

Ontario Justice Education Network

Project:
PROJECT 180°
Justice Education
Program



Project Template



Project Template

Project

OJEN developed partnership with a school for expelled students.

Many of the students may be facing or have previously faced criminal charges, and may have personal familiarity with the justice system. All of the students will have opinions about the system. The purpose of this program is to develop a justice education program that meets the needs of these particular students, providing positive interactions with justice sector volunteers (particularly crowns and judges).

The program sessions may take place in the school, with the exception of the mock trial, which can occur, with permission, in the local courthouse (ie: Ontario Court of Justice). The program includes:

1. An initial introduction session where students are asked what type of information and activity they would like to receive/or take part in.
2. Four one-hour information and discussion sessions about various aspects of the justice system
 - a. Bail: Bail Program bail supervisor
 - b. Defending: defense counsel
 - c. Judging: by Ontario Court of Justice judge
 - d. Prosecuting: crown counsel
3. Two mock trial coaching sessions run by defense and Crown counsel. OJEN has developed mock trial scenarios, which can be found on the OJEN website (www.ojen.ca), or may be developed by the staff and volunteers.
4. One coaching session that covers courtroom layout, protocol, and the step-by-step progress of a trial.
5. A mock trial held in local courthouse
6. A debriefing and feedback session with students and school staff
7. After session, school staff provides written feedback on the program.
8. An informal debriefing and feedback session with the lawyers who coached the mock trial teams
9. Students may be offered the opportunity to judge shadow. This will need to be arranged with local court staff

Students are presented with either a 'completion' or 'participation' certificate, depending on their attendance level. Students will also receive a copy of a group photo (and copies of a photo of the students who played the role of lawyers). Permission from the students' parents would be required to give each justice sector volunteer a copy of the group photo.

Target Audience

Youth attending school for expelled students, and completing a year-long strict discipline program.

Planning Steps

- Meeting with school to discuss program possibilities
- Meeting with students and school staff to determine content of program
- Design program length and content
- Create mock trial scenario
- Recruit volunteers
- Hold info sessions
- Introduce students to scenarios
- Hold coaching sessions
- Organize mock trial hearing in courthouse
- Arrange for mock trial counsels' robes
- Create participation certificates for students

Volunteer Roles

- Delivery of information sessions on types of justice sector roles (e.g. defense counsel, assistant crown prosecutor, judge, bail supervisor)
 - One classroom session per role
 - No further commitment required unless interested in participating as mock trial coach or judge for judge shadowing
- Mock hearing coaching sessions (Crown, Defence, Police)
 - Assist with preparation of mock hearing scenario (as needed)
 - Coach students preparing for mock hearing; as many sessions are suitable for particular program (ex: two sessions on a scenario and one on court processes and protocol)
 - Attend mock hearing
 - Participate in evaluation
- Mock hearing judge and clerk
 - Preside as judge and/or clerk at mock hearing
 - Provide verdict and student feedback
 - Judge signed students' certificates of participation
 - Clerk assisted with courtroom booking, security and scenario development
 - Answer student questions
- Judge shadowing for students
 - Morning/ afternoon or full day spent with student shadowing in judge in court and perhaps chambers

Materials or Supplies

- Location for classroom sessions
- Access to court room for hearing (over lunch break)
- Counsels' robes (optional)
- Certificates of participation

- Photocopying of scenario/evaluation forms etc.

Timeline

- 1 Month prior
 - Discuss curriculum links with teachers
 - Recruit volunteers for Part 1 – information sessions
- 1st Session
 - Discuss justice education with students and ask for suggestions of content (issues they want to know about).
- Sessions 2-5
 - Hold information sessions
 - Meanwhile, prepare for Part 2: Mock Trial (recruit coaches, judge, book courtroom, select scenario)
- Sessions 6, 7
 - Coaching sessions
- Session 8
 - Hold Mock Trial
- After the event
 - Conduct evaluation
 - Consider second round

TOTAL TIME: 3 Months

Volunteer Recognition

- Letters of thanks from OJEN staff
- Inclusion in OJEN's list for letter of thanks from the Honourable R. Roy McMurtry, Chief Justice of Ontario
- Photo of students with volunteers during hearing (permission sought from students' parents to distribute copies of this photo to the volunteers due to YCJA requirements)
- Feedback from students distributed to volunteers

Strategies for Evaluation

- Evaluation/feedback session with all program participants:
 - Students
 - Teachers/School Staff
 - Volunteers



VOLUNTEER PACKAGE

PREPARING FOR THE CASE *R. v. WILSON*

Thank you for volunteering to assist with the Project 180°/ OJEN pilot program mock trial. Your time and enthusiasm will greatly enhance the learning process.

The purpose of the mock trial

This mock trial has been organized as part of a larger justice education program for students at Project 180°. Prior to the mock trial the youth had four informal class sessions with a justice sector volunteer; Toronto Bail Program supervisor, defence counsel, judge and Crown counsel. During the sessions the students and justice sector volunteers discussed their roles within the justice system.

