



# **TRIAL COURT**

## **TIPS FOR EVALUATORS**

## CASE INFORMATION

6.01 Mr. Domenico De Sole brings this cause of action under 18 U.S. Code § 1964 (c) authorizing suit as a person injured in his business or property by reason of a violation of section 1962. Defendant violated federal code 18 U.S.C. § 1962(c) by conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity when said enterprise was engaged in interstate commerce.

6.02 Defendant, the Knoedler Gallery, Michael Hammer, 8-31 Holdings, Glafira Rosales, Jose Carlos Bergantinos Dias, and Jamie Andrade were involved in an enterprise whose activities affected interstate commerce as physical artwork, monetary funds, and fraudulent messages were transferred or conveyed from one state to another. The enterprise lasted for over a decade and had an ascertainable structure. Defendant, a Director and the President of Knoedler, was a critical and willing participant in the racketeering scheme at issue. Defendant enabled the enterprise to thrive by lending her name and reputation, as well as Knoedler's, to fraudulent sales of forged artworks.

6.03 Defendant's racketeering activity consisted of violations of 18 United States Code 1341 (mail fraud) in that defendant devised a scheme to defraud or to obtain money by false or fraudulent pretenses, representations, or promises, or to sell, any counterfeit article, for the purpose of executing such scheme or artifice or attempting so to do, and placed in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service.

6.04 In addition, defendant's racketeering activity consisted of violations of 18 United States Code and 1343 (wire fraud), in that defendant devised a scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits and caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, a writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice.

1. Each team must call three witnesses.

### **WITNESSES FOR THE PLAINTIFF:**

1. Domenico De Sole
2. Jamie Martin
3. David Anfam

### **WITNESSES FOR THE DEFENDANT:**

1. Ann Freedman
2. Stephen Polcari
3. Laili Nasr

### **THE PHYSICAL EVIDENCE THAT MAY BE ENTERED:**

- Exhibit 1: Summary of Artwork sold by Glafira Rosales (1994-2008).
- Exhibit 2: The Painting sold to Domenico DeSole (titled *Untitled*, dated 1956)
- Exhibit 3: Invoice from Knoedler to James Kelly, agent for Domenico DeSole.
- Exhibit 4: Fax, Warranty of Authenticity and Attachments.
- Exhibit 5: Orion Analytical Report of *Untitled* 1956.
- Exhibit 6: Essay by Dr. Stephen Polcari



Exhibit 7: Letter from Laili Nasr  
Exhibit 8: Indictment Glafira Rosales

## EVALUATORS AND SCORING

1. The decision for team and judge scores will be made by one or more evaluators who are Youth and Government judicial alumni, law students, sitting or retired trial and appellate judges, or any licensed attorneys.
2. Evaluators score the team performances and the judge’s performance. Each evaluator fills out a ballot for each team and the judge. If there is more than one evaluator, the evaluators should not consult with one another during this process.
3. The criteria for scoring is provided on the ballots and replicated below:

<b>Judge Scoring Criteria</b>	<b>Attorney Team Scoring Criteria</b>
Calling the Court to Order (communicating any courtroom rules, swearing in the witnesses, announce that Court is in session, state the charges against the Defendant)	Opening Statement Provided case overview and teams side of the case; Mentioned key witnesses, Discussed burden of proof; Stated the relief requested; Did not use/rely on notes
Knowledge of Trial Procedure (:stick to schedule of trial, rules and proper procedures. Does not need guidance, does not hesitate during trial proceedings)	Attorney #1 and Attorney #2 Direct Exam (Developed case theme, avoided leading questions, questions short and to the point, handled objections appropriately.
Knowledge of Evidence Rules (Knows how to handle entering evidence, the order of who presents, etc.)	Attorney #1 and Attorney #2 Cross Exam (Asked only leading questions, questions short and to the point, properly impeached/discredited witness, handled objections appropriately, used various techniques, vocal tempo, volume, tone and pitch on cross exam.
Knowledge of Objections (Knows how to handle entering evidence, the order of who presents, etc.)	Use of Exhibits and Evidence (Exhibits marked, offered & entered into evidence, Effective use of exhibits )
Knowledge of the Law (Knows how to handle entering evidence, the order of who presents, etc.)	Knowledge of Trial Procedure (Knowledge of schedule of the trial, rules, and proper procedures )
Demeanor and Professionalism (Demands respect, engaged, good posture, pleasant disposition)	Objections (Relevant, Effective, Ability to Respond to Objections, Not Unfairly Excessive)
Interaction with Trial Participants (does not let attorneys go over time, politely directs attorneys and witnesses to proceed, etc.)	Overall Demeanor

