

East Renfrewshire MiniTrials 2011

New MiniTrial Edition – with Forensic Scientist



[The Faculty of Advocates](#)

with materials from



MiniTrial.org.uk



MiniTrial

“MiniTrial” is an initiative from Scottish Lawyers - supported by The Faculty of Advocates, The Law Society of Scotland and The W.S. Society.

The “East Renfrewshire MiniTrials” are supported by East Renfrewshire Council, The Sheriff Clerk’s Office, Paisley, The Procurator Fiscal’s Office, Paisley, the local Bar Association and the Faculty of Advocates.

This is a new edition of MiniTrials, from 2010, which contains a new Crown witness - a Forensic Scientist. Many thanks to Kim Schofield who kindly drafted the Joint Biology Report - which appears on page 33 (below).

The MiniTrial homepage is www.minitrial.org.uk .

Chapter 1 – Outline

"MiniTrials" are simulated court cases designed to be conducted by secondary schools - within roughly two double periods - or as tailored to suit the class.

Students take part in a reconstruction of a criminal jury trial. They convene the court, hear the evidence and return their own verdict - with the help of lawyer volunteers.

The MiniTrial materials have been prepared by Scottish lawyers - and are based on what actually happens in a Scottish Sheriff Court. They are designed to help students learn about the Scottish legal system, courts and the people who appear in them in an interesting and enjoyable way. MiniTrials are quite simple to run – and they do they not involve lengthy preparation. The trials can be exciting and are conducted seriously along the lines of real trials. The materials can be tailored to suit the interests and abilities of the class concerned. The aim is to improve understanding and discussion about our legal system. The materials are available free - by email or download from www.minitrial.org.uk .

Students will:

1. Become familiar with the role of a criminal trial court. They will also be introduced to court procedure and the function of the jury.



MiniTrial Starter Pack – East Renfrewshire 2011

2. Develop an appreciation for the roles of various people who work in the courtroom.
3. Practice communication and critical thinking skills as they prepare and present their case.

All the Materials you need are in this starter pack.

They include: -

| | | | | |
|-----------|------------------------|---------------------------------|------|----|
| Chapter 1 | Outline | | Page | 1 |
| Chapter 2 | Student Handout | on MiniTrial Procedure | Page | 12 |
| Chapter 3 | Case Papers | for Case No. 1 - Assault | Page | 27 |
| | | for Case No. 2 - Drugs | Page | 49 |
| Chapter 4 | Web-links | some law-related links | Page | 72 |

Time needed:

About two double class periods. An introductory session, then some preparation time followed by an actual trial - or as tailored to suit the class.

Class level:

Senior classes. To run a MiniTrial in a school the minimum number of students is 10 - allowing for a jury of at least one! When two schools are involved – each school will need a minimum of 5 students.

Teachers may wish to check beforehand whether any particular student(s) should for personal reasons not take part.

Teacher's participation:

School teachers are welcome to participate as much - or as little - as they like. Teachers are free to use the MiniTrial materials as they think best – and are encouraged to use lawyer volunteers to help prepare and conduct the trial if possible.

It would be a help if, as a minimum, the teachers could introduce the lawyer volunteers to the class and pass on whatever information might help to make their MiniTrial a success.



MiniTrial Starter Pack – East Renfrewshire 2011

It will be assumed that a teacher will be in attendance at all times - even if not actively participating in the trial.

Teachers are welcome to play a more extensive or a starring role if they wish.

Real Courtrooms

Thanks to the Sheriff Principal and the Sheriff Clerk in Paisley we will be able to use real courtrooms for the actual trials.

The date for your diary is:-

Saturday 9 March 2011
9.00 am to 3.00 pm.

Paisley Sheriff Court House
St James Street
Paisley
PA3 2HW

For ease of reference we will all be using the same “MiniTrial Starter Pack 2011” throughout.

Those materials have been designed basically for use in a classroom.

Please bear in mind that you will have to **be flexible and adapt the basic materials to suit the current situation** where several schools will be running trials in real courts – perhaps with several lawyers as helpers.

Further details of the actual MiniTrial arrangements “on the day” will be provided prior to the trials.

If you have any questions or need assistance – please ask your helpers.



Mini Trial Procedure - some suggestions

1. Before the actual trial, please ask the teacher to allocate students to the various parts in the mock trial. The roles are described in more detail the **Student Handout** on MiniTrial Procedure (see **Chapter 2** below). Please feel free to use the suggested timetable and the role allocation forms (in Chapter 2) as aids to preparation. Up to three students can be selected to be the lawyers for each side of the case. If you wish, one student can conduct examination-in-chief, one the cross-examination, and the other the speech to the jury. Or the students can share the tasks. If you feel that asking three students to speak causes complications then nominate just one (or perhaps two) to ask the questions - and ask the other two to help him / her prepare and then sit beside them in "court". To keep the trial moving and to inject more realism, a lawyer volunteer could act as Sheriff.
2. Assign students to **roleplay** the accused, the Clerk of Court, witnesses, members of the jury, court officer, policeman and reporters / media representatives – depending on numbers.
3. Before starting the trial, spend some time going over the basis court procedure and describe **the main steps** of a trial as outlined in the "Student Handout" (see Chapter 2 below) - in whatever detail is appropriate for the class concerned and the time available. There is a summary of the procedure in the handout.
4. For the purposes of MiniTrial there will be **no re-examination** of witnesses (unless the pupils are comfortable with the idea) and there will be **no objections** by the lawyers. If there are objections (and you may not be able to prevent them) - reserve discussion of them for later. Be flexible and play things by ear. It's meant to be fun.
5. **Prepare** enough copies of the relevant papers in advance.

The teacher and lawyer volunteers should probably have a complete set of **MiniTrial materials** each.

The students need only get copies of "**Chapter 2- The Student Handout**" and copies of the selected cases from "**Chapter 3 - MiniTrial Case Papers**".

6. **Timing.** You may think it best to spend one period preparing for the trial and discussing things - and a second period actually running it. Teachers will know what best suits their students.

Try to find everyone a role to play - even if it means having a jury of more than 15. Remind jurors and other that they will have to pay close



MiniTrial Starter Pack – East Renfrewshire 2011

attention to what happens in the court if they are to carry out their roles properly - and return a true verdict.

Allow a double period for each MiniTrial.

7. Arrange the classroom furniture so that it roughly resembles the **layout** of a court (or as near as possible). Some imagination may be required. See the "Court Layout" in the student handout below. There is an interactive illustration of a Sheriff & Jury Court Scene on the MiniTrial web-site at www.minitrial.org.uk. A "gavel" is not used in the Sheriff Court – or the High Court.
8. Provide the students with instructions along the following lines:

Lawyers

Tell the lawyers (students) to read all the papers - the facts, the court documents and all of the witness statements (including the witnesses for the other side). They should prepare

- questions for all the witnesses, and
- a speech to the jury.

Provide them with copies of the **Student Handout** (Chapter 2 below) to use in their preparation. This could be homework.

Ask the teacher if it would be helpful if the lawyers had help from other students - so that they could prepare in a small group. When they are in court (the class-room) the lawyers (and their helpers) should sit at a table in "the well of the court" in front of the Sheriff. The Prosecutor should be on the right hand side (as the Sheriff looks at the court from the bench). The defence should be on the left.

Explain the difference between credibility (by asking "is the evidence to be believed?") or reliability (by asking "is the evidence to be relied upon?").

You may even wish to introduce basic advocacy **skills** - creating an event, short and simple questions, open and closed questions and so forth.

The lawyers should assume that no-one knows anything about the case. They may wish to set a goal for themselves – such as trying to allow the witnesses paint a vivid picture of each of the relevant facts so that the jury will remember them in the jury room.

Be careful not to risk "information overload". The basic idea is to help students become more familiar with the legal process and to have some fun at the same time.



MiniTrial Starter Pack – East Renfrewshire 2011

With more experienced student, you may wish to give the students some more details about of what the lawyer is trying to achieve. You could outline, in simple terms, some of the **main concepts** by reference to: -

- the draft Crown speech,
 - the draft defence speech and
 - the draft Sheriff's charge
- copies of which are all with the case papers (in Chapter 3 below).

Lawyers should remember to bring notebooks (or paper) and pens with them – so that they can take notes of the evidence during the trial and add to their written submissions if need be.

Accused and Witnesses

Tell the accused and each witness to read his/her **statement** at least three times so that he/she will be prepared to answer questions. This could be homework. The accused should sit in "the dock" in the middle of the court - on the far side of the lawyers from the bench. Another seat should be provided at one side of the court – to mark the position of the "witness box". Normally witnesses would remain in the "witness room" until they are called to give evidence – but if that is not practicable in school they could simply sit in the public gallery until called.

It is extremely important that all the witnesses and the lawyers asking the questions can be seen and heard by the others in the class. Please make a point of asking each witness to stand (rather than sit) while giving their evidence and to speak up loudly and clearly so that everyone can see and hear what they have to say.

The Sheriff can remind them gently if need be.

Sheriff

The sheriff should read the **Student Handout** (Chapter 2) and review the procedure for the oath that he/she will administer to each witness. This is the Sheriff's "homework". The Sheriff should sit behind a table - which acts as "the bench" - facing out over the Court.

If questions are raised by the class during the MiniTrial the Sheriff (or some of the other lawyers present) could try to reply in the form of a mock "Note by Counsel" or a "Solicitor's letter" – to illustrate what those sort of documents might look like. In most cases, however, a verbal response will be sufficient.



MiniTrial Starter Pack - East Renfrewshire 2011

Clerk of Court

The Clerk should read the **Student Handout** (Chapter 2) and review the procedure for the oath that he/she will administer to the jury and for reading the indictment (statement of charges). This could be homework. The Clerk of Court sits in front of the Sheriff (or if that is not practicable beside the Sheriff for MiniTrial) - also facing out over the Court. The Clerk should also be familiar with the trial timetable. The Clerk should be asked to monitor the times of the various stages of the trial and be able to indicate to the Sheriff when they should be drawing each stage to a halt. A "timer" or stopwatch can help.

It would be helpful if the Clerk of Court could bring extra copies of the indictment with them – so that they can be distributed to the jury at the start of the trials for reference. The jury may also wish to take notes - and pens or pencils should be available if required.

Court Officer

Tell the Court Officer to collect the Sheriff from "chambers" (the Sheriff's room / part of the classroom or corridor) and bring him or her on to the bench - saying "Court Rise" as the Sheriff enters and leaves. The Court Officer should use a loud voice – so that everyone in the room can hear. If there is a lot of noise in the room at the time it may be necessary to use a very loud voice. The Court Officer also ushers the witnesses to and from the witness box when they are called to give evidence.

Reporters / Media representatives

Tell the reporters that they can sit in court. They are to prepare a very short newspaper article based on what happens at the trial.