The purpose of this program is to:

- Help students better understand the criminal justice system
- Provide students with positive interactions with members of the justice system.
- Empower students by encouraging them to have a sense of ownership over the justice system, as a democratic process in which they have a positive role to play
- Develop self-esteem and public speaking skills

Your role as a volunteer

Your role in this mock trial is to prepare the participants so that they feel confident in their roles and understand the material. You are not expected to produce polished young counsel, but to encourage enthusiasm and a sense of fun (this might be the first positive experience with the justice system that some participants have had).

Your time and efforts also have a mentoring element, as youth benefit from the attention and interest paid to their lives. Simply spending the time engaging with youth, regardless of their level of participation in the mock trial, is a valuable part of the experience.

Some things to keep in mind

- The participants will need coaching on proper courtroom procedure (such as when to stand up, how to refer to the opposing counsel, and when it is appropriate to make an objection)
- There is a wide range in the education and literacy levels of the participants
- The participants (especially the lawyers) will likely need prompting during the actual trial, as they may become confused, shy or stuck on certain points

- Think participation not performance! You may find that students only ask three or four questions during their direct examination or cross-examination.
- The students will not be receiving the same preparation package as you. Students will only receive the fact scenario, a list of the players, the information, and a two-page outline of their role and how to prepare for it

Suggestions for coaching a mock trial

- Review all material beforehand, assess what the side you are coaching is attempting to accomplish during the trial
- If you are working with the Crown, start by explaining what the offence is
- If you are working with Defence, start by reviewing the overall weak points of the charge
- Help the group to come up with a general theory and theme
- Help them draft their opening and closing arguments by pointing out what information is critical to their party's argument
- Come prepared to discuss all of the basic points that they will need to prove in their examination in chief and cross examination
- Keep their examination of witnesses short and focused on key points
- Assist them in coming up with questions for witnesses
- Make them feel generally comfortable with how the trial process works
- To ease the preparation required by the participants, have four lawyers per side (1 to prepare the opening statement, 1 to do the direct examination, 1 to cross-examine, 1 to prepare the closing statement)

Because of time restraints and to keep things less complicated, there will be no exhibits

For the purpose of this mock trial assume the apartment entry and search was lawful.

Suggestions for judging a mock trial

- Be familiar with the facts of the case
- Don't worry if students are making mistakes, we haven't spoken extensively to them about hearsay, exclusions of evidence, etc.
- Feel free to intervene and help examinations along
- Try to keep them on time as much as possible
- Be prepared to give comments to each of the lawyers and witnesses after the trial (positive feedback and constructive criticism are welcome!)
- Ask for and take note of each participant's name so that you can give them individual feedback at the end of the trial



What Happened?

Joe is 16. It was Saturday May 6, 2006, and Joe's Mom was away for the night. Joe and his friend Kamal invited some people over for a party.

Joe and Kamal called their friends, who then called their friends. By 10:00 PM the apartment was almost full, with people from school, from the building and neighbourhood, and some people that Joe and Kamal didn't know. The music was loud and people were talking and drinking in all of the rooms. People kept arriving, and by midnight the place was packed.

The noise from the party got pretty loud. At about 12:30 AM Mike Bourke, who had just moved into the apartment down the hall, banged on the door and demanded that the music be turned off. The partygoers, including Joe, started yelling at Mike, and he yelled back.

Mike yelled that he was going to get Joe's family kicked out of the building. In response, some people in the apartment pulled guns out and waved them at Mike. Mike ran down the hallway yelling. Suddenly the lights went out. Two gunshots went off. People screamed and started running through the apartment and down the hallway outside.

About five minutes later all of the movement and confusion had stopped. Joe turned on the lights. He was the only person left in the apartment. Suddenly the door burst open and five police officers stormed through the front door with their guns out. They yelled at Joe to get down and pushed him onto the ground and held him there.

The police searched the apartment and found a loaded gun under the couch. Joe said to the police "that's not mine – I've never seen that before – I don't have any guns – someone must have put that there".

Joe was arrested and charged with possession of a firearm.

No useable fingerprints were found on the gun.



Key Players:

1. Joe Wilson (the accused)
2. Kamal Amar (friend of Joe's and defense witness)
3. Constable Emilio Gomez (arresting officer and crown witness)
4. Mike Bourke (Joe's neighbour and crown witness)
5. Defence lawyers (3)
6. Crown Lawyers (3)
7. Judge
8. Court Services Officer
9. Court Clerk
10. Jury members (additional students/staff) (if available)



TIME CHART FOR TRIAL OF *R. v. WILSON*

1. Clerk calls to order	1 min
2. Clerk asks the accused, Crown and Defence to stand, reads charge, enter pleas, and introduces parties	3 mins
Crown Case	
3. Crown opening statement	3 mins
4. Crown direct examination Crown witness 1	4 mins
5. Defence cross-examination	4 mins
6. Crown direct examination Crown witness 2	4 mins
7. Defence cross-examination	4 mins
Defense Case	
8. Defence opening statement	3 mins
9. Defence direct examination Defence witness 1	4 mins
10. Crown cross-examination	4 mins
11. Defence direct examination Defence witness 2	4 mins
12. Crown cross-examination	4 mins
Closing Arguments	
13. Defence closing arguments	3 mins
14. Crown closing Arguments	3 mins
15. Judge instructs Jury (if there is a jury. If not, judge deliberates and renders a verdict – 12 minutes)	2 mins
16. Jury deliberates and gives verdict (if there is a jury)	10 mins
17. Judge gives feedback and discusses trial process etc.	10 mins



