

THE STATE OF TEXAS v. LEE HARVEY OSWALD



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THE STATE OF TEXAS v. LEE HARVEY OSWALD
A "What If?" Mock Trial

Learning Objectives: The student will

1. Think critically in analyzing what might have happened if Lee Harvey Oswald had not been killed before standing trial for the assassination of President John F. Kennedy;
2. Develop an understanding of trial procedures by participating in a mock trial loosely based on a historical event.

NOTE: Although most of the information included in this mock trial is based on documented evidence, it is not an objective of this activity to teach the historical events surrounding the death of President Kennedy. Before beginning this mock trial, teachers should be sure that students understand that information contained is not historically based. Except for Oswald, his wife and his mother, witnesses are compilations of people present on the day of the shooting.

TEKS: 8.20 D, 8.30 B, D & F; U.S. Hist. 24 B & F; Govt. 9 C & H, 10 C, 12 D, 14 E, 15 D, 18 A, 21 D, 23 B; Spec. Topics 1 B, C & E, 3 A & B

Materials Needed: Case packets for all witnesses and attorneys

Vocabulary: Reasonable doubt, statute, acquittal

Teaching Strategy:

1. After studying the life and death of President John F. Kennedy, explain to students that, **at the time of the crime**, killing a president was not a violation of federal law. Therefore, if Lee Harvey Oswald had not been killed, he would have stood trial in Dallas County under the Texas statute of murder. This mock trial uses some historical facts and some suppositions and theories for students to analyze "what might have happened."
2. Assign parts for the mock trial (see "Mock Trial Assignment Sheet"). Be sure student attorneys equally share duties. One should be assigned opening statements, one should be assigned closing statements, and the third prosecuting attorney could do the rebuttal closing. Each attorney should do one direct examination and one cross examination. Witnesses should write direct examination questions for their characters.
3. It is suggested that students other than attorneys and witnesses in the mock trial be given an alternate assignment, such as creating group editorial pages (see attachment) that might have been printed between the time of Kennedy's death and the (mock) Oswald trial. Then these students could serve on the jury when the mock trial begins.
4. Set the date and time for the trial. Be sure and allow ample preparation time, in and outside of class, for the trial participants. You might want to consider inviting administrators and/or parents for the mock trial.
5. Conduct the trial under the "Simplified Rules of Evidence," given in this guide. After all evidence is presented and each side rests its case, the judge should read the jury instructions to the jury. **Remind students that the only decision the jury will make is guilty or not guilty. They will not be dealing with the matter of punishment.**

6. Debrief the mock trial. Suggested questions might include:

To the Jury--

- What was the result of the first vote that was taken?
- What was the major deciding factor in the jury's decision?
- Which member of the jury was the best persuader?
- Did any member of the jury eventually switch his or her vote?

To the Trial Participants--

- What was the hardest part of the trial?
- What would have made the trial easier for you?
- After participating in this mock trial of Oswald, are you convinced that Oswald acted alone in the assassination of President Kennedy? Why or why not?

7. Explain to students that immediately after the events in Dallas, Congress passed a law making it a federal violation to kill a president, vice president and other high ranking federal official. United States Code Annotated Title 18. Crimes and Criminal procedures, Chapter 84 § 1751 states:

(a) Whoever kills (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or (2) any person appointed under section 105()(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided

This federal statute was passed by Congress August 28, 1965.

Extensions for GT/AP:

- (1) Instead of giving students the affidavits, have them research different theories of the assassination. Then they could conduct a mock trial of Oswald or of Jack Ruby with that information.
- (2) Assign students to research events in Congress between the time of Kennedy's death and when the federal law was passed almost two years later (in other words, why did it take two years for the bill to get through the process?).
- (3) Have students obtain a copy of the *Code of Criminal Procedure* that would have been applicable in 1963 and determine qualifications/exemptions for jury service. [They will find the following: Article 578 states "In the district court, the jury shall consist of twelve **men**...." Article 612 states that jurors must be qualified voters in the county and state and a householder in the county or a freeholder in the state. Article 616 states that jurors cannot have been "convicted of theft or any felony," not under indictment, not insane or has any "defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service, not a witness in the case, did not serve on the grand jury that heard this case, did not serve on a former petit jury of this case, is not related to the defendant or prosecutor, does not have "conscientious scruples in regard to the infliction of the punishment of death for crime, that he does not have a "bias or prejudice in favor of or against the defendant," that he has already made up his mind as to the defendant's guilt or innocence, and that he is able to read and write.] Then the students could determine today's qualifications/exemptions for jury duty and make comparisons. There are also several U. S. Supreme Court cases regarding peremptory challenges (striking a juror without a legal reason). Students will also be interested in the fact that jurors received the sum total of \$2.00 per day for jury duty in 1963!

MOCK TRIAL ASSIGNMENT SHEET

Prosecution Team:

Lead Prosecuting Attorney

Assignments

Prosecuting Attorney #2

Assignments

Prosecuting Attorney #3

Assignments

Prosecution Witness Jesse Jones

Prosecution Witness Steve Straight

Prosecution Witness Marina Oswald

Defense Team:

Lead Defense Attorney

Assignments

Defense Attorney #2

Assignments

Defense Attorney #3

Assignments

Defendant Lee Harvey Oswald

Defense Witness Marguerite Oswald

Defense Witness Cary Sideman

THE STATE OF TEXAS v. LEE HARVEY OSWALD

STATEMENT OF STIPULATED FACTS
(Both sides are bound to these facts.)

I.

The Defendant, Lee Harvey Oswald, has been charged by indictment with the murder of President John F. Kennedy. The Defendant will be tried by the State of Texas for the offense of murder. The Prosecution will seek the death penalty.

The True Bill of Indictment:

In the name and by the authority of the State of Texas, the Grand Jury of Dallas County, State of Texas, duly organized at the October Term, A.D., 1963, of the Criminal District Court of Dallas County, in said court at said Term, do present that one Lee Harvey Oswald, on or about the 22nd day of November 1963, in the County of Dallas and the State of Texas, did knowingly and intentionally, with premeditation, cause the death of an individual, to wit: John Fitzgerald Kennedy.

