Kilpatrick Townsend 1L Mock Trial Competition

United States of America v. Luke Clark

Friday, January 20, 2023 — Sunday, January 22, 2023

Hosted by the Broun National Trial Team at the University of North Carolina School of Law

COMPETITION STRUCTURE

1. Rounds. Every team is guaranteed to compete in two preliminary rounds. Both of these rounds will take place during the afternoon and evening on Friday, January 20, 2023. Each team will compete once as the Prosecution and once as the Defense. The tournament field will be narrowed to sixteen teams that night and each team that advances will be notified via email after the preliminary rounds have concluded. The next two days of the competition will be single elimination head-to-head rounds. Sides will be determined by coin flip. Two rounds will be held Saturday, January 21, 2023. The semi-final and final rounds will be held Sunday, January 22, 2023. The final day of competition, both the semi-final and final rounds, will be open to the public. Non-competing guests are permitted to observe all other rounds if both teams consent and the judge for that round does not reasonably believe the guest will be disruptive. In addition to scoring for teams, each round will also feature a "Best Advocate" award for the student who best performs playing an attorney for that round.

2. Time Limits. Each team may decide how to allocate their allotted time on direct and cross examination between their designated witnesses. If a side chooses to do redirect, that will be counted against the direct examination time limit. Recross is not permitted. On closing, the Prosecution is permitted to reserve up to half their time for rebuttal. The clock will stop for all objections. The bailiff will notify competitors with flash cards when they have 3, 1, and 0 minutes remaining. With permission of the judge, the competitor may be permitted to finish a question or a final sentence of an answer or statement. Permission is entirely within the discretion of the judge.

Opening Statements: 5 minutes per side
Closing Arguments: 8 minutes per side
Direct Examination: 15 minutes per side
Cross Examination: 10 minutes per side

TEAM STRUCTURE

1. Number of Participants. Each team may consist of four to six first-year law students.

2. Preparing the Case. Each team must prepare both Prosecution and Defense sides of the case. During each round, two students per team will be attorneys each of whom will do one direct examination, one cross examination, and either the opening or closing statement. No attorney may do both the opening and closing statement. Two other students from the same team will be that side's witnesses. Within each team from round to round, a student may play attorneys for both sides, witnesses for both sides, or an attorney for one side and a witness for the other side. Witnesses are intended to be gender-neutral. The team may refer to the witness by either gender pronoun. It does not have to match any pronoun used in the packet and it does not necessarily have to match the preferred pronoun of the student playing that witness.

STRUCTURE OF THE TRIAL

1. Pretrial Motions. There will be no pretrial motions. Sides may briefly introduce themselves and settle housekeeping matters not covered in this packet.

2. Statements. Each round will begin with opening statements. The Prosecution will go first and the Defense will go second.

3. Prosecution Case. The Prosecution will present its case-in-chief. They may call their witnesses in whatever order they see fit. Witnesses are considered constructively sequestered, except the Defendant. Therefore, while all witnesses may remain in the competition room, they may not testify to anything that occurred through the trial. Each witness will be examined by the side that called them and then cross-examined by the opponent. The proponent party may ask for redirect examination, but no recross will be allowed. No witness may be recalled. After the Prosecution has presented both of their witnesses, the Prosecution will rest.

4. Judgment of Acquittal. After the Prosecution rests, the Defense should move for a judgment of acquittal to which the Prosecution should respond (see below).

5. Defense Case. The Defense will present its case-in-chief. They may call their witnesses in whatever order they see fit. The case-in-chief will proceed as it did with the Prosecution. The Defense will then rest. After the Defense closes their evidence, they should again move for a judgment of acquittal to which the Prosecution should respond.

6. Closing Arguments. Both sides will present closing arguments. The Prosecution will argue first and the Defense will argue second. If the Prosecution reserved time, the Prosecution may deliver a rebuttal.

PROCEDURE AND TECHNIQUE

MOTION FOR JUDGMENT OF ACQUITTAL

1. Procedure. Motions for judgment of acquittal will be made by the Defense after the close of both the Prosecution's evidence and after the close of their own evidence. The motion will be oral, not written. The motion should argue the Prosecution has failed to present sufficient evidence to sustain a conviction. The Defense should explain that a reasonable juror could not conclude the defendant is guilty beyond a reasonable doubt based on the evidence thus far presented. The Prosecution should briefly respond to the Defense's argument to show a reasonable juror could find each element of the crime beyond a reasonable doubt.

