

# Edinburgh Primary School MiniTrial



[The Faculty of Advocates](#)

with materials from



[MiniTrial.org.uk](http://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 “Edinburgh MiniTrials” for secondary schools are supported by the The City of Edinburgh Council, The Sheriff Clerk’s Office in Edinburgh, The Procurator Fiscal’s Office in Edinburgh, the Edinburgh Bar Association and the Faculty of Advocates.

Primary school MiniTrials are also supported by The City of Edinburgh Council. This starter pack has been devised following the MiniTrial format, and has been taken into primary school classrooms in Edinburgh principally by Joan Spencer, a teacher at Trinity Academy, with the assistance of several Scottish lawyers including John Scott and Simon Collins, both Solicitor Advocates based in Edinburgh, and various members of the Faculty of Advocates.

For younger primary pupils there is a Goldilocks MiniTrial which is also available for download free from the MiniTrial web-site.

For classes who wish to run a trial *without* a jury – there is a District Court MiniTrial based on simpler District Court procedure.

The MiniTrial homepage is [www.minitrial.org.uk](http://www.minitrial.org.uk). It contains a free “downloads” page and links to a blog and other law-related web sites.

## Chapter 1 – Outline

"MiniTrials" are simulated court cases designed to be conducted by schools - within roughly two sessions - 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.



## MiniTrial Starter Pack – Edinburgh Primary

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](http://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.
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	<b>Outline</b>		Page	<b>1</b>
Chapter 2	<b>Student Handout</b>	on MiniTrial Procedure	Page	<b>12</b>
Chapter 3	<b>Case Papers</b>			
	For <b>Case No. 1</b>	<b>Malicious Mischief</b>	Page	<b>29</b>
Chapter 4	<b>Web-links</b>	some law-related links	Page	<b>42</b>

### Time needed:

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



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### Class level:

Primary classes. To run a MiniTrial in a school the minimum number of students is 9 - allowing for a jury of at least one! When two schools are involved – each school will need a minimum of 4 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.

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.

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



## 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, with court experience, should act as Sheriff if possible.
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**".



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- 6. Timing.** You may think it best to spend one session 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 attention to what happens in the court if they are to carry out their roles properly - and return a true verdict.

Allow an hour and a half 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](http://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?").



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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.

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.



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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.

### **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.





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### 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

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" (outlining the law which is to be applied) and the Jury retire to consider their verdict. The trial may take about



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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 – which is something that cannot be done after a real trial.
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.
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?



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- 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 overview 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 place 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.



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



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<b>TIMETABLE for 60 minute Trial : Stage</b>	<b>Starting time</b>	<b>Time allowed</b>
1. Introduction and preliminary matters		10 minutes
2. Examination-in-chief of 1 <sup>st</sup> prosecution witness		3 minutes
3. Cross-examination		2 minutes
4. Examination-in-chief of 2 <sup>nd</sup> prosecution witness		3 minutes
5. Cross-examination		2 minutes
6. Examination-in-chief of 1 <sup>st</sup> defence witness		3 minutes
7. Cross-examination		2 minutes
8. Examination-in-chief of 2 <sup>nd</sup> 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



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### 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**

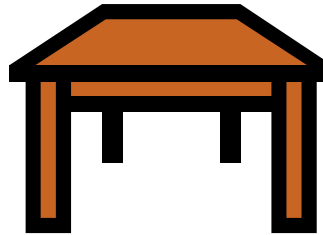
OOO (sit in the Jury Box – rows of seats)

