



### Schroon Lake Central School Mr. Jones

#### Objectives

- Learn about common practices and procedures of the American justice system.
- Develop more in-depth knowledge of a particular historical period and the issues and motivations common for people at that time and place.



**Background** - For cases involving reenacted historical cases, this is a brief review of the story. Students should be *very* familiar with this and will often find useful information here for arguments before the court.

**Stipulated Facts** - These are facts that neither side disputes. While playing, students may not dispute these facts.

**The Law** - This is a statement of the laws relevant to the case. These laws must guide the decision.

**The Problem** - This is a precise statement of what is to be decided in the trial.

**Roles** - In the case of historical reenactments, students are given an outline of the person they are to play. Although a certain amount of embellishment and interpretation is welcome, students must remain consistent with the character's testimony, attitude, and point of view such that the trial **could** have the same result as the original trial.

**Character Profile** - Students work with their teams to create character profiles and evidence based on the historical time period in question. *See form at end of this manual.*

**Decision** - The judge and jury are bound by the law, as stated in the mock trial directions, no matter what. The only exception to this is in Supreme Court moot court activities where the justices may overturn a law deemed unconstitutional (and in such cases, however, the US Constitution is the highest law). This being said, neither judge nor jury are required by the activity to find as the original judge and jury did. Participants may interpret the law differently or may be swayed by more skilled arguments on the part of the attorneys. **However, it is against the rules to make decisions arbitrarily or capriciously. Findings must be on the evidence and the law.**

**Rules** - Participants are responsible to know the rules or procedure and of evidence thoroughly.

## **Procedure**

### **1. Create characters, alibis, roles, and settings for the trial**

Students are briefed on the historical period, the accusation, the stipulated facts of the case, and the pertinent law. These things are provided by the teacher in advance. There should be a balance maintained between establishing enough facts to make a trial possible while leaving enough open-ended so that students can create their own historical characters, evidence, and setting.

Students who wish to play judge and district attorney should be elected as they would be in many places in real life. Other students' roles are drawn from a hat (they may be allowed to trade off if they don't like their role). The defense team will select its own lawyer, the rest being witnesses.

Teams now develop their case theories, alibis, witness testimony and characters. A form is provided for both activities. This should be done in class. Judge and jury also create time-period characters and prepare to make decisions based on these characters. All students must try to "get inside" the historical period. Teams are reminded to avoid creating fictional character traits or evidence which favors their side in a grossly unfair way. No feature may contradict stipulated facts. No witness statement or character trait can be changed once trial begins.

### **2. Mock trial voir dire**

Students create some portions of the mock trial. This is intended to permit some creativity in character, to make the outcome less certain, and to encourage students to investigate historically accurate character, setting, and issues. However, this leaves open the possibility that students will create some element that unfairly weighs the case in their favor. For example, one witness may claim to be Zeus, an all-powerful deity who cannot lie under oath.

To prevent this and balance the process, a **voir dire** activity will be used before trial. Like in real life when attorneys examine potential jurors, attorneys in the mock trial will examine fictional characters and evidence of the opposing team. If there are any objections, the team will bring them before the judge in advance of trial. Judge may rule that character traits, evidence, or other features of a case theory may be stricken or modified. The judge has the final say. Students are given time to make any adjustments necessary to their character profiles.

### **3. Conduct Mock Trial**

*See rules which follow...*

## Rules

*These rules are adapted from the National High School Mock Trial Championship Rules. Gaps in numerical sequencing reflect rules that were not necessary for the classroom setting.*

### **B. THE PROBLEM**

#### **Rule 2.1. The Problem**

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

#### **Rule 2.2. Witnesses Bound by Statements**

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement.

A witness is not bound by facts contained in other witness statements.

### **D. THE TRIAL**

#### **Rule 4.2. Stipulations**

Stipulations shall be considered part of the record and already admitted into evidence.

#### **Rule 4.3. Reading Into The Record Not Permitted**

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

#### **Rule 4.4. Swearing of Witnesses**

The following oath may be used before questioning begins:

“Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff; or (c) the examining attorney. The host state will indicate which method will be used during all rounds of the current year's tournament. Witnesses may stand or sit during the oath.

#### **Rule 4.5. Trial Sequence and Time Limits**

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination. (12 minutes per side)
3. Cross and Re-cross (optional) Examination. (12 minutes per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

#### **Rule 4.6. Timekeeping**

Time limits are mandatory and will be enforced. An official timekeeper will be assigned to each trial.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

#### **Rule 4.7. Time Extensions and Scoring**

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of over-runs in time.

#### **Rule 4.8. Motions Prohibited**

No motions may be made.

#### **Rule 4.9. Sequestration**

Teams may not invoke the rule of sequestration.

#### **Rule 4.10. Bench Conferences**

Bench conferences may be granted at the discretion of the presiding judge, but should be made from the counsel table in the educational interest of handling all matters in open court.

#### **Rule 4.11. Supplemental Material/Costuming**

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make-up which are case-specific.

