

ATTORNEY INSTRUCTIONS

As one of the attorneys for the Tribunal, you bear the main burden of the trial. You must prepare your case, prepare and present an opening statement, coordinate witnesses' testimony, insure that all testimony presented is relevant to the proceedings, examine and cross-examine witnesses, object to any part of the proceedings that seems detrimental to your side, and, finally, prepare and present your summation statement. During the pre-trial period, you should meet with each of your witnesses. Working together with them, you lay out a list of your main questions and the answers you expect them to give. You must decide in advance the most advantageous order in which to call your witnesses. You must also prepare your opening statement before the trial; this statement explains to the court what you intend to prove and what main lines of testimony and evidence you will introduce to prove it. You will repeat much of this in revised form in your summation, but developments during the trial will undoubtedly suggest changes and additional points. ~~Before the trial begins, you must also fill out the ATTORNEY'S BRIEF form, to be submitted to the Judge. Keep a copy for your own use as a handy brief outline of your entire case and deliver a third copy to the opposing attorney, who must reciprocate.~~ Remember that a good lawyer prepares his opponent's case as well as his own, in order to avoid unpleasant surprises. (You should know in advance what witnesses he will call and what they will say, so that you can outline your cross-examination in advance.)

~~Your conduct throughout the trial must be based strictly on the rules set forth in the TRIBUNAL PROCEDURE sheet, with which you must familiarize yourself thoroughly.~~ In questioning witnesses, you will, of course, be friendly and supportive towards your own. You are permitted a reasonable amount of aggressiveness in cross-examining opposition witnesses and should exert every effort to discredit their testimony, but *you must never be rude*. Object to questions and statements by opposing counsel only when you are sure you have reasonable grounds such as those listed in the TRIBUNAL PROCEDURE. Do not waste the court's time with unnecessary argument. Respond to the judge's rulings with proper respect at all times. Finally, you will be expected to carry out all pre and post-trial tasks together with your classmates.

SPECIFIC INSTRUCTIONS FOR PROSECUTION ATTORNEYS

Your central task is to prove that President Truman's decision to drop the atomic bomb constituted a war crime and a crime against humanity. Prove the following essential points:

1. It was unnecessary to use the A-bomb in order to win the war or even to shorten it by much. The Japanese would have had to surrender within a short time even if we had not used the bomb.
2. The U.S. plan for an invasion of Japan was needless. All we had to do was to tighten our naval blockade and continue our conventional bombing campaign until they surrendered.

3. There were two additional alternatives:
 - a. We could have encouraged the Japanese to surrender by announcing that we would allow the Emperor to remain on the throne after the war.
 - b. We could have given the Japanese prior warning about the bomb with a demonstration of its power (for example on an uninhabited island) and have given them a chance to surrender. Only if they still refused, should we have used the bomb on a city.
4. The real reason why we used the bomb was not so much to defeat Japan as to intimidate the Russians and make them accept our plans for the postwar world. It was a cold-blooded political action, not a military necessity.
5. The decision to use the bomb was immoral, inhumane, and criminal.

~~A special, pre-trial task for the prosecution is preparation of the CHARGE FORM, to be supplied to the judge at the opening of the trial and used by the barrister.~~

SPECIFIC INSTRUCTIONS FOR DEFENSE ATTORNEYS

Although the burden of proof rests traditionally on the prosecution, wise defense lawyers prepare a complete body of testimony and evidence proving their client's innocence. You will therefore attempt to convince the Tribunal that President Truman's decision was totally justified. Prove the following essential points:

1. Use of the bomb shortened the war and saved many thousands of lives.
2. The only realistic alternative to using the bomb was the invasion of Japan. It might have cost a million American casualties and have taken another year or year and a half.
3. Three and a half years of bitter experience in battle had convinced America's leaders that the Japanese preferred death to surrender, even if that might mean the destruction of the entire nation. Only an overwhelming shock, such as that provided by the atomic bomb, could have convinced them that surrender would be honorable rather than an unacceptable disgrace.
4. President Truman was right in rejecting the proposal to inform the Japanese that their Emperor would be allowed to stay on the throne. The Japanese would have seen such concession as weakness. The American people would have seen it as another example of the appeasement policy that brought on the war.
5. The proposal to warn the Japanese about the bomb and demonstrate it to them was thoroughly investigated by a group of top atomic scientists. They found it impractical.
6. It is true that our exclusive possession of atomic power strengthened our hand in dealing with the Russians after the war. This was a worthwhile and important result of our use of the bomb. But it was not the main reason why we used it. First and foremost, we used the bomb to force the Japanese to surrender as soon as possible. Its use accomplished that goal.

