



Judges in the Classroom

Herschel C. Lyon Mock Trial

Source:

From a unit, *State of Washington v. Herschel C. Lyon*, written for the Institute for Citizen Education in the Law, Seattle, Washington, by Tarry L. Lindquist, Julia Gold, and Margaret Fisher, and updated in 2012. Staff at the Washington State Administrative Office of the Courts (AOC) edited the lesson. For more information, contact AOC Court Services, 1206 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170. For an electronic copy of this lesson, or to view other lesson plans, visit Educational Resources on the Washington Courts Web site at: www.courts.wa.gov/education/.

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 4-8

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 current environmental 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 *State of Washington v. Herschel C. Lyon* and reads aloud these instructions:

"This is a criminal case brought by the State of Washington charging the defendant, Herschel C. Lyon, with first degree murder. The State claims that Herschel C. Lyon, with a premeditated intent to cause the death of Sam Steelhead, caused his death. In support, the State claims that on March 31, Herschel C. Lyon attacked Sam Steelhead, killing and eating him. The State denies the defendant acted out of necessity. The State claims Herschel is an overweight sea lion that eats fish, specifically Sam Steelhead, to please the crowds of humans at restaurants alongside the Locks."

"Herschel admits that he killed and ate a steelhead on March 31, although he claims that he is not sure who the steelhead was. He claims that he did this out of necessity because he needs to eat 40 pounds of fish per day in order to maintain his health."

"The bailiff will now swear in the jury." (The bailiff announces: "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 prior class work to influence your final decision?") After the bailiff swears in the jury, tell the jury to be seated.

"The burden of proof in this case is on the prosecution; it is proof beyond a reasonable doubt. The defendant must prove his defense of necessity by a preponderance of the evidence."

"The case will now follow in this order. First the prosecutor will make an opening statement, outlining the evidence to be presented on behalf of the prosecution'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 prosecutor's evidence, the defense may introduce evidence. Third, after all the evidence has been presented, I will give you more instructions, after which the lawyers will make closing arguments. Then you will go to the jury room, select a foreperson, and decide 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 "O" 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 three witnesses:

Sandy Steelhead, Sibling of Sam Steelhead
Robin Whitecub, Director of the Cedar River Tribal Hatchery
Lotta Sport, President of Trout for All

(Direct examination is limited to 5 minutes for each witness, and 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 three witnesses:

Herschel C. Lyon, Defendant
Dee D. Kated, Director of the Seattle Greenpeace Office
Ev R. Reddy, Retired biologist

(Direct examination is limited to 5 minutes for each witness, and cross-examination 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 Herschel C. Lyon 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 31st day of March Herschel C. Lyon mauled Sam Steelhead, thus causing his death;
- That Herschel C. Lyon acted with intent to cause the death of

Sam Steelhead;

- **That the intent to cause the death was premeditated; and**
- **That Sam Steelhead died as a result of Herschel C. Lyon's acts."**

"It is a defense to a charge of murder in the first degree that the homicide was committed due to necessity. To establish the defense, Herschel must prove that circumstances required him to kill Sam to protect his own health in a reasonable manner and that there was no other acceptable choice for him."

"When you go to the jury room, you should first pick a presiding juror. It is his or her duty to see that discussion is carried on in an orderly fashion, that the issues are fully and fairly discussed, and that every juror has a chance to participate."

"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.

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.) **STIPULATED FACTS**
)
HERSCHEL C. LYON,)
)
 Defendant.)

State of Washington v. Herschel C. Lyon is a criminal case. Herschel C. Lyon is charged with first degree murder in connection with the death of Sam Steelhead. The death occurred at the Ballard Locks, City of Seattle, located in King County, State of Washington.

Sam Steelhead was passing through the Locks on his way back to the Cedar River watershed, the place of his birth. He had traveled from the Pacific Ocean to complete another stage of his life cycle.

Sam Steelhead died March 31, at the foot of the fish ladder at the Ballard Locks, as a result of having been mauled. Herschel C. Lyon was observed in the area at the time.

To convict Herschel C. Lyon of the crime of murder in the first degree, the prosecution must prove each of the following elements beyond a reasonable doubt:

- (1) Herschel mauled Sam Steelhead, thus causing his death;
- (2) Herschel acted with intent to cause the death of Sam Steelhead;
- (3) The intent to cause the death was premeditated; and
- (4) Sam Steelhead died as a result of Herschel's actions.

For the defendant to be found not guilty, the prosecutor must fail to prove one of the four elements of the crime and/or the defendant must prove a defense that excuses or justifies his behavior. Herschel claims the defense of necessity, claiming that the circumstances required him to kill Sam Steelhead to protect his own health in a reasonable manner and there was no other acceptable choice for him. For Herschel to establish this defense, he must prove each element of necessity by a preponderance of the evidence.

