

# *Bergeron v. Glampers*

## The Harrison Bergeron Mock Trial

### Section 1

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# Introduction

This Unit packet contains all the elements for creating an inquiry-based, experiential unit around a combination of teaching the Bill of Rights as well as the Kurt Vonnegut short story *Harrison Bergeron*. Teachers who are new to a mock trial strategy will find all the materials and guidance needed to create a short or long version of this process. If you have not ever learned various skills or strategies around a mock trial, we highly recommend a training from the Classroom Law Project to get you started. If you have questions or would like more information about bringing a training to your school or district, you can contact them through their website at [www.classroomlaw.org](http://www.classroomlaw.org).

This packet is intended to create stand-alone activities that allow you to combine them in whatever way might fit your class. While a full mock trial might seem like a large project, it is a very intuitive, step by step process that can engage students around concepts and literature for an extended period of time. We have provided here the wrap around supports, resources and materials that make a deeper examination of the themes of *Harrison Bergeron*, as well as the US Constitution, a living, active process for students.

Most importantly, this packet is created to help you bring fun, relevance, collaboration, and rigor to your classroom in a way that turns the examination of literature and social studies on its head! Have fun with it!

# Suggested Humanities Unit Framework

## The U.S. Constitution & *Harrison Bergeron*

(US History 1776-1785)

### Possible Readings & Resources:

Harrison Bergeron, by Kurt Vonnegut (Narrative Short Story)  
Touching Spirit Bear, by Ben Mikaelson (Novel w/real world connections)  
“[Argument Wars](#)” - iCivics digital game w/case readings  
“[Branches of Power](#)” - iCivics Digital game  
Bill of Rights - Study & Skits  
[Liberty Kids](#), Parts 1 & 2: Intro to the Constitution (animated YouTube video series)  
“[History of the Constitution](#)” - US History Crash Course (John Greene's YouTube Series)  
“[The Powers of State and Local Governments](#)” - Newsela article  
[Basics of the Court System - Civil Cases](#) (United States Courts)  
[Reading Harrison Bergeron](#) - Facing History and Ourselves  
[Objection, Your Honor!](#) - a game to practice objections from Texas Law Related Education

(these links are also located at [classroomlaw.org/resources/harrison-bergeron](https://classroomlaw.org/resources/harrison-bergeron))

### Possible Activities in addition to Mock Trial

- Philosophical Chairs Debate (Bill of Rights v. Overreaching laws of Equality)
- Persuasive writing
- Comparison of themes in Harrison Bergeron, Touching Spirit Bear, Constitutional ideas
- Townhall simulation w/testimony on equality policy ideas

### Essential Questions:

- What is equality?
- What are the repercussions of overcompensating to try to make everyone equal?
- What should be the government's role in enforcing the laws and definitions of “equality”?

### AVID Strategies:

- Mark-up the text
- Collaborative Groupwork
- Philosophical Chairs debate
- Costa's Level 3 Inquiry/application
- Evidence based Writing to support Critical Thinking (multiple modes)
- Graphic Organizer
- Focus Notes

## Oregon 8<sup>th</sup> Grade Social Studies Standards:

- 8.1 Compare and contrast the Articles of Confederation to the U.S. Constitution.
- 8.2 Identify and understand how to apply the rights and responsibilities of individuals under the Constitution.
- 8.5 Examine and analyze important United States and Oregon documents, including (but not limited to) the Constitution, Bill of Rights, 13<sup>th</sup> -15<sup>th</sup> Amendments and Oregon Constitution.
- 8.7 Analyze the expanding eligibility of citizenship in the continuing struggle for the expansion of rights for ethnic and traditionally marginalized groups.
- 8.8 Analyze important political and ethical values such as freedom, democracy, equality, equity, and justice embodied in documents such as the Declaration of Independence, the United States Constitution, and the Bill of Rights. (Civics)
- 8.9 Analyze the effect of historical and contemporary means of changing societies, and promoting the common good.
- 8.10 Explain specific roles and responsibilities of citizens (such as voters, jurors, taxpayers, members of the armed forces, petitioners, protesters, and office-holders).
- 8.22 Evaluate continuity and change over the course of United States history by analyzing examples of conflict, compromise, cooperation, interdependence, and social justice from multiple perspectives.
- 8.23 Evaluate the continuity and change over the course of United States history by analyzing the key people and events from the 1780s through Reconstruction.
- 8.25 Evaluate the influence of the intersections of identity, including but limited to gender, age, race, ethnicity, religion, and class on the experiences of peoples, groups, and events.
- 8.29 Use and interpret relevant primary and secondary sources pertaining to U.S. History from multiple perspectives.
- 8.30 Synthesize information and data to construct an account of historical events that includes multiple sources and varied perspectives.
- 8.32 Critique and analyze information for point of view, historical context, distortion, bias propaganda and relevance including sources with conflicting information in order to question the dominant narratives in history.

## Language Standards:

- 8.6 Cite the textual evidence that most strongly supports an analysis of what the text says explicitly as well as inferences drawn from the text.

- 8.7 Determine a theme or central idea of a text and analyze its development over the course of the text, including its relationship to the characters, setting, and plot; provide an objective summary of the text.
- 8.9 Determine the meaning of words and phrases as they are used in a text, including figurative and connotative meanings; analyze the impact of specific word choices on meaning and tone, including analogies or allusions to other texts.
- 8.11 Compare and contrast the structure of two or more texts and analyze how the differing structure of each text contributes to its meaning and style.
1. Integrate and evaluate content presented in diverse formats and media, including visually and quantitatively, as well as in words.\*
  2. Delineate and evaluate the argument and specific claims in a text, including the validity of the reasoning as well as the relevance and sufficiency of the evidence.
  3. Analyze how two or more texts address similar themes or topics in order to build knowledge or to compare the approaches the authors take.

### **Unit Rationale:**

This unit covers the beginnings of the US Constitution and the writing and implementation of the Bill of Rights. Students will discuss, prepare arguments, dissect texts, find supporting evidence, analyze authentic realia, use high level/academic language, and engage in the four modes of communication: speaking, written, listening, and reading. Students will also engage in an authentic civics and courtroom experience.

