



Judges In The Classroom

The Republic of Rome v. Marcus Brutus Mock Trial

Source:

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Objectives:

1. Students will conduct a mock trial, follow the sequence of steps in a trial, and employ good techniques for each role.
2. Students will make complex, prepared oral presentations as attorneys and witnesses.
3. Students will demonstrate skills in listening, rapid critical analysis, and extemporaneous speech.
4. Students will gain an understanding of the rules of evidence and procedure.
5. Students will demonstrate knowledge of the law applicable to the case.

Grade Level: _

Grades 6-8

Time: _

One class period (approximately 50 minutes)

Materials:

Mock trial packet for the judge (mock trial agenda, stipulated facts, sworn statements, and evidentiary information as included in this lesson). The teacher will prepare all other materials for students ahead of the trial date.

Note: This lesson assumes the class completed a multi-disciplinary unit on mock trial preparation. They studied legal concepts and procedures, analyzed the trial process, reviewed historical issues, and prepared for this specific case. Now, the parties are ready to proceed to trial, with you as the judge.

Mock Trial Agenda

Procedures:

1. **Begin the class** by introducing yourself and setting the students at ease. Tell students the purpose of this mock trial is to familiarize them with the court process, to develop analytic and communication skills, and to help them understand more about criminal law.
2. **Start the trial** by following this agenda:

n **Mock Trial Enactment** (40 minutes)

- (1) The bailiff calls court to order as the judge enters.
- (2) The judge announces case of *The Republic of Rome v. Marcus Brutus* and reads aloud these instructions:

"This is a criminal case brought by the Republic of Rome charging the defendant, Brutus, with murder in the first degree. The Republic claims that Brutus, with a premeditated intent to cause the death of Julius Caesar, caused his death on March 15, 44 B.C.

"Brutus admits that he stabbed Caesar on March 15, 44 B.C. but claims that the homicide is justified. His defense is that he committed the homicide in the lawful defense of the nation, when he reasonably believes that Julius Caesar intended to destroy the Republic of Rome and that there was imminent danger of the Republic being destroyed.

"It is now my duty to swear in the jury. Will the jury please rise and raise your right hands? Please indicate your agreement by saying, "I do." Do you swear or affirm that you will base your decision solely on the evidence presented before you in this case, not allowing any class loyalty, outside pressures, or personal bias to influence your final decision? Be seated.

"The burden of proof in this case is on the prosecutor, and is proof beyond a reasonable doubt.

"It is your duty to determine the facts in this case from the evidence produced in court. It is also your duty to accept the law from the judge, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

"Counsels' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. They are not evidence; however, and you should disregard any remarks, statements, or arguments that are not supported by the evidence or by the law as given to you by the Judge.

“You are the sole judges of the credibility of the witnesses and of what weight is to be given to the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe; the witness's memory and manner while testifying; any interest, bias, or prejudice the witness may have; the reasonableness of the testimony of the witness considered in light of all the evidence; and any other factor that bears on believability and weight.

“The case will now proceed in the following order. First, the prosecutor will make an opening statement, outlining the evidence to be presented on behalf of the state's case. The defense lawyer will then make an opening statement, outlining the defense case.

“Second, the prosecutor will introduce evidence. At the conclusion of the state's evidence, the defense may introduce evidence.

“Third, at the conclusion of all the evidence, further instructions will be given to you, after which the lawyers will have the opportunity to make closing arguments. Then you will retire to the jury room, select a presiding juror, and deliberate on your verdict.”

- (3) The judge asks counsel to introduce themselves and their clients.
- (4) Prosecution's Opening Statement (3 minutes)
(Time for each activity is tracked by a clerk who notifies the judge and lawyer of remaining time by holding up cards indicating "2 minutes," "1 minute," and "0 minutes" remaining.)
- (5) Defendant's Opening Statement (3 minutes)
(No reservation to the end of the Prosecution's Case-in-Chief.)
- (6) Prosecution's Case-in-Chief, which consists of four witnesses:
 - Gaius Cassius Longinus
 - Mark Antony, Caesar's Lieutenant
 - Ghost of Julius Caesar
 - Calpurnia, wife of Julius Caesar

(Direct examination is limited to 6 minutes for each witness;
cross-examination to 3 minutes for each witness)

Note: The bailiff, not the judge, swears in witnesses.