Jurors

The jurors in MiniTrial are chosen from the remaining students. They should imagine that they have all been cited to attend court for jury service (to act as jurors) and that they have been selected for jury service - by Clerk of Court. When the Clerk of Court asks the jurors to take their places in "the jury box" – the jurors should make their way to the jury box / seats on the other side of the court from the witness box. There are some "Jury Observation Sheets" with the case papers (in Chapter 3 below) which the jurors may wish to look at as homework. Such sheets are not normally issued to jurors, but they may aid discussion in MiniTrials.

Reporters / Members of the Public



MiniTrial Starter Pack – East Renfrewshire 2011

The remaining students who are not on the jury - can be reporters / media representatives who are asked to prepare a short news report of the trial.

If there are other pupils present who would prefer not to take any active part they can be members of the public or relatives.

Preferably each student should have a task to complete and no-one should feel left out.

9. For the purposes of MiniTrial, a simplified procedure is used for **jury selection**. The Clerk of Court simply asks the jurors to take their seats in the jury box. In most cases, the teacher can simply prepare a list of jurors in advance. If need be the Clerk of Court can call out their names as a reminder. Actual pieces of paper in a ballot box or glass are not required and there is no right to challenge the jurors selected in a MiniTrial. For the purposes of MiniTrial, the number of jurors can be increased to over 15 to include more students (or all of them) if need be – or the number can be reduced below 15 to suit the class size. An odd number is best.
10. **The trial begins** with the calling of the first witness by the prosecution. This is followed by the examination of the witnesses (prosecution case first then the defence case) and then speeches to the jury (prosecution first then defence). The Sheriff gives his "charge" and the Jury retire to consider their verdict. The trial may take about an hour - but you can speed things up or slow things down to suit the time available. The simple aim of MiniTrial is to increase the students' knowledge of courts and trials and to encourage discussion about the people and processes. Questions raised by anyone can be noted down to be asked after the trial. Please ask the Clerk of Court to monitor the times of the various stages of the trial following the suggested timetable (outlined in Chapter 2) and to indicate to those speaking when they should be drawing to a halt. A stopwatch or a kitchen timer can help to keep track of the times - and give an audible indication of when to stop.
11. The judge should "**charge**" the jury at the end of the trial using the jury instructions contained in each set of case papers. The charge can be kept short – but it is probably helpful to include the essentials as many people may not know what they are. The jury should require only a few minutes to reach a **verdict**. After they have announced the verdict, you could ask the jurors to explain how they reached their decision.
12. Ask the **media** representatives what kind of story they would have written. What was most newsworthy about the trial? What would grab the reader's attention? Did they agree with the jury's decision? Who gave the strongest testimony? If time is running out, this step can be done while the jury is deliberating.



MiniTrial Starter Pack – East Renfrewshire 2011

13. Once a verdict has been returned, you may wish to debrief the trial. Encourage all students to participate in the **discussion** of the trial.

Questions that might help discussion include:

- Q. What were the strong and weak points of each side?
 - Q. What additional information would have been helpful?
 - Q. Who was the most believable witness? Why?
 - Q. Did any of the students change their minds during the trial? When and why?
 - Q. Are there other ways that the problem could have been dealt with? What would have been the advantages or disadvantages?
 - Q. Was the formal court language and procedure helpful? How could it be improved?
 - Q. In some countries, a trial starts with opening speeches rather than just reading the indictment. Would opening speeches have been an improvement?
 - Q. Do you think the accused should have been in custody or on bail prior to the trial? Why?
 - Q. What, if anything, did you find confusing or hard to follow.
14. Please send some **feedback** to MiniTrial (see details on last page).

All comments and criticisms welcome. For example: -

1. What did you enjoy about the MiniTrial?
2. What did you learn from the MiniTrial?
3. What did you *not* enjoy about the MiniTrial?
4. What would you like to change about the MiniTrial?



MiniTrial Starter Pack

Chapter 2 - The Student Handout:

MiniTrial Procedure

To run your MiniTrial : -

- decide who is to play which role - see the list of participants below,
- decide on a timetable for the various stages of the trial - see below,
- set out the classroom to resemble the approximate layout of a court - see the suggested layout below, and
- follow the MiniTrial instructions (below) - which contains the dialogue and the "stage" directions you will need.

You can highlight the text if you think it helps. The headings give you an over-view of the procedure - but can be left out of account if you wish.

Participants

- **Sheriff** - the judge who sits on "the bench".
- **Accused** - the person accused of the crime by the Crown.
- **Prosecution** lawyer - the Procurator Fiscal Depute for the Crown.
- **Defence** lawyer - the Solicitor for the accused who may also instruct counsel (ask an Advocate or a senior QC to appear).
- **Clerk of Court** - who manages and administers the Court under the Sheriff's direction.
- **Court Officer** - who escorts the Sheriff and the witnesses - so that they are at the right pace at the right time.
- **The Jury** (15 jurors) - who are balloted from members of the public.
- **Witnesses** - who are cited to attend court to give evidence.
- **Policeman** - who is on hand to escort the accused or deal with any trouble
- **Members of the Public** - who sit in the public gallery.
- **Reporters** / Media representatives - who can tell others what happened.



MiniTrial Starter Pack - East Renfrewshire 2011

| ROLES - for MiniTrial | Date: | <i>Understudy or Assistant if required</i> |
|------------------------------|-------|--|
| 1. Sheriff | | |
| 2. Accused | | |
| 3. Prosecution lawyer(s) | | |
| 4. Defence lawyer(s) | | |
| 5. Clerk of Court | | |
| 6. Court Officer | | |
| 7. The Jury 1 | 2 | 3 |
| 4 | 5 | 6 |
| 7 | 8 | 9 |
| 10 | 11 | 12 |
| 13 | 14 | 15 |
| 8. Witnesses for Prosecution | 1. | |
| | 2. | |
| | 3. | |
| 9. Witnesses for Defence | 1. | |
| | 2. | |
| 10. Policeman | | |
| 11. Public / Reporters | | |



MiniTrial Starter Pack – East Renfrewshire 2011

| TIMETABLE for 65 minute Trial : Stage | Starting time | Time allowed |
|--|----------------------|---------------------|
| 1. Introduction and preliminary matters | | 10 minutes |
| 2. Examination-in-chief of 1 st prosecution witness | | 3 minutes |
| 3. Cross-examination | | 2 minutes |
| 4. Examination-in-chief of 2 nd and 3 rd prosecution witness | | 3 minutes each |
| 5. Cross-examination | | 2 minutes each |
| 6. Examination-in-chief of 1 st defence witness | | 3 minutes |
| 7. Cross-examination | | 2 minutes |
| 8. Examination-in-chief of 2 nd defence witness | | 3 minutes |
| 9. Cross-examination | | 2 minutes |
| 10. Jury speech by prosecution | | 5 minutes |
| 11. Jury speech by defence | | 5 minutes |
| 12. Sheriff's charge | | 5 minutes |
| 13. Jury retire and consider verdict | | 5 minutes |
| 14. Jury announce verdict | | 1 minute |
| 15. Plea-in- mitigation? | | 3 minutes |
| 16. Sentence? | | 1 minute |
| 17. Discussion | | 5 minutes |



Court Layout – using tables

(Chambers / Sheriff's room)

SHERIFF

(sits on the Bench – a separate table)

CLERK OF COURT

(sits at the head of the main table)

O WITNESS

(stands in the Witness Box – a separate seat)

OOO

OOO **JURORS**

OOO (sit in the Jury Box – rows of seats)

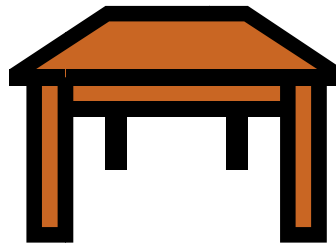
OFFICER

OOO

OOO

COURT

(sits near the main table)



PROSECUTOR

(sits at the main table)

THE MAIN TABLE

DEFENCE

(sit at the main table)

THE ACCUSED

(sits in the dock – in a separate seat)

POLICEMAN

(sits beside the accused)

**MEMBERS OF THE PUBLIC
& REPORTERS**

(sit in the public gallery - room)

WITNESSES - WAITING TO BE CALLED

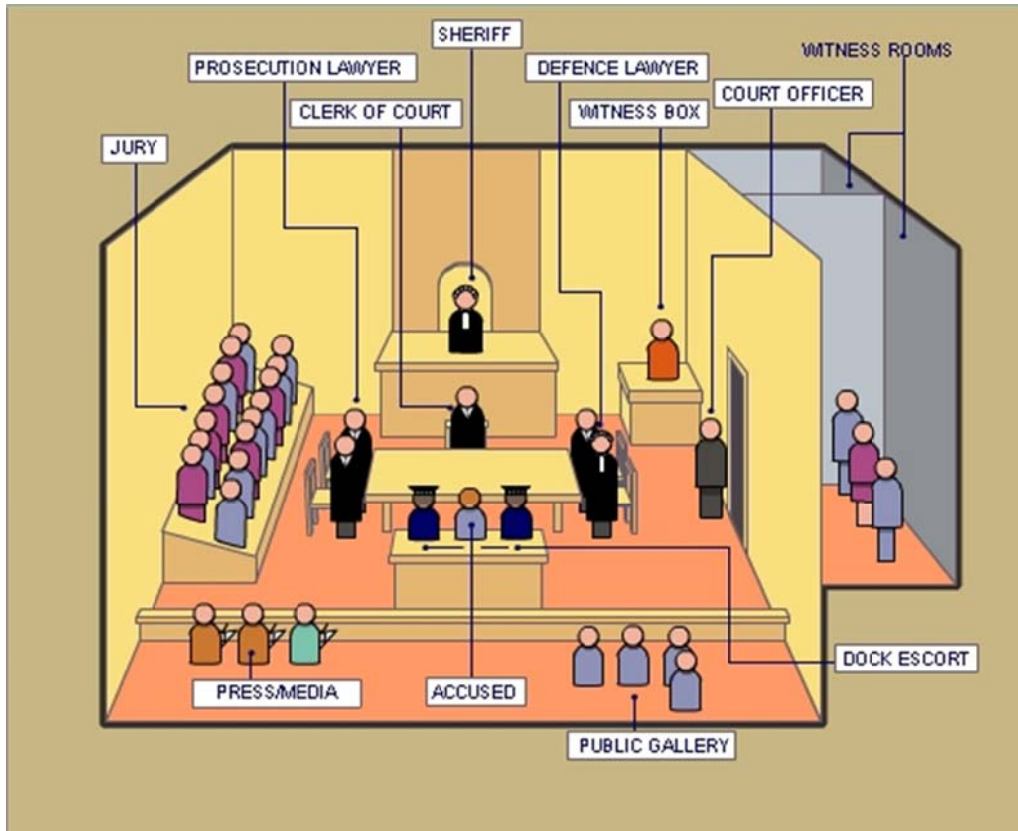
(wait in the witness rooms / room)



MiniTrial Starter Pack - East Renfrewshire 2011



www.minitrial.org.uk



copyright njd and A. F. Wylie

njd = www.notjustdesign.co.uk

The MiniTrial website has an interactive courtroom scene.