The only documents which the teams may present to the presiding judge or scoring panel are the individual exhibits as they are introduced into evidence and the team roster forms. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

#### **Rule 4.17. Standing During Trial**

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

#### **Rule 4.18. Objections During Opening Statement/Closing Statement**

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge will not rule on this "objection."

#### **Rule 4.19. Rules of Evidence**

*In actual courtroom trials, what spoken testimony and physical evidence are allowed into evidence is governed by very complex rules. These rules are designed to ensure that both sides receive a fair hearing and to keep out any evidence that doesn't relate to the issue of the case, isn't reliable, or whose value as evidence is totally outweighed by how prejudicial it would be.*

*The complexity of the rules of evidence used with mock trials varies, depending upon the experience of the class and teacher in conducting mock trials. A more simplified form of rules appears below.*

#### **Standard Objections**

An attorney can object any time she or he thinks the opposing attorney is violating the rules of evidence. The attorney may object to questions that the other side's attorney is asking, to answers that a witness is giving, or to exhibits that the other side is attempting to admit into evidence. Generally attorneys are not allowed to object to opening statements or closing arguments. The attorney wishing to object should stand up and do so at the time of the violation.

When an objection is made, the judge will ask the reason for the objection. The objecting attorney should state what specific rule of evidence is being violated. Then the judge will turn to the other attorney who asked the question or offered the exhibit, and that attorney usually will have a chance to explain why the objection should not be accepted (that is, should be “overruled”) by the judge. The judge will then decide whether the question, answer, or exhibit must be discarded because it has violated a rule of evidence (“Objection sustained”) or whether to allow the question, answer, or exhibit to become part of the trial record (“Objection overruled”).

### **1. Irrelevant Evidence**

“I object, Your Honor. This testimony is irrelevant to the facts of the case.” This means that the witness’s answer, the attorney’s original question, or the exhibit will not help the trier of fact to decide the issues in the case.

### **2. Leading Questions**

“Objection. Counsel is leading the witness.” Leading the witness is only objectionable when done on direct examination. Leading questions are proper on cross examination. A leading question is one that suggests the answer to the question and is usually answered by “yes” or “no.”

### **3. Hearsay**

“Objection. Counsel’s question (the witness’s answer or the exhibit) is based on hearsay.” Hearsay is a statement made outside of the courtroom. Statements that are made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem arises when a witness is asked to tell what another person said to him or her.

There are many exceptions to the hearsay rule. Two of the most common are

a. That a witness may repeat a statement made by either party in the case if the statement contains evidence that goes against his or her side;

OR

b. If a person’s state of mind at the time of a certain event is important, any statements made about that event at the time the event occurred concerning the speaker’s intent, knowledge, or belief will be admissible.

### **4. Lack of Personal Knowledge**

“Objection. The witness has no personal knowledge that would enable him or her to answer this question.” The witness is testifying to things that the witness has not directly seen, heard, or experienced.

## 5. Opinion

“Objection. Counsel is asking the witness to give an opinion.” Unless it is within the common experience of people to form an opinion on the subject, opinions will not be allowed. Expert witnesses may give opinions, if they explain the basis for the opinion, which is called “laying a foundation.” An expert witness is someone who by training or experience has special knowledge in the case.

## 6. Argumentative Question

“Objection. That question is argumentative.” Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner. Badgering is harassing or asking again and again. While attorneys questioning the other side’s witnesses can be forceful and pressing, if they go too far a judge will sustain an objection for being argumentative.

## 7. Speculation

“Objection. Counsel is asking the witness to speculate in order to answer the question.” Attorneys cannot ask questions that get witnesses to guess at answers.

## 8. Special Rule for Mock Trials

An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If the attorney believes a witness has gone beyond the information provided and is providing new information that is totally out of character and will change the outcome of the trial, use the following objection:

“Objection. The witness is creating material fact that is not in the record.”

**9. Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: “Tell us what you know about this case.”)

**10. Non-Responsive Answer:** A witness’ answer is objectionable if it fails to respond to the question asked.

## Rule 4.19. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. “Your honor, may I approach the bench to show you what has been marked as Exhibit No. \_\_\_?”
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. “I now hand you what has been marked as Exhibit No. \_\_\_ for identification.”

6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor", or "Yes, your Honor". If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. \_\_\_ is/is not admitted."

#### **Rule 4.20. Use of Notes**

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

#### **Hints on Objections**

Attorneys should object only when they are sure there is a reason and they have a specific objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness should be the only attorney able to raise objections when the opposing side conducts its examination of that witness.

Once an objection has been made, the witness should stop talking until the objection has been resolved. If the objection has been overruled, the attorney asking the question should persevere and ask the question again to ensure that the witness gets to answer the question or the exhibit gets admitted into evidence. Many times once the objection is over ruled, the attorney doesn't follow up and pursue the issue.

When judges rule against attorneys, attorneys should take the ruling gracefully, not making facial expressions or gestures that show the ruling affected them. Similarly, attorneys pleased with a ruling should not thank the judge for it.

When objections are sustained, attorneys should move on to another question and end their questioning on a strong note.