There are three witnesses each for the prosecution and for the defense:

Prosecution:

Sandy Steelhead
Sister or brother of Sam Steelhead

Robin Whitecub
Director of the Cedar River Tribal Hatchery

Lotta Sport
President of Trout For All (a Marine sport fishing group)

Defense:

Herschel C. Lyon
Defendant

Dec D. Kated
Director of the Seattle Greenpeace Office

Ev R. Reddy
Retired biologist and co-author of the Marine Mammal Protection Act of 1972

Note to Teachers:

The crime is made up of elements (listed 1-4 on the previous page). The prosecution must prove all four of those beyond a reasonable doubt to win. Herschel wins if all the elements are not proved and/or if he can prove, by a preponderance of the evidence, his defense of necessity -- that he acted to protect his own life and health, and that there was no other acceptable choice.

In Washington, this defense is not available when the crime charged is murder or manslaughter. However, for the purpose of this mock trial, it is available.

SWORN STATEMENTS

SANDY STEELHEAD, Witness for the Prosecution

My name is Sandy Steelhead and I live in the Cedar River. However, I spend a good deal of time in the Pacific Ocean with my relatives. My brother, Sam, and I arrived at the locks on Friday, March 29. We were pretty tired. We made the trip from the Pacific Ocean in a week. The closer we got to the locks, the more we could smell the waters of our ancestors.

You know, until some 80 years ago our ancestors used to swim up the Black River to return to our spawning grounds. In 1916 the Army Corps of Engineers built a canal to join Lake Washington and Lake Union. That lowered the level of Lake Union by nine feet and caused the Black River to dry up and that blocked our migration path. That's why we come up Puget Sound to the locks now. It's not our fault.

Biologists think 200 to 300 returning fish are needed to maintain the run. Just last year, only 38 steelhead were counted passing through the fish ladder. You can see that our main job is to get back to our ancestral stream. We can't worry about sea lions!

When we get to the locks, we have to wait around a bit. We need to change from living in salt water to living in fresh water. We prefer to use the fish ladder at dusk or dawn. You probably don't realize that part of the canal floor is concrete. There are no kelp beds or other places for us to hide from predators.

It was at noon on Sunday, March 31, that my brother, Sam, and I noticed a big sea lion swimming around at the opening of the locks. We had thought that the sea lion problem had been solved. In 1994, Congress changed the law, the Marine Mammal Protection Act, to allow sea lions known to be harming us steelheads to be permanently removed, that is, to be killed. But we were wrong, the problem wasn't solved.

I was just resting when suddenly, there was an enormous splash. Near me in the water I noticed my brother, Sam, swimming for his life. A large, brown, bad smelling animal was chasing him. I know it was a sea lion and I'm almost sure I saw a tag on his ear with the number 40 on it. I never saw my brother alive again.

People in the nearby restaurants were laughing and clapping -- they urged this monster to kill my brother.

SWORN STATEMENTS

ROBIN WHITECUB, Witness for the Prosecution

My name is Robin Whitecub, a member of the Muckleshoot tribe. I live on the Cedar River Reservation. I am the Director of our tribal fish hatchery. You may not realize it, but the state has a legal and moral obligation to protect the steelhead.

In the 1850's, in a treaty signed by the government and our tribe, territorial Governor Isaac Stevens promised the tribes the eternal right to fish in their usual and accustomed places. Later, Federal District Court Judge George Boldt made that promise stick. We are guaranteed half of the harvestable catch. Now Herschel is eating our half!

Because of Herschel, only 38 steelhead got through in 1996! While it's gotten a little bit better in the last few years since they allowed the killing of sea lions who harm steelhead, there are still too few fish. There were 95 counted in 1998.

Sea lions are nuisance animals. Sometimes they are so aggressive they snap at fish as we pull them from a net! When they are encouraged, they eat more and more fish than they need to survive.

You need to know that steelhead like Sam are about 45 inches long and weigh up to 36 pounds. Herschel weighs about 800 pounds and needs about 1,200 pounds of fish per month. By the size of Herschel, I'd say he eats about 1,500 pounds of fish a month.

Herschel is guilty of murder. He's not only destroying a unique species. He's also depriving my people of an income, all because he is a glutton.

SWORN STATEMENTS

LOTTA SPORTZ, Witness for the Prosecution

My name is Lotta Sportz. I live at 9001 Spruce Avenue, Seattle, Washington. I am the President of All For Trout, a sports fishing club. I just want to say how upset I am. Wild steelhead, like Sam, are a treasured sportfish.

Herschel is greedy and not a sportsman. He outweighs, outsizes, and outeats any of us! We believe in giving the steelhead a chance. Not Herschel!