II.

Lee Harvey Oswald's statement to the Dallas County Grand Jury was given freely and voluntarily, and all of the legal requirements for the taking of said statement have been met. Oswald's state and federal constitutional rights, including the right against self-incrimination, right to counsel, and right to due process of law are not at issue with regard to the statement given to the Grand Jury. There are no defects or infirmities in the indictment and none may be argued.

III.

Provisions of the State of Texas Penal Code applicable to this case in 1963 include the following:

Article 1256: "Murder," -- Whoever shall voluntarily kill any person within this State shall be guilty of murder. Murder shall be distinguished from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide or which excuse or justify the killing.

Definitions:

"Homicide" is the destruction of the life of one human being by the act, agency, procurement, or culpable omission of another. The destruction of life must be complete by such act or agency.

"A deadly weapon" means a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury.

"Firearm" means any device designed, made or adapted to expel a projectile through a barrel by using energy generated by an explosion or burning substance or any device readily convertible to that use.

“Serious bodily injury” means bodily injury that creates a substantial risk of death, or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Malice” as an element of murder means the willful and intentional doing of a wrongful act without legal justification or excuse and may exist without former grudges or antecedent menaces and may be presumed as a matter of fact from the act committed or words spoken.

IV.

All exhibits contained herein should be considered authentic originals and are the only exhibits that may be used in this trial. Signatures on affidavits and on all exhibits (if applicable) are authentic.

V.

Instructions to the Jury:

The Prosecution (the State of Texas) has the burden of proving the defendant guilty. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he or she has been arrested, confined or indicted for, or otherwise charged with, the offense, gives rise to no inference of guilt at his or her trial.

A reasonable doubt is a doubt based on common sense after a careful and impartial consideration of all the evidence in the case is presented. It is the kind of doubt that would make a reasonable person hesitate to act in the most important of his or her own affairs. In the event the jury has a reasonable doubt as to the defendant’s guilt after considering all of the credible evidence, the defendant must be acquitted. The jury would then return a verdict of “Not Guilty.”

VI.

Jesse Jones, Steve Straight and Marina Oswald are witnesses for the Prosecution; Lee Harvey Oswald, Marguerite Oswald and Cary Sideman are witnesses for the Defense.

VII.

This case is to be tried before a jury. The only issue to be determined by the jury is the guilt or innocence of the Defendant. Punishment will be determined in a separate hearing and only if the jury finds the Defendant guilty.

AFFIDAVIT OF STEVE STRAIGHT*

I am Special Agent Steve Straight of the Secret Service and have been so employed for several years. The Secret Service is a division of the Department of the Treasury, established to provide highly trained bodyguards to protect the president, vice president, former presidents, and their families.

My specific assignment in late November 1963 was protection of President and Mrs. Kennedy on their campaign trip to Dallas. There had been rumors for several weeks that Kennedy was going to run into some protests while he was in Dallas. The rumors even went so far as to warn the President that he was in danger of being assassinated.

I was in the front seat of the follow-up car right behind the President's car during the motorcade. The President, Mrs. Kennedy and Texas Governor and Mrs. John B. Connally were riding in a middle car, an open-top convertible. Everything had gone as planned until we were almost through the downtown area.

As we were heading toward the triple underpass on Elm Street, I heard gunshots. When the first shot went off, I noticed that the President jerked to his left. At the second shot, Governor Connally disappeared from my sight. Then there was a third shot and possibly even a fourth. The total time between the first and last shots was about five or six seconds. My first impression was that the shots came from overhead, but I also had a fleeting impression that the noise might have come from the area of the triple overpass. All I know is that we needed to get out of there as fast as possible. Everything was happening really fast. We were following the President's car at a great rate of speed, traveling under the triple overpass within seconds of the shots being fired.

It is my understanding that later that day while the area around Dealey Plaza was being searched, the police found a .38 caliber revolver. The gun evidently was in a brown paper sack behind the fence on Dealey Plaza. Some witnesses indicated it may have been dropped by a blonde woman, but there were hundreds of people in Dealey Plaza and the surrounding buildings who were at lunch at the time of the assassination! It would be reasonable to conclude that many paper bags and other trash were dropped from those lunches on November 22, 1963.

My own conclusion of this matter, after a thorough investigation, is that Lee Harvey Oswald was the lone assassin of the President. Oswald shot four times from the sixth floor of the Texas School Book Depository building. One bullet went through both the President and Governor Connally, who was riding in front of President Kennedy in the limousine. Another bullet apparently missed the limousine all together, another hit the President in the head, and the fourth bullet caused all the other damage. I will, however, admit that other officers riding in the motorcade thought the shots came from the area of the grassy knoll.

These are all the facts that I can remember about this matter.

STEVE STRAIGHT

Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Information not based on any specific person.

AFFIDAVIT OF JESSE JONES*

My name is Jesse Jones. I live in Dallas and have worked at the Texas School Book Depository for several years. I knew who Lee Harvey Oswald was but didn't really get to know him personally in the short time he worked at the depository. He didn't have much to do with the other employees.

I recall the morning of Friday, November 22, 1963. A strange thing happened while I was driving to work. A green pickup truck with a Texas license was parked about 45 or 50 feet east of the overhead signs. One man was sitting in the driver's seat, slouched over the wheel. He had on a green jacket, appeared to be in his forties and was heavy set with light brown hair. Another man was at the back of the pickup. I saw him reach over the tailgate and take out what appeared to be a gun case. The case was about eight inches at its widest point and tapered down to a width of about four or five inches. The man who took it out of the truck then proceeded to walk away from the truck up the grassy hill which forms part of the overpass. This man seemed to be in his late thirties and was wearing a gray jacket, brown pants and a plaid shirt. He also had on some kind of wool stocking hat with a tassel in the middle.