PACKAGE FOR CROWN AND DEFENCE LAWYERS

PREPARING FOR TRIAL

- As a Defence lawyer you represent the accused.
- As a Crown attorney you represent the government and the public.
- During the trial, lawyers for both sides give: 1) opening and closing statements; 2) direct examination of your own witnesses; and 3) cross-examinations of the other side's witnesses.
- The Crown will make its opening statement and call its witnesses first. The Defence goes next with its opening statement and witnesses.
- The Defence gives its closing arguments first. The Crown goes second.

How to prepare an opening statement

1. Become familiar with your witnesses' fact sheets.
2. Select which facts should be included in the opening statement. Include the central facts to your case that are not likely to be challenged by the other side.
3. Stick to facts. The facts are what will paint the picture for the judge.
4. Check with the lawyer writing the closing arguments for your side, to make sure that both the opening and closing arguments are very similar, and cover the same facts.
5. When giving the opening arguments, try to speak in short, clear sentences. Be brief and to the point.
6. Have notes handy to refresh your memory.
7. Remember that the opening statement is very brief but gives an overview of your case.

How to prepare for direct examination

1. Write down all the things that your side is trying to prove.
2. Read the witness' testimony carefully, several times over.
3. Make a list of all the facts in the witness' testimony that help your case.
4. Put a star beside the most important facts that you must make sure that your witness talks about. For example an important fact for the Crown might be if your witness saw the actual crime taking place.
5. Create questions to ask the witness that will help the witness tell a story:
 - Start with questions that will let the witness tell the court who s/he is ("What is your name? What do you do? How long have you worked in that job?")
 - Move to the events in question ("What were you doing on the night in question? Where were you? When did you first hear there was a problem?")
 - Move to more specific questions ("What did you see? What did you do after that happened?")
6. Remember not to ask leading questions.
7. When your witness is on the stand, do not be afraid to ask a question twice, using different words, if you do not get the answer you were expecting.

How to prepare for cross-examination

1. Make a list of all the facts in the witness' testimony that hurt your case.
 2. If there are a lot of facts that don't help your case, can you find a way to challenge the witness' credibility? For example can you show that the witness made a mistake or has a reason for not telling the truth?
 3. Put a star beside the facts you must make the witness talk about.
 4. Write short leading questions, that move towards the key points you want to make.
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13. Depending on what the witnesses' say you might need to come up with different questions on the spot during the trial.

How to prepare closing statements

1. Write down your key arguments and summarize the important facts you want to stick out in the judge and jury's mind.
2. When delivering the closing arguments, try to speak in short, clear sentences. Be brief and to the point.
3. Only summarize evidence that actually was given at trial. This may mean you have to re-write your closing arguments on the spot during the trial.
4. Where a witness for the other side admitted something important to your case, point that out. For example: "The witness says she identified Mr. Smith as the man who broke into the car. However, she admitted that she was standing three blocks away from the car when she made the identification. She admitted that it was dark out. There is a real doubt that the witness actually could have identified anyone, let alone someone she had never met before, in the circumstances."
5. Check with the lawyer writing the opening statements for your side, to make sure that both the opening and closing statements are very similar, and cover the same facts.



PACKAGE FOR JOE WILSON, THE ACCUSED

DEFENCE WITNESS

PREPARING FOR TRIAL

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

Your Background

- Your name is Joe Wilson
- You are 16 years old
- You are in Grade 11
- You have no previous criminal record.
- Some of your friends have been in trouble with the police before.

Your version of what happened

- On May 6, 2006, you and your friend Kamal decided to have a party in the apartment you live in with your Mom, who was away.
- You and Kamal called your friends and by 10:00 PM the apartment was full of people, some from school, some from the building and neighbourhood, and some that you didn't know. Kamal didn't know them either.
- You were drinking throughout the evening, but not very much. By midnight you weren't really drunk, but you weren't sober either.
- The music was loud. People were dancing, talking and laughing. It was pretty noisy.
- At about midnight Kamal told you that someone was at the door demanding that the music be turned off. This made you angry, because you didn't want the party to end.
- You pushed your way into a group of partygoers standing by the door. They were people you didn't know. The man at the door was someone you had seen in the building a couple of times recently (who you now know as Mike Bourke).
- You asked Mike what his problem was. He yelled that he wanted the music turned off.
- The people yelled at Mike, telling him to get lost and that the music was staying on. You joined in yelling at him.
- Then Mike said that he was going to get your family kicked out of your apartment. This made you really angry. You, and the people around you yelled louder at Mike, and moved towards him.
- Suddenly, a guy beside you pulled out a gun and waved it at Mike. Other people around you pulled out guns too. You laughed at how scared Mike looked. Then someone handed you a gun. You held it up, looking at it. Then you realised what you were doing and tried to hand the gun back.
- Mike started running down the hallway. Someone turned the apartment lights out. Then you heard two gunshots. You didn't know who had fired them, or what they shot at. You dropped the gun.
- People started screaming and running through the apartment and down the hallway. You moved out of the way. You thought you had better stay at the apartment to make sure things didn't get wrecked or stolen.

