project in the last minute. What was special was that in that *room*, there permeated an incredible sense of purpose, and the extraordinary devotion we had towards each other. We didn't win the championship, but there was no finger pointing in the end. During the preparation before and in the actual competition, we were united as a team; and as a team, we were united in defeat.

Participating in Mock Trial was an invaluable experience, both academically and personally. Preparing a case was an intellectually enriching experience. However, the bonds that were formed between team members, the camaraderie shared- these are the things to be cherished.

*Gary received his master's degree in electrical engineering from the Massachusetts Institute of Technology in June 2003, and has returned this fall to pursue his doctorate.*



### Mock Trial – The Training Ground by Joshua Downer

I paced back and forth, staring hard at the tiles on which I walked. I glanced up at the four-story tall statue, a magnificently sculpted Indian, standing in the St. Paul courthouse. With a furrowed brow, I waved off my brother Matthew, also my team captain, as I tried to figure out how I could convince him just to let me keep my bread-and-butter argument the same. The pre-trial "request for clarification," which some people might mistake for a motion in limine, (those are prohibited) is my favorite part of the trial.

From a presentation perspective, it is an opportunity to grab momentum by showing knowledge of the law, ability to argue persuasively, and ease in the courtroom. From an evidentiary perspective, this particular motion presented the distinct possibility of having half of the other team's case thrown out before they even had a chance to try it.

Matthew insisted that it was safer to omit the motion all together. "It's smoke and mirrors, Josh, and the jury will see right through it. Some jurors may even see it as a cheap shot, and that's the last thing we want." But I wouldn't give up. "We are at the National Championship, bud, and we may only get one shot at this. We have to go for the throat and not let go until we either win or are sent packing." Matthew, a bit irritated at having to argue with his co-attorney five minutes before the first trial, reminded me of our team philosophy. "Remember Josh, confident but humble, matter-of-fact but not arrogant. Let's not forget how we got here."

As I walked from the lobby to the courtroom, I knew my brother was right. Through tough competition, immense pressure, and unprecedented success, I had learned a great deal. From the beginning, we said that we would always put our faith and relationships before winning – that we would not sacrifice our integrity in order to reach our highest high school goal. "We got here by taking the high road," I thought. "We can't give that up now."

The first time I entered a courtroom setting was in April of 2000. When a private school in our area invited local high schools to compete in an off-season tournament on their campus, I saw it as an opportunity to get Mock Trial experience before entering high school. As I walked into the classroom-turned-courtroom wearing an oversized suit and holding my dad's old briefcase, I knew that I had found the activity I wanted to pursue in the coming four years. I thought I had a pretty good idea of what competing in Mock Trial entailed. But looking back, I know that I did not have the foggiest notion of what this journey would teach me.

I soon found out. Through the coming competitions, I learned how to make a coherent argument when a championship and the expectations of my peers depended on it. I learned that there are two sides to every point of view and that understanding the other side is imperative to defending my own. I learned that if I don't look someone in the eye, they won't trust me, much less be convinced by my argument. I learned that pain, rather than joy, is the ultimate tutor. Examples of this are endless. When Circuit Court Judge Warren Moon looked at me and asked in a skeptical tone, "What is the relevance of this testimony, Counsel?" I didn't have an answer, and everyone in that courtroom knew it.

That hurt. But it taught me that I should know why I say something before I say it. When Tennessee Supreme Court Justice Mickey Barker asked with a slight smile, "I'm sorry, one more time, what are the grounds for your objection?" I learned that preparation and clarity are not as overrated as I thought. When a juror said in front of the whole courtroom after a trial that she thought my "cross-examination was great, but should have ended after the first time you made the point, not the 5<sup>th</sup> time," I learned that, despite all my instincts, shutting up and sitting down is sometimes a good thing.

But I also learned that there are times when I need to step up. One of those times was after two hard trials on a Friday night in Nashville, Tennessee, when every other State competitor was at the highly anticipated dance downstairs. That's when I needed to call out all the favors my witness owed me from the past couple of months and work on the notes I took during her testimony. That's when I had to muster up every bit of discipline I thought came naturally and listen to my coach badger me for the low points of the day's trials. That's when, despite the fact that I was in Music City USA on a Friday night in the spring, I needed to get to bed early so I would be fresh for the rest of the competition. These were the times where I learned that what I *think* I want to do, and what I *really* want to do, are often two separate things. I didn't go to the dance, but the next day I did get to hold the biggest trophy I could ever have imagined. That was when I experienced in a very tangible way how hard work and discipline pay off.