I arrived at work that morning about the same time as Oswald. He was wearing a jacket with big sleeves, and I noticed that he was carrying a large paper-wrapped object tucked beneath his arm. I asked him what was in the package, and he told me it contained curtain rods. He was carrying the package parallel to his body under his right arm.

That afternoon, some police officers came to the Depository. I followed them as they searched the building. On the sixth floor they found three spent cartridges in the southeast corner window and a matching rifle behind some book boxes on that floor's northwest corner. A television cameraman photographed the recovery of the rifle. It was about the same size as the package Oswald was carrying when he entered the building that morning. The officers asked me if there was access to the roof, and I told them "Yes."

These are all the facts that I can remember about this matter.

JESSE JONES

Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Information not based on any specific person.

AFFIDAVIT OF MARINA PRUSAKOVA OSWALD*

My name is Marina Oswald, the wife of Lee Harvey Oswald. I am from Russia and met Lee Harvey Oswald in Minsk in the spring of 1961. He told my relatives that he couldn't go back to America because he had permanently defected. Soon after we were married in May 1962, however, we did come to the United States. At that time I was unable to speak any English and relied on Lee for everything.²

I was living with friends in Irving at the time President Kennedy was killed. Lee had a room in a boarding house in Oak Cliff so he would be closer to his job.³

The police came and questioned me about the murder of the President. They searched the house where I was staying with friends. In some boxes I had stored in the garage they found some snapshot negatives of a picture of Lee holding a rifle. I had taken these pictures in February or March 1963. It may have been as late as April. After the police left, I found Lee's wedding ring in a cup. I was surprised to find it because Lee never took his ring off, not even when he was doing messy work. In fact, I remember seeing him wear it the night before.¹

I believe Lee committed this crime because I can see guilt in his eyes. In fact, if he had been innocent, he would have been screaming for his rights, claiming he had been mistreated, and demanding to see officials at the highest levels, just like he always did.¹

I, along with many others, was interviewed by a writer. After the interviews this writer concluded that Lee's political ideas were more important than even his life. I told the writer that Lee often talked about Marxism, Communism and injustices all over the world.¹

These are all the facts that I can remember about this matter.

MARINA PRUSAKOVA OSWALD

Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Not all information based on historical facts, but the following sources were used, as indicated:

¹Volume II of the Hearing of the House Select Committee on Assassinations, pp. 301-302, September 14, 1978.

²MacMillan, Priscilla, *Marina and Lee*, Harper and Row, New York, 1977.

³Posner, Gerald. *Case Closed*, Random House, New York, 1993.

AFFIDAVIT OF LEE HARVEY OSWALD*

My name is Lee Harvey Oswald. My last residence, until my arrest, was a room in a house located in the Oak Cliff section of Dallas.

I was born on October 18, 1939, in New Orleans. During my preschool years, I lived in five different locations in New Orleans and eventually was placed in a children's home. In about 1945 I rejoined my mother and attended at least fourteen different schools in Louisiana, Texas and New York, finally ending up at Arlington Heights High School in 1956.

In October 1956, at the age of 17, I joined the Marines and reported for basic training in San Diego. After basic, I was stationed in Jacksonville, Florida, Biloxi, Mississippi and El Toro, California before boarding the *U.S.S. Bexar* in August 1957. In June 1958, I was court-martialed for a fight with a sergeant and confined for about six weeks. I was released from active duty on September 11, 1959.

Shortly after leaving the Marines, I decided to go to Europe. While in Moscow, I attempted to renounce my United States citizenship but changed my mind after two years in Russia.

I met and married Marina Nikolayevna Prusakova in Minsk in the spring of 1961. Marina and I returned to the United States the following year and moved to Fort Worth, Texas.

Around March 1963, I saw an advertisement in a gun magazine and ordered a rifle. I wrote a note to Marina about that same time telling her how to deal with my death or arrest and left for New Orleans. Marina moved to Irving and began living with some friends she had met, but she joined me in New Orleans after a couple of months. After working a few months in New Orleans, I was fired from my job. Marina went back to Irving to stay with her friends there, and I went to Mexico City for a couple of months.

The police showed me a picture they say they found in my wife's stuff. The picture showed me standing with a holstered pistol strapped to my waist, holding a rifle, but it is a fake. I don't know where it came from, unless someone made it up.

Shortly after returning to the Dallas area, I was hired at the Texas School Book Depository, a textbook distribution center located in downtown Dallas. I moved into a rented room in Dallas' Oak Cliff neighborhood to be closer to my job.

I understand that I have been charged in the murder of President John F. Kennedy. I left work by bus about the time of the shooting and had nothing to do with his death.

These are all the facts that I can remember about this matter.

LEE HARVEY OSWALD

Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Information taken from public record. See "Sources."

AFFIDAVIT OF MARGUERITE OSWALD*

I am the mother of Lee Harvey Oswald. Lee and I moved to New York in August of 1952, shortly before Lee's thirteenth birthday. Lee wasn't very happy in the Bronx because other children teased him about his clothes and Texas accent.

In 1953, Lee's truancies from school caused him to be confined to a youth facility in New York, where he was given a psychological examination by the staff psychologist. I was told at that time that Lee was functioning only slightly below his capacity, in spite of his absences from school, and that he, in fact, had a better than average I.Q, scoring 118 on the Wechsler Intelligence Scale for Children. However, he showed some schizoid features and passive-aggressive tendencies. He was also suffering, so the psychologist informed me, from lack of affection, absence of family life and rejection by me (I left for work around 7:00 a.m. and got home every day around 7:00 p.m.). During his school years, he interacted with no one and even prepared his own meals.

Lee has one full brother and a half brother, both older. He was a happy-go-lucky youngster growing up, interested in animals and often went to the zoo (in fact, Lee was picked up in the Bronx Zoo one time playing hooky from school). I consider it a normal act for a boy to play hooky from school. Many boys do this.

I feel that Lee Harvey Oswald, my son, has done more for his country than any other living human being.

These are all the facts that I can remember about this matter.