### **Suggested Unit Plan (in ADDITION to Mock Trial)**

#### **Beginning:**

- Introduction to the Bill of Rights
- Analysis of the first ten amendments of the Constitution and how they relate to current day issues.
- Students can do skits for summarizing the amendments
- Connect the ideas in the Bill of Rights to the Preamble
- Explain the three branches of government & how they relate to one another
- Provide plausible scenarios/situations for students to decide (in groups) which branches are responsible and how they can affect one another.
- Students work in groups to present the three branches of government in a metaphorical way.

#### **Middle:**

- Can be taught in conjunction with Social Studies in Language Arts, or successively after beginning in Social Studies.
- Begin reading *Harrison Bergeron*.
- Use a vocabulary supporter sheet with either a visual dictionary, or have students look up

words in the dictionary and reword definitions in their own words.

- Read the story in groups of 4 and fill out Cornell notes/AVID note taking strategies by marking up the text
- Respond to EQ's surrounding the ideas of equality and engaging with the text.
- NEWSELA Analysis of the powers of government at state and federal level.

### Philosophical Debate Preparation:

- "Branches of Power" Game on iCivics
- Basics of the Court System - Civil Cases - review with students the basics of what a civil court case is in the judicial process
- Assign students into Groups:
  - 1: the jury (5-7 students)
  - 2: Council A (in favor of making society more like *Harrison Bergeron* - 5-7 students)
  - 3: Council B (against *Harrison Bergeron* society and for defending Bill of Rights - 5-7 students)
- All students will need to analyze both *Harrison Bergeron* & The Bill of Rights to understand the position they will be arguing.
- Students will take notes and organize their arguments and will be ready refute the other group.

### Philosophical Debate:

- Students will engage in a debate to try and convince the jury of their argument.
- Teacher acts as a facilitator between both groups 2 and 3 where each student will present a viewpoint.
- Students will first make initial statements, be given time to form a rebuttal.
- Each group is given 2-3 turns of rebuttal.
- Each member of the Jury prepares a statement to explain their viewpoint (individually) with evidence based on reasoning from the debate.
- Jury will then deliberate as a group in an attempt to come to a 3/4 vote.

### Final Essay Component:

Students write an Argumentative PACE in response to the Essential Questions.

**P**araphrase the prompt

**A**nswer the question with a claim or thesis

**C**ite evidence

**E**xplain your reasoning!

# The Mock Trial Activity Guide

## *Bergeron v. Glampers*

This is a fun mock trial to do with Middle Schoolers, but specifically 7th or 8th grade. It is a **civil case** that combines the short story *Harrison Bergeron*, by Kurt Vonnegut with the Bill of Rights, with a little *Declaration of Independence* thrown in. Both history and language arts teachers can utilize this activity. As a civil case it includes all areas of courtroom procedures, courtroom participants, vocabulary, reading, writing, historical analysis and critical thinking. And, like we said, it's fun!

**Concepts & Skills** that can be practiced and expanded on by individual teacher preferences include:

- Civil Law v Criminal Law
- Prosecution vs Plaintiff
- Defense
- Witnesses
- Telling the truth
- Understanding different perspectives
- Responsibility for individual actions
- Open ended questions and critical thinking
- The ability to think on one's feet
- Developing a claim and supporting it with evidence
- The role of the court system and the Bill of Rights
- The role of the Constitution and the creation of Amendments
- The understanding of equality under the law
- Vocabulary

### **Time Needed:**

6 - 8 one-hour periods for set up, research and preparation.

2 one-hour periods for the trial (at least 100 minutes)

2 one-hour periods for a follow up Socratic discussion and reflection.

### **Learning Objectives:**

- Increase proficiency in reading, writing, speaking and critical thinking.
- Increase proficiency in analyzing, reasoning, listening and questioning.

### **Courtroom Set up:**

At the end of this Section 1 is a Courtroom Set Up Diagram. That shows how to set your classroom up for the best trial maneuvering.

Props such as robes (often old graduation robes can serve here), a gavel, a podium, etc., can help to get everyone into the spirit of the trial.

A great option is to reach out to your local courthouse to see if there is a real courtroom your students could use; they usually are happy to accommodate school requests. Or, if you are in Oregon, you can contact Classroom Law Project to help you do that.

### Suggested Concept Tip:

Included in Section 2 is an article for students to read about horse racing handicaps. This will help them understand the concept of “handicap” as a method of equalization, rather than as a disability, as its common usage suggests.

### Student Materials

All optional handouts, guides, and materials for students to use in preparation and during the trial are included here in Sections 2, 3, and 4.

### Roles & Responsibilities

All the roles in the mock trial require preparation, research, decision-making, collaboration, presentation, and reflection. The different roles provide different perspectives of the story.

**Option 1:** all students to prepare for all roles and then assign roles at the end so that they can each experience the different perspectives before performing one of them

**Option 2:** students are assigned roles based from the beginning and invest in prepping for that perspective and then at the end during the Socratic discussion and reflection show they understand the other perspectives they witnessed during the trial.

**Potential Roles:** multiple students can serve in the roles together. A list of up to 41 different roles is included in this section.

- |                        |                        |
|------------------------|------------------------|
| 1. Judge               | 5. Witnesses           |
| 2. Jurors              | 6. Attorneys           |
| 3. Bailiff(s)          | 7. Journalist(s)       |
| 4. Clerk/timekeeper(s) | 8. Courtroom artist(s) |

### Overall Activity Steps

1. Preparation (expectations & plan)
2. Vocabulary
3. Bill of Rights
4. Courtroom procedure and etiquette
5. How trials are used to solve conflicts, and the difference between criminal law, (breaking a law) and civil law, (conflict resolution between two parties)
6. Student research of different roles (allow them to choose their top three choices and argue why they want to do them)
7. Students learn “Steps of a Trial” and discuss and clarify questions
8. Practice objections and how they work
9. Read *Harrison Bergeron* aloud together. (*this is the “crime scene” of the trial*).
10. Students research and prepare for roles.
11. Run through motions of the trial (not a practice, but more of the movements and order of what to expect)
12. The Trial!
13. The Jury's response
14. The reporters & artists presentations
15. Small group and whole class analysis (Socratic) discussions
16. Individual reflections