- (7) Defendant's Case-in-Chief, which consists of four witnesses:
 - Marcus Brutus, Defendant
 - Portia, wife of Brutus
 - Casca, one of the conspirators
 - Soothsayer

(Direct examination is limited to 6 minutes for each witness;
cross-examination is limited to 3 minutes for each witness)

- (8) After all of the testimony, the judge then reads aloud the closing instructions to the jury:

"To convict Marcus Brutus of the crime of murder in the first degree, the prosecutor must have proved each of the following elements beyond a reasonable doubt:

- **That on or about the 15th day of March, Marcus Brutus killed Julius Caesar;**
- **That Marcus Brutus acted with intent to cause the death of Julius Caesar;**
- **That the intent to cause the death was premeditated;**
- **That Julius Caesar died as a result of Marcus Brutus's acts; and**
- **That the evidence does not establish a defense of justifiable homicide.**

"If you find from the evidence that the prosecutor has proved each element beyond a reasonable doubt, then it will be your duty to return a verdict of guilty to murder in the first degree. However, if you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty to murder in the first degree.

"It is a defense to a charge of murder in the first degree that the homicide was justifiable. Homicide is justifiable when committed in the lawful defense of the nation, when the defendant reasonably believes that the person killed intends to destroy the Republic and that there is imminent danger of the Republic being destroyed.

"Imminent has a different meaning than immediate. Imminent means ready to take place, near at hand, hanging threateningly over one's head, or menacingly near. Immediate means occurring, acting or accomplished without loss of time, or made or done at once. The statute only requires that the harm faced by the defendant be imminent.

"Upon returning to the jury room for your deliberations, your first duty is to select a presiding juror to act as chair. It is his or her duty to see that that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has a chance to be heard and to participate.

"This being a criminal case, all of the jurors must agree upon a verdict.

When you have so agreed, the presiding juror will notify the bailiff who will conduct you into court to declare your verdict.”

- (9) Prosecution's Closing Argument (3 minutes including rebuttal)
- (10) Defendant's Closing Argument (3 minutes)
- (11) Prosecution's Rebuttal
- (12) Jury Deliberations

n Debriefing

After the trial, the judge should convene the students for debriefing. Any time the jury reaches a verdict, the judge should suspend the debriefing process and allow the jury to render its verdict. Following the verdict, the judge should resume the debriefing.

During the debriefing the judge should acknowledge the contributions of the bailiff and clerk, and later thank the jury for listening. The judge should then offer constructive comments to the students, explaining the reasons for rulings on objections, discussing the effectiveness of their strategies, and commenting on the performance of witnesses. The judge may describe how this mock trial differs from actual cases.

n Verdict

The presiding juror will read the verdict. The judge may poll the jury if time allows.

n Adjourn

3. **Conclude the class session** by thanking all students and observers. Frequently, other classes of students or students' family members come to observe the mock trial. If time permits, respond to questions the students, teacher(s), and observers pose.

The Republic of Rome)	
)	
v.)	
)	Statement of Agreed Facts
Marcus Junius Brutus)	
Defendant)	
)	

In the Murder of Julius Caesar

On March 15, 44 B.C., Julius Caesar was stabbed to death in the Roman Senate shortly after giving a speech. At the time, Julius Caesar was a popular and successful statesman and general. He had been engaged in a civil war since 49 BC and became the victor in 46 BC. Caesar had declared himself dictator in 46 BC and was implementing many social and political reforms.

A group of Roman Senators conspired and then carried out their plot to kill Caesar. The leader was Cassius, a long time political enemy of Julius Caesar. Marcus Brutus, the defendant, had been a friend of Caesar's. He was drawn into the conspiracy during a meeting at his home on March 14, 44 B.C. He took over as leader in the plan to kill Caesar the next day at the Senate.

On March 15, 44 B.C. Caesar's wife, Calpurnia, tried to keep Caesar at home because she felt that something evil was about to happen. Caesar agreed to remain at home, but later in the day, Senators Cassius, Brutus and other Senators convince him to go to the Senate as planned. He gave a speech and then a group of conspirators rushed him with their swords and daggers drawn. They each took turns stabbing Caesar. When Caesar spotted Brutus with his dagger drawn, he stated, "Et tu, Brutus?" and gave up resisting. Brutus stabbed Caesar who then fell to the floor dead.