Instructions for The Trial

1. The Court convenes / assembles - the Sheriff is brought on to the bench

The Court Officer collects the Sheriff from Chambers and enters court in front of the Sheriff and announces their arrival with the words (said loudly enough to be heard above any background noise):-

"Court. All rise please."

Everyone remains standing until the Sheriff is seated.

2. The Clerk of Court "calls the diet".

The Clerk of Court stands and asks the Sheriff

"My Lord shall I call the diet".

The Sheriff says

"Yes please".

The Clerk of Court then says

"Call the diet. Her Majesty's Advocate against AB {the accused's name}. Are you AB?"

The accused AB (who sits in the dock) says

"Yes".

3. The Accused's plea is tendered by his defence lawyer - "Not Guilty" in this case.

The defence solicitor or advocate stands and says

"My Lord I appear for the accused who adheres to his plea of Not Guilty."

4. The Clerk of Court ballots the Jury - chosen from those cited for jury service.



MiniTrial Starter Pack – East Renfrewshire 2011

The **Clerk** of Court says

"Shall I empanel the Jury, My Lord?"

The **Sheriff** says

"Yes please."

The **Clerk** of Court then simply asks those chosen to be jurors to take their place in the jury box

In MiniTrial there is no need to carry out the full procedure for empanelling a jury. That would involve the Clerk of Court saying to the potential jurors (sitting in the public benches)

"When your name is called please come forward and take your place in the jury box which is on my right (or left)."

Normally the Clerk would then call out the jurors' names one by one from pieces of paper taken out of a ballot jar/box and the process would continue until the jury is complete (normally 15 jurors) – but that is not necessary in MiniTrial.

In MiniTrial, there is no right to challenge the jurors selected.

5. The Clerk reads the indictment (charge) to the jurors

The **Clerk** says

"Shall I read the indictment, My Lord?"

The **Sheriff** says

"Yes please"

The **Clerk** of Court then says

"Ladies and Gentlemen of the jury the charge against the accused AB is that " *and the Clerk then reads out the words from the indictment which is with the case papers (changing "you" to "he").*

6. The Clerk administers the oath to the Jury.

The **Clerk** then administers the oath to the jury by saying to them:



MiniTrial Starter Pack - East Renfrewshire 2011

"Ladies and Gentlemen of the Jury, please stand and raise your right hands. Do you swear that you will well and truly try the accused and return a true verdict according to the evidence? Please say "I do"".

The **jurors** all reply

"I do".

7. The Sheriff outlines the procedure.

The **Sheriff** can then briefly outline the procedure to the Jury - as follows:-

"Ladies and Gentlemen of the Jury, you are about to hear the evidence in this case. Please listen carefully. You may take notes if you wish. At the end of the trial you will be asked to decide upon a verdict."

(There are some MiniTrial "Jury Observation Sheets and Checklists" with the case papers if the Jurors wish to use them.)

8. The witnesses give evidence

The **Sheriff** then invites the prosecution to begin by looking at the Procurator Fiscal and saying

"Mr/Madam Fiscal who is your first witness?"

The **prosecutor** simply calls the first witness by saying

"My Lord my first witness is ... (*name*)"

The witness is collected from the witness room/area and is shown into the witness box by the Court Officer.

Students can use MiniTrial to practice for what could be an important part of their "public speaking" - giving evidence.

It is **very** important that **ALL** the witnesses and the lawyers **STAND and SPEAK UP:-**

- **loudly**
- **clearly** and
- **slowly.**



MiniTrial Starter Pack - East Renfrewshire 2011

They should try to make sure that everyone in the whole Court- even those at the very back of the room - can

- **hear** what they say without difficulty,
- **remember** what they say and
- **write down** what they say - in notes.

It is important for the prosecutor to remember to ask the Crown witnesses whether they are able to identify the accused as a person they say they saw. That involves asking the witness to look round the court and if they see the person concerned to point him out. If they are able to do so that is sometimes called a "dock identification". Many cases depend on identification evidence.

9. The Sheriff puts each witness on Oath - to tell the truth

All witnesses are sworn in before they begin answering questions. This is to remind them that they must tell the truth.

In MiniTrial the Sheriff can use a modified "oath" – using "I promise" instead of "I swear by Almighty God"

The **Sheriff** stands and raises his or her right hand and says:

"Please raise your right hand and repeat after me. "I promise that I will tell the truth, the whole truth, and nothing but the truth.""

10. The Crown case begins

The Crown case begins by the prosecutor asking the witness questions in "examination in chief" followed by cross-examination by the defence (and perhaps re-examination if you wish)

(i) Examination in Chief

The prosecution asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. If the witness is asked questions which are not included in the witness statements it is probably better for the witness to answer by saying "I don't know" or "I can't remember" or "I'm not sure" or "It's possible".

If need be the Sheriff may remind students to **"Please keep your voice up"**.



MiniTrial Starter Pack – East Renfrewshire 2011

Ideas for questions:

**What do you remember?
What happened next?
Who did you see?**

Remember to ask questions that will let the witness tell the complete story. Try asking what are sometimes called “open questions” starting with words like: -

**Who?
What?
Where?
When?
Why?
How?
Describe?**

(ii) Cross Examination

The defence lawyer then questions the witness for the other side to try to show that the witness is lying or mistaken or can't remember. For example, the lawyer may ask “Isn't it true that you really couldn't see because it was almost dark outside?”

Ideas for questions:

**Isn't it true that.....
You said that ...
You told them that ...
You didn't really go ...**

If possible, ask questions that call for a "yes" or "no" answer only

(iii) Re-examination

At this stage, the prosecutor may normally then ask a few questions (if he or she wishes) to clear up or correct any matters that arose during cross examination. In a MiniTrial it might be best to say to start with that there will be no re-examination - until the students are more familiar with the process.

Crown case - MiniTrial sequence

Remember the normal sequence of events in MiniTrial is: -



MiniTrial Starter Pack - East Renfrewshire 2011

Witness 1 for the Crown - "**examination-in-chief**" by the Crown

Witness 1 - "**cross examination**" by the defence.

Witness 2 for the Crown - examination in **chief** by the Crown.

Witness 2 - **cross** examination by the defence

Witness 3 for the Crown - examination in **chief** by the Crown.

Witness 3 - **cross** examination by the defence

11. The Defence case begins

After all the prosecution witnesses have been questioned and cross-examined (and re-examined if necessary), the **prosecutor** says

"My Lord I close the Crown case".

For the purposes of MiniTrial - it will be assumed that there *is* a case to answer and the case proceeds.

The defence may then call its witnesses (starting with the accused if he is to give evidence) and questions them in examination in chief. Then the prosecutor cross-examines (and the defence may re-examine) all along the same lines outlined above.

Defence case - MiniTrial sequence

Remember the normal sequence of events in MiniTrial is: -

The accused - "**examination-in-chief**" by the Defence

The accused - "**cross examination**" by the Crown

Witness 2 for the Defence - examination in **chief** by the Defence.

Witness 2 - **cross**-examination by the Crown.

Once all the evidence has been heard the **defence** say

"My Lord that closes the case for the defence".

It is time for the "Speeches to the Jury".

12. The Crown Speech to the Jury - seeking conviction



MiniTrial Starter Pack - East Renfrewshire 2011

The prosecutor addresses the jury first, then the defence.

Each side summarises the evidence presented during the questioning in a way that supports their case.

In a criminal case, assuming there is sufficient evidence, the prosecution asks the jury to find the accused "guilty".

The speech must be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Crown Speech with the case papers in **Chapter 3** below.

13. The Defence Speech to the Jury - seeking acquittal

Assuming that an accused adheres to his plea of "not guilty" the defence asks the jury to acquit the accused by finding him/her "not guilty" or by finding the charge "not proven".

The speech must be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Defence Speech with the case papers in **Chapter 3** below.

14. The Sheriff's Charge to the Jury - giving them directions in law

After the Jury Speeches are finished, the Sheriff "charges the jury" i.e. gives them directions as to the law which they must apply.

The Sheriff will find the terms of a "charge" (much simplified) in the case papers concerned. See **Chapter 3** below.

15. The Jury Retire - to consider their verdict

The jurors retire to consider their verdict - which can be guilty or not guilty or not proven (in a criminal case).

Depending on the space available the jury can go to another room, or the corridor, or simply sit where they are to discuss things.



MiniTrial Starter Pack - East Renfrewshire 2011

Once the Jurors have retired to consider their verdict, the **Court Officer** says

"Court rise"

and escorts the Sheriff back to his or her chambers / other part of the room.

16. The Verdict

When the jury have reached their verdict they let the Clerk of know that they are ready to announce it.

The **Court Officer** brings the Sheriff back on to the bench - saying

"Court rise".

The Jurors return to Court.

The **Clerk** of Court then ask

"Ladies and Gentlemen of the Jury - who speaks for you?"

The appointed **spokesperson** for the jury says

"I do".

The **Clerk** of Court then says

"What is your verdict on the charge against the accused"?

Depending on what the jury decided, the **spokesperson** says

"Guilty" or
"Not guilty" or
"Not Proven"

The **Clerk** then asks

"Was your decision unanimous or by majority".

The **spokesperson** says as appropriate

"Unanimous" or
"By majority"



MiniTrial Starter Pack – East Renfrewshire 2011

The **Clerk** of Court records the verdict in writing and then reads it back to the jury asking them

"Ladies and Gentlemen - is that a correct record of your verdict"?

The jurors indicate whether it is a correct record of their verdict.

(i) If the accused is acquitted

If the accused is acquitted - the **Sheriff** says

"AB, you are free to go."

(i) If the verdict is "guilty"

If the accused is found guilty the prosecutor normally says

"I move for sentence"

and then tells the court whether the accused has any previous convictions and whether and for how long he has been in custody prior to trial.

17. Plea in Mitigation and Sentence

If the verdict is "guilty" the Sheriff then listens to what the defence has to say on the accused's behalf in mitigation of sentence.

The Sheriff then sentences the accused in the way he/she considers most appropriate.

Depending on the circumstances the Sheriff's options might include: -

- imprisonment (or detention if under 21),
- community service,
- probation,
- deferred sentence,
- a fine,
- a compensation order,
- an admonition, or
- an absolute discharge.

The Sheriff may say

"I am going to call for a Social Enquiry Report and a Community Service Assessment. The case will be adjourned for three weeks."



MiniTrial Starter Pack – East Renfrewshire 2011

The Sheriff may then discharge the jurors saying:

"Ladies and gentlemen of the jury I can now discharge you from further attendance as jurors in this case. Thank you for performing an important public duty."