## Preparation Steps for Roles

### Attorneys:

- Read & list the facts from the crime scene of the case
  - Choose an attorney part: opening statement, closing statement, or direct/cross witness questioning
  - Go over exhibits and decide how and where they will use them to reinforce their version of the case
  - Decide their theory of the case
  - Meet with their own witnesses to plan their questioning/story
  - Anticipate what the other side might make their theory
  - Understand objections, how to use them, and plan when they might use them
- **Opening statement:** prepare statement that explains their theory of the case. Include a claim and the 3 key points that will prove THEIR side of the case is correct. Use the form for this. Practice speaking with voice inflection and use of gestures. Incorporate jury eye contact. Memorize this statement as much as possible (not required).
  - **Direct examination of witness:** Use form to interview your witness and get their statement. Have the statement written down verbatim, (use form) and get a signature. This will be used for direct examination and cross. Create questions to either support your case or contradict oppositions case. If they try to go beyond it during questioning you have room for objections.
  - **Cross Examination of Witness:** Use form to interview witness and get their statement. Get a signature. Prepare questions to support your case or contradict oppositions case. Make sure you do not go beyond the scope of the statement or get more information from the interview, or you will leave yourself open for objections and possible damage to your case.
  - **Closing statement:** Prepare to sum up your case. Go back and recap your opening argument and show how you gave evidence to back- up your claim. Add any new information in that supports your case that was learned during the trial. Use gestures and eye contact with the jury to strengthen your statements. Give a final strong statement that ASKS the jury to “do the right thing,” or “Follow the law” or other and vote whether the defendant is responsible or not, whichever applies for your client.

### Witnesses:

- Write what you believe your part or role in the trial story is. Write it in your own words and use the facts from the crime scene, affidavit or other research. Know your story well and even memorize it if needed.
- Your story will need to be believable on the stand during its telling and during questioning. The more you read from your card, the less believable you are.
- Strong voice and eye contact with the attorneys are important. Use of gestures to point at plaintiffs or defendants and other gestures strengthen your version of the story.
- Be prepared to give witness or interviews before trial and to be questioned on the stand by both attorney's during the trial.

- Be prepared to sign your affidavit that you swear it to be the truth.
- Work with the lawyers on your side to think of questions and how you want to emphasize your version of the story.

#### **Jurors:**

- Listen & take notes about the “crime scene”, such as: names, timeline of events, descriptions of what happened, questions for clarification, statements by witnesses and accuracy and level of weight of evidence and exhibits.
- Read through the Objections guide: Be aware of the correct and incorrect use of objections and their meanings.
- Optional: Watch the movie, *12 Angry men*, and observe the role of jurors and how to discuss the evidence given at trial and weigh its importance.

#### **Bailiff(s):**

- Know the oath thoroughly and how to administer it
- Know the Judges entrance statement and give it with impact
- Be prepared to enforce judge's courtroom commands.

#### **Clerk/Timekeeper(s):**

- Listen carefully and have all documents available.
- Have copies of all affidavits, opening and closing remarks, and exhibits so as to provide clarification of statements said if needed.
- Keep a stopwatch of the time and cue participants when down to the final 2 minutes and 1 minute before time is up.

#### **Journalist/Artist(s):**

- Listen to crime scene story, read witness accounts, listen to courtroom proceedings and be prepared to summarize the trial
- Comment on the case, its outcome and its verdict based on your point of view.
- Draw scenes from the courtroom or take photos and use them in your article.

# Mock Trial Public Speaking Skills

Below is a list of public speaking skills that Mock Trial helps students practice\*:

## Eye Contact

- With specific individuals
- With the group as a whole
- Conscious breaks and pauses to create interest
- Looking away (at individuals and the group) then back before starting

## Body Posture

- Upright
- Confident
- Hands in front

## Body Movement

- For transitions
- To build or keep suspense

## Articulation (speaking clearly)

## Vocal emphasis and variety

- Volume (how loud or soft)
- Pace/Speed (slow down or speed up)
- Pitch (change octaves)
- Rhythm (variation of strong and weak elements)

## Silence

- Pauses before, during, and after a speech
- Draws attention and emphasis

## Hooks and rhetorical devices

- Ethos: appealing to emotion
- Logos: appealing to logic
- Pathos: appealing to authorities (experts or laws)

## Gestures

- Show (convey emotion)
- Give (hand up, invites openness)
- Tell (hands down, makes a point, gives direction)
- Point (accusation)
- Sign post (first, second, third points, etc.)
- **Nine Specific Gestures** that reinforce public speaking:
  - **The Bookshelf Sweep**  
With both hands open and facing left (palms facing out), make an enveloping movement and “drag” the imaginary contents to the right and below. This the

ideal gesture to separate topics and to indicate priorities or levels of hierarchy in the exhibition (as if you are moving books in the library when you finish talking about them).

- **The Critical Whirl**

Placing the hand at eye level and towards the front, with the palm facing the ground, turn it clockwise to enunciate contents, list topics as examples, and accelerate the flow of your exposure.

- **The Italian Waiter**

The entertaining name (also known as the "chef's kiss") defines the gesture of the dominant hand, in which the fingers are grouped in front (towards your face, your mouth particularly) and in a shake, they go forward. This gesture punctuates special words in your oratory and helps you demonstrate more strength in your presentation.

- **Flexing the Academic Muscle**

Imagine that you play the piano with both hands, only in two positions: to the right and to the left. This movement is useful to individualize contents within the same context and denotes mental clarity regarding the exhibition.

- **The Point**

With the elbow flexed and the dominant hand closed in a fist, inward, extend the index finger and shake it towards your audience to direct attention to a specific person, place or point. This gesture denotes security.

- **The Backhand Slap**

Put your non-dominant hand with the palm facing up and strike it with the back of the other hand to highlight an idea, and important point, or reiterate a concept. This gesture denotes security and authority.

- **The Dialectic**

This gesture is quite used and can help you demonstrate more intelligence when speaking. Using either of your hands, with your thumb and forefinger as if you were taking a small hourglass, turn your hand as you carry the sand of the cock to either end. The gesture indicates a change or two different points of view in the same idea and denotes breadth of knowledge and security on the subject in question.

- **The Tiny Dialectic**

Similar to the previous one, but with the thumb and forefinger much closer together (almost joined), the hand can turn or simply move forward, as if you were "putting the tail on the donkey" on a board. The gesture points out the key idea in your presentation.