- After about 5 minutes the noise and movement stopped. You turned on the light. Everyone else was gone.
- Suddenly the front door flew open and about 5 cops stormed into the apartment. They had their guns out. They yelled at you to get down and one pushed you to the floor and held you there. He handcuffed you.
- The police searched the apartment. They found a gun under the couch. You didn't know if it was the one you had dropped.
- You said to the cop "that's not mine – I've never seen that before – I don't have any guns – someone must have put that there".
- But you were arrested and taken to the police station and charged with unlawfully possessing a firearm.
- You were shocked at being arrested and didn't know what to do. You didn't answer any of the police questions at the police station, but told them your name, your address, that the gun wasn't yours.
- You were held in a police station cell overnight. The next morning you were bailed out by your Mom under her custody.

Questions you should think about

- What kind of student are you?
- How close are you to your friend Kamal?
- Have you ever gotten into trouble before?
- Do you have friends who have guns?
- How do you feel about guns? Have you ever had a gun?
- How does your Mom feel about you being charged?
- How do you feel about being charged?
- How do you feel about what happened at the party to Mike?
- How did you act when you were arrested? Did you cooperate with the police?
- Are you scared about what might happen if you are convicted?



PACKAGE FOR KAMAL AMAR, WITNESS FOR THE DEFENCE

PREPARING FOR TRIAL

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

Your Background

- Your name is Kamal Amar
- You are 15 years old
- You are in Grade 11
- You have no previous criminal record

Your version of what happened

- On May 6, 2006, you were at a party at your friend Joe's apartment. His Mom was away. You knew most of the people at the party from school and Joe's building, but some you had never seen before.
- At about midnight someone (who you now know as Mike Bourke) banged on the door and said he was a neighbour and demanded the music be turned off.
- You went and told Joe. Joe went over to the door and you followed.

- The people near the door were yelling at Mike. You didn't know these people. Joe moved into the middle of their group. He started yelling at Mike too, and asked him what his problem was.
- Mike was yelling back. Everyone was angry and abusive.
- Then Mike yelled that he was going to get Joe's family kicked out of the building. This made things worse. The yelling got louder, and the partygoers started moving toward Mike like they would hurt him.
- Then one of the partygoers you didn't know pulled out a gun and pointed it at Mike. Other people with him pulled out guns too. You couldn't see how many there were or what was happening because they were in front of you. You didn't see Joe with a gun. Everything happened very fast.
- Mike ran down the hallway. Someone turned the apartment lights out. You heard two gunshots. You didn't see who had fired them or what they fired at.
- People screamed. Everyone was trying to get away from the guns. People started running out of the apartment and you joined them.
- You left the building and went home. The next day you found out that Joe had been charged with possession of a firearm.
- You have never seen Joe with a gun, and he has never talked about guns to you.

Questions you should think about

- What kind of student are you?
- Have you ever gotten into trouble?
- Do you have friends who have guns?
- How close are you to your friend Joe?
- How do you feel about Joe being charged?
- Have you ever seen Joe with a gun before?
- How was Joe acting at the party before this happened?



PACKAGE FOR CROWN WITNESS CONSTABLE EMILIO GOMEZ

PREPARING FOR TRIAL

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

Your Background

- Your name is Constable Emilio Gomez
- You are 35 years old
- You are a Constable with the Toronto Metropolitan Police Service, and have been for 7 years
- You patrol the east part of the city in a police car

Your version of What Happened

- Just after midnight on May 7, 2006 you were on patrol in the east of Toronto. You received a call from headquarters advising you of a 911 call of gunshots in a building at Pape & Danforth.
- Due to the nature of the 911 call, you and the four other responding officers entered the apartment in question with your weapons drawn.

- There was one person in the living room, who was 'taken down', handcuffed, and searched. You later identified him as Joe Wilson, who lives in the apartment with his mother. No firearms were found on Joe.
- You and the other police officers searched the apartment. You found a gun under the couch.
- You showed the gun to Joe and he said it wasn't his and that he had never seen it before. He said there had been lots of people at the apartment for a party, and someone must have put the gun there.
- You then interviewed Joe's neighbour Mike Bourke, who had made the 911 call. He told you he had moved into the building that week. He said he had been to Joe's apartment and asked that the music be turned off. A group of young people had started yelling at him.
- Mike Bourke said he had got mad at the youth and told them he was going to have Joe's family evicted. Then some of the youth pulled out guns and threatened him with them. He had run down the hallway.
- Mike Bourke said he recognized one of the young people as someone he had seen in the building but had not met. He now knows this person to be Joe Wilson. He is sure that he saw Joe with a gun.
- You put the gun in a bag and marked it. You took it to the police station.
- You took Joe to the police station and charged him with unlawful possession of a firearm. Joe looked scared and wouldn't answer any more questions other than his name and address. All he would say was that the gun wasn't his.
- Joe spent the night in custody and was released on bail the next day.
- You had the gun tested and there were no fingerprints on it.