These were not the lessons, however, that were running through my head as I got up to give the defense opening statement at the first round of the National Competition. As I spoke of how the evidence would support our case, I thought about the biggest nugget of wisdom I had obtained from Mock Trial. When I started, I was well aware of the strategy often used by the successful teams in our state. The strategy was to intimidate the opponent at all times: before, during, and after the trial. In the hotel a day before the competition, some would smile coldly and walk off. In the courtroom, before the judge walked in, the same people would shake hands with the opposing team and say, "Good luck. You are going to need it." And during the trial, they would attempt an aloofness that communicated to all that they regarded themselves as superior to the other team – a perfected version of their competition. Intimidation was the secret to success.

Winning a state championship had shown me the opposite. From the beginning of the Regional Competition to the end of State, we had endeavored to treat our opponents with dignity and respect before, during, and after the trials. We had attempted to show that we considered "others better than ourselves," as it says in the second chapter of Philippians. And we had purposed to conduct ourselves with professional courtesy, even if we were facing a team which made that particularly difficult. When jurors and spectators complimented our team, we deflected praise to the ones who truly deserved credit: our coaches, our parents, and our God. Instead of manipulating people, we built relationships. Instead of building our own reputation, we tried to build that of others. We weren't successful in that endeavor all the time, however. On one particular occasion, we failed miserably in accomplishing that goal. But we tried. And as I wrapped up my opening statement, I knew that being humble is not a handicap. I had learned that

doing what is right is never wrong in the long run.

Twenty-four hours after giving that opening statement, the most overwhelming announcement of my life was made in front of a thousand people in that Radisson Hotel: Team Tennessee was now Team USA. That was over a year and a half ago. Since then our team has been blessed to win another National Championship. As I reflect on Mock Trial's significance to me, I think about it as an opportunity, a training ground. It has been an opportunity to experience real life before being thrust into it and forced to succeed. But it has also been a training ground, where mistakes aren't fatal, but hurt just enough to make them memorable. Soon I will not be on a training ground. Like so many high school students, I will be launched into college and eventually the marketplace. In a professional world where manipulation, intimidation, and insincerity are temptations to all who enter, the lessons learned through Mock Trial will be just as true, and even more necessary.

*Joshua Downer, now in his junior year of high school, was an attorney on the 2002 and 2003 Tennessee state champion team, the Family Christian Academy Homeschoolers, which became the first team to win two consecutive national mock trial championships. He is spending fall quarter working as a page for United States Senator Bill Frist.*

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## **Why Mock Trial Matters: The Perspective of a Teacher Coach**

### **THE PLAYING FIELDS OF MOCK TRIAL** by Rick Nagel

*Rick Nagel, taught Law and Society and coached mock trial at Franklin High School. He is currently on the Board of Directors of the National High School Mock Trial Championship. A version of this article appeared in Putting On Mock Trials, a publication of the American Bar Association.*

It was the spring of 1985 and I was sorting through the promotional mail for books, simulations, and maps that all social studies teachers receive. Most of it I discarded, but one brochure captured my attention: it advertised a high school mock trial competition in Seattle that May. I had been teaching Law and Society at Franklin High School for 18 years and had done a mock trial each semester, but never in an interschool competition. Mock trials had always energized my students, but the emphasis was on their understanding the essential components of a trial: the opening statement and how its function differs from that of the closing argument, and how the direct and cross-examination differ, rather than to demonstrate mastery of some of the essential skills of trial advocacy and a basic grasp of the rules of evidence.

So I decided to recruit a group of students to compete, heedless of the fact that I knew little more of the rules of evidence than they did, nor how to construct an effective opening statement or closing argument, much less the elements of an effective cross examination. We competed, had fun, and were never in contention. My most enduring memory is of a student's futile effort to get in a piece of evidence. He tried at least three times, but his opponent's objections were sustained. If the rules had permitted him to call a "time out" to ask me how to overcome the objections, I would not have known what to tell him.

But I resolved to learn. Local attorneys were eager to help, and I was eager for their assistance. I familiarized myself with the rules of evidence and read everything I could on trial advocacy. Two years later, we placed second in the state, and in 1990 won our first state championship and traveled to Portland, Oregon to compete in the National High School Mock Trial Championships. We tied for eleventh, and each subsequent team resolved to finish in the top ten. This was not to happen soon. We won state championships in 1991, 1992, 1997, and 1998 but fell far short of our goal, placing between 20<sup>th</sup> and 24<sup>th</sup> (out of more than 40 state champions) in each of those years. I thought that we would never escape our rut - five times to nationals and each time winning two matches and losing two, and never placing in the top ten.