Caesar's lieutenant and loyal friend, Mark Antony, would not let the Senators enjoy their victory. Through skillful rhetoric, he turned the people against Brutus and Cassius and got the prosecutor's office to charge both of them with first degree murder.

Cassius plead guilty to the murder of Julius Caesar prior to the murder trial of Brutus. In exchange for a promise to get a prison term and not the death penalty, Cassius agreed to testify against Brutus.

Brutus admits that he took part in the killing. However, he defends his actions by claiming that he took this terrible action to save his country, to preserve the republican (representative) form of government and prevent a tyrant of illegally taking power.

Prosecution Witnesses

1. Gaius Cassius Longinus
2. Mark Antony, Caesar's Lieutenant
3. Ghost of Julius Caesar
4. Calpurnia, wife of Julius Caesar

Defense Witnesses

1. Marcus Brutus, Defendant
2. Portia, wife of Brutus
3. Casca, one of the conspirators
4. Soothsayer

Law

Murder in the first degree: A person is guilty of murder in the first degree when, with a premeditated intent to cause the death of another person, he or she causes the death of such person.

Premeditation involves more than a point in time. An intentional murder is in the first degree if it is committed with premeditation. Premeditation may be proved by demonstrating that the accused acted with consideration and reflection upon the preconceived design to kill, turning it over in the mind, giving it a second thought.

Justified Homicide: It is a defense to a charge of murder in the first degree that the homicide was justified. Homicide is justified when committed in the lawful defense of the nation, when the defendant reasonably believes that the person killed intends to destroy the Republic and that there is imminent danger of the Republic being destroyed.

Imminent has a different meaning than immediate. Imminent means ready to take place, near at hand, hanging threateningly over one's head, menacingly near. Immediate means occurring, acting or accomplished without loss of time, or made or done at once. The statute only requires that the harm faced by the defendant be imminent.

Sworn Statement of Gaius Cassius Longinus, Prosecution Witness

My name is Gaius Cassius Longinus, or Cassius. I was once a part of the great Roman Senate. I am a great man, but I have been brought low by the actions of the despicable Julius Caesar. I have known Julius Caesar since he was a boy. He was a coward, but the people didn't know this. They believed he was as powerful as a god. Caesar himself believed this. He was working day by day to become the King of Rome and undo the great Republic of Rome that had survived for 400 years.

Caesar got a taste for power during the Gallic Wars. It was just after his success there, that the Senate ordered him to put down his command. He refused. In fact, he crossed the River Rubicon, entering onto Italian soil, to show his defiance of the Senate, the representatives of the people. Civil War broke out. Pompey fought his former friend Caesar, but unfortunately Pompey was defeated.

When Caesar came back from defeating the sons of Pompey in battle in 44 BC, he was ready to grab the crown. He arranged for a major military procession just in time for the races that are part of the Feasts of Lupercal. A soothsayer came up to Caesar, but I couldn't hear what he said. The soothsayer moved away from Caesar and stood not too far from where I was standing with Brutus; I didn't pay any attention to the soothsayer after that. This was the first time that I spoke to Brutus to find out what he thought about the unchecked ambition of Caesar. I wanted to see how willing Brutus would be to join our effort to stop Caesar. Brutus said he was dissatisfied, and agreed to talk about it further.

Meanwhile, Caesar got his lapdog, Mark Antony, to pretend to offer him the crown to be King of Rome. It's true that Caesar turned it down three times, in front of the people. We Senators knew that he was just playing the crowd, working on them, and trying to look humble, so that they would accept him as King when the time was right.

I, the leader, developed a plan to keep Caesar permanently from being king. I recruited Casca, another Senator, and Brutus. It's true that Brutus was reluctant to join at first, but once he joined, he took over as leader. We met at his house on March 14, 44 BC, the night before Caesar died. It was Brutus who made the plan how we were to rush Caesar in the Senate and stab him with our daggers and swords. I was glad to have Brutus take over, because he was able to persuade Caesar to come to the Senate on March 15, especially when it looked like Caesar might not come.