Steelhead are one of nature's beautiful designs. They look powerful and sleek, everything that a fish should be. Herschel takes advantage of them when they are tired and getting used to fresh water.

It's possible that wild steelhead like Sam are unique in North America. It may be that he and his relatives are the only large run of wild steelhead traveling through an urban habitat. Once this wild run is gone, the surviving fish will be hatchery fish. An original resident of King County will be gone forever.

Steelhead like Sam provide a lot of money to the people of Seattle. Sport fisherman spend money on equipment, licenses, and other things to catch one or two steelhead a season. Herschel doesn't spend anything. And he catches several hundred steelhead a season. It isn't fair.

I was at the locks at noon on Sunday, March 31. I just went to see how Sam and his family were making it through the fish ladder. I saw Herschel there, with the tag #40 on his ear. He was showing off. He'd make noises, dive down, chase steelhead, and then pop up, looking at the tourists. It made me sick when people would laugh and clap for him! I saw him eat two fish that day -- one before Sam and then Sam. That's 70 pounds of fish -- twice as much as he needed to eat. What a pig!

SWORN STATEMENTS

DEE D. KATED, Witness for the Defense

My name is Dee D. Kated. I live on a houseboat in Lake Union. I am the director of the Seattle chapter of Greenpeace, an organization dedicated to saving the environment. I just want to say using arrows to thump sea lions is a crazy idea. Killing them is even worse.

I was at the Locks on March 31, having a picnic lunch. I saw Herschel there, doing what he was born to do -- eating fish. I saw him eat at least one fish, but I really don't remember whether he ate any more. There were another sea lion around that day, too.

And I'm tired of this wild steelhead myth. Since 1914, one million steelhead have been introduced to Lake Washington from other river systems. That means the steelhead today are "genetically mixed." The original fish, what I would call "wild," have been gone for a long, long time and have nothing to do with the sea lions.

Different things are adding to the steelhead decline. Habitat destruction, for example, is the leading cause of the decline of fish. In Seattle, you can go to a couple places where you used to see a spawning stream and find a parking lot or mall. Why, the whole lock system was imposed by man! To make this waterway, two rivers that the steelhead used to return home were diverted and have now died. Dams are another problem, but I won't go into that right now.

There's also pollution, and the interception of the run by high sea drift-net fleets from Japan, Taiwan, and Korea. Recently, one Taiwanese vessel was apprehended and 4,000 tons of illegal salmon were found in the hold. Humans are responsible for the death of steelhead, not a sea lion who is just doing what comes naturally.

According to the American Fisheries Society, 214 wild salmon and steelhead runs in the Northwest face a moderate or high risk of extinction and over 100 runs have already become extinct. In March 1999, the Puget Sound Chinook salmon was officially listed under the Endangered Species Act.

One solution to this problem would be to provide migrating steelhead with artificial cover such as underwater "islands" of tightly spaced 6 to 8 feet-high vertical rods installed into the channel bottom. If these underwater "islands" were built into the channel bottom immediately below the fish ladder, steelhead would be provided with an escape matrix of vertical steel or concrete rods where they could swim but sea lions could not follow. With this protection, steelhead could adjust to the fresh water and safely migrate up the fish ladder.

The federal government changed the Marine Mammal Protection Act to allow the killing of sea lions only when all nonlethal methods had been tried. The islands method has not been tried. This must occur before any killing of sea lions, according to the law itself. Of course, we oppose the killing of any sea lions at all.

SWORN STATEMENTS

HERSCHEL C. LYON, Witness for the Defense

My name is Herschel C. Lyon, also known as #40 from the tag on my ear. Currently, I live some of the time at the entrance to the Ballard Locks. Ever since they said it was okay to kill me, I've had to be a little more sneaky about entering the locks.

First, I just want to get one thing straight. In 1985, I was swimming along in the Pacific Ocean minding my own business. Then I noticed huge schools of fish swimming in a current of warm water. Well, being a sea lion I did what comes naturally. I followed those fish and they led me to Puget Sound, right here to the locks. I want you to know I was just an innocent follower.

I may be called a California sea lion, but my range is the entire Pacific Coast. I go wherever the fish are in order to survive. Fish are my regular and natural diet, along with squid and hake. Let me tell you how I've been treated, just for doing what comes naturally to me. Biologists have dropped firecrackers in the water where I've been swimming. You can imagine how that hurts the ears. They've tried to feed me dead steelhead laced with "yucky" tastes that make you want to throw up! Then, they played tapes of killer whales. Now you know how afraid I am of killer whales! That was so mean! They even talked of putting "Fake Willy," a 16-foot fiber-glass killer whale in the water, but they decided against it. Of course, it wouldn't have fooled me!