MARGUERITE OSWALD

Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Information taken from public record. See "Sources."

AFFIDAVIT OF CARY SIDEMAN*

My name is Cary Sideman. I am an auto mechanic and have lived in a Dallas suburb for more than twenty years.

I was so excited that the President was coming to Dallas! I went to a downtown area about 10:00 a.m. the morning of November 22, 1963, in order to get a good spot to see the First Lady and President. I picked the area known as Dealey Plaza, which is just a couple of blocks toward downtown from the triple overpass.

Several people were getting their movie cameras ready to film the exciting, historical event. As we waited I saw, much to my surprise on a sunny November day, a couple of people with umbrellas! There was even a woman in a red raincoat!! I heard later that there was supposed to be some kind of protest involving the umbrellas.

It was obvious that many people had taken their lunch hours to see the President because they were eating their lunches from brown paper bags. Others were looking out the windows and sitting on fire escapes of buildings in the area around Dealey Plaza.

We could see the advance cars coming around the corner as the excitement built. The motorcade made the turn onto Houston Street. Finally, the car with the Kennedys and Connallys in it appeared. Just as the car pulled in front of where I was standing I heard the first sound, which I thought was a firecracker. The President put his hands up as if to guard his face, leaned to the left, and I saw his head jerk. I, without thinking, turned toward a stockade fence behind me, thinking that might be where the shots came from. That's when I saw a puff of smoke or steam. It might have been motorcycle exhaust, but I thought I smelled gunpowder!

There appeared to be no difference between how the two shots sounded, so I assume they came from the same place. I also remember hearing a crush of glass. I looked over to the fence area and saw that some kids had thrown their soft drink bottles onto the pavement, so that might have caused the noise. In fact, the pop bottle crashing was much louder than the shots had been. The loudest thing I heard that afternoon was the siren, and that was after the head shot and the car had disappeared under the underpass.

Many people were scrambling around, apparently looking for cover; others just dropped to the ground where they stood! I didn't move, except for looking around. I remember thinking, "What am I doing standing up here?" After a period of almost total silence, except for cars speeding out of the area, I got down from the concrete slab where I was standing and ran down the hill. Everyone was running back down the hill, swarming around. Then I began to talk with others around me. We were almost all in agreement that the shots came from Dealey Plaza.

These are all the facts that I can remember about this matter.

CARY SIDEMAN

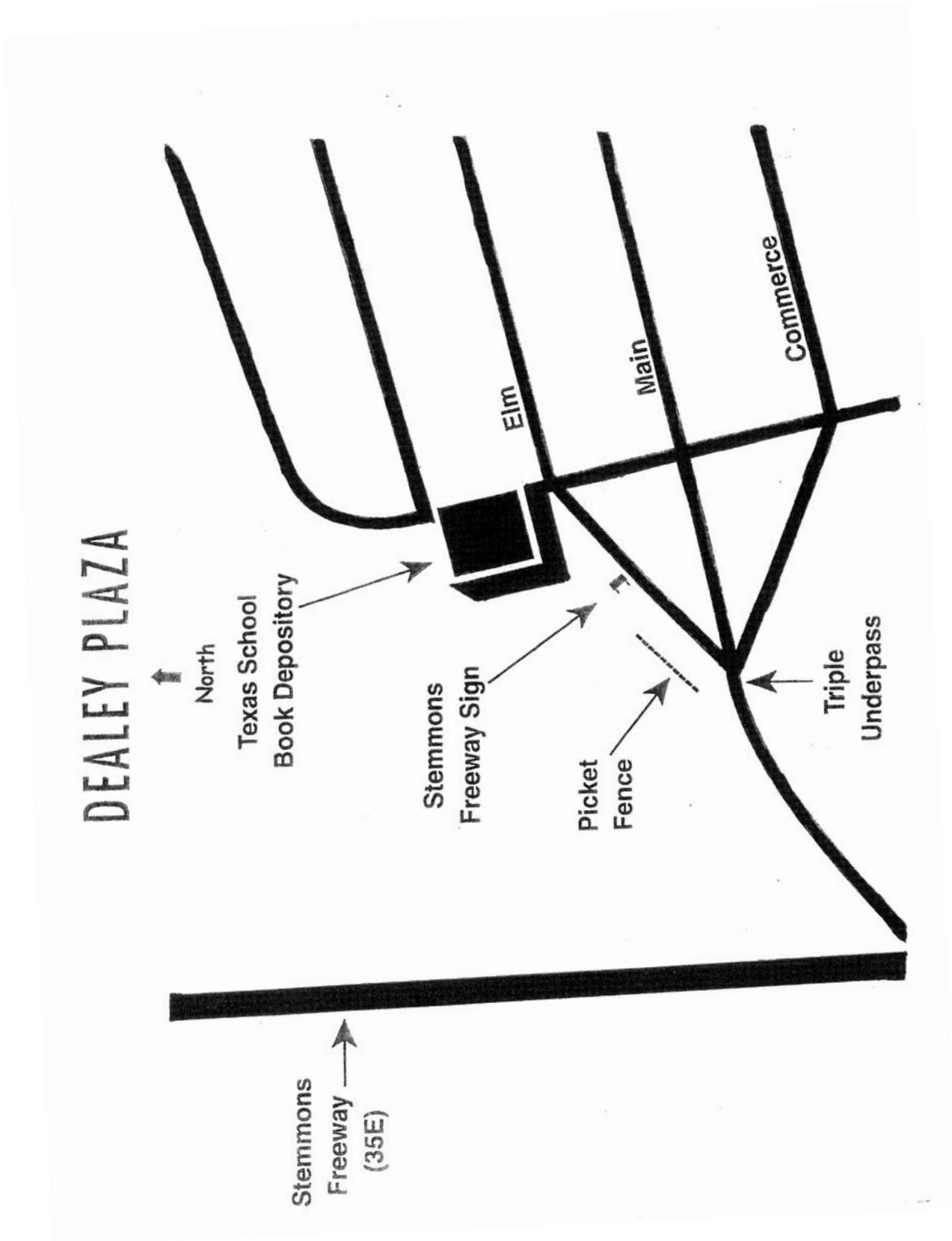
Signed and sworn to before me the undersigned authority on this ____ day of _____, 1963.