Questions you should think about

- What reason did you have for arresting Joe?
- Is it clear that Joe possessed the firearm?
- Is Mike Bourke able to identify Joe as a person who had a gun?
- Why do you think Joe didn't answer questions at the Police Station?
- Have you been to other gun-related incidents in this neighbourhood?
- Does this neighbourhood have a gun problem?



PACKAGE FOR CROWN WITNESS MIKE BOURKE

PREPARING FOR TRIAL

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

Your Background

- Your name is Mike Bourke
- You are 36 years old
- You live in an apartment down the hall from Joe Wilson and his mother
- You work as a taxi driver

Your version of what happened

- You moved into the building at Pape & Danforth on April 28, 2006. You live alone.
- On May 6 you got home from work at 9:00 PM. You were starting work again at 6:00 AM, and needed some sleep.
- When you arrived home you noticed a party in an apartment down the hall. Over the next three hours it got louder and louder.
- At midnight you went and knocked on the apartment door. Someone opened the door and you saw a room full of young people. They were drinking and dancing and there was lots of shouting.

- You asked for the music to be turned down. The person who answered the door left to get the person who lived there.
- The young people by the door started yelling at you, telling you to get lost and that the music was going to stay on.
- Another youth joined the group. You recognized him as someone you had seen in the building maybe once or twice since you moved in. You hadn't met him before, but you now know him as Joe Wilson.
- He joined in with the people yelling at you. He asked what your problem was and you asked again for the music to be turned off. He refused.
- You told him that you would get his family kicked out of the building. When you said that, the youth got even angrier and started moving toward you.
- One of the young people pulled out a gun and pointed it at your face. Then other guns were pulled out by other youth. You are sure that you saw Joe with a gun.
- You ran off down the hallway. Suddenly two gunshots went off. You ran into your apartment and called the police. You were not injured.
- The police arrived and interviewed you.

Questions you should think about

- Why did you ask for the music to be turned off?
- How often had you seen/met Joe Wilson before the incident?
- Why did you yell at the partygoers?
- Did you see which people actually held the guns?
- How did you feel when the guns were pointed at you?
- How quickly did everything happen?
- What do you hope happens to Joe?
- Is this considered a dangerous neighbourhood? Do you feel safe in your building?
- Was there anything else about the evening that was confusing or out of the ordinary? For example, were you very tired?



PACKAGE FOR COURT CLERK

PREPARING FOR TRIAL

Your role is to help the Judge to make sure that the trial runs smoothly.

You will:

- Open the Court
- Read the charge to the accused and ask him to plead guilty or not guilty
- Swear in the witnesses
- Close the courts

How to Open the Court

When all participants are in their places, you will bring in the judge and say:

Order, All Rise. M. Justice _____ presiding.

Oyez! Oyez! Oyez! Anyone having business before the Ontario Court of Justice for the Province of Ontario draw near and give your attention and you shall be heard. God Save the Queen.

How to Read the Charge

You stand and say to the accused:

Joe Wilson, who is a young person within the meaning of the Youth Criminal Justice Act, is charged that he, on or about the 7th day of May 2006, in the City of Toronto, did possess a firearm, without being the holder of a license under which he may possess it contrary to section 91(1) of the Criminal Code.

Joe Wilson, how do you plead to this charge? Guilty or not guilty?

How to Swear in Witnesses

If either one of the lawyers calls a witness during the trial then ask them to enter the witness box and you will swear them in by saying:

Will you please state your name for the court? Please spell your first and last name

Then ask: **Do you wish to affirm or take an oath on the Bible?**

If the witness chooses to affirm, you ask: **Do you solemnly affirm to tell the truth as you know it concerning this matter?**

If the witness chooses to swear an oath, you ask: **Do you swear that the evidence you are about to give in this matter is the whole truth so help you God?**

Closing the Courts

After the lawyers have made their closing arguments and the Jury has given its decision, then the Court is closed and you will say:

All Rise. Court is now adjourned.



PACKAGE FOR JUDGE & JURY

PREPARING FOR TRIAL

Judge

A judge's role is to:

- Be a referee and explain to the Jury what the law is.
- If a lawyer objects to a question by another lawyer, decide whether or not the witness must answer the question.
- At the end of the trial, summarize what the law and evidence is relating to this case.
- If it is a jury trial, instruct the jury who then decides if the accused is guilty or not.
- If the accused is found guilty decide what the sentence will be.