We thought that if we could get Caesar to the Senate floor, we would be able to stop him permanently. On the morning of March 15, 44 B.C., Brutus, several other Senators, and I went to Caesar's home. His wife Calpurnia tried to stop Caesar from going, but Caesar didn't want us to know he was afraid so he came along. Brutus spoke to Caesar in front of the others, saying that the Senate wanted to know his plans, that we were considering making him king. Caesar agreed to come. We went to the Senate, and Caesar gave one of his big-winded speeches. He told them that he was the North Star, the only one powerful enough to hold the Roman Republic together. At this point, Brutus rushed toward Caesar with other Senators coming up behind. Brutus took his dagger and plunged it into Caesar. Caesar did realize at first that it was Brutus, but when he saw that Brutus was the main person trying to kill him, he gave up. His last words were "Et tu, Brutus." He stopped fighting; Brutus gave the last and fatal stabbing wound.

I admit that I was jealous of Caesar. Yes, if the crown had been offered to me, I would have taken it, but it wasn't. This Caesar had to be stopped. The Republic had to be saved. We Senators had to keep our place in history. Yes it is true that Senators in Rome are not elected to the Senate, we got there because we are a part of the noble families. We had great privileges as Senators that we would have lost had Caesar become king.

I pleaded guilty to murder in the first degree and agreed to testify against Brutus in exchange for a life sentence, not the death penalty.

Sworn Statement of Mark Antony, Prosecution Witness

I have served as lieutenant to Julius Caesar for many years. The Senate had been corrupt for

almost one hundred years. Their greed and plundering of the country and the conquered lands were responsible for the decline of Rome. It was Caesar who saw this and had a bright vision of how to strengthen Rome and the Greco-Roman world. The Senators did not want to give up its huge wealth and privileges. This is why they killed Caesar, for their own selfish motives.

The people of Rome loved Julius Caesar. If the Senate was so concerned with keeping a government of representation, why didn't they listen to the people?

Of course, I knew Marcus Brutus. In fact, I did refer to him as "the noblest Roman of them all." I do believe that Brutus believed he acted for the common good to all Romans, but he had no right to kill Caesar. Caesar had not taken the crown; Caesar had not thrown out the Senate or taken away their power. Caesar was killed for what Brutus thought he *might* do, not for what he *did* do.

On March 15, 44 B.C., I was not with Julius Caesar when he was murdered, but I knew that he planned to enter the Senate. I was worried about this, because there were rumors that his life was in danger. I came running into the Senate chambers as Caesar fell, dead to the floor. Brutus was standing over Caesar, with his bloody dagger.

Sworn Statement of Julius Caesar's Ghost, Prosecution Witness

I am the ghost of Gaius Julius Caesar. It is a very sad day to be here, to see Brutus, who used to be my dear friend. He betrayed me. I still cannot believe that he would do this.

I came from a noble family; in fact we trace our ancestors back to the goddess Venus. I've never made a big deal about that, though. In fact, I have never identified with the nobility. I understood that to make Rome great, all of its people had to be treated fairly. For my entire life, I watched as the policies of the Roman Senate were crushing the life out of Rome and the Greco-Roman world.

I am a genius at military matters, as anyone can see from my brilliant defeat of the Gauls, in a series of campaigns that ended in 50 BC. It was then, that the Senate decided it had to get rid of me, because I threatened all their special privileges that were destroying Rome. They ordered me to put down my command of the army, and I refused. I crossed the Rubicon on to the soil of Rome, and they launched a campaign against me. Of course, I was the victor of the civil war, which ended in 46 BC. I gave myself the title, Dictator, in 46 BC and launched a series of political and social reforms for the country. I only had the good of the country in mind.

For example, I reformed the calendar. I created a standard for the constitutions of local governments. I resurrected the great cities of Carthage and Corinth that had been destroyed by my predecessors. I granted Roman citizenship to aliens. I even increased the size of the Roman Senate to make it more truly representative. These are not the actions of someone who only wanted power. I wanted to make Rome great again. Only I could do that.