OOO

OOO

**COURT OFFICER**

(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**

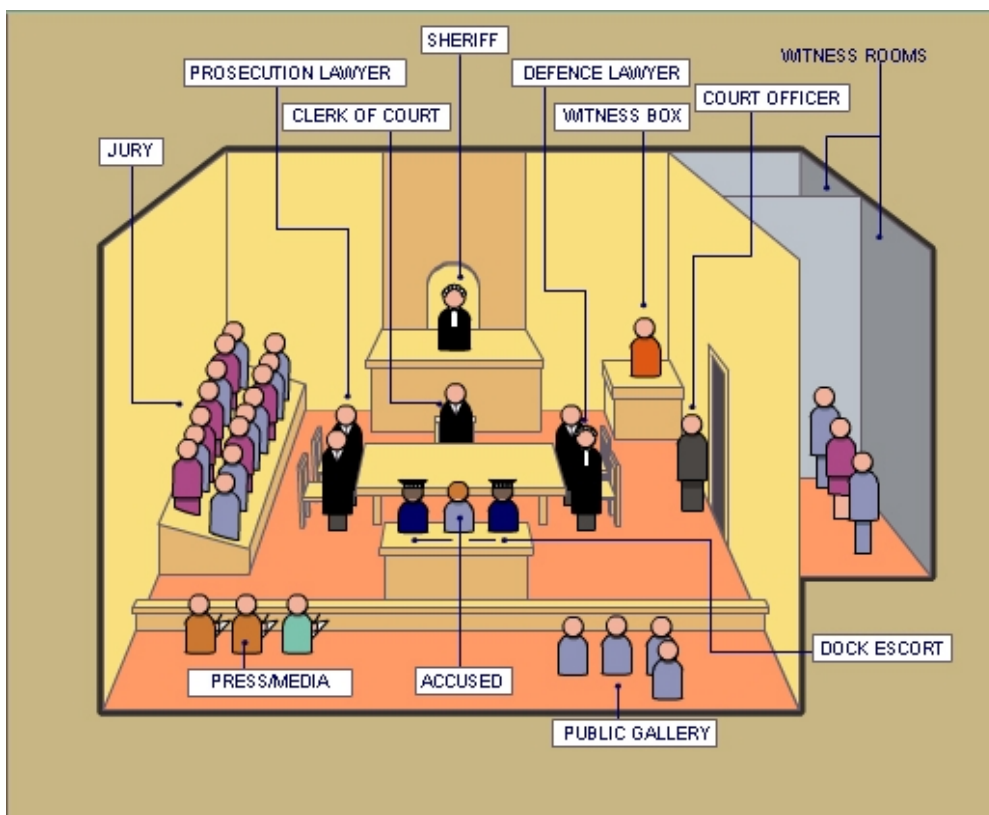
(wait in the witness rooms / room)



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[www.minitrial.org.uk](http://www.minitrial.org.uk)



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njd = [www.notjustdesign.co.uk](http://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 Tony Bowie. Are you Tony Bowie?"**

The accused **Tony Bowie** (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."**



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

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



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"Ladies and Gentlemen of the jury the charge against the accused Tony Bowie is that on 15<sup>th</sup> March in Smith Street he did maliciously damage property belonging to Mr Robert Wiley who lives at Number 2 Smith Street and did break his windows with a brick or bricks or similar items.

### 6. The Clerk administers the oath to the Jury.

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

"Ladies and Gentlemen of the Jury, please stand and raise your right hands. Do you promise 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?"



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

**"My Lord my first witness is Robert Wiley,"**

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.**

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 MiniTrial "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.""**



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### 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"**.

#### **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?"



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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: -

**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 Crown Case Closes and the Defence case begins

After all the prosecution witnesses have been questioned and cross-examined (and re-examined if necessary), the **prosecutor** checks whether there are any other matters to be dealt with by the Crown.

In some case there is a Joint Minute of Agreement. In that event the prosecutor will say:-

**“My Lord, there is also a Joint Minute of Agreement in this case and with your Lordship’s leave I propose to read it to the Ladies and Gentlemen of the Jury.”**



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If the defence agree, the Sheriff will allow that to be done. The Sheriff will also explain briefly to the jury that certain matters have been agreed between the prosecution and the defence, which saves time and inconvenience to witnesses, and that a document called a Joint Minute is about to be read to them setting out the facts which are deemed to have been formally proved. The prosecutor will then go over and stand in front of the jury box and read the Joint Minute aloud to the jury.