Jury Members

A jury's role is to:

- Listen to all of the evidence without making any decisions until the end of the trial about the guilt or innocence of the accused
- Listen to the Judge describe the evidence and what the law is
- Elect a Foreperson (spokesperson) to head the jury and give the final decision
- Talk about the evidence with other jurors behind closed doors, then vote on the guilt or innocence of the accused
- Come up with a decision that all jurors agree on



PACKAGE FOR COURT SERVICES OFFICER

PREPARING FOR TRIAL

Your role is to:

- Bring the accused into the courtroom.
- Help the judge in keeping order in the courtroom.
- Making sure the accused and the Jury are not threatened during the trial.

You can prepare for your role by reviewing the background documents and understanding what will happen during the trial.

The judge will expect you to escort anyone who becomes too loud or is not behaving out of the courtroom.



BACKGROUND ON THE CRIMINAL JUSTICE SYSTEM *

** This material has been developed by OJEN staff with permission from the University of Toronto LAWS program's Mock Trial Package 2006 to assist in explaining aspects of the criminal justice system in plain language to mock trial participants. These materials also rely heavily on S. Lubet's *Modern Trial Advocacy: Analysis and Practice, Canadian Edition* (S. Block and C. Tape eds.) (Notre Dame, Indiana: National Institute of Trial Advocacy, 1995).*

What is a Trial?

- A trial is a kind of debate between two groups called “*parties*” who have different stories or two different versions of what actually happened. Trials are used to end disagreements when the two groups involved can't agree on the facts of what has taken place. Following a criminal charge the accused has a right to a trial.
- During a trial each party gets to present their own version with evidence before the Court and the other side gets to ask questions and challenge their evidence in order to reveal any weaknesses it might have.
- At trial a judge alone, or a judge and jury, will listen to the evidence being presented by both sides. Both parties then try to convince the judge, or judge and jury, that their version of the events is how things really happened.
- At the end of the trial, the judge or the jury has to decide which version of events is more believable.

Who are the key players in a criminal trial?

- The Accused – the person who is alleged to have committed the criminal offence.
- The Crown – the lawyer who acts on behalf of the Attorney General and the public to ensure that all evidence in a case is brought before the courts. The Crown does not “win” a case, but must work to make sure that the court hears all evidence surrounding a crime.

- The Defence – the lawyer or lawyers who act on behalf of the accused to ensure that that accused has a fair trial and to present evidence which the Crown may have not uncovered but which may be crucial to the case.
- Duty Counsel – the lawyer paid by legal aid to assist accused who cannot afford a lawyer. Duty Counsel can give advice and guidance and basic assistance with the court process. They cannot replace a lawyer on a file and instead can only help out on a given day by assisting the accused with asking for a delay, doing some simple plea-bargaining with the Crown, conducting bail hearings, and sometimes assisting with guilty pleas and sentencing.
- The Judge – a former lawyer and appointed official who listens independently to all evidence which is being presented in a trial, summarizes and gives instructions to the jury if there is one, and gives reasons for deciding a case.
- The Jury –members of the public who are selected to sit in court and hear all evidence and then decide on a case.
- Witnesses –members of the public who have some knowledge about the accused or the event and are brought into the courtroom to give evidence that helps a judge or jury decide the outcome of the case.
- The Clerk – the court official who helps the Judge run the courtroom. S/he swears in witnesses, marks exhibits, calls recesses and makes sure the court runs smoothly.
- The Court Services Officer – the court official who assists the judge in keeping order in the courtroom.
- The Court Reporter – the court official who keeps track of everything that is said in the courtroom so that the lawyers, judges and jury can refer back to these records if they need to.
- The Arresting Officer – the police officer who investigates the crime, and then arrests and charges the accused which starts the prosecution process.
- The Expert – the individual who may be called in because s/he has special knowledge in an area that helps the court to understand some of the evidence being presented.
- The Press – reporters who document what happened at a trial for the public.
- The Court Artists – individuals who document the trial through drawing because cameras are not allowed in Canadian courtrooms.

What happens during a criminal trial?

- The Crown tries to prove that the accused is guilty of the criminal offence s/he has been charged with.
- The accused and his/her lawyers which are called "*the Defence*" try to show that the accused is not guilty of the criminal offence.
- In a criminal trial, an accused has a chance to plead "guilty" or "not guilty". If the accused pleads guilty, there is no trial and the accused just gets a sentence handed down by the judge.

What is a criminal charge?

- The charge sets out a list of things that the Crown has to prove in order for the accused to be found guilty.
- For example, in our case we are dealing with a theft charge. Keri Jones is charged with an offense under the Criminal Code for:
...committing theft by fraudulently and without the right, taking for use something with the intent to deprive, temporarily or absolutely, the owner of it, of the thing...
- The elements the Crown must prove in this trial are:
 1. That Keri took something;
 2. That Keri intended to take it away from someone else
 3. The Keri didn't own it
 4. That Keri was the person who committed the crime
 5. The value of the stolen good
- To do this, the Crown has to provide the judge, or judge and jury, with evidence that proves all the elements of an offence "beyond a reasonable doubt".
- Proving something "beyond a reasonable doubt" does not mean that there has to be no doubt. It means that the Crown must be convincing enough with the evidence that the average person would not have any "reasonable doubts" in his or her mind about whether the individual committed the offence s/he was charged with.
- Defence lawyers do not have to disprove all of the elements of the criminal offence, instead they just have to raise doubts that the accused committed the offence s/he

is charged with based on the evidence presented. If they can raise “a reasonable doubt”, then the accused will be found not guilty.