Notary Public in and for the State of Texas

My Commission Expires:

*Information not based on any particular person.

Graphic of Dealey Plaza



Picture of Oswald with rifle



Homicide Report

FORM OF HB-403

HOMICIDE REPORT

POLICE DEPARTMENT

CITY OF DALLAS

Last Name of Person Killed KENNEDY, John F (PRESIDENT OF U. S.)			First Name John			Middle Name F			Race w	Sex m	Age 47	Residence of Person Killed Washington, D. C. (White House)			Offense Serial No. P-85950
Reported By				Title or Relationship				Race	Sex	Age	Address of Person Reporting			Phone of Person Reporting	

Offense as Reported (Crime) MURDER	After Investigation Changed to
--	--------------------------------

Place of Occurrence — Street and Number or Intersection Elm St. (approx. 150' W of Houston)				Division H&R	Platoon 2	Beat 101	Officers Making Report CN Dhority 476 HH Blessing 698		I.D. No.	Name	I.D. No.
Day of Week Fri	Date of Occurrence 11/22/63	Time of Day 12:30PM	Date Reported 11/23/63	Time Reported 5:10PM	Report Received By Mayo	Received—Time—Typed 5:10PM					

DESCRIPTION OF DEAD PERSON

Age	Height	Weight	Eyes	Hair	Beard	Complexion	Identifying Marks, Scars, Etc.			Clothing
-----	--------	--------	------	------	-------	------------	--------------------------------	--	--	----------

Coroner Notified Joe B. Brown				Name of Coroner Attending—Time of Arrival				Name of Prosecutor Attending—Time of Arrival			
---	--	--	--	---	--	--	--	--	--	--	--

Pronounced Dead by Physician Dr. Kemp Clark, LPM, Parkland Hospital				Address				Person With Whom Accused Lived or Associated			
---	--	--	--	---------	--	--	--	--	--	--	--

DETAILS OF OFFENSE (Give Circumstances of Occurrence of Offense and Its Investigation) Use Both Sides of This Sheet.

The expired was riding in motorcade with wife and Governor John Connally, and his wife. Witness heard gun shot and saw the expired slump forward. More shots were heard and the expired fell into his wife's lap. Governor Connally was also shot at this time. Car in which they were riding was escorted to Parkland Hospital by Dallas Police Officers.

Witness Taken Into Custody				Address				Witness Taken Into Custody				Address			
All witnesses affidavits are in Homicide Office.															

Known, Suspected or Possible Motives

DESCRIPTION OF SUSPECTS OR PERSONS WANTED

Name if Known	Alias	Address	Sex	Color	Age	Height	Weight	Eyes	Hair	Complexion
Beard	Nativity	Occupation	Dress and Other Marks			Cause for Suspicion				
Name if Known	Alias	Address	Sex	Color	Age	Height	Weight	Eyes	Hair	Complexion
Beard	Nativity	Occupation	Dress and Other Marks			Cause for Suspicion				
Name if Known	Alias	Address	Sex	Color	Age	Height	Weight	Eyes	Hair	Complexion
Beard	Nativity	Occupation	Dress and Other Marks			Cause for Suspicion				

Persons Arrested—Name—Address Lee Harvey Oswald				Race w	Sex m	Age 25	Arresting Officers Lt. E. L. Cunningham 464		I.D. No. MN McDonald 1178	Charge MURDER
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Officers Assigned to Investigate (Include I.D. No.) Dhority - Blessing - Brown				This Offense Declared Unfounded <input type="checkbox"/> Cleared by Arrest <input type="checkbox"/>		Pending <input type="checkbox"/>	Date	Commanding Officer
Case File Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Disposition Code		By		Date		

REMARKS:

INVESTIGATION BUREAU

Arrest Report

POLICE DEPARTMENT
CITY OF DALLAS
CPS-JS-555

ARREST REPORT ON INVESTIGATIVE PRISONER

FIRST NAME LEE		MIDDLE NAME HARVEY		LAST NAME OSWALD		DATE 11-22-63	TIME 140PM	I. D. NUMBER ARREST NUMBER	
RACE WHITE <input checked="" type="checkbox"/> COLORED <input type="checkbox"/>		SEX MALE <input checked="" type="checkbox"/> FEMALE <input type="checkbox"/>		AGE 24	DATE OF BIRTH 09-17-39	HOME ADDRESS 1126 N. BECKLEY			
ADDRESS WHERE ARREST MADE 231 W. JEFFERSON				TYPE PREMISES (IF BUSINESS, GIVE TRADE NAME ALSO) THEATRE					
CHARGE INV. MURDER				BUSINESS WHERE ARREST MADE HAS: BEER LICENSE <input type="checkbox"/> LIQUOR LICENSE <input type="checkbox"/> STATE LIC. NO. _____					
HOW ARREST MADE ON VIEW <input type="checkbox"/> CALL <input type="checkbox"/> WARRANT <input type="checkbox"/>				LOCATION OF OFFENSE (IF OTHER THAN PLACE OF ARREST)					
COMPLAINANT (NAME-RACE-SEX-AGE)			HOME ADDRESS-PHONE NO.			BUSINESS ADDRESS-PHONE NO.			
WITNESS			HOME ADDRESS-PHONE NO.			BUSINESS ADDRESS-PHONE NO.			
WITNESS			HOME ADDRESS-PHONE NO.			BUSINESS ADDRESS-PHONE NO.			
PROPERTY PLACED IN POUND (MAKE, MODEL, LICENSE NO. OF AUTO)					PROPERTY PLACED IN PROPERTY ROOM				
NAMES OF OTHERS ARRESTED AT SAME TIME IN CONNECTION WITH THE SAME OR SIMILAR OFFENSE									
NAME OF AND/OR INFORMATION CONCERNING OTHER SUSPECTS NOT APPREHENDED									

OTHER DETAILS OF THE ARREST

This man shot and killed President John F. Kennedy and Police Officer J. D. Tippit. He also shot and wounded Governor John Connally.