	(Interaction with Judge and Opposing Counsel, Rapport with Witnesses, Standing when addressing the Court, Posture)
Decision Making Ability (Handle objections and questions efficiently, does not get thrown off by unexpected events)	Witnesses: Performance (Credible portrayal of character, appropriate emotion, understanding of facts, sounded spontaneous, appropriate courtroom demeanor, well prepared for cross examination. Minimal notes
Maintains Control of Courtroom (Preside effectively, keep time, make a ruling and explain why that team won)	Preparation (Organization, Prepared Use of Facts, Utilization of Time, Teamwork)
	Closing Argument –organized, persuasive (Summarized evidence and points supporting their case, Discussed burden of proof, pointed out flaws of opponents case, Minimal Notes

4. NO COMPLETED BALLOTS ARE TO BE VIEWED BY ANY TEAM MEMBER OR ANY OTHER PERSON DURING THE COMPETITION, in compliance with the educational goals of the Judicial Program. These are to be returned to the tournament staff after the round has been concluded and the winning team recorded. Score and comment sheets for a team will be copied and distributed to that team’s coach after the competition is completed.
5. Conference staff will check evaluator ballots for complete scoring and for improper scores. Whenever possible, evaluators will be asked to make any necessary corrections. When an evaluator cannot be located, or other circumstances prevent timely consultation with the evaluator concerning the ballot, conference staff will correct improper entries before the ballot is totaled, or take other appropriate action.
6. General Scoring Guidelines
  - a. Please be sure to completely fill in your name and all the participants’ names on the evaluation forms. The Bailiff in your room can help you with this task
  - b. In scoring, start at 3 and work your way up or down from there based on performance
  - c. **Remember these are high school students and not college or law school students therefore please provide constructive but kindly worded critiques.**
  - d. PLEASE FILL OUT THE COMMENT FORM FOR EACH TEAM AND JUDGE. We realize we are asking you to juggle a lot of forms but there is not always time for critiques following the trial and your comments are so helpful to the attorneys teams and judges as they prepare for their next rounds. If there is time you may give oral feedback but we ask that you ALWAYS provide some written feedback on your comment form. **Please do not comment**