- **Taking Ideas**

Imagine that you take a pinch of sand with all your finger and that you release it upwards as if it were a card. This gesture enhances the idea on display and demonstrate specificity and security.

\*thanks to [www.mocktrialstrategies.com](http://www.mocktrialstrategies.com)

# Mock Trial & Courtroom Vocabulary

**affidavit:** A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

**allegation:** something that someone says happened.

**appeal:** A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

**bail:** Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his/her appearance on the day and time appointed.

**bench trial:** Trial without a jury in which a judge decides the facts.

**chambers:** A judge's office.

**capital offense:** A crime punishable by death.

**charge:** The law that the police believe the defendant has broken.

**charge to the jury:** The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

**circumstantial evidence:** All evidence except eyewitness testimony.

**clerk of court:** An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

**complaint:** A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

**continuance:** Put off trial until another time.

**conviction:** A judgement of guilt against a criminal defendant.

**counsel:** Legal advice; a term used to refer to lawyers in a case.

**court:** Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

**court reporter:** A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

**cross examine:** Questioning of a witness by the attorney for the other side.

**defendant:** In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

**defense table:** The table where the defense lawyer sits with the defendant in the courtroom.

**deposition:** An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

**discovery:** Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

**docket:** A log containing brief entries of court proceedings.

**evidence:** Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

**felony:** A crime carrying a penalty of more than a year in prison.

**grand jury:** A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. attorney's office who are prosecuting the case.

**hearsay:** Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

**impeachment:** (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

**indictment:** The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

**instructions:** Judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case.

**interrogatories:** Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

**interview:** A meeting with the police or prosecutor.

**issue:** (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

**judge:** Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

**judgement:** The official decision of a court finally determining the respective rights and claims of the parties to a suit.

**jurisdiction:** (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

**juror:** A person who is on the jury.

**jury:** Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

**misdemeanor:** Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

**mistrial:** An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

**oath:** A promise to tell the truth.

**objection:** A reason that an attorney interrupts a witness to talk to the judge.

**opinion:** A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

**oral argument:** An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

**plaintiff:** The person who files the complaint in a civil lawsuit.

**plea:** In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges, a declaration made in open court.

**pleadings:** Written statements of the parties in a civil case of their positions. In the federal courts, the principal pleadings are the complaint and the answer.

**probation:** A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

**probation officers (or pretrial services officers) :** Screen applicants for pretrial release and monitor convicted offenders released under court supervision.

**prosecute:** To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

**public defenders (or defense attorney):** Represent defendants who can't afford an attorney in criminal matters.

**sentence:** The punishment ordered by a court for a defendant convicted of a crime.

**sequester:** To separate. Sometimes juries are sequestered from outside influences during their deliberations.

**sidebar:** A conference between the judge and lawyers held out of earshot of the jury and spectators.

**subpoena:** A command to a witness to appear and give testimony.

**testify:** Answer questions in court.

**testimony:** Evidence presented orally by witnesses during trials or before grand juries.

**trial:** A hearing that takes place when the defendant pleads "not guilty" and witnesses are required to come to court to give evidence.

**verdict:** The decision of a petit jury or a judge.

**victim advocate:** work with prosecutors and assist the victims of a crime.

**voir dire:** The process by which judges and lawyers select a jury from among those eligible to serve, by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

**warrant:** A written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.

**witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.

*\*from Whitfield County Schools, Dayton, Georgia*



# Building Block Activity: Direct & Cross Examination Asking Good Questions

## Materials:

- 2 identical sets of large colored blocks (8-10 blocks per set)
- 2 desks or sets of chair/table that can be put back to back
- chalkboard/whiteboard
- laptop/projector/phone camera
- Taboo buzzer

## Activity:

### Part 1:

- 1) Have 2 students sit back to back with a set of blocks in front of each
- 2) Ask one student to build a structure with the blocks, any structure.
- 3) Have students share out the question words: Who, What, Where, When, Why, How
- 4) Ask a third student to come forward and only using the 6 question words ask 1st student with blocks questions that will help the second student build an identical structure.
- 5) Can use a Taboo buzzer to buzz questioner when they use the incorrect form. (This simulates objections, keeping cool when you're interrupted.)
- 6) Give students a time limit if they are dragging it out. Take a photo of the 2 structures.

### Part 2:

- 1) Use same 2 builders. (You can switch builders, but you lose the debrief of the 2nd builder comparing different types of questioning.)
- 2) Have one student build structure.
- 3) Add Explain and Describe to the list of words that 3rd student can use.
- 4) You can switch out the 3rd student. Repeat questioning process.
- 5) Give time limit if necessary. Take a photo of the 2 final structures. **Don't destroy them and don't let builders look!**

### Part 3:

- 1) Use same 2 builders.
- 2) Bring up a 4th student.
- 3) Have 4th student ask leading questions to try and "correct" structure.
- 4) If students need example of leading questions, you can give them ways to start.
  - a) Isn't it true that the blue block is actually under the green block?
  - b) The green block is on the short side, not the long side, right?
- 5) Repeat questioning process.
- 6) Take picture of structures.

## Debrief:

- 1) If you can, post pictures during the debrief. This can be done with your phone and google photos. Dump them into a slide while students are questioning.
- 2) Compare 2nd builders experience each time. Which was easiest? Which was most frustrating? What was most helpful?
- 3) Compare experience of questioners.
- 4) Draw the comparison to a trial. Who is the jury? Who is the witness? Who is the attorney?
- 5) How do the questions operate? How would you use what you learned in a trial?
- 6) Why is it so hard to be a juror?



# Who is Responsible? A Mad Libs Game of Asking Quality Questions

This Mad Libs game is fun for the whole class and can really challenge them to think about how they get at the facts of a case in order to make good decisions. This one can be especially helpful in preparing students on juries, but can help everyone in their various roles of the mock trial.

## Materials:

- Mad Libs Story handout for each student
- One set of character roles
- A white board or poster to write the Mad Lib Categories and then determine the responsibility.

