

Mock Trials Are Informative

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An excellent addition to a forensic accounting or fraud course is a mock trial near the end or at the end of a semester. My students have engaged in a mock trial on several occasions. I break my students into three or four member teams. I prefer to have my student groups prepare for more than one trial, so they do not cheat and fall over each other while researching. Since you need both a prosecuting

team (criminal) or plaintiff (civil), and a defense, if you have 24 students there is a need for 3 disputes (24/8). Thus, for a 16-group class, there would be a need for two disputes (16/8). I prefer 3 person teams rather than 5 person teams. Four person teams will work also.

Keep in mind that one student can play more than one part (e.g., a fact witness and an expert witness). Students will wear wigs, different hats, etc. In general, each team will need one or two attorneys, at least one fact witness, and one expert witness. While two teams are engaged in a trial, the other students can be jurors, bailiff, investigative reporter, etc. I bring in a lawyer for the judge, and I use the courtroom at LSU's law school. I prefer a mock trial dealing with an accounting, auditing, or taxation subject. In a three hour night class I can get in at least two trials, and possibly have the other teams give their opening and closing arguments. In the Spring 2009 class, I had 38 students, so I had two juries. I randomly select the trial five minutes before the night class. If you want only one sample trial, the first time I used the facts in J.T. Reisch, "Brodnax Minerals Company: A Case Study for Auditors" *Responsibility: Issues in Accounting Education*, Vol. 14, No. 4, November 1999, pp. 601-612. I handed out a copy of the article to my class.

Other sources on the Internet are:

- ABA, Putting on Mock Trials (includes some sample mock trials)
- Mock trial, Wikipedia.org/wiki/Mock_trial
- Guide to Conducting Mock Trials (http://www.19thcircuitcourt.state.il.us/bkshelf/resource/mt_conduct.htm)
- Rules of Evidence Cheat Sheet
- The Ten Commandments of Demonstrative Evidence in Litigation (Fulcrum Inquiry)

Steps in Conducting a Mock Trial

1. Pre-trial preparation of information gathered from different sources by students.
2. Courtroom participants: Judge, attorneys, witnesses, jurors, plaintiff, defendant, and a bailiff.
3. Beginning the trial, the bailiff announces: "All rise. The Court of the _____ is now in session; the Honorable Judge _____ is presiding." Everyone remains standing until

the judge enters and takes the bench. The judge asks the bailiff to call the day's calendar and the bailiff says,

"Your Honor, today's case is _____ vs. _____. " The judge asks the attorneys for each side if they are ready to begin the trial.

4. The Trial. Each attorney introduces him/herself: "May it please the court and members of the jury, my name is _____, counsel for _____ in this action."

5. Attorneys for the plaintiff (first) and the defense (second) deliver their opening statements prepared from studying the facts of the dispute.

6. Plaintiff calls each witness until finished calling witnesses and conducts direct examination for each one (direct examination).

7. Defense cross-examines the witnesses called by the plaintiff before each witness steps down.

8. The defense calls witnesses after the plaintiff rests the case (direct). Plaintiff's attorney may cross-examine witnesses called by the defense before each witness steps down.

9. Defense rests. Preparation of closing arguments.

10. Closing arguments in a trial: Plaintiff's (or Prosecutor) attorney first, then defense.

11. Jury instructions if a jury trial. Jury's verdict. This verdict must be unanimous in a criminal trial, but not in a civil trial.

12. The sentence. The judge decides the punishment: jail, money, and/or time of volunteer service in a criminal trial.

Some Mock Trial Topics

1. Should Timothy Geithner, current Secretary of the Treasury, be prosecuted, either criminally or civilly, for failure to pay \$34,000 and \$40,000 in back taxes and interest? Should penalties under Section 6662 be assessed? He prepared his own taxes for 2001 and 2002, but used paid preparers for 2003 and 2004. See Michael Joe, "Finance Committee OKs Treasury Secretary Nominee Geithner," Tax Notes, January 26, 2009, pp. 461-462.

2. A lab assistant at Honeybun Inc., Bud Albert, is run over by a train after taking samples from a tank on Honeybun's premises. The railroad employees are in the process of spotting the train cars in front of numerous tanks. No one saw how the accident happened. This lawsuit is for damages by the spouse of Bud Albert. Pay special attention to the value of the employee's life. See *Butler v. Illinois Central Railroad* (Baton Rouge).