Opening Statement

Plaintiff's attorney explains to the judge/jury the evidence to be presented as proof of the allegations in the written papers filed with the court. Defendant's attorney explains evidence to be presented to disprove the allegations made by the plaintiff.

What to say in an opening statement:

1. Introduce yourself and your main witness
 preview a little of what they will testify
2. Explain the purpose of your opening statement
 briefly tell the judge/jury what's coming up in your opening statement
3. Summarize your evidence
 support each element of your legal claims
 mention at least some of the evidence that you will offer
4. Tell the judge/jury what you want

What not to say in an opening statement:

1. Do not refer to evidence that may not be presented
 if you are not sure what a witness will say, don't tell the judge/jury
 do not refer to documents that you're not sure will be used
2. Use "the evidence will show" in your statement
3. Do not argue
 don't discuss believability of witnesses
 don't draw conclusions about evidence
 don't personally attack your adversary

Tips for rehearsing your opening statement:

1. Use an outline, but don't read a speech
 write your statement, memorize it, then outline it in your notebook
2. Speak slowly and strongly
3. Stand at the lectern

Scoring Factors:

Provided a case overview, mentioned key witnesses, stated relief requested
provided a clear and concise description of their case
limited time allowed

Closing Argument

Review all the evidence presented and asks for finding for your side.

Prepare and rehearse your closing argument before the trial

How to put together a closing argument

1. Show how the evidence supports your side
2. Emphasize those facts that are favorable and explain away the facts that hurt you
3. Say why your witnesses were believable and your opponents were not

Direct Examination

Each witness is questioned . Other evidence in favor of your case is presented.

Direct examination is like telling a story

Give enough background so the jury know what's going on
Chronological order, dramatically builds to main events
Focus your attention on the main points critical to making your case
Remember the jury is your audience

Preparing for direct examination

1. Outline your direct examination
write it out completely, rehearse it, then outline it in your notebook
2. Rehearse each witness's testimony
if you are going to ask a witness to refer to a document, practice that too
3. Look at your notes to refresh your memory (lawyers only)

How to question witnesses

1. Do not make speeches
it is the witness's job to give the details
2. Begin with background questions
occupation, experience, job description
3. Ask legally acceptable questions
Good: narrative questions, open questions
Bad: closed questions, leading questions
4. Establish a witness's personal knowledge
show that they personally observed, heard, smelled, touched, or tasted
5. Refresh a witness's recollection if necessary
use a helpful document (remove the document before asking questions about it)
leading questions if necessary

Scoring Factors

Used properly phrased questions (who, what, where, when, how), used proper courtroom procedure, demonstrated understanding of issues and facts, proper introduction of evidence, defended objections in clear concise terms, used time effectively, complied with all rules of the competition and spirit of fair play.

Cross-Examination

Opportunity to question opponent's witnesses. Questioning is designed to break down the story of to discredit the witness in the eyes of the judge/jury.

Two Goals of cross-examination

1. Produce/repeat evidence that supports your case.
2. Impeach adverse witness

How to ask questions on cross-examination

1. Ask leading questions: Yes or No questions
stay in control during the cross-examination
you control what the witness says
2. Interrupt non-responsive witnesses
if they don't answer with yes or no ask the judge to intervene
"Your Honor, I object; the witness is not answering my question"
ask the judge to delete the answer from the record
3. Use exhibits if they are helpful
4. It's okay to use prepared questions during cross-examination

Tips for cross-examination

Focus your attack on their strongest and important witness or points they've made
Be clear as to what it is you are trying to accomplish: establish responsibility, raise doubt, show negligence
Don't get hostile, flip, or sarcastic
Don't argue - keep your focus on the big points you're trying to make
Keep the jury's attention - don't put them to sleep

Scoring Factors

Used leading questions, properly impeached witnesses, raised proper objections and stated reasons clearly, know rules of evidence and did not overuse objections, courteous of opponent, complied with rules of competition and spirit of fair play