18. The End.

That is the end of your MiniTrial.

Well done to all.

Take a moment to ask the students: -

How could the trial system be made better?

What worked well - and what didn't?

19. Feedback Please.

Please ask your teacher to send your thoughts about MiniTrial to MniTrial (see details on last page).

All comments and criticisms welcome.

For example: -

1. What did you enjoy about the MiniTrial?
2. What did you learn from the MiniTrial?
3. What did you *not* enjoy about the MiniTrial?
4. What would you like to change about the MiniTrial?



MiniTrial Starter Pack

Chapter 3 - MiniTrial Case Papers

This Chapter contains two sets of MiniTrial Case Papers for use in conducting your MiniTrials.

The two cases concern :-

- assault to severe injury, and
- possession of drugs with intent to supply.

The papers for each case include: -

1. **The Facts** - a brief summary
2. **The Indictment** - the charge against the accused,
3. **The Law** - a very brief summary of the relevant principles,
4. **Precognitions** (witness statements) for the prosecution witnesses,
5. **Precognitions** for the defence witnesses,
6. **Summary sequence of events and Additional Materials**
7. **The Crown Speech to the Jury** - a possible outline
8. **The Defence Speech to the Jury** - a possible outline
9. **The Charge** - a style which the Sheriff can use for the Charge to the Jury,
10. **Jury Observation Sheets** - for the jurors to use if they wish.
Blank paper and pencil would suffice.

Obviously the names of the participants may require to be changed to suit the gender of the pupils playing the various roles. Suggested names are included in the text.

N.B. Labels and copy Productions and copies of the Joint Minute will also require to be made available for each court.



CASE No. 1 – Assault to severe injury

HER MAJESTY'S ADVOCATE

v.

JOHN (*or JOAN*) WADE

1. The Facts - a brief summary

FACTS

On Sunday 2nd June the complainer, Derek Saddler, was walking home through Rouken Glen Park when he was confronted by two youths. One was carrying a knife which he was waving in front of him. The guy with the knife lunged forward striking Mr Saddler on the left arm. The other youth shouted something and then struck Mr Saddler a heavy blow on the face with his fist.

John Wade has been charged with assault to severe injury.

Did John Wade assault Mr Saddler as libelled – as set out in the indictment?



2. The Indictment - the charge

The indictment is in the followings terms: -

HER MAJESTY'S ADVOCATE

v.

JOHN (*or JANE*) WADE

JOHN WADE, 12 Spencer Avenue, you are indicted at the Instance of Her Majesty's Advocate and the charge against you is that:

On 2nd June in Rouken Glen Park, while acting with another, you did assault Derek (*or Diane*) Saddler strike him on the arm with a knife or similar instrument, punch him on the head and knock him to the ground all to his severe injury.



3. The Law - a summary

You will find **the main legal concepts** outlined in the draft Sheriff's charge and in the draft speeches to the jury - which are with your case papers (below). Please read them to help you prepare.

“**Assault**” can be defined as “any attack upon the person of another with evil intent”.

In this case there is no doubt that the persons who attacked Mr Saddler would be guilty of the crime of assault.

The **main questions** are:-

- (1) whether the Crown has proved beyond reasonable doubt that John Wade was one of the two youths - and if so which one?
- (2) whether John Wade can be found guilty of using the knife – even if he was the youth that punched Mr Saddler, and
- (3) whether the injury to Mr Saddler was “severe”.

An important feature of this case is the legal principle known as “**Art and Part Guilt**” or “**Concert**” – which is outlined in the Sheriff Charge. It means, for example, that if an accused person knows that a weapon such as a knife is being used by someone else in an attack upon a victim and the accused joins in that attack then he (the accused) can be found guilty of stabbing the victim even if he (the accused) did not actually use the knife.

“Concert” can have extremely serious and far reaching consequences. For example, if the victim of a concerted attack dies of a knife wound then several accused could find themselves convicted of murder “art and part” - even although perhaps only one of them actually used the knife.

See the Sheriff's charge for further details.



4. Precognitions - Prosecution Witnesses

Prosecution Witnesses

1. **Derek (or Diane) Saddler**
2. **D.S. Gillian (or Graham) McKay**
3. **Kim (or Ken) Mortimer, BSc, Forensic Scientist**

Crown witness No 1.

Derek (or Diane) Saddler,
aged 26, residing at 11 McKay Avenue, sales assistant

On Sunday 2nd June I was walking home through Rouken Glen Park - my local park - when I was confronted by two youths. It must have been about 3.00 pm. I can't remember what they were wearing but I saw their faces very clearly.

One of the youths was carrying a kitchen knife with a blade about 5 inches long which he was waving in front of him.

The other youth wasn't carrying anything – but he was saying in a low voice “Go on – slash him”.

The first guy lunged towards my face with the knife but I managed to deflect the blow with my left arm. I screamed in pain as the knife cut deep into my forearm.

Then the second guy shouted “You've only cut his arm” – and then he (the second guy) hit me hard across the face with a backhand blow from his fist. I was knocked to the ground with the force of the blow. My nose was bleeding. There was blood everywhere.

I saw someone (who I now know was a plain-clothes police officer) chase after the youths and I saw the officer detain one of them a few hundred yards away.

I was taken to Glasgow Royal Infirmary where I received 24 stitches to my left arm and treatment for a broken nose. My face was black and blue.

I can identify the second youth – the one without the knife. He was the one who punched me. He is sitting over there (points to John or Jane Wade). I will never forget his (or her) face.



MiniTrial Starter Pack – East Renfrewshire 2011

Crown witness No. 2.

**Gillian (or Graham) McKay,
Detective Sergeant with Local Police
Aged 31 – with 12 years police service.**

On Sunday 2nd June I was on plain clothes duty in a local park – Rouken Glen Park – on the look out for drug dealers.

At 3.05 pm my attention was drawn to two youths who were about 30 yards away. They were both wearing purple hooded tops, blue denims and yellow trainers.

One of the youths was carrying a kitchen knife with a blade about 6 inches long. He was brandishing it in front of him at about shoulder level. I could see the knife clearly even from a distance.

The other youth wasn't carrying anything – but he seemed to be pushing the first youth towards a member of the public who I now know to be Mr Derek Saddler.

Without any provocation, the first youth lunged forward and tried to slash Mr Saddler on the face. Mr Saddler managed to defend himself with his arm. The second youth shouted something and then struck Mr Saddler in the face with his fist. It was a heavy blow which knocked him to the path.

By this time I had shouted to them to stop – and I was running over to the scene to help Mr Saddler. I chased and caught one of the youths – who I kept in my sight the whole time. The other one got away. He was brandishing the knife aloft as he went.

I later attended Glasgow Royal Infirmary, where I saw that Mr Saddler had received a large number of stitches to a nasty wound on his left arm. I also saw that his nose had been broken by the attack. He was bleeding and was badly bruised too. I took an evidential mouth swab from the complainer (Crown Label No 1).

I can identify the youth I detained. He is sitting over there (points to John *or Jane* Wade). I also took an evidential mouth swab from the accused (Crown Label No 2). I also took possession of the accused's clothing which included a hooded top (Crown Label No 3) and his right trainer (Crown Label No 4). In reply to caution and charge the accused John (*or Jane*) Wade said "You've got the wrong guy."

There is no doubt that John Wade was one of the two youths that attacked Mr Saddler. He was not carrying a knife or indeed anything else when I caught and searched him. He never said anything to me about bird-watching.

I sent all the items which I recovered to the Forensic Science Laboratory.



MiniTrial Starter Pack – East Renfrewshire 2011

Crown witness No. 3.

Kim (or Ken) Mortimer, BSc
Forensic Scientist
Forensic Science Laboratory Paisley
Aged 35 – with 15 years experience.

On 25 August 2010, I received various items from DS McKay for examination in connection with the case against John (or Jane) Wade.

I prepared a Joint Biology Report dated 3 September 2010 - together with my colleague Nichola Schofield

The report is Crown Production No 1 – copy annexed.

My report is true and accurate.

I can identify the items and explain the contents of the report if need be.



FORENSIC SCIENCE LABORATORY

Joint Biology Report

Case against John (or Jane) Wade (09/09/1993)

We, Kim Mortimer and Nichola Schofield, Forensic Scientists, authorised by the Secretary of State for Scotland to make reports for the purposes of Section 280 (4) of the Criminal Procedure (Scotland) Act, 1995, state that the undernoted items were received by us for examination on 25 August 2010. We hereby report as follows.

HEALTH & SAFETY CONSIDERATIONS

Some items examined for this report are contaminated with biological material (e.g. blood etc.). The condition of these items represents a potential health risk. Consequently they have been sealed into polythene bags with hazard tape. Every effort has been made to display the areas of these items most relevant to this report, including areas from which samples have been removed for further testing.

There may have been items submitted to the laboratory that have not been examined. These items, although not in polythene bags or identified by hazard tape, should be treated in the same way as those, which are.

These bags should not be opened in a courtroom or other public place, and the contents examined or demonstrated, without adequate precautions being taken.

INFORMATION RECEIVED

We understand on the 2 June 2010 within Rouken Glen Park, it is alleged that the accused assaulted the complainer by striking him (or her) to the arm with a knife, by punching him (or her) to the head and by knocking him (or her) to the ground.

We understand that the complainer had bleeding injuries to his (or her) left arm, an injured nose and that no weapon was recovered.

The examination of the items in this case, our interpretation of the findings and our conclusions are based on the above information. If any element of this information is inaccurate, or if further relevant information comes to light, then our interpretation of the findings must be re-evaluated. This may be more useful to the court if undertaken in advance of the trial.



MiniTrial Starter Pack – East Renfrewshire 2011

PURPOSE

The purpose of our examination was to determine if there was any scientific evidence to assist in addressing whether the accused assaulted the complainer, as alleged. We have sought to do this by:

- Examining items recovered for DNA and trace evidence;
- Comparing any DNA profiles obtained from the items to DNA profiles obtained from reference samples in order to determine who the items may belong to;
- Examining items taken from the accused for blood and blood patterns; and
- Comparing any DNA profiles obtained from selected bloodstains to DNA profiles obtained from reference samples in order to determine from whom the blood may have originated.

TECHNICAL ISSUES

Blood Pattern Terminology

'**Spots and splashes**' are terms used to describe the types of bloodstains created when wet blood breaks up into droplets, travel through the air and are deposited on an item. The size, shape and distribution of the spots and splashes may give an indication of the force used to create the droplets of blood and the direction and distance travelled from their source. The types of action, which can cause wet blood to break up into droplets, include:

- Impact into wet blood;
- Expiration of wet blood; and
- Blood being cast from a person / object wet with blood.

Generally small and minute droplets of blood do not travel far through the air. Therefore, their presence on an item indicates that the item has been close to wet blood when the blood was caused to break up.