There was a time that I thought I could count on Brutus to be an honorable man. Up until Cassius recruited him to kill me, I believed that he lived by his principles. In February 44 BC, I

had just returned from battle in which I defeated Pompey's sons. I came into Rome at the time of the races of the Feast of Lupercal. A soothsayer came up to me and said, "Beware the Ides of March." I would never let the public know this, but this scared me. I noticed Cassius watching me, like a lean and hungry wolf. I knew that he was up to no good. However, I never believed that he could have convinced my friend Brutus to join against me, but he did.

During the night of March 14, 44 BC, my wife Calpurnia dreamt of my death three times. Calpurnia pleaded with me not to go to the Senate on March 15. On the morning of March 15, 44 BC, Brutus, Cassius, and other Senators came to my house. They invited me to the Senate, saying that the Senate was interested in hearing about my ideas for reform. Again, I didn't want to go, but I couldn't let these Senators see that I was afraid. Also, Brutus was there, my friend, so I believed nothing would happen to me.

The Senators walked with me through the doors of the Senate. I went to the podium and delivered a powerful speech, outlining the glories of Rome that I would be able to restore to it. As soon as I was done, a group of Senators rushed me with their swords and daggers drawn and began to stab me. Of course, Cassius led the way. He stabbed me first, but he only got me in the right arm. I was fighting madly; I think I had a chance to get away. Then I looked up and made eye contact with Brutus. He was there, a dagger in his hand. Just as he was plunging the dagger into my heart, I said, "Et tu, Brutus." Brutus was no longer a man of honor. Instead, he had been lured to the ignoble cause through flattery and through appeals to the possibility of the loss of his privileges in the Senate. He deserves to die for his actions.

Brutus makes some claim that I wanted to be king. I had already refused the crown three times. If I had wanted to be king, would I have done that?

Statement of Calpurnia, Wife of Julius Caesar, Prosecution Witness

Julius Caesar was my husband. He was a man with a great dedication to Rome. He was never motivated to take power just to have power. He was a genius, who was committed to making Rome great again.

The Senators were selfishly guarding all their privileges. They took whatever riches they could plunder and left nothing for the people. The Republic was coming to an end anyway. My husband was trying to reform it so that it could last as a great power for many more years.

In February 44 BC, after Julius came back from the battle with Pompey's sons, he was frightened. A soothsayer had approached him at the races and said, "Beware the Ides of March." Most people didn't know this about Julius, but he was a very superstitious man. He had a public face and a private one.

On March 14, I had three dreams. In each one, my husband was murdered. I couldn't see exactly who was doing it, but I cried out and woke myself up each time, screaming, "Julius Caesar is dead." Julius was terrified too. He believes in omens. The fact that it was the 15th of March, the Ides of March, made him even more afraid. However, when that traitor Brutus and the others came to our house in the morning of March 15, I thought Julius would stay at home. But Brutus lied and tormented Julius to get him to come out of the house and into the Senate. Brutus is a coward. He claimed he was a great friend of Julius, but when he finally

realized was going to be losing privileges, he murdered Julius.

Sworn Statement of Marcus Junius Brutus, Defendant, Defense Witness

My name is Marcus Junius Brutus and I have been a Senator in the Roman Senate. My ancestor was Lucius Junius Brutus, who helped drive the Tarquins from Rome and establish the Roman Republic. I am grief stricken at what I was forced to do, to kill Julius Caesar, but it was the only thing that I could do to save the Republic. I could not sit by and watch Caesar destroy the Republic that would dishonor my family name. This is not about my pride in my ancestors. Caesar was a direct threat to Roman institutions.

Julius Caesar was no longer a wise statesman, but he had become ambitious and self-serving. Two years before, in 46 BC, Julius declared himself Dictator. The Senate had commanded him to lay down his military command, and he blatantly refused to do so.

He would have taken the crown and deprived Rome's citizens of the representative government that they have enjoyed for 400 years.

Mark Antony is no hero restoring good government, but a demagogue who willfully and with utter irresponsibility inaugurated a dreadful civil war in which brother kills brother.

I very reluctantly decided to join the plan to save the Republic but only because there seemed to me no other way to avert tyranny. Caesar, after all, was to be crowned not by any constitutional process but simply at the hand of his own lieutenant, Mark Antony, in front of the rabble.

Even crowning by senators had no place in Rome's constitutional order. My whole purpose and the only thing that could convince me to act was to preserve freedom. My act was neither unjust nor wrongful, but the act of a true patriot.