And that's not all. They captured me and my friends and hauled us away. First they took us to the Washington coast. Hey, it was okay for a weekend, but I missed Seattle. Then they took us all the way back to the Channel Islands in California.

It was all right. After all, I am a California Sea Lion. But, it was a drag. That's where my parents live. And all my aunts and cousins. You know how that can be. "Herschel, why don't you do this, and why don't you do that..." My friends and I decided to head back to Seattle. You know, the law says they can kill me now, but I've got to eat to survive!

Well, I can't remember exactly how many fish I did eat that day. The people in the restaurants recognized me -- I'm famous, you know. I was giving my fans a little show, but I don't believe that I ate two fish. Did I kill and eat Sam? I don't know. I mean, all steelhead look alike. But those biologists started shooting rubber-tipped arrows at me and my friends. That hurt! And now they want to kill me! I'm not hurting them. Besides, it was time for my snack. Hey, I'm just doing what comes naturally. I have to eat fish to survive. Look it up in the encyclopedia if you don't believe me. It's there -- the California Sea Lion's main food is fish. I am a cousin of the bear, you know. No one is bothering him for eating salmon. Why's everyone on my back?

In order to survive, I need to eat 5% of my body weight a day. That's only about 40 pounds of fish daily! Some say I'm a little overweight, but hey, I love to eat! Why should I go out into the ocean and cruise all day just for just enough bottom fish to survive, when I can go to the locks, banqueting on my favorite fish, steelhead, any time I can sneak in? I'd be crazy!

It is true that the next day I had a bad stomach ache -- maybe I ate too much, and they don't

make Pepto Bismol for sea lions.

SWORN STATEMENTS

EV R. REDDY, Witness for the Defense

My name is Ev R. Reddy and I recently retired from my position with the government as a marine biologist. I moved to Olympia, Washington, from California but I've followed the problems Herschel is having in the newspaper.

I knew Herschel since he was a pup. He and his mother lived down in California. Even then, Herschel liked to be the center of attention -- he'd do anything to please a crowd. One time, when he was barely six months old, he ate a boogie board that he found in the water just to impress his friends. Herschel has always had a weight problem. He always ate a little more than he should and avoided any exercise. He has a good heart though.

From my study of his family, I became an expert on marine mammals. I helped the U.S. Congress write the Marine Mammal Protection Act in 1972 and participated in its revisions.

You see, we found that certain marine mammals were becoming extinct or endangered due to the activities of humans. We did not believe that was right. Other species shouldn't die out just because of us! Everyone knows that our ecosystem is made up all kinds of species and each is valuable.

We also knew how much we didn't know! Then, there wasn't enough knowledge about the ecology or the population of different marine mammals. The act originally made it illegal to harass, hunt, capture or kill any marine mammal. Only commercial fishermen who are protecting their gear or catch could kill sea lions. The protection of fish and shellfish is not as important as the protection of mammals. They changed the law in 1994. Now sea lions known to be harming sea lions can be killed if non-lethal methods have failed.

This law helped the population of sea lions increase. In 1975, there were only 27,000 sea lions. Today there are about 130,000 seal lions on the west coast of the United States. Up until 1960, Washington State allowed sea lions to be killed. Sea lions were first spotted in Puget Sound in 1950 and were first noticed eating fish at the locks in 1970. Harassment of sea lions began there in 1985. In 1996, three sea lions were slated to be killed when Sea World volunteered to take them to Florida. What a choice – Florida or the death penalty!

The sea lions have been treated very badly at the Locks. There are other solutions to this problem. One is to reroute the steelhead or to make them move through the locks faster, like the salmon do. Another is to build underwater barricades to keep the sea lions away from the steelhead. Sea lions can be captured in a floating cage, then held captive, in pools in the Seattle Aquarium and Tacoma's Point Defiance Zoo. I'm confident we can solve this problem. Herschel is only doing what he was born to do.

Evidentiary Information

Standard Objections

An attorney can object any time she or he thinks the opposing attorneys are attempting to introduce improper evidence or are violating the rules of evidence.

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. Then the judge will turn to the other attorney who asked the question; 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 or answer must be discarded because it has violated a rule of evidence ("Objection sustained") or whether to allow the question or answer to remain on the trial record ("Objection overruled").

IRRELEVANT EVIDENCE

"I object, Your Honor. This testimony is irrelevant to the facts of the case."

LEADING QUESTIONS

"Objection. Counsel is leading the witness."
(This is only objectionable when done on direct examination.)

BADGERING

"Objection. Counsel is badgering the witness."

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 this subject, opinions will not be allowed.)

LACK OF PERSONAL KNOWLEDGE

"Objection. The witness has no personal knowledge that would enable him or her to answer this question."

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.)

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 you believe 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."

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.