2. Basis. The motion for judgment of acquittal is based in Rule 29 of the Federal Rules of Criminal Procedure. The Rule in relevant part reads:

After the government closes its evidence or after the close of all the evidence, the court on

the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

For purposes of the competition, the court will deny both motions.

IMPEACHMENT

1. Types. Impeachment may be by contradiction or omission. The general procedure is the same, except that an impeachment by omission concerns a statement the witness did not make but should have, whereas an impeachment by contradiction concerns a statement a witness did make contrary to their present testimony.

2. Method. If a witness presents testimony which contradicts their prior statement, the opposing party, during cross examination, may impeach the witness's testimony. Impeachment is not offered to prove the truth of either the prior statement or the current statement. Rather, it is offered to prove the inconsistency and attack the witness's credibility. A proper impeachment is conducted by *committing* the witness to their current statement, *crediting* the prior statement, *confronting* the witness with the inconsistency between their present and prior statement, and *controlling* the remainder of the testimony, usually by only having the witness confirm the accuracy of a word-for-word reading of the prior statement.

When conducting an impeachment, the impeaching party must present the prior statement to the opposing party for their examination prior to approaching the witness. The opponent party should not use this time to delay the proceeding, but rather, to confirm the statement being presented is in fact the statement claimed.

REFRESHMENT

1. Refreshment. If a witness is unable to remember a material fact or inadvertently contradicts their prior statements, the witness may have their memory refreshed. As in impeachment, the proponent party should allow the opponent party to confirm the statement presented is the statement claimed.

2. Steps. First, if a witness has inadvertently contradicted their prior statement, the examining attorney may present a question to get the witness to retract their testimony. The attorney must be careful, as the opposing party may still object to improperly phrased questions. If the witness cannot remember the truthful answer, the attorney may offer to refresh their memory. The attorney may approach the witness with their prior statement and the witness may briefly review their prior statement. The attorney must then take the statement back and then give the witness another opportunity to answer the question. The witness may not simply read from the statement as if they are notes.

DECORUM AND TECHNIQUE

1. Dress. Business professional attire is expected for all participants in every round.

2. Directing Responses to the Questioner or Judge. Attorneys and witnesses should direct their responses to the appropriate parties, whether they be the opposing counsel or judge.

3. Use of the Well. Attorneys will generally be permitted free use of the "well," the open space between counsel tables, the bench, and the jury box. The jurisdiction for this case is "standing jurisdiction," which means that Attorneys should stand for their opening/closing arguments and their direct/cross examinations. Attorneys may ask to reposition themselves in the courtroom if it is necessary to view and opponent's exhibit. Attorneys may ask permission for witnesses to step down from the stand if it is necessary for a demonstrative exhibit. During direct examination, it is best for attorneys to position themselves to aid the witness in directing their attention to the jury. During cross examination it is bet for attorneys to position themselves so as to direct the witness's attention away from the jury.

4. Sidebars and Objections. All sidebars and speaking objections are constructively out of the presence of the jury. There is no need to approach the bench in order to explain an objection or point of law.

5. Stipulations. The packet contains a series of stipulations. This evidence may not be objected to by either party. However, this information may only be entered into evidence by a witness with proper personal knowledge of the information. Attorneys may call the judge's attention to stipulated evidence during housekeeping matters.

OTHER RULES

1. Notes. Witnesses may not bring notes to the stand. Proper refreshment is the only permitted technique for correcting gaps in memory or inadvertent mistakes.

2. Facts. Witnesses may not make up any material fact not contained within the packet. Certain inferences are permitted if they are demonstrably based in the facts in the packet. Ambiguities and contradictions in the evidence are often intentional, but only logical inferences drawn from the facts present are permitted to correct or clarify these ambiguities. If an invented fact is introduced, teams should not object. The proper remedy is impeachment. Gross violations may be addressed after the round has concluded.

3. Coaching. Coaching of teams is not permitted. No other student, faculty member, or attorney may provide special assistance outside of rudimentary logistical support to any team or team member from any school. This rule applies before and during the competition. Any violation of this rule will result in disqualification from the competition.

4. Calling of Witnesses. Each side must call both of their witnesses and may not call the other side's witnesses.

5. Rules. The rules of procedure and evidence for this competition are limited to those contained within this packet. If there are ambiguities or uncertainties, the Federal Rules of Criminal Procedure and Federal Rules of Evidence will govern.