3. Barry Bonds has pleaded not guilty to perjury and obstruction of justice charges and has been free on \$500,000 bond. These charges stem from his 2003 appearance before a federal grand jury probing the distribution of steroids in the San Francisco area. Did Bonds commit perjury and obstruction of justice? [You also can use Roger Clemens or Sammy Sosa. See Topic 9 below.]

4. Insider Trading Charges Against Mark Cuban. SEC Litigation Release No. 20810/November 17, 2008.

5. *SEC v. Whitworth Energy, Resources et al.* U.S. District Court Central District of California Western Division (Ponzi Scheme).

6. John Q. Auditor, a recent accounting graduate from the University of Cardinals, knew little about auditing liability. Because of a heavy workload, John's accounting firm provided him with minimal guidance, especially about the risks involved in auditing and reviewing the financial statements of a large corporation with significant accounts receivable. The accounting firm also

failed to instruct him on the Statement of Auditing Standards (SAS) 99 in regards to the consideration of fraud in financial statement audits. While auditing the financial statements of a new Louisiana wireless telephone company that had recently gone public, John failed to confirm several large accounts receivable. Most of the accounts he failed to confirm turned out to be fraudulent. These accounts exceeded \$4 million and provided the company with a positive net worth. As a result of the unsupervised work performed by John Q., the accounting firm issued an unqualified opinion. The client subsequently used the opinion, along with the fraudulent financial statements, to obtain a \$3.5 million loan from a local New Orleans bank. Three months later, the wireless telephone company filed for Chapter 11 bankruptcy protection and the fraudulent accounts were discovered. The bank and the company's shareholders sued the accounting firm for accounting malpractice.

7. A wealthy Baton Rouge client sought estate-planning advice from a midsize accounting firm. The client's goal was to avoid any "generation-skipping" tax. An accountant, Jane M. Doe, who had little gift and estate tax experience, was asked to attend the initial meeting with the client and was then instructed to complete the appropriate tax forms.

At that time, the Internal Revenue Service had not issued regulations on the key provisions of the "generation-skipping" tax. Unfortunately, the accountant misunderstood the statute and failed to properly complete and check the appropriate generation-skipping portion of the tax form. A senior partner briefly reviewed the tax form and approved it without revision. As a result of the oversight, the client faced a substantial increase in tax liability and sued the accounting firm for \$4 million for accounting malpractice.

8. Bubba Adder, a recent accounting graduate from an accredited university in the south, knew little about accountants' liability. Because of a heavy workload, Bubba's accounting firm provided him with minimal guidance, other than giving him last year's workpapers. They failed to instruct him on SAS No. 99. Bubba mailed confirmations for accounts receivable and the major bank account balances from the client's mailroom. One of the bank accounts was a \$3.4 million Bank of America account in the Cayman Islands, which provided the agricultural business with a positive net worth. As a result of the work performed by Bubba, the accounting firm issued an unqualified opinion. The company subsequently used the financial statements to obtain a \$3.2 million loan from a local Baton Rouge bank. Four months later the agricultural company filed for Chapter 11 bankruptcy protection, and it was discovered that the company had prepared a fake confirmation letter from the BOA bank in the Cayman Islands and mailed it back to the accounting firm (there was no money in the bank). The Baton Rouge bank and the company's shareholders sued the accounting firm for accounting malpractice.

9. Did Roger Clemens take steroids or human growth hormones (HGH)? Did Roger Clemens commit perjury and obstruction of justice in his testimony on February 14, 2008?

10. Defamation lawsuit against Oprah Winfrey brought by a former headmistress of a school that Oprah set up in South Africa.

11. Criminal trial of R. Allen Stanford accused of operating a ponzi scheme.

12. Criminal trial of two computer programmers for Bernard Madoff's firm, Jerome O'Hara and George Perez. An alternative is to have a criminal trial of the accountant for Madoff.

13. Roger Clemens' defamation suit against Brian McNamee.

14. Should Charles Rangel, current chairman of the House Ways and Means Committee be prosecuted for failure to disclose rental income from an apartment in Dominican Republic?