CHECK ALL ITEMS WHICH APPLY: DRUNK <input type="checkbox"/> DRINKING <input type="checkbox"/> CURSED <input type="checkbox"/> RESISTED <input type="checkbox"/> FOUGHT <input type="checkbox"/>				INJURED BEFORE ARREST <input type="checkbox"/>	INJURED DURING OR AFTER ARREST <input type="checkbox"/>	OFFICER(S) INJURED <input type="checkbox"/>	SPECIAL REPORT <input type="checkbox"/>
ARRESTING OFFICER M. N. McDONALD		I. D. NO. 1175	ARRESTING OFFICER K. E. LYONS		I. D. NO. 1276		
OTHER OFFICER LT. E. J. CUNNINGHAM		I. D. NO.	OTHER OFFICER P. J. BENTLEY		I. D. NO. 526		
INVESTIGATION ASSIGNED TO	CHARGE FILED	FILED BY	DATE	DATE - TIME TO CO. JAIL			
RELEASED BY	DATE - TIME	H.C. BOND BY	DATE - TIME	COURT	DATE	TIME	

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SIMPLIFIED RULES OF EVIDENCE* **Student Handout**

This country is committed to the concept of equal justice under law. To be certain each case before the law is as fairly tried as possible, the oral and physical evidence allowed before the jury is carefully regulated. This regulation is the purpose of the rules of evidence followed in courts today. They have evolved over hundreds of years, and they are designed to ensure that both parties receive a fair hearing. These rules are intended to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial--that is, putting one of the parties at an unfair disadvantage.

Formal rules of evidence are quite complicated and differ in federal, state and special courts. The rules that follow are vastly simplified and shortened. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether or not that is the case—"objection sustained" or "objection overruled."

Preparing and Presenting Your Case:

Carefully examine all materials you are given. Become very familiar with the facts, witness statements and the physical evidence. Notice conflicting statements by the various witnesses. Notice ambiguities.

Develop as many theories of the case as possible that favor your side. **A theory of a case is simply a proposed explanation of the facts in the case.** For example, if you and your brother were home alone when an entire plate of cookies disappeared from the kitchen, your presence at home when they disappeared would be a fact. However, you and your brother each might have an explanation of how the cookies disappeared that placed the blame on the other person. These would be **theories**. Consider what problems you will have proving the theories you develop. Are there weaknesses in a theory that make it unlikely, unreasonable or contrary to human nature? Possibly the best theory will be the one that is most logical and simplest.

*Partially excerpt from "Simplified Rules of Evidence" from the Texas State Mock Trial Competition packet.

After you decide which theory or theories you will seek to prove, you must decide what spoken evidence, or **testimony**, from your witnesses will help to prove that theory. Additionally, you must decide what evidence you want to bring out in the testimony of opposing witnesses during cross-examination.

Courtroom Demeanor:

Remain seated at the counsel table during questioning, except when granted permission to approach the bench or a witness. Always rise when addressing the judge, even for a single word. **There are no exceptions to this rule!** Direct all remarks to the judge, jury or witness, not to the opposing counsel.

Opening Statements:

Position--Standing before the jury.

The purpose of the opening statement for the plaintiff/prosecution is to inform the jury of the nature and facts of the case. Argument, discussion of law or objections by defense attorney are discouraged.

In the opening statements, address the judge, jury and opponent. Then introduce yourself and your client. You also seek to acquaint the jury and judge with the nature of the case. Outline the case from your point-of-view, tell the jury what the evidence will prove by mentioning expected key testimony, explain the importance of any documents to be introduced and conclude by asking for the relief (award or decision) you seek. In a criminal case, opening statements often consist of the prosecutor reading the indictment, followed by a description of the case and a summary of the facts. They should end by stating that the prosecution intends to prove the defendant is guilty of the crime for which he or she has been charged.

It is often desirable to develop a "theme" for your case and to introduce it during opening. Avoid too much detail, exaggeration and overstatement, argument, anticipating what the defense attorney will say, and walking or pacing. Do not exaggerate or make statements that may be beyond your ability to prove. Simply outline your case for the jury. You can think of the opening statement of a trial as something like a table of contents in a book. Keep in mind as you prepare your opening statements that this will be the first information the jury has received about the case.

You may have your statement in outline form before you, but do not read from a completely written speech. Also do not discuss undisputed facts. The attorney must keep the jurors' attentions and win their support for his or her case. He or she must speak loudly and clearly enough to be easily understood and be logical and persuasive. To win the case, the attorney must be well prepared.

The purpose of the opening statement for the defense is to deny that the plaintiff/prosecution has a valid case and, in a general way, to outline the facts from the standpoint of the defendant. Interruptions by the plaintiff/prosecution are discouraged.

Include your name, your client's name, general theory of defense, facts that tend to weaken the plaintiff's/prosecution's case, a rundown of what each defense witness will testify to and your conclusion. You also might like to introduce a "theme" for the defense case during the opening. Be a helpful guide to the jury. End by stating that you will prove the defendant is not guilty of the crime charged.

Avoid repetition of facts that are not in dispute, exaggeration and argument, strong points of the plaintiff's/prosecution's case, and walking or pacing.

Direct Examination:

Position: Seated at counsel table, except when introducing evidence.

You present evidence, both physical and testimonial, that proves your case to the jury during direct examination. Draw out the facts of your case with clear and precise questions. Try to show your witnesses at their best.

Construct a series of questions that will bring out evidence during direct examination. Go over the questions you have developed with your witnesses. It is the attorney's job to help the witnesses become credible, or believable. Consider having the witnesses dress their parts and assume mannerisms that lend credibility to their roles. Well-prepared and believable witnesses increase your chance of success.