In 1997 the current attorney coach, Charlie Williams, who had been a student of mine in 1970, long before there was a mock trial program, became part of the program. Charlie is a dedicated student of trial advocacy, and has done an extraordinary job of imparting the lessons of his twenty-five years of study and practice to the students. At least once a week during the mock trial “season,” which encompasses most of the school year, he works with the students, honing their knowledge and effective application of the rules of evidence, the art of cross-examination, and the delivery of compelling opening statements and closing arguments. Another former student, Mollie Thompson, lent her theater expertise to the development of effective witness and attorney performances. We started to improve. After winning our sixth state title in 1999, we finished 12<sup>th</sup> in the national competition in St. Louis.

Finally, in 2000, after winning our seventh state championship, we achieved our goal: we not only placed, but also won the national mock trial championship in Columbia, South Carolina. In 2001 we again were state champions and finished third at nationals. In March of the following year we won our ninth Washington State Mock Trial Championship and finished sixth in the national competition.

But when students are given an opportunity to say what is most significant about their mock trial experience, they comment not on winning championships, or placing in the national competition, but on the camaraderie with fellow team members, and the self-confidence, maturity, and strength of character that manifested themselves in the arduous process of preparing for competition. One student on this year’s team said, “mock trial is an unbelievable experience. It made me realize the talents I have inside me.” Another said, “I’ve never worked so hard in my life and had so much fun doing it.” A third said that “mock trial is the most rewarding and enjoyable experience of my entire high school career. I learned to have faith in my ability to accomplish things I never thought I was capable of.”

A fourth student learned a more difficult - but perhaps more important and enduring – lesson that, he told a gathering of mock trial students and their parents at the end-of-the-year dinner, was far more important than the trial techniques and rules of evidence he had learned in his three years of mock trial. He had the courage and class to reveal to all assembled what he had written me two weeks before:

*Dear Mr. Nagel,*

*I have been thinking about what to write to you for quite some time now and hope that I will get all my thoughts across.*

*There was no doubt was my selection to the B Team [the junior varsity, or second team] was devastating. I felt that I had paid my dues. I had spent my sophomore year learning the ins and outs of mock trial and my junior year as a witness on the A team. I saw myself as a person who had clout on the team, a near automatic selection. But I learned that not much gets by a person who has taught for 34 years, a man who has led a team to a national championship.*

*Unfortunately, it was my error in judgment that told me that I could give a half-assed effort and still make it. I underestimated the talent that was coming in and thought that no matter how much talent there was, that it would only make the B team that much stronger, not that it would endanger my chances of making the A team [the varsity, or First Team]. You saw my effort. You knew that I was giving less than 100%. When you kept reminding us that competition for spots on the A team were going to be tough, that no one’s spot was secure, you were probably referring to me. So when you told me I was not going to be on the A team, I was sent for a loop. I had no idea how to react.*

*Shocked, a little depressed, a little angry, I didn't know how to feel. I had said in the questionnaire you gave us at the beginning of the year that it was varsity or nothing, and I had to think whether I would hold up to my word. I decided to stick with mock trial in hopes of moving up, if I worked my tail off.*

*Before the district competition, I thought that if I worked harder, I would be moved up to the A Team and someone else would be demoted to the B Team. I was excited at the possibility I might redeem myself and salvage whatever ego I had left. But something told me that there was a reason as to why I was on the B team in the first place. How was it that someone who worked harder than I did was going to be demoted because I got a fire lit under me and decided finally to go to work? In the workplace, does someone who has proven his skills and worked hard get demoted because a slacker decides he finally wants to put in some effort? No. And I realized that my redemption was neither realistic nor just. I knew I had to work with what I had, and make the most of it.*

*So I put in the effort that should have been put in during tryouts. I worked as if I were on the A team; I wanted to be better than them. I wanted to prove to myself, and also to you, that I was right up there with them.*

*Looking back, I took so many things for granted. I was high and mighty with my accomplishments. But I was brought to ground zero. And I thank you for doing that. I have learned more than just how to argue objections or how to write good papers. I learned how to be humble. And every time I start to see my head inflate, I think of what happened this year, and how nothing is handed to you unless you work for it.*

*If I am to go far in life, it will be because of the decision that you made that was so hard for you. I bet you never knew that, essentially, you decided to teach me how to succeed.*

The Duke of Wellington once said that the Battle of Waterloo was won on the playing fields of Eton, where competitive sports molded the character of young people by requiring for success the will to prevail despite fear, and fatigue; the making of quick and irrevocable decisions; courage; sportsmanship; and teamwork.