6. Violations. Gross violations of these rules should be addressed with the judges at the end of each round. Judges may bring rule violations to the attention of the competition organizers as appropriate. If any team is repeatedly or egregiously violating competition rules, they may be disqualified from the competition. The final determination of any violation or sanction for violations rests with the Vice President of the Broun National Trial Team.

OBJECTIONS

1. Procedure. Time will be stopped for objections. Objections and objection responses will be spoken aloud. Where appropriate, participants will be deemed to have "constructively" approached the bench and the jury will be constructively removed from the courtroom.

2. Rulings. This is a competition to assess advocacy skills, so judges may occasionally rule incorrectly on objections. Competitors are expected to adapt and respond professionally in such situations.

3. Limitations. Objections are limited to those contained within this packet. Raising or responding to objections outside the scope of these limitations is subject to reprimand and, if continued, disqualification.

4. Strategy. It is permissible to raise an objection even if the objecting party knows that an exception applies. The opponent may not know or cite the correct exception, which will be to the credit of the objecting party either in the judge's ruling or in competition scoring.

DECORUM AND PROCEDURE

1. Addressing Objections. Objections and explanations are addressed to the court, not to the opposing party. Attorneys should stand when making objections, responding, or offering explanations to the court only if that team has decided to stand for the competition.

2. Voicing Objections. All objections will be made by simply stating "Objection, Your Honor." The judge will then ask, if necessary, for the grounds for the objection. The judge may, in their discretion, simply sustain or overrule the objection, but usually only when the objectionable conduct is particularly obvious or egregious. Most often, the objecting attorney will be asked to explain which rule they are objecting under and what the grounds are for their belief this rule is applicable.

3. Who May Object. Objections must be raised by the attorney who is conducting direct or cross examination on that witness. Their co-counsel may suggest objections to them (but not in such a way as is disruptive to proceedings), but the objection and explanation must be given by the appropriate attorney.

4. Final Rulings. All rulings by the judge on objections are final. Witnesses should not attempt to continue entering objectionable testimony once an objection has been raised and should not answer any question to which an objection was sustained. An attorney may attempt to illicit the same information by rephrasing the question.

PERMISSIBLE OBJECTIONS

1. During Opening Statements. Objections during openings are usually discouraged and should be reserved for the most egregious breaches by the speaking party. Nonetheless, the following objections are appropriate:

a) Counsel is arguing/being argumentative (rather than merely forecasting evidence and what the evidence will show;
b) Counsel is stating a personal opinion of the merits of the case.

2. During Closing Arguments. Objections during closing are usually discouraged. Nonetheless, the following objections are appropriate:

a) Counsel is arguing facts not in evidence;
b) Counsel is stating a personal opinion of the merits of the case.

3. Evidentiary Objections. These objections are based on the rules of evidence (as limited by this packet, see below for explanations of each rule):

a) Hearsay
b) Relevance
c) Evidence which is Substantially More Prejudicial than Probative
d) Witness Lacks Personal Knowledge
e) Question Calls for Speculation
f) Impermissible Character Evidence
g) Lack of Proper Foundation

4. Form Objections. These objections are not in the rules of evidence, but are commonly considered improper forms of questioning:

a) Leading—A question that suggests a particular answer. Commonly explained as calling for a yes/no answer (but this is not always true). Generally not allowed on direct examination but generally allowed on cross-examination
b) Compound Question—A question that actually contains two separate questions calling for two separate answers
c) Asked and Answered—Repeatedly asking the same question calling for the same answer
d) Beyond the Scope of Direct/Cross—Cross-examination should only address issues brought out on direct and redirect should only address issues brought out on cross. This rule is interpreted loosely.
e) Badgering the Witness—Counsel is overly aggressive, such as by persistently interrupting the witness.
f) Argumentative—Making statements or assertions rather than asking questions (however, on cross, counsel is permitted to make assertions in the form of a question so long as it is not stating an opinion or conclusion about the evidence).

ENTERING AND USING EXHIBITS

Exhibits may be entered, provided proper foundation is laid, during any witness's direct or cross examination. Exhibits may not be entered by attorneys during opening statements and exhibits that were not previously entered may not be shown during closing arguments.

Entering Exhibits into Evidence

1. Exhibits. Documentary exhibits are provided in the fact pattern and may be entered by either side. Demonstrative exhibits are permitted, but they may not be prepared beforehand. For example, if a witness's testimony is aided by drawing a diagram, the witness may draw the diagram during their testimony. Demonstrative exhibits also require foundation and must be entered into evidence if they are to be reused during the trial or constructively sent back with the jury for deliberations.