A **drip** of blood is a term used to describe blood that has fallen under the effect of gravity.



MiniTrial Starter Pack - East Renfrewshire 2011

A **contact bloodstain** is created when a surface wet with blood comes into direct contact with another surface resulting in the transfer of blood.

If we cannot determine how a particular blood 'mark' has been deposited on an item, i.e. through direct contact or when blood has travelled through the air, it is described as a **bloodstain**.

DNA PROFILING

DNA is found in most cells in the human body. It is a complex chemical that carries genetic information in a coded form, half of which is inherited from each parent.

A person's DNA is the same in all their body fluids, so the DNA in a person's blood will be the same as that in other cells such as saliva, skin and hair roots. Each person's DNA is unique with the exception of identical twins.

The technique used analyses 10 different regions of human DNA. Analysis of these regions gives a high degree of discrimination. A full DNA profile consists of 20 DNA types. A test is also included to indicate the sex of the individual from whom the DNA originated.

The results are examined to determine if the DNA came from a single source or if DNA from more than one person is present. This is referred to as a mixed DNA profile. A mixed DNA profile can contain more DNA from one person than the other, and is then said to have a major and a minor DNA component.

It is not unusual for the DNA profile of an individual to be detected on clothing that they have been wearing.

Occasionally, the analysis may be unsuccessful at one or more regions resulting in a partial DNA profile or no profile at all.

If any of the DNA types of an individual are different from those of a case stain, that person can be excluded as a possible source.



MiniTrial Starter Pack - East Renfrewshire 2011

If, however, the same DNA profile is obtained from a crime sample and a reference sample, then the profiles are said to match. The significance of obtaining a match between a crime stain and an individual's DNA profile is statistically assessed. This is done by using an appropriate database to estimate the probability of obtaining this match by chance from an unrelated individual.

EXAMINATION AND RESULTS

REFERENCE SAMPLES

Evidential mouth swab [Crown Label No 1] labelled 'Complainer 02/06/10'.

Evidential mouth swab [Crown Label No 2] labelled 'Accused 02/06/10'.

DNA was extracted and profiled from the reference samples and DNA profiles that were different from each other were obtained.

ITEM RELATING TO THE ACCUSED

1 X Hooded Top [Crown Label No 3] labelled 'Accused 02/06/10'.

The hooded top was examined and tape was used to lift fibres and hair from around the collar of the hooded top. The tape was placed on a slide and then examined under a microscope.

DNA was extracted and profiled from the strand of hair (1A) from the collar of the hooded top. The DNA profile obtained matched the DNA profile of the accused.

We have estimated a probability of 1 in more than 1 billion for obtaining this matching DNA profile if the DNA from hair 1A originated from another male (*or female*) unrelated to the accused.

1 X Trainer (right foot) [Crown Label No 4] labelled 'Accused 02/06/10'



MiniTrial Starter Pack – East Renfrewshire 2011

The trainer was examined and found to be bloodstained. Many small and minute spots of blood were found on the left toe of the trainer.

DNA was extracted and profiled from a minute spot of blood (3A) on the left toe. The DNA profile obtained matched the DNA profile of the complainer.

We have estimated a probability of 1 in more than 1 billion for obtaining this matching DNA profile if the DNA from blood 3A originated from another male (*or female*) unrelated to the complainer.

INTERPRETATION

In our opinion the pattern of bloodstaining and the corresponding DNA results from 3A are consistent with the wearer of the trainer having been close to a source of the complainer's wet blood when it was forced to break up and travel through the air. The types of action which can cause this type of pattern include:

- Impact into wet blood;
- Expiration of wet blood;
- Blood being cast from a person / object wet with blood.

Generally small and minute droplets of blood do not travel far through the air. Therefore, their presence on an item indicates that the item has been close to wet blood when the blood was caused to break up.

OTHER ITEMS EXAMINED

Several other items from the accused were also received in relation to this Joint Report. They were examined for the presence of blood with negative results.



MiniTrial Starter Pack - East Renfrewshire 2011

CONCLUSIONS

In our opinion the scientific findings are consistent with the accused being in close proximity to the complainer at the time he (*or she*) was assaulted.

| | | |
|---------------|---------------------|--------------------------|
| Signature | <i>Kim Mortimer</i> | <i>Nichola Schofield</i> |
| Name | Kim Mortimer | Nichola Schofield |
| Qualification | BSc | C Biol MIBiol |
| Date | 03/09/10 | 03/09/10 |



5. Precognitions - Defence Witnesses

Defence Witnesses

1. John (*or Jane*) Wade, the accused
2. Leslie (*or Lesley*) Weir

The accused – defence witness No. 1.

John (*or Jane*) Wade,
aged 17, residing at 12 Spencer Avenue, student.

On Sunday 2nd June I was in a local park, Rouken Glen Park, when two guys ran past me.

One of them was waving a kitchen knife above his head as he ran past me. He was quite close to me. Then I could see that he was trying to stuff the kitchen knife into his back pocket.

A couple of seconds later I was knocked to the ground by a plain clothes police officer.

The officer cautioned and charged me with an assault.

I told her that she must have the wrong guy.

I never assaulted anyone.

I was only in the park because I am a very keen bird-watcher.

There is a very rare bird called a “tree-creeper” in the park and I was hoping to catch sight of it.

My friend Leslie Weir was with me.

The two guys who ran past me – were wearing exactly the same as me. Purple hooded tops, denims and yellow trainers.

I did not assault Mr Saddler – and I have never carried a knife.



MiniTrial Starter Pack – East Renfrewshire 2011

Defence witness No. 2.

Leslie (or Lesley) Weir,
aged 18, residing at 10 Robert Road, student.

On the afternoon of 2nd June I was in Rouken Glen Park - a local park.

I was with my friend – the accused John (or Jane) Wade

We were bird-watching.

I heard a commotion – and then two guys ran passed us.

One of the guys had a knife in his hand. He was waving it about – at around head height. I think he bumped into John – but I could be mistaken about that.

The two guys were wearing the same as John and me – purple hooded tops, denims and yellow trainers.

I ran off after them.

I looked back and could see that a person I now know to be a plain clothes policeman had arrested John.

The police got the wrong guy.

John did not assault anyone.

He would never do that sort of thing.

John has never ever carried a knife.

We were heading for the pond – to do a spot of bird watching.

That's all.

Honest.



6. Summary - the sequence of events during the trial

1. The Court **convenes** /assembles - the Sheriff is brought on to the bench
2. The Clerk "**calls the diet**" - formally starts the case against the accused
3. The Accused's **plea** is tendered by his defence lawyer - "Not guilty" in this particular case
4. The Clerk **ballots the Jury** - chosen from those cited for jury service
5. The Clerk **reads the indictment** (charge) to the jurors
6. The Clerk **administers the oath** to the jury
7. The Sheriff **outlines the procedure**
8. The witnesses give **evidence**
9. The Sheriff puts the witnesses on "**oath**" to tell the truth
10. **The Crown Case** is presented as follows:

 Witness 1 for the Crown - "**examination-in-chief**" by the Crown
 Witness 1 - "**cross examination**" by the defence

 Witnesses 2 and 3 for the Crown - examination in **chief** by the Crown.
 - **cross-examination** by the defence
11. **The Defence Case** is presented as follows:

 The accused - "**examination-in-chief**" by the Defence
 The accused - "**cross examination**" by the Crown

 Witness 2 for the Defence - examination in **chief** by the Defence.
 Witness 2 - **cross-examination** by the Crown.
12. **The Crown Speech** to the Jury - seeking conviction
13. **The Defence Speech** to the Jury - seeking acquittal
14. **The Sheriff's Charge** to the Jury - giving them directions in law
15. **The Jury retire** - to consider their verdict
16. **The Verdict.**
17. **Plea in Mitigation and Sentence**
18. **The End - Feedback please.**



Additional Materials - for the assault case

“Assault Update Sheet”.

This sheet contains additional information for the assault case. It is for distribution to the participants prior to the trial – after everyone is familiar with the Starter Pack

URGENT FURTHER INFORMATION

H. M. Advocate v. John Wade

As a result of continuing preparation for the trial diet the Crown and the Defence (and the witnesses – who should act in role) are now aware of the following new information:-

Derek Saddler - Crown witness No 1 - will say:

“I had been out for lunch on the day of the assault. I had drunk about half a bottle of red wine. I was feeling a bit light-headed but nothing special. I remember that the park was surprisingly quiet for that time of year. It was as a very bright and sunny day.”

D. S. Gillian McKay - Crown witness No 2 - will say:

“I did not detect any sign that Derek Saddler had been drinking. I’m sure I would have noticed if his speech was slurred, his eyes were glazed or he was smelling of alcohol. If I remember things correctly the park was very crowded that day and it was also raining quite heavily.”

John Wade - the accused - will say:

“There weren’t very many people in the park that day. The weather was good – and it was not raining.”

Leslie Weir – Defence witness No 2 – will say:

“The park was pretty empty for that time of year. It was a lovely dry day.”

Further Notes for the lawyers and witnesses taking part:

- (1) If the lawyers consider it necessary they may ask a few questions in re-examination (after their own witnesses have been cross-examined by their opposite numbers). There is no obligation to do so.
- (2) The accused will know by the time the trial starts whether or not he is in fact guilty or innocent.



7. The Crown Speech to the Jury - a possible outline

Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of **the Crown**.

It is my function to present the evidence - but it is your function to decide whether on the evidence the Crown have proved the accused "Guilty" beyond reasonable doubt.

You may have little difficulty in deciding that someone assaulted Mr Saddler in the way described in the indictment but "Who was involved in the assault?"

The Crown say **there is no reasonable doubt that the accused John (or Jane) Wade was responsible**.

On the evidence, the factors pointing to John Wade's guilt are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, the Crown say that John Wade's **guilt has been proved beyond reasonable doubt** and that you should convict.

I invite you to return a verdict of "**guilty**".



8. The Defence Speech to the Jury - a possible outline

Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of the accused – **John (or Jane) Wade**. It is important to remember that in Scotland every accused person is **presumed to be innocent**.

It is up to the Crown to prove an accused person guilty - and to prove his guilt "beyond reasonable doubt". That is a high standard.

If there is any reasonable doubt about Mr Wade's guilt, then you must acquit.

In this case, the Crown has simply failed to prove that Mr Wade was involved in any assault - far less that he was responsible for using a knife.

The factors which show **there is a reasonable doubt** are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, on the evidence, **guilt has not been proved**. There is a reasonable doubt - and Mr Wade is entitled to the benefit of that doubt. Mr Wade should be acquitted - and I invite you to return a verdict of "**not guilty**".



9. The Charge

SHERIFF'S CHARGE TO THE JURY - a possible outline

LADIES and GENTLEMEN OF THE JURY, it is now my duty to give you directions as to the law in this case.

You and I have **DIFFERENT FUNCTIONS**.