How do you persuade a judge or jury?

- Winning a trial depends on telling a more persuasive story than the other side.
- A persuasive story, is one which:
 - a) Explains or discusses all of the known facts
 - b) Is told by believable witnesses
 - c) Is supported by details
 - d) Makes common sense or has what we call “a ring of truth” to it
- A persuasive story also has both a “theory” and a “theme”.
- A “*theory*” is your overall story of what happened – it is a logical straightforward story, which covers all the issues and evidence. It explains why people did the things they did, and it is easy to believe.
- A “*theme*” is a single sentence that summarizes what your theory is. You will use your theme as your “hook” to draw the judge or jury into believing your theory. For example, say that Ms. X is charged with theft. Her lawyer decides that her main defence will be that she just happened to be at the scene of the crime and the police arrested her by mistake. A good theme for this story could be: “Ms. X was just at the wrong place at the wrong time.”
- Coming up with a theory of the case and a theme that summarizes the theory in one catchy phrase are important parts of telling a persuasive story at trial.

What is evidence and why is it important?

- Both sides use evidence to help them prove or disprove what really happened.
- Witnesses who are called to the stand in court to give testimony give “*oral evidence*”
- “*Physical evidence*” is actual physical documents or objects that are presented as exhibits at a trial (like a gun, or a stolen object).

How are witnesses & oral evidence presented at trial?

- In a trial, each side gets a chance to call witnesses to the stand at the front of the court, to help tell their side's story. When you are asking questions of your own witnesses, you are conducting what is called an "*examination in chief or direct examination*".
- Each side also gets to challenge the other side's witnesses. When you are posing questions the other side's witness, you are conducting a "*cross-examination*".
- In a criminal trial, the Crown presents its witnesses first, and the defence follows.

How is physical evidence presented at trial?

- At trial both sides can submit physical evidence to the court.
- If you are acting as one of the lawyers in the trial, you may ask the witnesses to examine pieces of evidence during the trial, and ask them specific questions about the documents.

What makes an examination in chief / direct examination successful?

- Cases are won by a strong and well-organized examination in chief or direct examination of your witnesses. You examine a witness to get him/her to describe for the court what s/he saw in his/her own words.
- You try to prove that your witness is reliable and believable.
- During a direct examination, you are not permitted to "lead" a witness by suggesting the answer to a question in the form of the question itself.
- Leading questions are questions in which the answer is given in the form of the question. For example, when asking someone about what they had for breakfast:

- A leading question would be "You had corn flakes for breakfast, right?"

The non-leading way of asking the question is "What did you have for breakfast?"

To avoid asking leading questions, it's better to ask questions starting with words like these: What? Where? When? Why? Who? How? Please explain... Describe ...Tell us about ...

- Questions that are more specific are also okay, as long as they also are open-ended. The following are examples of questions that are more specific but not considered leading:

- Did you cross the street? Did you eat breakfast?

What is a cross-examination?

- Cross-examination is the chance to poke holes in the evidence that the other party's witnesses presented in direct examination.
- The goal of the cross-examination is to raise doubts about a witness' testimony and if possible, disprove it. If you are cross-examining a witness, you will try to:
 - Highlight facts that will support your own case
 - Draw out facts that will support the evidence your own witnesses will give on the stand
 - Discredit the witness' previous testimony
 - Poke holes in the witness' credibility
- Always use leading questions on cross-examination. The witness is often hostile to a cross-examination, and leading questions allow you to be in control of what the witness says.
- Remember that leading questions suggest the answer, whereas open questions do not. For example, when asking someone about what they had for breakfast on cross-examination, you should ask "You had corn flakes for breakfast, right?" and not "What did you have for breakfast?"
- The best cross-examinations result in a series of "yes" answers from the witness.
- Avoid cross-examining on every detail – as much as possible, plan what you are going to cross-examine on, the most important details and leave it at that. The best cross-examinations are short.
- However, if the witness says something unexpected on the stand, you must be prepared to challenge him or her even if you had not planned for a question about that statement.
- Avoid asking questions you don't know the answers to. You don't want to ask "You had corn flakes for breakfast, right?" and have the witness reply "No, I had bacon and eggs and I have a receipt from the restaurant I ate at to prove it".
- It is sometimes difficult to figure out how to cross-examine a witness on statements made during their direct examination. One way to approach it is to consider whether the witness' statements are actually supported by evidence.

- Often a witness will draw a conclusion or make a statement that can't really be justified. It is your job to point out the weakness of that conclusion and that there is no evidence to support it.
- For example, suppose a witness has testified in her direct examination that: "I saw Mr. Smith break into a car on January 7, 2006." This is damaging evidence against Mr. Smith. When Mr. Smith's lawyer cross-examines the witness, his or her goal will be to raise doubt about whether the person the witness saw damaging the car was really Mr. Smith:

Question: You testified that you were standing on the street corner of Bathurst and Harbord when you saw the incident, right?