**on the participants' clothing choices; the judicial staff handles all issues regarding appropriateness of dress.**

- e. Please return your evaluation packet to the judicial office promptly so the forms can be tabulated in a timely manner.
  - f. On the evaluation form of the winning team (ie: the team the JUDGE picks to win) please make some sort of notation identifying that particular team was the winner.
  - g. **IF YOU NOTICE ANYONE IN THE COURTROOM SIGNALING A WITNESS EITHER BY NODDING THEIR HEAD OR MAKING SOME INDICATION OF HOW THEY SHOULD ANSWER A QUESTION, PLEASE MAKE A NOTE ON THE EVALUATION FORM AND REPORT THIS TO THE JUDICIAL OFFICE AS SOON AS THE ROUND IS OVER**
7. What we expect from the Attorney teams in each category of scoring:
- a. **Opening statements**-preferably are memorized, but attorney teams are not **required** to memorize them. They should tell the court what they intend to prove through the course of the trial.
  - b. **Direct Exam**-this should be based on how well the attorneys handle difficult situations with witnesses. For example, if a witness does not give the answer the attorney was looking for, the ability to create a new question to extract that information on the spot without getting flustered.
  - c. **Cross Exam**-Signs of a good attorney is the ability to handle hostile witnesses without badgering and extract information needed. Some attorney teams tend to be rude and badger the witness in cross-examination, but should not be confused with determination to get information or prove their point.
  - d. **Use of Exhibits and Evidence**-Attorneys should use the evidence throughout their presentation. The legal process for entering evidence is one of the skills that the attorneys must get right to get a good score. The documents are considered pre-marked. The judge should know the procedure. NOTE: Only the prosecution is required to enter evidence, though there is some evidence that would benefit the defense should they choose to enter it. If the defense does not enter evidence your score should be based on their response to the evidence and the handling of any exhibits.
  - e. **Knowledge of Trial Procedure**-Knowing the schedule of the trial (the order in which who presents), knowledge of the rules, and proper procedures should be known by the attorneys
  - f. **Objections**-Objections should be stated in a legal manner. The attorneys should know a legal objection, and not get up and give a long reason as to why the question or answer is not acceptable. The ability to respond to an objection is also vital for a high score (to respond with legal terms to the objections). Attorneys that do not respond to objections should be marked low.
  - g. **Overall Demeanor**-Attorneys must ALWAYS stand up COMPLETELY when addressing the judge, when the judge is addressing them, during opening

statements and closing arguments, and when objecting or responding to objections. It is the decision of the judge whether attorneys should sit or stand while questioning witnesses and each judge should make clear at the beginning of the trial which is his or her preference. Attorneys should show respect for the judge at all times, and are NEVER permitted to argue with the judge. Remember, the attorneys are in the judge's courtroom, and the judge is completely in control. Respect for the judge, both verbal and in body language is very important for an attorney team to score high.

- h. **Preparation**-Organization is extremely important if an attorney team plans on scoring high. Attorney teams that are always shuffling around with papers and talking to each other are not well prepared, and should be counted off accordingly. However, they are allowed to confer with each other as long as it does not become a distraction to the court. This also includes how strong or weak their cases are.
- i. **Closing Arguments**-The closing argument is the sum of a team's case. If an attorney team reads what seems to be a pre-written speech and make statements that something was proven/disproved when it was not, the team should be scored low. The purpose of the closing argument is to state what was proven in that specific trial and the facts and evidence that were presented. Attorneys should ask the Court for a favorable verdict in their closing argument.

8. What we expect from the Judge in each category of scoring:

- a. Student judges are evaluated on: knowledge of trial procedure, knowledge of evidence rules, knowledge of objections, knowledge of the law, demeanor, and interaction with trial participants, decision making ability, and maintaining control of the courtroom.
- b. The judge should open the case with the case number and the parties involved. They should ask if the defense wants the charges read.
- c. During the trial, the role of the judge is to preside, keep order, make rulings, and oversee the different events in the course of the trial.
- d. At the end of the trial, they should give a verdict and can explain why that team won the trial.
- e. Just because the judge gives a verdict for a team does not necessarily mean the judge thought that team was better, and should not affect how they are scored by the evaluator(s)
- f. They should demand respect, in the sense that if an attorney does not stand when addressed or is addressing the judge, or are referring to the judge by name or other names besides "your honor," "the court," "judge," the judge should instruct them otherwise.

- g. It is the judge's courtroom, and he or she is in control to preside over the trial. A judge who allows a sloppy trial should be counted down. A judge who permits attorneys to argue with him, or the opposing counsel should be counted down.
- h. Judges are to keep the trial on schedule, as they are the time keepers. Judges who permit attorneys to run over time should be heavily counted down. Time does stop on objections unless they become excessive.
- i. If you have any question regarding the case, the judge should be able to help you. If the judge ever stops the trial and asks you a question, the judge is not well prepared. **Evaluators are not permitted to interrupt or stop the trial.**
- j. The only person who can stop and start the trial is the student judge, or the director of the competition
- k. Rulings of the judge should never be argued.