What happened was this. In February 44 B.C., Cassius approached me and told me that Julius Caesar was taking his popular support and his self-proclaimed dictatorship into destroying the country. He was going to proclaim himself King. Cassius said we must kill him that this was the only way to stop him and to save the Republic. I did not have a good night's sleep since this conversation. I thought it over and over. I finally, on March 14, 44 BC, reluctantly agreed. There was a meeting at my house, and I agreed to help eliminate Caesar. However, I did not take over the leadership of the plan to remove Caesar. Cassius is lying. He was the instigator and the leader from start to finish.

On March 15, in the morning, Cassius and I and some other Senators went to Julius's house in the morning to get him to come to the Senate. Julius' wife urged him not to go, but Julius came with us. After we went to the front of the Senate, Julius made a speech. If you can believe this, he declared himself the North Star, which is one step away from declaring himself King. A group of Senators rushed toward Caesar and began to stab him. I stood back at first. Then I knew that I had to live up to my principles, and I too raised my dagger to stab him. Caesar then turned to me and said, "Et tu, Brute" while staggering towards me. At this point, I was horrified and didn't want to go forward. However, I had given my oath to protect the Republic. I knew I had to act. I stabbed Caesar in the chest with my dagger. I did not try to hide my action. Mark Anthony came running up; I explained why we had to kill Caesar.

How does a loyal citizen of Rome overcome unjust rule when the monarch is neither elected, nor removable, and there is no established method of succession capable of identifying a definite successor? I had no choice.

Sworn Statement of Casca, Defense Witness

My name is Casca, and I was a Senator in the great Roman Senate. Beginning in the 50s BC, I watched Julius Caesar amass a great deal of military strength. With that military strength, he was able to get riches and pay for agents to come to Rome to influence what was happening. It was very clear to the Senators that Caesar's goal was to destroy the Republic and make himself King.

Yes, it is true that Caesar was offered the crown three times in front of the Roman people and that each time he refused it. At first, I believed that Caesar didn't want the crown. I even told Cassius about Caesar refusing the throne, and Cassius helped me see that it was just a trick to fool the people. Caesar was merely trying to get the people to believe more in him, pretending not to want to the throne as he continued to organize to make his move.

I was with Cassius when we went to Brutus' house on March 14, 44 BC. Brutus did not want any part of the plan to kill Caesar, but Cassius finally convinced him that it was his duty as a citizen and a senator of Rome to stop this tyrant from destroying the Republic.

Sworn Statement of Portia, wife of Brutus, Defense Witness

My name is Portia, and I am married to Brutus. Brutus has always been an honorable man, a man of principle. On March 14, 44 BC, Cassius, Casca, and some other Senators came to our house to talk to my husband. Because we have a marriage based on partnership and equality, I was able to be there as Cassius tried and tried to get my husband to join their plan to kill Caesar.

Brutus did not want to be a part of killing, especially since Caesar was his friend. After the Senators left that night, he talked and talked about it, trying to decide what was the right thing to do. In the end, he knew that he had to save the Republic, and that Caesar was determined to destroy the great Republic of Rome. He left the next morning, and I didn't see him again until after he had been arrested for murdering Caesar.

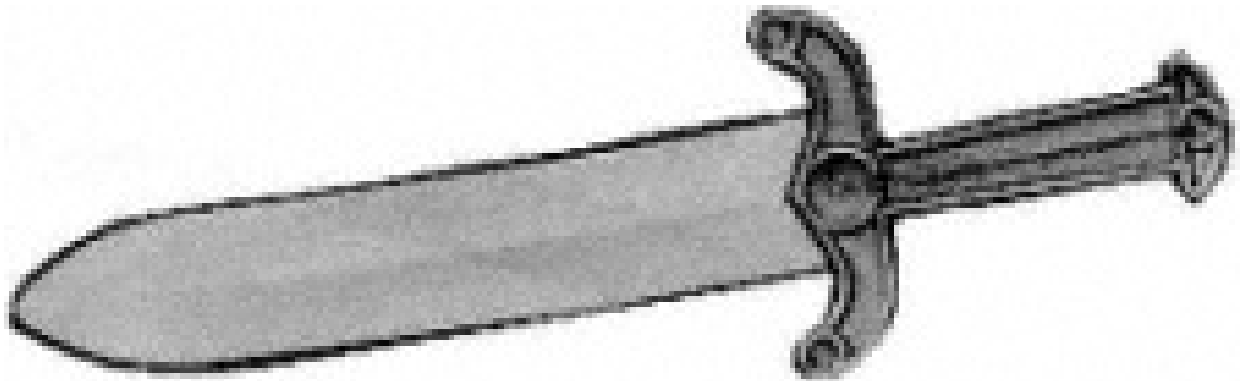
Sworn Statement of Soothsayer, Defense Witness