Answer: Yes

Question: The car in question was at the corner of Euclid and Bathurst, right?

Answer: Yes

Question: That's three blocks from where you were standing, right?

Answer: Yes

Question: And you saw the break-in at around 7 pm, didn't you?

Answer: Yes

Question: This break-in took place in January, right?

Answer: Yes

Question: So if it was January, that means it was night out when you saw the incident, right?

Answer: Yes

- Getting the witness to agree to these questions will go a long way to undermining her evidence that she saw Mr. Smith breaking into the car. These questions raise doubt about whether the witness could really identify anyone properly at that distance in the dark.

What does an opening statement do?

- The way a lawyer opens his/her arguments sets the tone for the trial. It is an opportunity to give a brief sketch one side of the story to the court, and to paint a scene in the minds of the judge or jury.

- Opening statements are like a guide or road map for the judge or the jury, which lets them know what they should focus on as they hear all of the evidence.
- The opening often begins with the “*theme*” (the catchy sentence) and then sets out the theory or the explanation of all the facts in the form of a story.
- The side that most accurately and most vividly presents its story during the opening and catches the judge or jury’s attention often has an advantage throughout the trial.
- Lawyers are only permitted to talk about “what the evidence will show” during an opening statement. So opening statements should be limited to facts you will prove during trial.
- Lawyers cannot be “argumentative” in opening statements. They are not permitted to argue why their evidence will be better than the other side’s evidence, or to draw conclusions from the evidence. For example:
 - Not argumentative: “the police officer’s evidence will show that the accused had several alcoholic beverages on the night in question. Later, when the police officer pulled over the accused’s car and spoke with the accused, the accused replied using slurred speech, had red eyes, and smelled of alcohol.” [This opening lists only facts – the jury may draw a conclusion that the accused was drunk, but the lawyer has not actually come out and said so.]
 - Argumentative: “The accused was obviously drunk as a skunk, and anyone who claims otherwise is lying to you.” [This opening is not permitted – it draws conclusions instead of presenting evidence.]
- Only include the most important facts that will allow you to tell a complete story in your opening.

What is a closing argument?

- Closing arguments take place after both sides have had a chance to present all of their evidence to the court.
- This is the last chance to convince the court your version of events is the correct one.
- Through closing arguments the lawyer summarizes:
 - This is what happened
 - Here’s the evidence you heard that tells us what happened

- Here's why you should believe that evidence

- The closing should repeat the theory and the theme developed in the opening statement.
- However, in closing, lawyers are now permitted to do more than set out what the evidence will show. Lawyers should review the evidence the court actually heard and actually draw conclusions from that evidence. For example, instead of saying "the police officer's evidence will show that the accused had several alcoholic beverages on the night in question", now is your chance to say "the accused was obviously drunk as a skunk."
- Closing arguments should mention all of the key facts relied on in support of the theory of the case, and why the judge or jury should believe those facts.
- If the evidence your evidence hasn't been challenged, say so. That's strong evidence.
- If the evidence about what happened is in dispute, explain why the evidence better supports your version of events.
- Avoid using too much description or value-laden adjectives. Try to present the facts as simply as possible, without embellishment.
- Closing arguments should refer to evidence that was actually heard during the trial. The lawyer has to listen closely to what was presented during the evidence phase of the trial and be prepared to change his/her closing statement at the last minute to reflect what actually went on at trial.

What does a judge consider when making sentencing decisions?

- When a judge is deciding what sentence to give to a young person, he/she must consider:
 - The seriousness of the offence and the amount of responsibility the youth had for the offence;
 - A sentence that is proportionate to the seriousness of the offence;
 - Whether or not the young person has made any amends with the victim;
 - Whether the young person has previously spent any time in detention as a result of the offence;
 - Whether non-custody would be more appropriate;

- What sentence would be the least restrictive on the young person and would promote rehabilitation and a sense of responsibility and acknowledgement of the harm done.
- Some of the sentencing options a judge has under the *Youth Criminal Justice Act* are:
 - A reprimand
 - An absolute or conditional discharge (in an absolute discharge no conviction is registered; in a conditional discharge conditions might be things like going to school regularly, following a curfew, staying out of trouble...)
 - An order to participate in an intensive support and supervision program
 - An order to attend a program offered at a facility
 - A fine up to \$1000
 - Payment of compensation to the victim
 - Payment of costs of the crime (such as the costs of replacing stolen goods)
 - Community service up to 240 hours
 - An order for reporting to a probation officer
 - Custody and supervision
 - Community justice conferencing (meeting with the police, the crown, the victim and those supporting the victim, and a facilitator so that the offender learns how the wrongdoing has hurt the victim and what they can do to help mend things)
 - Healing circles (members of the community meet with the offender and sometimes the victim. The community discusses how to work to solve the problems that led to the offence and the impact it has had on their community).