It's MY FUNCTION to deal with questions of law and you must accept and apply my directions on **THE LAW**.

But YOU are the judges of **THE FACTS**.

It's **YOUR FUNCTION** to assess the evidence. It's for you to decide: - what evidence you believe and what you disbelieve; what evidence you find reliable and what unreliable. Please consider the evidence with care. It is your recollection and your assessment of the evidence that counts - and not mine.

There are **THREE VERY IMPORTANT LEGAL PRINCIPLES** which I wish to draw to your attention at the outset.

1. **THE PRESUMPTION OF INNOCENCE**. Every person is presumed innocent and he remains innocent unless and until the Crown satisfies you that he is guilty beyond reasonable doubt. It is up to the Crown to prove the guilt of the accused. If they fail to do so, then the accused must be acquitted.
2. **THE STANDARD OF PROOF - is GUILT BEYOND REASONABLE DOUBT**. A reasonable doubt is something that would cause you to hesitate or pause before taking an important decision in the practical conduct of your own life. If there is any doubt about an accused's guilt and it is a reasonable doubt, not a fanciful or hypothetical one, then you must acquit.
3. The Crown must prove guilt by what is called **CORROBORATED EVIDENCE**. That means by evidence from more than one source. It is not every detail that requires to be corroborated. It's the essentials of the case, such as the commission of the crime and involvement of the accused. Corroboration need not come from two eyewitnesses - circumstantial evidence can be enough.

Remember that the burden is on the Crown throughout. An **ACCUSED** is in a completely different position. AN **ACCUSED** never needs to prove anything at all. An accused never requires to give evidence and evidence in defence never needs to be corroborated. If the accused's guilt is proved beyond reasonable doubt you should convict. But if on **ALL** the evidence there is any reasonable doubt then you must acquit.

The verdict is for you to decide on the evidence. The evidence is very fresh in you minds - and I propose to say nothing further about it.

However, I would like to say a few words about the **LAW**.

An "**assault**" in law is any deliberate attack on another person with evil intent. Evil



MiniTrial Starter Pack – East Renfrewshire 2011

intention is essential.

In this case the charge contains an aggravation – “to severe injury”. Whether the Crown has proved those words is a question of fact for you to decide. It is open to you to return a verdict under deletion of the words which have not been proved to your satisfaction.

I must also give you directions in relation to the legal principle known as “**concert**” or “art and part guilt”. As a general rule a person is only responsible for his own actings. However, where two or more persons are engaged together in a known common criminal purpose, then each participant in that enterprise is responsible not only for what he himself does but for what everyone else does in pursuance of the common criminal purpose.

The use of a **weapon** calls for special consideration. Where a weapon is used, an unarmed attacker may be held responsible *if* he knew his companion was armed and was likely to use the weapon. So if an accused person, having seen his companion with a weapon in the course of an attack, joins in and continues the attack then as a matter of law he is guilty along with the companion of assault with the weapon.

The question for you is whether the prosecutor has proved beyond reasonable doubt that the accused John (*or Jane*) Wade assaulted Derek Saddler as set out in the indictment.

In assessing the evidence you should consider carefully all of the points made by the prosecution and by the defence. Having done that you should come to a verdict according to the principles which I explained at the outset.

THERE ARE **THREE VEDICTS** OPEN TO YOU

1. Guilty or
2. Not Guilty or
3. Not Proven

The last two ("not guilty" and "not proven") are both verdicts of acquittal.

Your verdict can be unanimous or by majority.

Before you can find an accused guilty there must be at least EIGHT of you in favour of guilty verdict.

When you have reached a verdict please tell the Clerk of Court.

Please also appoint a spokesperson to speak for you when you return to give your verdict.

WOULD YOU NOW PLEASE **RETIRE** AND CONSIDER YOUR VERDICT.



10. Jury Observation Sheets - for the jurors.

(a) JURY OBSERVATIONS on the PROSECUTION Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the prosecution witnesses and any doubts raised.

Witness Number 1

Witness Number 2

Witness Number 3

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree
A = Agree
D = Disagree
SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Prosecution's Closing Speech:

How did the prosecution use the evidence to prove its case?



MiniTrial Starter Pack - East Renfrewshire 2011

(b) JURY OBSERVATIONS on the DEFENCE Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the defence witnesses and any doubts raised.

Witness Number 1

Witness Number 2

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree
A = Agree
D = Disagree
SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Defence Speech to the Jury:

How did the defence use the evidence to raise a reasonable doubt?



CASE No. 2 – Possession with intent to supply

HER MAJESTY'S ADVOCATE

v.

JAMES (*or JANE*) WOOD

1. The Facts - a brief summary

FACTS

On Saturday 15th June, outside the “Antarctic Club”, Paisley, two plain clothes police officers saw the accused, James Wood, approach a parked car. The car was being driven by a well know drugs dealer. The accused appeared to give the driver something and the driver gave the accused a small package. The car then drove off quickly.

The accused was cautioned and lawfully searched by the police. In his jacket the police found a number of Ecstasy tablets. Mr Wood has been charged with possession with intent to supply.

Will the Crown establish guilt?



2. The Indictment - the charge

The indictment is in the following terms: -

HER MAJESTY'S ADVOCATE

v.

JAMES (or JANE) WOOD

JAMES WOOD, 26 Beech Avenue, you are indicted at the Instance of Her Majesty's Advocate and the charge against you is that:

On 15th June in Fenwick Road, Giffnock, you did have in your possession a controlled drug, namely the drug commonly known as "Ecstasy", being a Class A drug specified in paragraph 1 (c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971, with intent to supply it to another in contravention of section 4(1) of said Act; contrary to the Misuse of Drugs Act 1971, section 5 (3).



3. The Law - a summary

You will find **the main legal concepts** outlined in the draft Sheriff's charge to the jury and in the draft speeches which are with your case papers (below).

Please read those speeches and the Sheriff's charge to help you prepare.

This case concerns the Misuse of Drugs Act 1971.

There is no doubt that the accused physically had in his pocket the controlled Class A drug commonly known as "Ecstasy".

The **main questions** are:-

- (1) whether the Crown has proved beyond reasonable doubt that the accused was in "possession" of the controlled drug within the meaning of the Misuse of Drugs Act 1971, and
- (2) whether the accused can be found guilty of the much more serious offence of possession "with intent to supply" – as opposed to simple possession.

See the Sheriff's charge for further details.

The most serious cases are prosecuted "on indictment" and are heard before a jury. On indictment:-

- Simple "possession" of a Class A drug carries a maximum penalty of 7 years or an unlimited fine or both, and
- Possession of a Class A drug "with intent to supply" has a maximum penalty of life or an unlimited fine or both.

Less serious cases can be prosecuted on summary complaint and are dealt with by a judge without a jury. On summary complaint the maximum penalties for such drugs offences are 12 months or £5,000 or both.



4. Precognitions - prosecution witnesses

Prosecution Witnesses

1. D.S. Joan (or James) Galloway
2. D.C. Patrick (or Patricia) Yuille

Crown witness No 1

Joan (or James) Galloway

Detective Sergeant with Local Police

Aged 37 – with 18 years police service.

On Saturday 15th June, I was on duty in plain clothes on mobile patrol with my colleague D. C. Patrick Yuille.

We were in an unmarked police car parked directly opposite the “Antarctic Club” in Fenwick Road, Giffnock. I was in the driving seat facing west. The street was well lit

At about 9.30 pm a black BMW 7 Series car stopped on the other side of the road directly in front of the Antarctic Club. It was facing east. The driver of the BMW was a well known drugs dealer. As soon as the car stopped I saw a youth I now know to be James Wood come out of the club doorway. He was looking furtively up and down the street and then walked very briskly over to the passenger window of the car. After short conversation I saw Mr Wood give the driver what appeared to a bundle of pound notes. In exchange the driver gave the accused a package – and then drove off quickly.

We lawfully detained and searched Mr Wood. In his left jacket pocket I found the package. It was a clear polythene bag containing a large number of tablets. The bag and tablets are Crown Label Production No 1. The tablets were subsequently examined at the forensic laboratory and were found to be methylenedioxymethylamphetamine (MDMA) - the controlled Class A drug commonly known as Ecstasy. The forensic report (*which has been agreed by the defence in a Joint Minute of Admissions*) is Crown Production No. 2. We counted the tablets. There were 60 of them in total. They were white tablets with a dollar sign design stamped on them.

In Mr Wood’s trouser pockets I also found a handwritten list of names and numbers. There were 11 names in total. Against 9 names was written the number “6”. Against the remaining 2 names was written the number “2”. The list is Crown Production No. 3. Mr Wood had no money on him.

In reply to caution and charge, the accused said:-



MiniTrial Starter Pack – East Renfrewshire 2011

“Come off it. It’s only a few dollars. The guy in the BMW shouted me over and said could I give this wee envelope to the bouncer. Anyway, you can’t do me for supply. I am no dealer. I was just going to pass the sweeties on – and I wouldn’t have made a penny.”

I have noted his reply in my notebook. Mr Wood said nothing about mints or breath-fresheners.

I have considerable experience of drugs related offences. I have been involved in many drugs cases and I have attended many drugs training sessions as part of my police duties.

The Ecstasy tablets with a dollar sign stamped on them are often referred to on the street as “dollars”. Ecstasy tablets are sometimes referred as “sweeties”.

The effects of Ecstasy can be unpredictable. There have been a number of deaths related to the abuse of MDMA.

The number of tablets found in the possession of Mr Wood clearly indicates his intention to supply tablets to others. There were too many tablets for his own personal use. They were also wrapped in pairs in clingfilm – for supply.

He also had what looked to me like a “tick list” of the people he was going to supply to. The tablets had a street value of about £900.

It was quite clear to me that the driver of the BMW did not shout Mr Wood over to him. Mr Wood spoke first.

I never saw anyone else with Mr Wood – but there might have been someone else in the doorway.

I can identify the person I have been referring to as James Wood. He is sitting over there (points to the accused James Wood).



MiniTrial Starter Pack – East Renfrewshire 2011

Crown witness No. 2.

Patrick (or Patricia) Yuille
Detective Constable with Local Police
Aged 23 – with 3 years police service.

On Saturday 15th June, I was on duty in plain clothes on mobile patrol with my colleague D. S. Joan Galloway.

We were in an unmarked police car. We parked directly opposite the “Antarctic Club” in Fenwick Road, Giffnock. I was in the front passenger seat. Our car was facing west. The street was well lit.

At about 9.30 pm I saw a dark blue BMW 7 Series car drawing to a halt directly opposite us on the other side of the road in front of the Antarctic Club. It was heading east. The driver of the BMW was a well known drugs dealer.

I then saw a youth I now know to be James Wood come out of the club doorway. As soon as he saw the BMW he started walking quickly towards it.

He was looking uneasy – and was glancing from side to side.