## Procedure:

1. List the Mad Lib Categories on your board or overhead and have the students call out a word to put for each number.
2. Pass out the Mad Libs story to the class and ask them to fill in the chosen words for each numbered space.
3. Do a read aloud with volunteers reading parts of the silly story
4. Call five student volunteers to the front to sit in a panel - give each of them one role description to read. Let them know that they may be asked questions and they should only answer EXACTLY what information is on the role description and say "I don't have that information" if the question doesn't cover what's there. They should not offer any information on their role sheet that ISN'T asked by other students.
5. While the student panel are reading their roles, ask the rest of the students which people in the story are responsible for the dancer's injuries - list who they come up with on the board.
6. Seat the panel of students and spend about 10-15 minutes allowing questions from the audience to the various roles. The goal for the audience is to ask question that will give them the information they need to decide who has what amount of responsibility in this case.
7. End question time and ask the student audience to give percentage responsibility to each of the roles (for example, they might think the manufacturer is 50% responsible, the coach is 30% responsible, and the dancer is 20% responsible, etc.)
8. Once they've landed on who they think has what responsibility in the story, have each of the panel members reveal information that WASN'T asked of them. Now students will hear what they did not ask, ie, all the information they DIDN'T have to make an informed decision about responsibility.
9. Once they learn ALL the information from the roles, ask them to redo their percentages and see if their idea of responsibility changes after they learn all the facts.

There are no correct answers here - the idea is to show students how asking the right questions can get them the facts they need. It also will help them decide how to ask witnesses questions, help witness prepare to answer, and help jury members prepare to make decisions about what the facts are.

## Dancing and Damages: Who Should Pay?

### Mad Lib Categories:

- 1) School in this District
- 2) Another School in this District
- 3) A number
- 4) Teacher
- 5) Any student name
- 6) A larger number
- 7) a food

(1)\_\_\_\_\_ and (2) \_\_\_\_\_ have a dance team rivalry. Both schools are competing in the Final for the Oregon Dance Team Trophy. This year, (1) \_\_\_\_\_ plans to win, because it bought a secret weapon: **The Boogie Booster**. The Boogie Booster is a small device put in each dancer's shoe. When activated, a dancer gets a boost so the dancer can jump (3) \_\_\_\_\_ feet higher than before. From high in the air, a dancer can continue to dance. The effect of dancers dancing on the floor and in the air is awesome. (1) \_\_\_\_\_ believes it will win easily.

(1)\_\_\_\_\_ 's coach, (4) \_\_\_\_\_ saw an ad for the Boogie Booster in "Dance Magazine." The coach had never heard of the product or manufacturer, "Flying Free," although Flying Free was the largest producer of dance products in the US.

(5)\_\_\_\_\_ is the star member of (1) \_\_\_\_\_ 's dance team. Although (5)\_\_\_\_\_ was the best dancer, (5)\_\_\_\_\_ always wanted to do better. About ten minutes before the Dance Contest began, (5)\_\_\_\_\_ thought, "If pumping up the Boogie Booster one time makes me jump (3)\_\_\_\_\_ feet, if I pump it more than that, I'll almost fly. The talent scouts will love me. So (5)\_\_\_\_\_ pumped the Boogie Booster (6)\_\_\_\_\_ times.

Finally the big moment arrived. Hearing only sounds of the band and the crowd, (5) \_\_\_\_\_ started pumping and said, "Take me higher, Boogie Booster." It did, but higher than ever imagined. (5)\_\_\_\_\_ went so high, (5)\_\_\_\_\_ even forgot to "jiggy." Fortunately, there was a hole in the ceiling of the dance hall and the dancer went right through it. Then (5)\_\_\_\_\_ went down, down, down, finally landing in the garbage container with the leftover school lunch, (7)\_\_\_\_\_. A straw from a drink container punctured the dancer's left ear and all the discarded homework papers resulted in Severe Paper Cut Trauma. (5)\_\_\_\_\_ could never hear music clearly again, and the paper cuts resulted in so many scars that (5)\_\_\_\_\_ never wanted to be seen in public again.

The dancer wants to sue for their damages, but who is responsible? If you were the dancer's lawyer, who would you sue?

# Dancing and Damages: Who Should Pay?

**Mad Lib Character Roles** (to be cut apart and given to panelists):

## Coach

- You have been coaching dance for 15 years
- You have won the Trophy 3 times.
- You read the Boogie Booster manual and told the dancers to pump only 1 time. You did not give them the manual to read.
- You had the team practice with the Boogie Boosters for 2 hours per day for 1 week. Nobody pumped more than 1 time in practice. You had no problems.
- You were a little worried that dancers were going so high, but wanted to win the trophy so badly you decided to take the risk of any injuries in order to win.
- You did not get any special or additional insurance.
- You did not inform the parents because you wanted the Boogie Booster kept secret.
- You did not tell the school principal about the Boogie Booster.
- You had no experience using any kind of dance enhancement device before.

## Manufacturer Flying Free

- You are the biggest maker of dance equipment in the US.
- Boogie Booster is a new product, and you sold only 100 of them before the accident.
- There are no instructions on the Boogie Booster itself.
- You tested the Boogie Booster in Australia on kangaroos.
  - 10 kangaroos used the Boogie Boosters for 2 hours each with no injuries.
  - The Boogie Booster was pumped up to 3 times in the tests.
  - It was not tested on people prior to sale.
- The box says: "Manufacturer is not liable if product not used according to directions. See instruction manual for details."
- The instruction manual says:
  - The manufacturer disclaims any liability for use of this product not according to directions.
  - User assumes all liability.
  - Pump the Boogie Booster only 1 time. More than 1 pump may cause unpredictable results.
- Flying Free considered using a safety switch limiting the Boogie Booster to 2 pumps, but decided the cost would be too high and cause sales to decrease.

## **Dancer**

- You are 17 years old. You don't live with your parents any longer, but live in an apartment with friends and work 20 hours each week at a fast food restaurant.
- You always wanted to be a dance star, with the dance company Alvin Ailey Dance Group.
- The ear damage cannot be corrected surgically with today's practices.
- The paper cut scars could be repaired by plastic surgery at a cost of \$100,000. You suffered a lot of pain from the injury, lost three weeks of work (where you now work as cook in the back instead of at the front counter, since you don't want to be seen in public), lost 3 weeks of school, and are embarrassed and ashamed because of the accident and the injuries. You want \$300,000 for pain and suffering.
- The coach told you to pump only 1 time, but did not explain why.
- You never saw the Boogie Booster instructions, manual or the box.