Once the prosecutor is satisfied that there are no other matters to be dealt with by the Crown, the prosecutor will say:-

**"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**

The prosecutor addresses the jury first, then the defence.



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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.

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





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**"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"**



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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

**"Tony Bowie, 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 / payback order,
- probation,
- deferred sentence,
- a fine,
- a compensation order,
- an admonition, or
- an absolute discharge.



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The Sheriff may say

**"I am going to call for a Social Enquiry Report. The case will be adjourned for three weeks."**

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 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 3 - MiniTrial Case Papers

This Chapter contains a set of MiniTrial Case Papers for use in conducting your MiniTrials.

The case concerns allegations of malicious mischief.

The papers 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.



## CASE No. 1

### HER MAJESTY'S ADVOCATE

v.

### TONY BOWIE

## 1. The Facts - a brief summary

### FACTS

Tony Bowie and several of his friends were out hanging around in the street on Friday, March 15. A few guys from a different area came over to them. They dared Tony and his friends to throw bricks at Mr. Wiley's windows. Mr. Wiley is an old man who often tells teenagers to stay off his property. Several windows were broken, and when Mr. Wiley ran out of his house to stop them, he recognized Tony.

The Crown has charged Tony with malicious mischief - and for reasons best known to the Crown Tony has been charged on indictment.

Issue: Has it been proved that Tony threw a brick that broke Mr. Wiley's windows?



## **2. The Indictment - the charge**

The indictment is in the followings terms: -

**HER MAJESTY'S ADVOCATE**

**v.**

**TONY BOWIE**

TONY BOWIE, 8 Saddler Avenue, you are indicted at the Instance of Her Majesty's Advocate and the charge against you is that:

On 15<sup>th</sup> March in Smith Street you did maliciously damage property belonging to Mr Robert Wiley who live at Number 2 Smith Street and did break his windows with a brick or bricks or similar items.



### 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.

In this particular case, no question need arise in relation to whether a crime has been committed by someone. **There is no doubt that if Tony threw a brick that broke Mr Wiley's windows that would be the crime of malicious mischief**

If, in a real court, the Sheriff was to give a definition of the crime of **Malicious mischief** it would probably be something along the following lines:-

"Malicious mischief is the crime of damaging or destroying the property of another or interfering with it to the detriment of the person who owns it or who is in possession of it.

The Crown must prove that the damage, destruction or interference was carried out wilfully or recklessly - in other words that it was done by the accused either deliberately or (viewed objectively) was done by him with an utter disregard for the consequences."

This summary simply illustrates the sort of language that might be used in a real court. It is not essential to use it for the purposes of MiniTrial.

You might wish to explain the main features along these lines: -

The Crown has to prove either

- (1) that Tony intentionally broke a window with a brick or
- (2) that Tony threw a brick which broke a window and when he did so he deliberately failed to stop and think out what the obvious consequences of doing that might be.



## 4. Precognitions - prosecution witnesses

### Prosecution Witnesses

1. **Robert Wiley**
2. **Leslie McKay**

#### Crown witness No 1

**Robert Wiley,**  
aged 67, residing at 2 Smith Street, retired.

I live at 2 Smith Street. I have lived in this neighbourhood for 47 years. My wife and I built our little house when we were married. My wife died five years ago. Since then, I have been a victim of many attacks of vandalism. They frighten me.

On Friday evening, March 15, I was watching the 9:00 o'clock news when I heard glass breaking in my front window.

I ran out my back door and around the house to see what was going on. I saw lots of teenagers.

I recognized Tony because he lives down the road and often walks past my house. It was clear to me that this group of people was responsible for breaking my windows. In fact, Tony had a brick in his hand and was getting ready to throw it.

I don't know what I'm going to do now. It will cost over £2,000 to repair the damage. I don't have any insurance and I spent my life savings on medical treatment for my wife.

Tony was wearing a brown leather jacket. It had a red and yellow dragon design on the back. I saw the design as he was running away. I shouted after him.

There was a street light on the other side of the road – behind the group of youths

I can identify Tony. He is sitting over there (points to Tony).