Mr Wood spoke first. He said something to the driver through the passenger window.

I saw him hand something to the driver. I could not see what it was.

The driver gave Mr Wood a package – and then drove off quickly.

Mr Wood mouthed “Thanks” and waved to the driver as he left.

We lawfully detained and searched Mr Wood. I saw D. S. Galloway recover the package from Mr Wood's right jacket pocket. It was a clear polythene bag. I could easily see that it contained a large number of tablets. The bag and tablets are Crown Label Production No 1. The tablets were later examined at the forensic laboratory and were found to methylenedioxymethylamphetamine (MDMA) - the controlled Class A drug commonly known as Ecstasy. The forensic report (*which has been agreed by the defence in a Joint Minute of Admissions*) is Crown Production No. 2.

We counted the tablets. There were 60 of them in total. They were white tablets with a dollar sign design stamped on them.

In Mr Wood's trouser pockets D. S. Galloway also found a handwritten list of names and numbers. The list is Crown Production No. 3. Mr Wood had no money on him.

In reply to caution and charge, the accused said:-



MiniTrial Starter Pack – East Renfrewshire 2011

“Come off it. It’s only a few dollars. The guy in the BMW shouted me over and said could I give this wee envelope to the bouncer. Anyway, you can’t do me for supply. I am no dealer. I was just going to pass the sweeties on – and I wouldn’t have made a penny.”

I have noted his reply in my notebook.

Mr Wood said nothing about mints or breath-fresheners.

I have a little experience of drugs related offences and I recently attended a training session as part of my police duties.

The Ecstasy tablets with a dollar sign stamped on them are sometimes known as “dollars”.

Ecstasy tablets are often referred to as “sweets” or “sweeties”.

The number of tablets found in the possession of Mr Wood clearly indicates his intention to supply tablets to others. There were too many tablets for his own personal use. They were also wrapped in clingfilm – in pairs I think.

He also had what I believe to be a “tick list” of the people he was going to supply to.

The tablets had a street value of about £900.

I think there was someone else in the doorway. It was a young woman.

I can identify the person I have been referring to as James Wood. He is sitting over there (points to the accused James Wood).



5. Precognitions - defence witnesses

Defence Witnesses

1. James (*or Jane*) Wood, the accused
2. Gerry (*or Jerry*) Logan

The accused – defence witness No. 1.

James (*or Jane*) Wood,
aged 18, residing at 26 Beech Avenue, student.

On Saturday 15th June, I had gone to the “Antarctic Club” in Fenwick Road, Giffnock. I was with my close friend Gerry Logan.

I don't do drugs – and I am certainly not a drug dealer.

I agree that I physically had 60 Ecstasy tablets in my pocket when the police searched me but I did not know what was in the bag at the time.

I thought the tablets were mints – like those wee breath-freshener things.

I was going to give the tablets to the bouncer - for nothing – as a favour.

I remember it was about 9.30 pm when Gerry and I both went to the door for a breath of fresh air.

I was speaking to Gerry when a guy in a black BMW shouted me over to his car.

I walked slowly over to see what he wanted.

He said “Do us big favour and give these to Dave the bouncer. Thanks.”

He handed me the poly bag and drove off.

I saw that there were wee white tablets in the bag, but I just thought they were those mint things.

That when the police detained me.

I accept that the police lawfully searched me and that they found what they say they found.

I don't know anything about their experience of drugs.



MiniTrial Starter Pack – East Renfrewshire 2011

The rest of the police evidence is simply not true.

I did not look up and down the road.

I did not give the driver anything.

I did not say a word to him.

He just handed me the package and drove off.

I did not wave when he left.

I certainly did not say “*It’s only a few dollars.*” in reply to caution and charge.

Anyway, there is no way that the police could have seen what they say they saw.

The handwritten list which I had in my pocket is just a list of people I know. I was hoping to get together a football team for a charity fundraising event. To help sponsor the event I was going to ask them to contribute £6 – but for a couple of them I was going to suggest just £2. That’s where the figures come from.

This is all just a horrible misunderstanding.

I am not guilty of this charge.



MiniTrial Starter Pack – East Renfrewshire 2011

Defence witness No. 2.

**Gerry (or Jerry) Logan,
aged 17, residing at 12 Coll Crescent, student.**

On Saturday 15th June, I had gone to the “Antarctic Club” in Fenwick Road, Giffnock. I was with my best friend James Wood.

James Wood doesn't do drugs – and he is certainly not a drug dealer.

I know that he physically had 60 Ecstasy tablets in his pocket when the police searched him but he did not know what was in the bag at the time.

He thought the tablets were mints – like those wee breath-freshener things.

He was going to give the tablets to the bouncer - for nothing - as a favour.

I remember that it was at about 9.30 pm when James and I both went to the door for a breath of fresh air. James was speaking to me when a guy in a black BMW shouted him over to his car. James walked slowly over to see what he wanted. I heard the driver say “Do us big favour and give these to Dave the bouncer. Thanks.” He handed James a poly bag and drove off. I saw that there were wee white tablets in the bag, but I just thought they were those mints things. James did too. That when the police detained James.

I think this is all just a horrible misunderstanding.

James is definitely not guilty of this charge.

I can't remember if James looked up and down the road. I can't remember if James gave the driver anything. I can't remember if James said anything to the driver. The driver just handed James the package and drove off. I can't remember if James waved when he left.

I can't remember what James said to the police.

I don't know anything about a football team for a charity fundraising event.



6. Summary - the sequence of events during the trial

1. The Court **convenes** /assembles - the Sheriff is brought on to the bench
2. The Clerk "**calls the diet**" - formally starts the case against the accused
3. The Accused's **plea** is tendered by his defence lawyer - "Not guilty" in this particular case
4. The Clerk **ballots the Jury** - chosen from those cited for jury service
5. The Clerk **reads the indictment** (charge) to the jurors
6. The Clerk **administers the oath** to the jury
7. The Sheriff **outlines the procedure**
8. The witnesses give **evidence**
9. The Sheriff puts the witnesses on "**oath**" to tell the truth
10. **The Crown Case** is presented as follows:

 Witness 1 for the Crown - "**examination-in-chief**" by the Crown
 Witness 1 - "**cross examination**" by the defence

 Witness 2 for the Crown - examination in **chief** by the Crown.
 Witness 2 - **cross-examination** by the defence
11. **The Defence Case** is presented as follows:

 The accused - "**examination-in-chief**" by the Defence
 The accused - "**cross examination**" by the Crown

 Witness 2 for the Defence - examination in **chief** by the Defence.
 Witness 2 - **cross-examination** by the Crown.
12. **The Crown Speech** to the Jury - seeking conviction
13. **The Defence Speech** to the Jury - seeking acquittal
14. **The Sheriff's Charge** to the Jury - giving them directions in law
15. **The Jury retire** - to consider their verdict
16. **The Verdict.**
17. **Plea in Mitigation and Sentence**
18. **The End - Feedback please.**



Additional Materials - for the drugs case

“Drugs Update Sheet”.

This sheet contains additional information for the drugs case. It is for distribution to the participants prior to the trial – after everyone is familiar with the Starter Pack material. It is followed by a copy of the forensic science report, the joint minute and the “List of Names” (a production) – which should all be available for the trial.

URGENT FURTHER INFORMATION

H. M. Advocate v. James Wood

As a result of continuing preparation for the trial diet the Crown and the Defence (and the witnesses – who should act in role) are now aware of the following new information:-

The Antarctic Club – this is a new club which has only been open for a day or two. It has attracted a broad range of people from various walks of life.

The drugs referred to in the forensic science report have actually been produced as Label Production No 1 – which can be shown to the jury if it thought appropriate. *(The production will be available at the start of the trial.)*

Sergeant Galloway - has many years experience. She tends to be very dogmatic and a bit too sure things. She believes that at the accused is guilty without any shadow of a doubt – and appears anxious to make sure that the jury convict.

Constable Yuille – is a relative novice. He not very forthcoming with information. For some reason he is not keen to dwell on the details of what he says is in his note book.

James Wood – the accused is a delightful young man. Basically “very nice but dim”. He is quiet and unassuming – but he listens to the questions and answers clearly. He is an only child. He stays at home with his parents – who are both teachers. He is studying music at a local college.

N. B. The accused will know by the time the trial starts whether or not he is in fact guilty or innocent.

Gerry Logan – is a down to earth sort of guy. He has a dreadful memory – but the things he can remember he puts across well. He lives at home with his mother. He has to leave school and get a job soon – to pay for medical treatment which his mother needs.



MiniTrial Starter Pack – East Renfrewshire 2011

CROWN PRODUCTION NO. 2

SCOTTISH FORENSIC SCIENCE LABORATORIES

FORENSIC SCIENCE REPORT

By Des Murphy and Maureen Browne

Her Majesty's Advocate v. James Wood

On 24th November at the Scottish Forensic Science Laboratories we both examined Crown Label Production No. 1 which is a polythene bag containing 60 white tablets.

Said tablets were found to contain methylene-dioxy-methyl-amphetamine (MDMA) the controlled drug commonly known as Ecstasy which is a Class A drug specified in paragraph 1(c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971.

This is a true and accurate report.

Signed

Des Murphy

Forensic Scientist

Maureen Browne

Forensic Scientist



MiniTrial Starter Pack – East Renfrewshire 2011

SHERIFFDOM of NORTH STRATHCLYDE AT PAISLEY

JOINT MINUTE OF ADMISSIONS

in the cause

HER MAJESTY'S ADVOCATE

Against

JAMES WOOD

A For the Crown and

B For the Panel, James Wood

have agreed and hereby agree as follows :-

1. that Crown Label Production No. 1 is a polythene bag containing 60 white tablets;
2. that said tablets were examined by Des Murphy and Maureen Browne, both forensic scientists at the Scottish Forensic Science Laboratories, on 24th November;
3. that Crown Production No 2 is their report of said examination; and
4. that said tablets were found to contain methylene-dioxy-methyl-amphetamine (MDMA) the controlled drug commonly known as Ecstasy which is a Class A drug specified in paragraph 1(c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971.

IN RESPECT WHEREOF

Signed A
for the Crown

Signed B
for the Panel James Wood

SHERIFFDOM
Of
NORTH STRATHCLYDE AT PAISLEY

JOINT MINUTE OF ADMISSIONS

in the cause

HER MAJESTY'S ADVOCATE

Against

JAMES WOOD

2011



MiniTrial Starter Pack – East Renfrewshire 2011

CROWN PRODUCTION NO. 3

Handwritten List of Names and Numbers

| | |
|----------------|---|
| <i>Valerie</i> | 6 |
| <i>John</i> | 6 |
| <i>Ronnie</i> | 2 |
| <i>Jim</i> | 6 |
| <i>Jane</i> | 2 |
| <i>Frank</i> | 6 |
| <i>Gerry</i> | 6 |
| <i>Colin</i> | 6 |
| <i>Roy</i> | 6 |
| <i>Neil</i> | 6 |
| <i>Eugene</i> | 6 |



7. The Crown Speech to the Jury - a possible outline

Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of **the Crown**.