## **Principal**

- You hired the coach. The coach has an excellent record. The coach didn't tell you about the Boogie Booster.
- You ask your teachers and coaches to get your approval for policy changes, but you give them the power to incur reasonable expenses within their budgets. The Boogie Booster was within the dance coach's budget.
- You have ultimate responsibility for what goes on your in your school, and in turn, the school system is responsible for what you are responsible for.
- The school board has given the school \$10 million for repairs for the school. It would be terrible if this money were to be used to pay for the lawsuit rather than make the repairs.
- The hole in the roof was there for at least the last five years, maybe longer.
- The school system has liability insurance to cover accidents of this kind.

## **Publisher of Dance Magazine**

- You make a good profit from advertisements in your magazine, around \$20 million per year. You yourself earn \$2 million per year.
- You never test any product you advertise. You accept advertisements from anyone and do not review their claims for accuracy.
- In the small print on the table of contents of each magazine, you write a disclaimer: "The claims of advertisers are not endorsed by Dance Magazine in any way. Dance Magazine is not liable for any damages that may be caused by any products it advertises."
- Flying Free has often advertised products in Dance Magazine, and pays top money for advertising.
- You are unaware of any problems with or injuries from Flying Free products.

# Mock Trial Roles for up to 41 Students

1. Judge \_\_\_\_\_
2. Co-Judge \_\_\_\_\_
  
3. Plaintiff Attorney - Opening statement Plaintiff \_\_\_\_\_
4. Defense Attorney - Opening statement Defense \_\_\_\_\_
  
5. Plaintiff Witness #1 \_\_\_\_\_
6. Plaintiff Witness #2 \_\_\_\_\_
7. Plaintiff Witness #3 \_\_\_\_\_
  
8. Defense Witness #1 \_\_\_\_\_
9. Defense Witness #2 \_\_\_\_\_
10. Defense Witness #3 \_\_\_\_\_
  
11. Plaintiff Attorney - Direct Examination Plaintiff Witness #1 \_\_\_\_\_
12. Defense Attorney - Cross Examination Plaintiff Witness #1 \_\_\_\_\_
13. Plaintiff Attorney - Direct Examination Plaintiff Witness #2 \_\_\_\_\_
14. Defense Attorney - Cross Examination Plaintiff Witness #2 \_\_\_\_\_
15. Plaintiff Attorney - Direct Examination Plaintiff Witness #3 \_\_\_\_\_
16. Defense Attorney - Cross Examination Plaintiff Witness #3 \_\_\_\_\_
  
17. Defense Attorney - Direct Examination Defense Witness #1 \_\_\_\_\_
18. Plaintiff Attorney - Cross Examination Defense Witness #1 \_\_\_\_\_
19. Defense Attorney - Direct Examination Defense Witness #2 \_\_\_\_\_
20. Plaintiff Attorney - Cross Examination Defense Witness #2 \_\_\_\_\_
21. Defense Attorney - Direct Examination Defense Witness #3 \_\_\_\_\_
22. Plaintiff Attorney - Cross Examination Defense Witness #3 \_\_\_\_\_
  
23. Plaintiff Attorney - closing argument \_\_\_\_\_
24. Defense Attorney - Closing argument \_\_\_\_\_
  
25. Juror #1 \_\_\_\_\_
26. Juror #2 \_\_\_\_\_
27. Juror #3 \_\_\_\_\_
28. Juror #4 \_\_\_\_\_
29. Juror #5 \_\_\_\_\_
30. Juror #6 \_\_\_\_\_
31. Juror #7 \_\_\_\_\_
32. Juror #8 \_\_\_\_\_
33. Juror #9 \_\_\_\_\_
34. Juror #10 \_\_\_\_\_
35. Juror #11 \_\_\_\_\_
36. Juror #12 \_\_\_\_\_
  
37. Clerk/Bailiff \_\_\_\_\_
  
38. Journalist #1 \_\_\_\_\_
39. Journalist #2 \_\_\_\_\_
  
40. Courtroom Artist #1 \_\_\_\_\_
41. Courtroom Artist #1 \_\_\_\_\_

# Mock Trial Procedure

## (Sequence of Events of the Trial)

### Opening:

1. Bailiff announces "all rise" - all in the courtroom rise
2. Judge enters the room and are seated
3. Judge calls for rest of courtroom to sit down
4. Judge asks teams if they are ready to proceed; Teams respond "yes, your Honor."

(Clerk keeps time for each part going forward)

5. Plaintiff Attorney(s) makes opening statement
6. Defense Attorney(s) makes opening statement

### Plaintiff's Case:

7. Plaintiff Attorney calls Plaintiff Witness #1 to the stand
8. Clerk leads Witness #1 in oath to tell the truth
9. Plaintiff Attorney direct examination of Plaintiff Witness #1
10. Defense Attorney cross examination of Plaintiff Witness #1
11. Plaintiff Attorney re-direct of Plaintiff Witness #1 (if desired)
  
12. Plaintiff Attorney calls Plaintiff Witness #2 to the stand
13. Clerk leads Witness #2 in oath to tell the truth
14. Plaintiff Attorney direct examination of Plaintiff Witness #2
15. Defense Attorney cross examination of Plaintiff Witness #2
16. Plaintiff Attorney re-direct of Plaintiff Witness #2 (if desired)
  
17. Plaintiff Attorney calls Plaintiff Witness #3 to the stand
18. Clerk leads Witness #3 in oath to tell the truth
19. Plaintiff Attorney direct examination of Plaintiff Witness #3
20. Defense Attorney cross examination of Plaintiff Witness #3
21. Plaintiff Attorney re-direct of Plaintiff Witness #3 (if desired)

### Defense Case:

22. Defense Attorney calls Defense Witness #1 to the stand
23. Clerk leads Witness #1 in oath to tell the truth
24. Defense Attorney direct examination of Defense Witness #1
25. Plaintiff Attorney cross examination of Defense Witness #1
26. Defense Attorney re-direct of Defense Witness #1 (if desired)
  