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### Crown witness No. 2.

**Leslie McKay,**  
aged 19, residing at 7 Wade Road, student.

I have delivered newspapers to Mr. Wiley’s neighbourhood for three years.

On Friday, March 15, I was delivering the evening newspaper to Ms. Crowley, who lives three houses away from Mr. Wiley.

I heard people screaming and then I heard breaking glass.

It was probably about 8.30 p.m. It was quite light.

I ran over to Mr. Wiley’s house.

I saw about 10 teenagers on the pavement outside.

Tony and another person were pushing each other.

It looked to me like the other guy was trying to stop Tony from throwing a brick.

I did not actually see anyone throw a brick.

I cannot remember what Tony was wearing.

I think it was a dark coloured jacket.

I can clearly remember Mr Wiley shouting something.

I think he said:-

“There’s Tony – the little bandit - in his dragon jacket. Stop him.”

I can identify Tony. He is sitting over there (points to Tony)



## 5. Precognitions - defence witnesses

### Defence Witnesses

1. Tony Bowie, the accused
2. Sandy O'Carroll

#### The accused – defence witness No. 1.

**Tony Bowie,**  
aged 17, residing at 8 Saddler Avenue, student.

I was out with my friends on Friday, March 15. It was almost getting dark when a bunch of other guys we didn't know came over to us and started bugging us.

They wanted us to throw bricks with them. They were going to try to break some of Mr. Wiley's front porch windows.

Even though I don't like Mr. Wiley very much, we said we wouldn't do that.

I saw one of the guys standing next to me pick up a brick. I tried to take it out of his hand so he wouldn't throw it.

That's when Mr. Wiley came around the corner. Leslie the guy who delivers the newspapers also showed up.

I did not throw any bricks.

I was wearing a white jacket with a hood.

I do own a black leather jacket but I was not wearing it that night. My leather jacket has a red and yellow dragon design on the back – but I was not wearing it.

My white jacket had no design on it.

I did not run away.



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### Defence witness No. 2.

**Sandy O’Carroll,**  
aged 17, residing at 10 McGregor Drive, student.

Tony Bowie and I were out with some other friends on Friday, March 15.

We were just hanging around when a bunch of guys we didn’t know rode up to us and started noising us up.

They dared us to throw bricks at old Mr. Wiley’s windows. We tried to ignore them.

They threw a brick and hit a front porch window. Then they threw some more bricks.

I think a couple of windows were broken.

Tony and I and our friends stood and watched.

When one of the other guys picked up a brick to throw, Tony tried to stop him.

Then Mr. Wiley came around the house.

The other guys said they didn’t throw the bricks, they said that Tony did.

I think they were mad at Tony because he tried to stop them.

Tony is a quiet boy.

Tony wouldn’t try to break Mr. Wiley’s windows.

Tony was wearing a jacket. All I can remember is that it was a light colour.

We walked away – quite quickly – to get away from the trouble.

There were some street lights nearby. The nearest one was on the same side as of the road as Mr Wiley’s house – I think.



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### 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.**



## 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 was guilty of maliciously damaging Mr Wiley's property - but "Who was it?"

The Crown say **there is no reasonable doubt that the accused Tony was responsible**.

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

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

In short, the Crown say that **Tony'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 - **Tony**  
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 Tony's guilt, then you must acquit.

In this case, the Crown has simply failed to prove that Tony threw any brick - far less a brick which damaged Mr Wiley's property.

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 Tony is entitled to the benefit of that doubt.

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



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

There is no doubt that if Tony threw a brick that broke Mr Wiley's window that would be the crime of malicious mischief.

The real question for you is whether the prosecutor has proved beyond reasonable doubt that it was Tony who threw such a brick.

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.

Remember, if you have any reasonable doubt about the guilt of the accused then you must acquit.

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.





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# 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://thepaisleysnail.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



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### **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



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<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



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<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.victimsupportscot.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



## Contact MiniTrial?



[www.minitrial.org.uk](http://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](mailto:info@minitrial.org.uk)

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

We hope.

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