Likewise, young people's characters are tested on the playing fields of mock trial, where they are tempered in a crucible where those same qualities are essential to success. The character-forming benefits of mock trial, like those of playing rugby at Eton, are imparted regardless of whether one wins or loses. It is the *process* of pursuing victory, of giving one's all, that produce men and women of character. Former U.S. Supreme Court Justice Benjamin Cardozo described this best:

***“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”***

## Mock Trial Matters in the States

### OREGON

Oregon has also developed a program to deal with a problem that many state coordinators have faced: poor sportsmanship. The problem is not with students being poor losers but, as is often the case in organized sports, with their parents (and their coaches) displaying less than exemplary sportsmanship. Marilyn Cover, Executive Director of the Classroom Law Project and veteran director of the Oregon mock trial program, believes that much of the problem stems from an inadequate understanding of the mock trial process and the inherent subjectivity of the scoring.

Here is what Oregon has done, under Marilyn's leadership, to deal with the problem:

We have a separate orientation for the parents prior to the first round. We tell them that most of their children will not be on the winning team, and then we spend time talking about the importance of accepting not winning with grace and of their serving as good role models. We answer questions about rules and scoring, and request that they be silent observers, and that they not speak to any of the judges or raters who they may know. The orientation has greatly increased parents' understanding of the process, and the announcement of the winning team has not been as difficult because, before the announcement, we remind them of what we told them in the orientation.

Oregon also conducts a weekly question and answer session about the state case on its Web site, which Marilyn says, "has been both a cost saver and an excellent means of allowing everyone to stay in contact."

### INDIANA

*When I reviewed A Survey of State Mock Trial Program Participation, Costs, and Sponsor Support, I noticed something strange. Indiana had reported having no sponsoring organization, yet someone paid as much as \$3300 of the state champion's cost of competing in the national competition. Curious as to how this was possible, I e-mailed Susan Roberts, the Indiana state coordinator, for an explanation, not even considering the possibility that a group of attorney volunteers ran the program and used the \$150 per team registration fee for the benefit of the students.*

*Susan says that it is too much to describe her program as exemplary, but I think you'll agree that the dedication to students of this small group of attorneys is exactly that.*

Rick,

In reply to your question, we have five full-time practicing attorneys that run the program, which includes writing the case, scheduling, and running the regional and state competitions (which also includes art and journalism competitions). We also hold a workshop for new schools. In addition, we developed a website for the program and developed a video to show judges/attorneys scoring the competition, and we are developing a "how-to" training video for students, teachers, and coaches. One of our volunteer attorney board members also coaches one of the teams. Collectively, we spend 700-800 hours annually to run the program (which does not include any of the time that the one attorney spends coaching his team). Of course, we have other attorneys that volunteer to coach and to judge the competitions, but I believe most state programs have the same support from the bar.

## **NATIONAL MOCK TRIAL MATTERS**

### **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](mailto:drunaas@wisbar.org). If sending an electronic copy is not possible, please send her a disk or hard copy. Her mailing address is:

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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 Golden Gavel Nomination Process**

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.

**Nominations and supporting letters are due no later than February 1, 2004.**

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

### **The Site- Selection Process**

The 2004 competition will be in Orlando, Florida, with Charlotte, North Carolina selected for 2005, and Oklahoma City, Oklahoma for 2006. Thus far, Alaska and Texas have indicated a desire to host the 2007 competition and they, together with other states that submit a Letter of Intent to Bid no later than April 1, 2004, will make presentations to the Board at the May 2004 meeting in Orlando, after which a selection will be made.

If your state is interested in bidding for the 2007 competition, is considering a bid for a subsequent year, or if you are merely interested in the process, you can access the information concerning the process for submitting a bid at <http://www.nationalmocktrial.org/BidGuidelines.htm>.

### **2003 Survey of State Mock Trial Participation, Costs, and Sponsor Support**

***LINK TO 2003 SURVEY OF STATE MOCK TRIAL PARTICIPATION, COSTS, AND SPONSOR SUPPORT***