27. Defense Attorney calls Defense Witness #2 to the stand
28. Clerk leads Witness #2 in oath to tell the truth
29. Defense Attorney direct examination of Defense Witness #2
30. Plaintiff Attorney cross examination of Defense Witness #2
31. Defense Attorney re-direct of Defense Witness #2 (if desired)

32. Defense Attorney calls Defense Witness #3 to the stand
33. Clerk leads Witness #3 in oath to tell the truth
34. Defense Attorney direct examination of Defense Witness #3
35. Plaintiff Attorney cross examination of Defense Witness #3
36. Defense Attorney re-direct of Defense Witness #3 (if desired)

**Closing:**

37. Plaintiff Attorney(s) makes closing statement
38. Defense Attorney(s) makes closing statement
39. Judge gives Jurors their direction and asks them to adjourn to decide
40. Judge declares court in recess while Jurors adjourn (Jurors have limited time to adjourn)
41. Bailiff asks courtroom to stand while Judge and Jurors exit

**Verdict:**

42. Bailiff calls the courtroom to order & all stand while Judge and Jury return
43. Judge asks Jury if they have reached a verdict; Lead Juror responds
44. Judge asks jury to read its verdict (judge may poll the jurors)
45. Judge thanks the jury and declares case closed

# Developing a Theory of the Case

A case theory is a detailed and accurate story of what occurred in the case at trial. It is how you tell the story of your side of the matter.

In a civil case, Plaintiffs must present a case theory that shows they are entitled to the relief that is sought in their Complaint. Defendants must present a case theory that shows plaintiffs do not have enough "preponderance of the evidence" to entitle them to the relief they claimed. A **preponderance of the evidence** means plaintiffs must prove to the jury their theory of the case is *more true than not true*.

## **A good case theory is:**

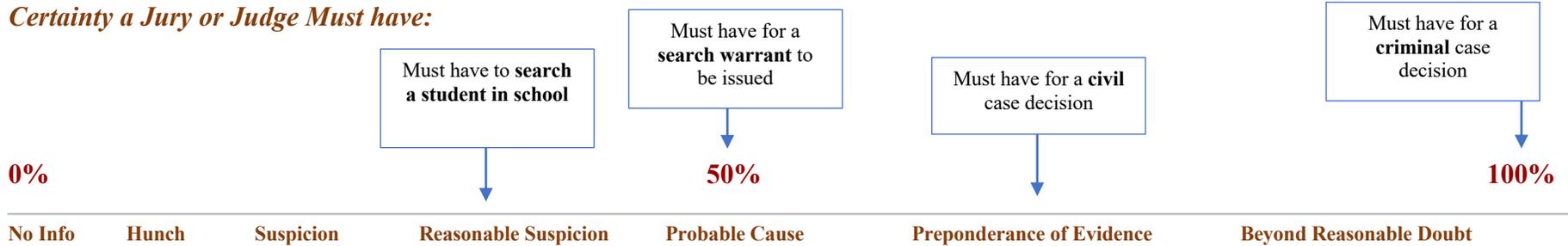
- Based on strong facts and inferences that can be fairly drawn from these facts;
- Built on facts not subject to much, if any, dispute;
- Consistent with any incontestable fact;
- Takes into account and explains away as many unfavorable facts as possible;
- Accepted by the trier of fact without having to stretch the imagination;
- Not based on wishful thinking about any aspect of the case.

## **To develop a case theory:**

1. Construct a factual chronology of the case;
2. Analyze the case from a common sense perspective by asking:
  - a) What's the essential wrong or unfairness to the client?
  - b) Does this unfairness suggest any causes of action or defenses that are not obvious to you?
  - c) Identify any facts that make the case special or more appealing.
  - d) Identify any theme or unifying principle that these facts suggest.
  - e) Identify the legal theories (causes of action/defenses).
  - f) Identify the elements you must prove to prevail on each cause of action or defense.
  - g) Identify the facts that support the elements, opponent's rebuttal to these facts.
  - h) Identify the theory of the case
3. Repeat the process to anticipate your opponent's theory of the case.

# The Probable Cause Continuum

*Certainty a Jury or Judge Must have:*



**No Information** means that the officer doesn't know anything about the location of evidence linked to a crime

**Hunch** means that the officer has a **gut feeling** that something is not right, but he officer cannot point to any specific facts; it is something like **intuition**

**Suspicion** means that the officer **knows a minor fact**, or has some **larger fact** that came from an unknown or unreliable source that suggests that evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street which says that a particular person is selling drugs.

**Reasonable Suspicion** means that the officer **knows several minor facts or a larger fact**, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. *New Jersey v. TLO* is a case that explores this level of certainty.

**Probable Cause** a reasonable belief, known personally or through reliable sources, that a person has committed a crime. Essentially means that an officer has enough evidence to lead a **reasonable person** to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that drug growing operation is underway inside. However, such an increase with other suspicious facts including an anonymous phone call reporting people in the building are growing drugs is enough for probable cause and search warrant.

**Preponderance of the Evidence** is the amount of evidence needed to be successful when suing in a **civil** case. It means that evidence must be "**more likely than not**" (more than 50%) in order to win.

**Beyond a Reasonable Doubt** is the highest amount of proof and is required to convict a person of a **criminal** charge.

# Using Objections in a Mock Trial

Attorneys, Judges, and Juries should prepare and understand these commonly used objections in a trial: attorneys how to respond to them, judges how to decide them, and juries how to include them in your understanding of the testimony.