Avoid complex, wordy or involved questions. Keep it simple and take the witness by small steps. If possible, try to follow a chronological order. Do not attempt to draw conclusions--that is the jury's job. Use care in allowing narrative testimony; it could waste much of your time and opposing counsel could legitimately object. When the facts are in, stop the questioning.

Ask your witnesses questions which will allow them to paint a broad picture of the case from your point-of-view.

The purpose of direct examination of witnesses is to present the evidence necessary to warrant a verdict favorable to your client. All the elements of a law must be brought into evidence by witness testimony or documents. Other purposes are to convince the jury of the soundness of your client's case and to present your witnesses to the greatest advantage--to establish their credibility.

General suggestions for direct examination:

- Ask "open-ended" questions. Those usually begin with "who," "what," "when," "where" or "how," or by asking the witness to "explain" or "describe."
- Avoid complex or long-winded questions--questions should be clear and simple.
- Be a "friendly guide" for the witness as he or she tells his or her stories. Let the witnesses be the stars.
- Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.
- When preparing for mock trials, it is generally a good idea to write the answers to the questions for direct examination. Often an answer will lead to the next question, and having the answer prepared will help the questioning.

flow better from one question to the next.

Witnesses may not be asked leading questions during direct or redirect examination. A leading question is one that suggests to the witness the answer desired by the questioner or suggests a “yes” or “no” answer.

Evidence about the character of a witness may not be introduced unless the person’s character is an issue in the case. For example, whether someone has been a responsible parent is an issue in a child custody case but not in a criminal trial for larceny.

Cross-Examination:

Position: Seated at counsel table, except when introducing evidence.

During cross-examination the opposing side attempts to discredit the witnesses by discovering and demonstrating flaws in their testimony. You should try to draw out testimony that will help your case.

Avoid hostility toward the witness; juries and judges resent it. Be careful about asking too many questions; doing so may allow the witness to explain his or her way out of an unfavorable situation. When you have an answer to your question, wait for the closing argument to use the testimony to your greatest advantage.

Your goal as an attorney during cross-examination is to destroy the credibility of the witness--that is, to impeach his or her testimony before the jury. Often witnesses will seem to impeach themselves by being tentative in their testimony or testifying to something that contradicts something they have said in their sworn statement. It is up to you to make this contradiction clear to the jury. One method of doing this is to have the witness repeat testimony which contradicts the written statement, then introduce the statement into evidence and have the witness read the conflicting passage before the court. It is usually best to stop impeachment at this point and reserve further comments until closing argument. Witnesses must admit making their statements when directly confronted with the question, "Do you remember making and signing this statement under oath?" Witnesses are bound by their fact statements and the stipulated facts of the case, but they are not bound by another witness' statement.

During cross-examination, witnesses should be asked leading questions. Questions must be phrased so that narrative answers are avoided. Generally, a witness being cross-examined should be held to a "yes" or "no" answer.

If a witness is asked for information not contained in the witness statement during cross-examination, he or she should give an answer that is consistent with the statement and that does not materially affect the facts of the case. For example, if the witness is a medical doctor, the attorney might ask where he or she went to medical school. The witness could give the name of a medical school he or she knows, even though the name is not contained in the witness statement. If making up an answer is beyond the ability of the witness, he or she may choose to say, "I don't know" or "I can't remember."

The purposes of cross-examination are to secure admissions from opposing witnesses that will tend to prove your case and to negate your opponent's case by discrediting his or her witnesses. Try to expose lack of sincerity of the witness. Never ask "Why.?" It gives a well-prepared witness a chance to explain. Generally, don't ask questions on cross-examination unless you know what kind of answers you are going to obtain. Fishing trips may be expensive. Be fair and courteous.

Prepare your own witnesses for cross-examination by having a member of your team play the part of the opposing attorney. Witnesses must know their statements so well that they can answer questions easily, without having to stop and remember what their fact statement said.

Redirect/Recross (optional):

Position: Seated at the counsel table, except when introducing evidence.

In this type of examination, you attempt to rehabilitate a witness or allow him or her to explain away testimony given under cross that has hurt your case. In other words, the purpose of redirect or recross is to repair damage done by your opponent or to pursue further a point that was raised in earlier testimony.

Questions should be limited to the damage the attorney thinks has been done on cross-examination and should be phrased so as to try and "save" the witness' truth-telling image in the eyes of the court. Redirect examination is usually limited to issues raised by the attorney on cross-examination, and recross is usually limited to issues raised in redirect.

Closing Arguments:

Position: Standing before the jury.

In the closing arguments, summarize your case by reminding the jury that you have proven what you said you would. Point out testimony that supports your case and damages your opponent's. In the closing argument you should pull everything together for the jury. Argue your point of view dynamically. Choose your words carefully, using forceful, active language. Organize your arguments so that your case can be clearly understood. Do not assume that the jury has understood the impact of all the testimony. Correct any misconceptions or ambiguities. You may use all introduced exhibits at this point. It might also be a good idea to refer back to the theme you introduced during opening statements and explain how it ties the case together.

Point out the bias or prejudice of the other side's witnesses, but avoid using ridicule, which could cost you the jury's sympathy. Avoid fostering confusion and illogic. Appeals to sympathy and prejudice also are improper. Do not ask the jurors to put themselves in your client's position. Tie the facts to the law. Be persuasive. Confidently request the judge or jury to grant you the decision you want.

Plaintiff's/prosecution's rebuttal: The plaintiff/prosecution, having the burden of proof, may respond to the closing argument of the defense. Limit the rebuttal to one or two major points. Again, use forceful, positive, and short sentences in presenting your position. Make it clear to the jury that you believe that the theory that you have set forth represents the only possible explanation of the facts in the case.