I am a soothsayer, that means that I have the power to predict what will happen in the future. In February 44 BC, at the races, I saw Julius Caesar arriving in all his military regalia. He came into Rome, in a magnificent military procession. I could see that he had plans to become King. I could also see that he would never be King.

All of a sudden, a darkness clouded my mind. I knew that Julius faced a great danger. The phrase that kept running through my head was "Beware the Ides of March." I could not control myself, but I went up to the magnificent Caesar, and the words flew out of my mouth: "Beware the Ides of March."

I stepped back into the crowd and found myself standing close to Cassius and Brutus. They did not pay any attention to me; however, I was listening to what they had to say. Cassius was asking Brutus to be part of their plan to kill Caesar. Brutus resisted. He would not commit to killing Caesar.

Exhibit



Dagger belonging to Brutus. Brutus handed the knife to Mark Antony immediately after the killing of Caesar.

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.

Simplified Rules of Evidence: Standard Objections

An attorney can object any time he or she 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 ("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").

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 jury to decide the issues in the case.

Leading Questions on Direct

"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."

Hearsay

"Objection. Counsel's question (or the witness's answer, or the exhibit) is based on hearsay." Hearsay is a statement made outside of the courtroom. With certain exceptions, statements that are made outside of the courtroom are 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:

1. 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
2. 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.

Lack of Personal Knowledge

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

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.

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 on cross-examination—that is when questioning the other side's witnesses—can be forceful and pressing, there is a point in which the attorney goes too far, and a judge will sustain an objection for being argumentative.

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.

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 which is not in the record."

Special Procedures

Procedure 1. Introduction of Physical Evidence

The lawyers may wish to offer as evidence written documents or physical evidence, such as the dagger. Special procedures must be followed before these items can be considered by the judge and jury as evidence.

1. "Your Honor, I ask that this item be marked for identification as Prosecution Exhibit #1." Attorney hands item to bailiff for marking.
2. Attorney shows item to opposing counsel, who may object to the evidence.
3. The attorney hands the item to the witness. "Mark Antony, do you recognize this dagger that has been identified as Prosecution Exhibit #1?" The witness should say, yes. Counsel should then ask the witness to tell the Court what it is. The witness should then explain that it is the dagger belonging to Brutus, that Brutus handed to him on March 15 after Caesar had been killed.
4. At this point, the attorney may ask the witness questions about the dagger.
5. If the attorney wishes to put the dagger into evidence so that the jury may consider it in its decision, counsel says, "Your Honor, I offer this dagger for admission into evidence as Prosecution Exhibit #1 and ask that the Court admit it."
6. The Court will ask the other side if it objects and will then either admit, or refuse to admit, the dagger. Unless the Court admits the dagger, the jury will not consider it in deciding the case.

Procedure 2. Impeachment

On cross examination, the lawyer wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment" which may use one of the following tactics: (1) asking questions about the prior conduct of the witness that shows that the witness is not always honest; (2) revealing that the witness has a motive for lying; (3) showing that the witness does not have a good basis for testifying because of faulty perception; or (4) showing that the witness has said something different at a time in the past than what the witness is now saying. This last tactic makes use of the witness's statement.

In order to impeach the witness by comparing information in the witness statement to the witness' testimony, lawyers should use this procedure:

Step 1: Ask the witness if he or she recognizes the statement.

Step 2: Ask the witness to read the section that differs from the present answer.

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Hint on Objections

Only object when you are sure there is a reason, and you 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 shall also raise objections when the opposing side conducts their examination of that witness.

If the judge rules against you on a point in a case, take the ruling gracefully and act cordially toward the judge and the other side. Don't be afraid to object again.