



Effective Upper School Teaching & Leadership with Dr. Christopher Schlect

Lesson 9: Cultivating Eloquence: Mock Trial

Outline:

Eloquence for Secondary Students

Mock Trial

- Mock trial is a declamation extended and further. It is a present day application of the Roman practice of declamation. It is an actual courtroom trial.
- A declamation captures the elements of any kind of speech: narrative, proof and refutation, pathos, and ethos. The courtroom involves the entire smorgasbord from which other forms of oratory take samplings.
- In our society, a world of mass media that has reduced a lot of public discourse to something that has been commodified. It is hard to point to a certain arena where real oratory matters. Today's courtrooms may be one of the last bastions of real oratory.
- The western tradition of law still prevails in today's courtrooms. The western tradition of law still honors the presumption of innocence.
- We have a relevant application of what the Romans recognized as oratory.
- A mock trial is based on a scenario that is given to the students, but it is far more developed than the declamation scenarios.
- Mock trial summons up all the qualities and skills that you want to see in a rhetoric problem that you give to your students: invention, arrangement, style, memory, and delivery.
- When you add the elements of competition and team cooperation, which induce student's to excel, mock trial is uniquely suitable to your students.

Mock Trial Competition

- Interscholastic activity staged in actual courtrooms.
- This creates a highly skilled and highly competent cadre of rhetoricians in your school. Your mock trial team shapes the culture of rhetoric in your school.
 - The students in the select choir would be embedded among the students in the broad choir and the whole school choir was elevated because of the presence of these students who excelled amidst the rest of the choir.
- High school mock trial is organized by the state's bar association.
- Mock trial cases include:



- Six witness statements, three representing one side and three representing another sides, supply backstory and point of view.
- Exhibits are included.
- Criminal case will include a charging document.
- A civil case will include a plaintiff's complaint and a defendant's answer to that complaint that bring out the legal issues that are in play.
- All mock trial cases include jury instructions.
- The team members prepare to take the case to trial.
- What a trial involves:
 - Team members take up attorney roles and witness roles.
 - The witness statements means that student will embody and embrace that witness (a role play).
 - Students who adopt the role of witnesses have to review the statement and role play in character.
 - Attorney's call the witnesses to the stand and question them.
 - There is always material in the witness statements that is unfavorable to your case. These things will come out in trial (preconceived prejudices). If a witness offers testimony that goes beyond statement, then the cross examining attorney will draw it out, and skewer the witness.
 - Controlling the witness is part of the art of cross examination.
 - Everything is governed by rules of evidence.
 - Deal with objections to testimony.
 - There will be opening statements and closing arguments based on the testimony that did come out.
 - This is the way a conventional trial typically proceeds. Enlist the expertise of a trial attorney in your community to help you coach your team.
- Preparing with students for a case:
 - Have the students overview the case for about fifteen minutes.
 - Go to the jury instructions, parse the jury instructions.
 - Make a chart for the witnesses and the testimony that you want to elicit for that witness.
 - Make strategy decisions about arrangement. Tell a story to the jury. You want the students to see how arrangement matters.
 - Begin developing the opening statements to offer a road map and the closing arguments to argue at the end of trial.
 - In practice, stage witness exams. Invite witnesses to push back on the attorneys who are examining them. We break the students down through our criticism as coaches. Demonstrate to the students why something is not working.
 - Try to put students through situations that they did not expect.
 - Invite the teammates to throw unexpected statements at one another.



- The students then learn and get comfortable rather spontaneously yet smartly and with poise to the unexpected.
- What are we looking for in a successful performance?
 - Witnesses
 - If someone is adopting a role as a witness, they need to speak clearly and definitely (embody the character).
 - They need to be in character and yet stay in character.
 - A good witness will remember which side of the case that they are on.
 - The attorney should not have to pry favorable testimony out of his own witness.
 - When a witness is subjected to cross examination, he needs to remember that the opposing attorney is asking questions from the opposite perspective.
 - Attorneys
 - Attorneys have to examine their own witnesses and cross examine the opposing witnesses.
 - When examining their own witnesses, they need to work together with the witness.
 - A well designed examination will focus on two or three fruitful areas of questioning:
 - They need to study the case materials working through the lens of the jury instructions.
 - The jury instructions identify the decision that jury needs to make at the end of trial.
 - They need to develop questions that emphasize the merits of their case.
 - The questions should make clear to the witness what exactly it is that you are getting at.
 - The question should elicit specific information not general vague impressions. If the witness did not quite supply what you were looking then come at it again and rephrase with a new question that will prompt the desired response.
 - An attorney should react naturally to the witness.
 - An attorney cross examining an opposing witness:
 - The attorney needs to force the witness to work with him, whether the witness is inclined to do so or not.
 - The attorney needs to not be a jerk about it. That undermines the attorney's credibility with the jury.
 - Fruitful areas of questioning:
 - The fruitful areas of question are those that support your side of the case and undermine the other side of the case.



- You have to ask about facts not about conclusions or interpretations.
- You need to ask concise questions that elicit one little detail per question.
- If you want to elicit a lot of information, ask a lot of discrete questions.
- Never elicit a lengthy explanation for the witness and never invite the witness to voice his opinion, that's like handing the microphone to the witness to tell his side of the story.
- You're trying to lead the witness to tell your side of the story for you.
- You ask only the questions that you know the answer to.
- The cross examining attorney needs to know the witnesses witness statement just as well as the witness does, if not better.
- If a witness dodges the question, go back over it, rephrase until you get a definite answer.
- In a cross examination, both the witness and the attorney are fighting for rhetorical control. A good witness will steal the air in the room from the attorney. A good attorney will steal the air in the room from the witness.
- The back and forth of trial involves all kinds of spontaneous rhetorical decisions that are grounded in a pre-planned and pre-prepared game plan knowing that an opponent is trying to knock them off of their game plan.
- Mock trial summons and cultivates some of the best skills out of our students. Mock trial is declamation at its best.
- Cicero would have been delighted to see a great round of high school mock trial!
- This is the capstone of eloquence in our classical and Christian schools.