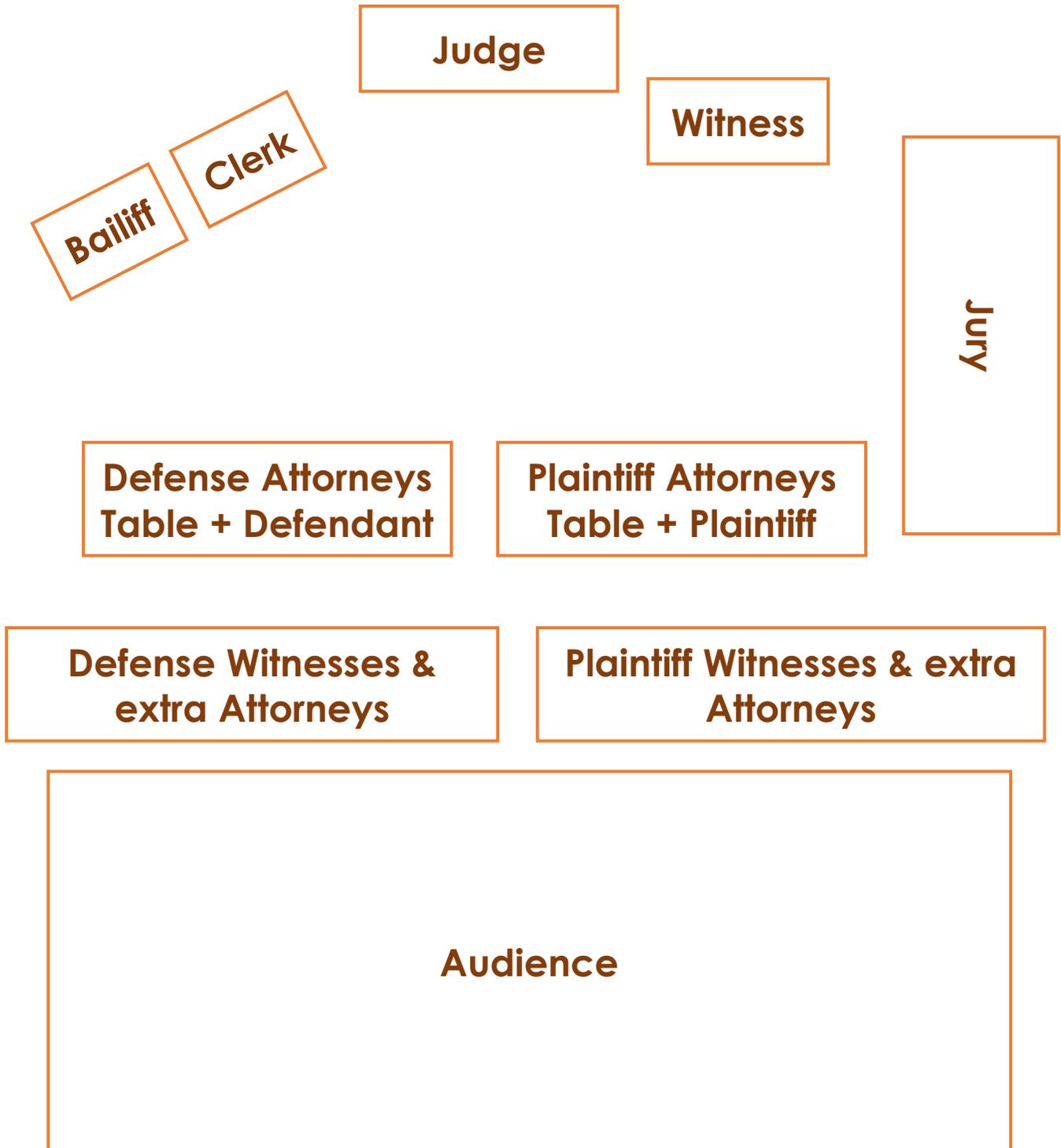
**Objection Procedure** (During witness testimony only, not during opening or closing statements):

1. Objection must be timely (occur right with the testimony as it happens)
2. Object to the statement before the speaker or responder continues
3. Rise and say "Objection!"
4. State the type of Objection and why (often a definition of the objection)
5. Judge gives other side a chance to respond
6. Objector may be allowed to respond again
7. The Judge rules on the objection (whether it can go forward: "sustained" or not "overruled")
8. Objector accepts the ruling gracefully ("Thank You Your Honor")

## Common Objections

1. **Argumentative or Badgering the Witness:** The attorney is deliberately harassing, provoking or showing hostility towards the witness
2. **Leading the Witness:** The attorney must allow the witness to answer in their own words and not prompt the witness or lead the witness through the story or give their own version of events.
3. **Irrelevant Testimony:** the question asked is not actually related to the case or has nothing to do with the alleged incident
4. **Calls for a Conclusion:** Neither witnesses nor attorneys can give an opinion or infer meaning through opinions about the facts. They must just state the facts as they know them.
5. **Repetitive ("Asked and Answered"):** The attorney continues to ask the same or similar question or try to trip up the witness or get them to change their answer.
6. **Non-Responsive:** When the witness does not actually answer the question asked
7. **Lacks Expertise / Not Qualified:** The witness was not established as an expert and is, therefore, not qualified to answer the question
8. **Hearsay:** Witnesses may not testify to something they heard or saw from a secondhand source. Witness lacks personal first-hand knowledge.
9. **Assumes Facts not in Evidence:** Similar to hearsay. Tries to get the witness to answer with no factual information introduced. For example, talking about the crime scene with no exhibit introduced showing the crime scene.

# Suggested Courtroom Set Up



# Mock Trial Showcase Photography/Film Permission

Student's Name: \_\_\_\_\_

As a parent or guardian of this student, I hereby consent to the use of photographs/videotape taken during the course of the school year for publicity, promotional and/or educational purposes (including publications, presentation or broadcast via newspaper, internet or other media sources). I do this with full knowledge and consent and waive all claims for compensation for use, or for damages.

\_\_\_ Yes, I give consent for \_\_\_\_\_(school) to photograph or video my child for school purposes and/or for their Mock Trial Showcase.

\_\_\_ No, I do not authorize \_\_\_\_\_(school) to photograph or video my child for any event.

Parent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Mock Trial Showcase Court Tour Field Trip Permission

Student Name: \_\_\_\_\_

The culminating Mock Trial Showcase will take place in an authentic Courtroom at the \_\_\_\_\_ Courthouse. Please indicate below whether you give your student permission to participate in the trip to the Courthouse to be part of the Mock Trial Showcase.

Date of Trip: \_\_\_\_\_ Times: \_\_\_\_\_

Address of Courthouse: \_\_\_\_\_

Responsible Teacher: \_\_\_\_\_

\_\_\_ Yes, I give consent for my student to travel with the school to participate in the Mock Trial at the Courthouse as detailed above.

\_\_\_ No, I do not give permission for my student to participate in the Mock Trial at the Courthouse as detailed above.

Parent Signature: \_\_\_\_\_ Date: \_\_\_\_\_