2. Entering Evidence. To enter evidence, the witness must identify the exhibit, establish the exhibit's relevance, and establish the witness's personal knowledge of the exhibit. The standard format for offering an exhibit virtually is as follows:

a) With the court's permission, direct opposing counsel to the exhibit you wish to use. You may assume that opposing counsel has the exhibit accessible.
b) With the court's permission, direct the Presiding Judge to the exhibit as well. This may occur by stating "Your Honor, if I may, directing you to Exhibit X" or similar language.
c) Ask the witness how they recognize the document or object. You may assume that the witness has the exhibit accessible.
d) Offer the exhibit into evidence, identifying which party is moving and which exhibit it is.
e) The opposing party may object to the exhibit on either foundational or evidentiary grounds.
f) Once entered, counsel may question the witness about the exhibit.
g) With the court's permission, publish to the jury.

Demonstrative Exhibits

1. Demonstratives. Demonstrative exhibits are illustrative aids prepared by witnesses to explain their testimony. A common example is a diagram of a scene or event the witness saw. Demonstratives also require foundation. The witness must testify as to what the exhibit will show, how it will be helpful to their testimony, and that it fairly and accurately represents what they saw or experienced. Once admitted, the witness creates the exhibit as they answer questions concerning the event in question.

RULES OF EVIDENCE

These rules are the only rules of evidence permitted in the Competition. These are drawn from the Federal Rules of Evidence, but no outside research into or use of the Federal Rules of Evidence is permitted. Note that not all evidence or information contained within the fact pattern is admissible and these rules may be applied to exclude inadmissible evidence.

Relevance

Evidence is relevant if it tends to make any material fact for which it is offered more or less likely to be true. For instance, a defendant's income is not relevant in a murder trial because it does not make it more or less likely that the defendant committed the murder. However, if the defendant's income is offered to prove something other than guilt itself, such as motive, then it may be relevant.

Substantially More Prejudicial than Probative

Some evidence is relevant but still inadmissible because it substantially risks unfairly prejudicing the jury against the defendant. The evidence may help prove some fact but is significantly more likely to cause a juror to decide on that evidence based on emotion or bias. For example, a particularly grisly photo of a murder victim may be relevant (it proves the victim is dead) but is also prejudicial (it may provoke revulsion or anger in the jurors). Note that this rule does not exclude evidence merely because it is prejudicial. In an adversarial trial, nearly all of the evidence offered against the opponent is prejudicial to that party. The test is whether that prejudicial value substantially outweighs its probative value.

Lack of Personal Knowledge or Speculation

In general, a witness may only testify to facts of which they are personally aware. For example, the witness may not speculate as to another person's state of mind. Similarly, a witness may not testify as to where a person was at a given time unless they actually know or have sufficient reason to know. Another example is that of a witness to a drunk driving accident: the witness may assert they saw the car swerving, they may not assert the driver had a BAC over the legal limit. A witness may offer a very basic opinion as to matters of common knowledge or based on their own reasonable perceptions.

Impermissible Character Evidence

1. Generally. In general, evidence of character or past behavior may not be introduced to show a propensity to act in conformity therewith. For example, in an assault case, it is impermissible to introduce evidence of the defendant getting in other fistfights in the past. Similarly, evidence of past crimes to show a propensity toward criminal behavior is inadmissible. There are three instances in which evidence of past conduct or character is admissible:

a) **To prove something other than conformity of conduct**. For example, in a murder case, evidence of past fistfights between the defendant and the victim may be offered to show the defendant did not like the victim and therefore had motive to commit the murder. This is distinct from offering it to show the defendant merely had a tendency toward violence (which would be impermissible).
b) **Character is an issue in the case**. In a criminal case, the defendant can "open the door" to character evidence by offering evidence of their own good character. Once this has been done, the prosecution may offer evidence to rebut this assertion.

c) **To prove or disprove credibility**. Evidence regarding a witness's tendency toward untruthfulness may be offered on cross to attack their credibility. Once this is done, the other party may attempt to rehabilitate the witness with evidence of a tendency toward truthfulness.

Hearsay

1. Generally. Hearsay is generally inadmissible. Hearsay is any out-of-court statement offered to prove the truth of the matter asserted. Typically, hearsay occurs when one witness recounts what some other person said in an effort to prove that what the other person said was true (e.g. "Bob said he saw the defendant do it."). Hearsay may also apply to written statements and documents as well. There are several "exclusions" (statements which are not hearsay) and "exceptions" (statements which are hearsay but are nonetheless admissible).