15. Criminal tax trial against Richard Hatch for the failure to report \$1 million of Survivor winnings and \$350,000 for professional appearances.
16. Criminal or civil tax trial against Tom Daschle for failure to report the free use of a car and driver provided to him by Leo Hindery, Jr., plus about \$80,000 of consulting income, and \$25,000 in payroll taxes. He paid more than \$100,000 in back taxes on January 2, 2009.
17. Criminal trial of Sir Allen Stanford (ponzi scheme).
18. Criminal/ Civil trial of the New York Mets board member Arthur Friedman, CPA, lawyer who served as liaison to Bernard Madoff's operation. See New York Times, February 21, 2011, A-1, "Met's Owners Guarded an Investment Pipeline." Possibly include Fred Wilpon and Saul Katz.
19. Donald J. Bisenius, an executive vice-president at Freddie Mac received a wells notice from the SEC (e.g., an enforcement action against him). Possibly include Anthony S. Pizel (known as Buddy). He was CFO. Bisenius ran Freddie Mac's single family credit guarantee business. Possible action: Possible violations of securities laws in 2007/ 2008.
20. Lee Farkas, former chairman of Taylor Bean & Whitaker Mortgage. Alleged \$1.9 billion fraud that targeted the government's TARP and contributed to the failure of Colonial Bank. Allegedly conspired to transfer funds between closely held Taylor Bean and Colonial Bank.
21. Criminal tax fraud against Bernard Madoff's brother (Peter Madoff) and his two sons, Mark and Andrew.
22. U.S. Security and Exchange commission v. Brian H. Stoker, CitiGroup Global Markets, Inc.
23. State of Calif. v. George B. Kaiser (Solyndra).
24. Lenny Dykstra, Downtown Auto Dealership, Robert Hymers (accountant).
25. The Frumpy Bookkeeper, Kinde Durkee, campaign treasurer, California.
26. SEC v. Deloitte Touche Tohmatsu. September 8, 2011. SEC complaint.
27. SEC v. Oracle, August 16, 2012. SEC complaint [Prosecution can not say that Oracle settled the charges.]
28. Peter Madoff. June 29, 2012. SEC complaint. [Prosecution can not indicate at trial that Peter pleaded guilty.]
29. Rita Crundwell Dixon, Illinois.
30. SEC v. Kwame M. Kilpatrick. May 9, 2012. SEC complaint.
31. Thomas Dale Delay: Did he commit money laundering (Texas)? [Prosecution cannot indicate at trial (or defense) the outcome of real case.]
32. Rudy Kurniawan: Wine fraudster [Prosecution cannot indicate at trial the outcome of the real case.]
33. I. John Benson: Dallas-based jewelry and collectible company [Prosecution cannot indicate at trial the outcome of the real case.]
34. Trendon T. Shavers, bitcoin Ponzi scheme [Prosecution cannot indicate at trial the outcome of the real case.]
35. Accounting Fraud at Dewey & Leboeuf. Indictment against former Executive Director Stephen DiCarmine [Prosecution cannot indicate at trial the outcome of the real case.]
36. A trust was established as a non-profit association organized under the laws of Alabama for the purpose of providing a means by which liability claims or judgments against tow truck operators shall be paid or settled arising from claims against members of the trust. A CPA firm, Bubba, LLC. prepared some of the bookkeeping services before the original organization became a trust. The CPA firm helped set up the trust. The CPA firm then prepared

two years of audits using generally accepted principles, but failed to recognize some potential losses. What is in dispute is a suit for accounting malpractice against the CPA firm after the trust went bankrupt. The suit was filed by Tow & Recovery Professionals of Alabama Trust.

37. Robert Lynn, former Chief Revenue Officer of Le-Nature.

38. AgFeed agrees to pay \$18 million to settle.

39. Board of Regents and Louisiana State Racing Commission (LSRC): LSRC failed to distribute \$15 million to Board of Regents.

40. Suit against Chief Executive Officer of Bill, Hillary, and Chelsea Clinton Foundation (Andrew Kessel).

41. Minority shareholder suit against Fannie Mae.

Students tend to prefer the high profile disputes since they can find information about the disputes on the Internet.

Suggestions for Students

- Decide upon your attorney, fact witness(es), and expert witness(es).
- The other side should be told and allowed to depose all witnesses.
- Each person should prepare a written document like "Street Law Mock Trial Preparation after the mock trial."
- Your report may be quite different than the Street Law firm.
- In general, there should be at least one fact witness (e.g., John Q. Auditor, Jane M. Doe, and Bubba Adder), one expert witness, and plaintiff or defendant.