It is my function to present the evidence - but it is your function to decide whether on the evidence the Crown have proved the accused "Guilty" beyond reasonable doubt.

The Crown invites you to accept that that **there is no reasonable doubt that the accused James (or Jane) Wood is guilty of the offence charged.**

On the evidence, the factors pointing to James Wood's guilt are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, the Crown say that on the evidence you would be fully justified in finding that James Wood has been proved **guilty "beyond reasonable doubt"** - and that you should convict. Mr Wood has no defence.

I invite you to return a verdict of "**guilty as libelled**".



8. The Defence Speech to the Jury - a possible outline

Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of the accused – **James (or Jane) Wood**. It is important to remember that in Scotland every accused person is **presumed to be innocent**.

It is up to the Crown to prove an accused person guilty - and to prove his guilt "beyond reasonable doubt". That is a high standard. If there is any reasonable doubt about Mr Wood's guilt, then you must acquit.

In this case, I am inviting you to accept that the Crown has clearly failed to prove its case.

The factors which show **there is a reasonable doubt** are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, on the evidence, you would be fully justified in finding that **guilt has not been proved**. There is a reasonable doubt - and Mr Wood is entitled to the benefit of that doubt. In any event Mr Wood has established a defence. I invite you to agree that Mr Wood should be acquitted - and to return a verdict of "**not guilty**".



9. The Charge

SHERIFF'S CHARGE TO THE JURY - a possible outline

LADIES and GENTLEMEN OF THE JURY, it is now my duty to give you directions as to the law in this case.

You and I have **DIFFERENT FUNCTIONS**.

It's MY FUNCTION to deal with questions of law and you must accept and apply my directions on **THE LAW**.

But YOU are the judges of **THE FACTS**.

It's **YOUR FUNCTION** to assess the evidence. It's for you to decide: - what evidence you believe and what you disbelieve; what evidence you find reliable and what unreliable. Please consider the evidence with care. It is your recollection and your assessment of the evidence that counts - and not mine.

There are **THREE VERY IMPORTANT LEGAL PRINCIPLES** which I wish to draw to your attention at the outset.

1. **THE PRESUMPTION OF INNOCENCE**. Every person is presumed innocent and he remains innocent unless and until the Crown satisfies you that he is guilty beyond reasonable doubt. It is up to the Crown to prove the guilt of the accused. If they fail to do so, then the accused must be acquitted.
2. **THE STANDARD OF PROOF - is GUILT BEYOND REASONABLE DOUBT**. A reasonable doubt is something that would cause you to hesitate or pause before taking an important decision in the practical conduct of your own life. If there is any doubt about an accused's guilt and it is a reasonable doubt, not a fanciful or hypothetical one, then you must acquit.
3. The Crown must prove guilt by what is called **CORROBORATED EVIDENCE**. That means by evidence from more than one source. It is not every detail that requires to be corroborated. It's the essentials of the case, such as the commission of the crime and involvement of the accused. Corroboration need not come from two eyewitnesses - circumstantial evidence can be enough.

Remember that the burden is on the Crown throughout. An **ACCUSED** is in a completely different position. AN **ACCUSED** never needs to prove anything at all. An accused never requires to give evidence and evidence in defence never needs to be corroborated. If the accused's guilt is proved beyond reasonable doubt you should convict. But if on **ALL** the evidence there is any reasonable doubt then you must acquit.

The evidence is very fresh in you minds - and I propose to say nothing further about it.



MiniTrial Starter Pack – East Renfrewshire 2011

However, I would like to say a few words about the **LAW**.

As you can see from the indictment, the charge alleges that the accused committed an offence under the Misuse of Drugs Act 1971. The drug referred to is Ecstasy which is a Class A controlled drug.

The charge alleges a contravention of section 5(3) of the Act – which relates to “possession” of a controlled drug “with intent to supply it to another”.

It is unlawful, in general, for a person to have “**possession**” of controlled drugs. There are two elements to the meaning of possession – and the Crown must prove both. The first is “**knowledge**”. The Crown must prove that the accused knew that he had a substance of some kind which was in fact a controlled drug. They don’t actually have to prove that he knew he had the drug in question, if they prove he knew he had a substance in his possession. The second element is “**control**”. For the element of control to be established, it must be proved that the accused had a practical say in the disposal of the substance. A person who is carrying an object in his pocket will normally have control over it in the relevant sense. He can keep it, take it out and dispose of and so on.

“**Supply**” applies to sale, supply for a price, or exchange for something else, or to handing the drug over for no consideration whatsoever. It is supply to give drugs to a friend just as it is to sell them on the street. The issue is whether it has been proved that the accused intended to supply any of the drugs to another. Proof of intent to supply can be inferred from surrounding circumstances or from the quantity or form of the drugs.

The question for you is whether the prosecutor has proved beyond reasonable doubt that the accused James (*or Jane*) Wood is guilty of the offence libelled - as set out in the indictment.

In the circumstance of this particular case you may be entitled to acquit the accused by virtue of **section 28(2)** of the Misuse of Drugs Act 1971 - which has the following effect. In this case you have heard evidence from the accused that he thought the tablets were mints or breath fresheners and not controlled drugs. If you believe the accused you must acquit him - but even if you don’t believe the accused but you are left overall with the view that it is more probable than not that the accused neither knew, nor suspected, nor had any reason to suspect that the package contained controlled drugs, you must acquit. Remember that the evidence of an accused person does not require to be corroborated.

In assessing the evidence you should consider carefully all of the points made by the prosecution and by the defence. Having done that you should come to a verdict according to the principles which I have explained to you.

THERE ARE **THREE VEDICTS** OPEN TO YOU

1. Guilty or
2. Not Guilty or
3. Not Proven

The last two ("not guilty" and "not proven") are both verdicts of acquittal.



MiniTrial Starter Pack – East Renfrewshire 2011

Your verdict can be unanimous or by majority.

Before you can find an accused guilty there must be at least EIGHT of you in favour of guilty verdict.

When you have reached a verdict please tell the Clerk of Court.

Please also appoint a spokesperson to speak for you when you return to give your verdict.

WOULD YOU NOW PLEASE **RETIRE** AND CONSIDER YOUR VERDICT.



10. Jury Observation Sheets - for the jurors.

(a) JURY OBSERVATIONS on the PROSECUTION Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the prosecution witnesses and any doubts raised.

Witness Number 1

Witness Number 2

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree
A = Agree
D = Disagree
SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Prosecution's Closing Speech:

How did the prosecution use the evidence to prove its case?

(b) JURY OBSERVATIONS on the DEFENCE Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of



MiniTrial Starter Pack – East Renfrewshire 2011

the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

FACTS established by the evidence of the defence witnesses and any doubts raised.

Witness Number 1

Witness Number 2

CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree
A = Agree
D = Disagree
SD = Strongly Disagree

Witness 1 was a believable and reliable witness SA A D SD

Witness 2 was a believable and reliable witness SA A D SD

Why did you reach those conclusions?

Defence Speech to the Jury:

How did the defence use the evidence to raise a reasonable doubt?



MiniTrial Starter Pack

Chapter 4 - Web Links - some law-related links

MiniTrial



<http://www.minitrial.org.uk>

The MiniTrial homepage – MiniTrial materials and an interactive courtroom

<http://thepaisleynail.blogspot.com/>

MiniTrial news and a selection of Scottish law-related links

Scottish Courts & Sheriff Clerks

<http://www.scotcourts.gov.uk>

* Where *is* your local Sheriff Court? See Locations - thanks to Scottish Courts

The Faculty of Advocates

<http://www.advocates.org.uk> -

The Faculty of Advocates

The Law Society of Scotland

<http://www.lawscot.org.uk> -

The Law Society of Scotland

<http://www.solicitoradvocates.org/> -

The Society of Solicitor Advocates



MiniTrial Starter Pack – East Renfrewshire 2011

The WS Society

<http://www.signetlibrary.co.uk>

The Society of Writers to Her Majesty's Signet

Procurators Fiscal

<http://www.crownoffice.gov.uk> -

Crown Office and Procurator Fiscal Service

Public Defence Solicitors' Office

<http://www.pdso.org.uk>

Public Defence Solicitors Office

The Police

<http://www.scottish.police.uk/mainframe.htm> -

Scottish Police Forces

<http://www.spf.org.uk> -

Scottish Police Federation

Legal Aid

<http://www.slab.org.uk> -

The Scottish Legal Aid Board

Legal Information

<http://www.bailii.org> -

British and Irish Legal Information Institute

<http://www.scotcourts.gov.uk>

Scottish Courts



MiniTrial Starter Pack – East Renfrewshire 2011

<http://www.scottishlawreports.org.uk> –
The Scottish Council of Law Reporting

<http://www.sccrc.org.uk>
The Scottish Criminal Cases Review Commission

Scottish Parliament

<http://www.scottish.parliament.uk> -
The Scottish Parliament

Scottish Education

<http://www.gtcs.org.uk/> -
The General Teaching Council for Scotland

Citizen Foundation

<http://www.citfou.org.uk> -
Citizenship Foundation

<http://www.citizenshipfoundation.org.uk/main/page.php?18>
Bar National Mock Trial Competition – supported by the Faculty of Advocates

Young Scot

<http://www.youngscot.org>
Young Scot

Other contacts that might help

<http://www.advocates.org.uk> -
The Faculty of Advocates

<http://www.cas.org.uk/> -
Citizens Advice Scotland



MiniTrial Starter Pack – East Renfrewshire 2011

<http://www.childline.org.uk/> -

Childline UK

<http://www.lawscot.org.uk/> -

Solicitors - The Law Society of Scotland

<http://www.scottish.police.uk/> -

The Scottish Police

<http://www.victimssupportscot.org.uk>

Victim Support Scotland

<http://www.samaritans.org.uk/> -

Do you need someone to talk to? The Samaritans.

<http://www.scottishwomensaid.co.uk/> -

Scottish Women's Aid

<http://www.cica.gov.uk/> -

Criminal Injuries Compensation Authority

Internet Safety

<http://www.scotland.gov.uk/clickthinking> -

Personal Safety on the Internet - from the Scottish Executive

Please take care on the internet.

MiniTrial is not responsible for the content of external internet sites



MiniTrial Starter Pack – East Renfrewshire 2011

Contact MiniTrial?



www.minitrial.org.uk

If you have any suggestions, revisals or corrections
or you would like to offer your help or support

Please contact

info@minitrial.org.uk

Someone will try to help
or put you in touch with someone who can.

We hope.

© A. F. Wylie 2010
Copyright and all rights reserved.
Permission granted to reprint copies for classroom use only.