2. Exclusion: Offered for Other Purpose. Hearsay must be offered to prove the truth of the matter asserted. Statements offered to prove something else, such as the effect on the listener, are not hearsay. For example, a witness who claims he was frightened and is asked why may answer they were frightened because "He said he was going to kill me." This is offered not to prove that the speaker was threatening the witness, but that the witness perceived a threat and, thus, was frightened. Be wary of this exclusion. If the judge finds the alternative offer of prove is a pretense (the offeror is attempting to prove the truth of the matter asserted and claiming otherwise), the statement may still be ruled inadmissible.

3. Exclusion: Admission of Party Opponent. In a criminal case, a witness may testify to the admissions of the defendant made to that witness. Note that in criminal cases, the victim is not a party; therefore, the defense does not have a party opponent. Thus, this rule does not apply to the victim's hearsay statements.

4. Exception: Then-existing Mental, Emotional, or Physical Condition. Hearsay may be admitted if it is used to prove what the speaker was thinking or feeling at the time of the statement. For example, a witness may assert the victim screamed "Help!" when they were killed in order to prove the victim's frightened mental or emotional state.

5. Exception: Records of Regularly Conducted Business. Documents are also hearsay, but they are admissible if they are regularly kept business records. The records need to be of a kind the organization regularly keeps and which were created at or near the time of the event recorded. This exception applies to for-profit, non-profit, and government entities alike.

Lack of Proper Foundation

Generally, this applies to the admission of exhibits. The witness needs to show that they know what the exhibit is, how they know it, and how their knowledge supports the exhibits authenticity. See the section on exhibits above for further information. This objection can also

apply during testimony if attorneys ask questions to the witness without establishing the witness's ability to discuss that line of questioning.

II TEAM NAME: ______________________________ **Δ TEAM NAME:** ______________________________

JUDGE NAME: ______________________________ **ROUND NUMBER:** ______________________________

SCORING GUIDE: 1-3 = Poor/Below Average 4-6 = Average 7-10 = Above Average

Points for Prosecution	Scoring Category	Points for Defense
________/10	**Opening Statement** (10 Possible Points)	________/10
________/10	**Direct of ∏ Witness #1** (10 Possible Points)	
	Cross of ∏ Witness #1 (10 Possible Points)	________/10
________/10	**Direct of ∏ Witness #2** (10 Possible Points)	
	Cross of ∏ Witness #2 (10 Possible Points)	________/10
	Direct of Δ Witness #1 (10 Possible Points)	________/10
________/10	**Cross of Δ Witness #1** (10 Possible Points)	
	Direct of Δ Witness #2 (10 Possible Points)	________/10
________/10	**Cross of Δ Witness #2** (10 Possible Points)	
________/10	**Closing Argument** (10 Possible Points)	________/10
________/5	**Witness Points** (5 Possible Points)	________/5
________/65	**Total Points** (65 Possible Points)	________/65
Prosecution	**Winning Team – Circle One** (Ties are NOT Permitted)	**Defense**
Best Advocate		

See Other Side for Scoring Guide

SCORING GUIDE: 1-3 = Poor/Below Average 4-6 = Average 7-10 = Above Average

Opening Statement (Total of 10 points possible per speaking advocate)
Factors to Consider When Scoring • Conveyed Theme • Conveyed Theory • Applied Law to Facts • Personalized Client • Effective Conclusion • Did NOT Argue • Clear Organizational Structure • Eye Contact/Limited Notes • Persuasive
Direct Examination (Total of 10 points possible per speaking advocate)
Factors to Consider When Scoring • Non-Leading Questions • Developed Theme/Theory • Extracted Relevant Facts • Relationship with Witness • Clear Organizational Structure • Eye Contact/Limited Notes • Objection-Handling
Cross Examination (Total of 10 points possible per speaking advocate)
Factors to Consider when Scoring • Leading Questions • Short/Simple Questions • Controlled Witness • Cross Had Point/Direction • Clear Organization Structure • Eye Contact/Limited Notes • Objection-Handling
Closing Argument (Total of 10 points possible per speaking advocate)
Factors to Consider When Scoring • Conveyed Theme • Conveyed Theory • Incorporated Witness Testimony • Responded to Opposition • Applied Law to Facts • Addressed the Elements • Clear Organizational Structure • Effective Conclusion • Persuasive • Eye Contact/Limited Notes
Witness Points (Total of 5 points possible per team)
Factors to Consider When Scoring • Witness Preparation and Demeanor • Quality of Witness Response