Entering Documents into Evidence:

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis. Use the following procedure when you wish to enter documents into evidence:

1. The attorney stands and addresses the judge:
ATTORNEY: "Your Honor, may I approach the bench?"
2. The judge acknowledges the attorney, who approaches the bench. The attorney hands evidence to the judge.
ATTORNEY: "Your Honor, may I approach the witness in order to show him/her what has been previously marked for identification purposes as Plaintiff/Prosecution (Defense) exhibit number ____?"
3. The judge acknowledges the attorney, who approaches the witness. The attorney hands evidence to the witness.
ATTORNEY: "Allow me to show you what has been marked for identification purposes as plaintiff's/prosecution's (defense's) exhibit # ____ and ask if you recognize it."
Response.
4. ATTORNEY: "Please identify it for the court."
Response.

5. ATTORNEY: "Has this document been changed or altered in any way?"
Response.

6. ATTORNEY: "Is this your signature on the document?" (if this question is applicable)
Response
7. The attorney approaches the opposing attorney but addresses the judge.
ATTORNEY: "Your Honor, at this time the plaintiff/prosecution (defense) would offer what has been marked as plaintiff's/prosecution's (defense) exhibit # ____ into evidence and tender it to the opposing counsel.

The attorney hands evidence to the opposing counsel. The opposing counsel may then object if he or she has reason to believe the exhibit is not an authentic document.
8. If there are no objections, the attorney places the exhibit on the judge's bench or with other marked evidence or gives it to the witness to use during questioning.

A witness may be asked questions about his or her statement without that statement being introduced into evidence. However, if a statement is to be read orally from or submitted to the jury or judge, the statement must first be admitted into evidence.

Objections:

An attorney can object any time he or she feels the opposing attorneys have violated a rule 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 may ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted (sustained) by the judge. The judge will then decide whether a 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).

Commonly used objections include:

- LACK OF PERSONAL KNOWLEDGE. A witness may not testify on any matter of which the witness has no personal knowledge. Nor may an exhibit be offered into evidence without the necessary facts showing its relevance and background being established. OBJECTION: "Objection. The witness has no personal knowledge that would enable him or to her to answer this question." Or "Objection. Counsel has not established facts showing by whom, why or when the exhibit was prepared."
- REPETITION. Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source. OBJECTION: "Objection. Counsel is asking for repetitive testimony-asked and answered."

- **OPINION TESTIMONY BY NON-EXPERTS.** Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their stories. However, other than matters that are commonly known (such as speed of a car or clumsiness of a person), witnesses should state only facts--not opinions as to ultimate issues. An expert must be qualified by the attorney for the party for which the expert is testifying. This means that before an expert witness can be asked for an expert opinion, the questioning attorney must "bring out" the expert's qualifications and experience through questions asked the witness.
- **AMBIGUOUS QUESTION.** An attorney shall not ask questions that are capable of being understood in two or more possible ways. **OBJECTION:** The question is ambiguous.
- **ASSUMING FACTS NOT IN EVIDENCE.** An attorney shall not ask a question that assumes unproved facts. **EXAMPLE:** "When did you stop beating your spouse?" **OBJECTION:** "Objection. The question assumes facts not in evidence."
- **ARGUMENTATIVE QUESTION.** An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the court in its discretion may allow limited use of argumentative questions on cross-examination. **OBJECTION:** "Objection. Counsel is asking an argumentative question." (This objection is sometimes called "badgering the witness.")
- **QUESTIONS CALLING FOR A NARRATIVE ANSWER.** Questions should be asked so as to call for a specific answer. **EXAMPLE:** "Tell us what you know about this case." **OBJECTION:** "Objection. Counsel is calling for a narrative answer."
- **HEARSAY.** Any evidence of a statement made by someone else which is offered to prove the truth of a fact, a piece of evidence, or any witness testimony in that out-of-court statement is hearsay and is not usually permitted. **EXAMPLE:** "Did some other tenants tell you that Jones often failed to keep his apartment in good repair?" **OBJECTION:** "Objection. Counsel's question is seeking a hearsay response." **RESPONSE:** "Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show" **EXCEPTION:** Admission against interest. A judge may admit hearsay evidence if it was said by a party in a case and contains evidence which goes against that party's side. **EXAMPLE:** In a murder case the defendant told someone he committed the murder. **EXCEPTION:** State of mind. A judge may admit hearsay evidence if a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind. **EXAMPLE:** Witness testifies, "Jones told me, I hate Taylor." That would be admissible as showing Jones' state of mind.

- **RELEVANCE OF EVIDENCE.** Only relevant testimony and evidence may be presented during a trial. This means that the only physical evidence and testimony allowed is that which tends to make a fact important to the case more or less probable than the fact would be without the evidence. Even though relevant, however, if a piece of evidence or testimony is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case and have nothing to do with making the issues clearer. **EXAMPLE:** The defense asks on cross-examination, “How old are you?” **OBJECTION:** All object, Your Honor. The evidence (or testimony) is not relevant to the facts of this case.”
- **CHARACTER.** Evidence about the character of a party or witness (other than his character for truthfulness or untruthfulness) may not be introduced unless the person’s character is at issue in the case. (For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce but is not an issue in a criminal trial for theft. Similarly, a person’s good character may be relevant in a criminal trial where entrapment is a defense but not an issue in a civil trial for breach of contract.)
- **LEADING QUESTION.** A leading question is one that suggests to the witness the answer desired by the questioner or suggests a “yes” or “no” answer. **OBJECTION:** “Objection. Counsel is leading the witness.” (Remember that an attorney may ask leading questions when cross-examining the opponent’s witnesses.) **EXAMPLE OF LEADING QUESTION:** “Sergeant Jeans, you really couldn’t see the defendant very well, could you?”

If an objection is sustained, either rephrase the question so that it will not be objectionable or go on to another question. After an objection has been overruled, it is very effective for the attorney to say, “Mr. Jones, the judge has ruled that you may answer my question.” This will reiterate the point you are making and also make you appear more credible before the jury.

Any time an objection is made by an attorney, the opposing attorney should also immediately stand and have an appropriate response if the judge asks for one.

Trial Motions:

When doing mock trials in class, a motion for directed verdict (request for dismissal of the case at the end of the plaintiff/prosecution’s case) should be overruled by the judge. It should, however, be permissible for the defense attorney to make such a request.