

MOCK TRIAL TOURNAMENT

1994

I. INTRODUCTION

This year's case is Her Majesty the Queen v. Kimball and the accused is charged with the indictable offence of first degree murder. The applicable law is detailed in these materials under the heading "Applicable Law". You may assume for the purposes of this case that the arresting police officer complied fully with the Canadian Charter of Rights and Freedoms. The accused has been granted permission to be tried without a jury.

The Ontario Tournament organizers are David J. Goodman of Smith, Lyons, Torrance, Stevenson & Mayer, and Michael Martosh of the Municipality of Metropolitan Toronto, Legal Department. The Tournament is administered by the Law Day Committee of the Canadian Bar Association - Ontario. All communications regarding this tournament should be made to Janice Richardson of the Toronto office of the Canadian Bar Association ("CBAO"), at the address listed below. We encourage participants to write to the CBAO with respect to any questions about the form or substance of the Mock Trial problem.

Janice Richardson
Director of Committees and Meetings
Canadian Bar Association - Ontario
Suite 200
20 Toronto Street
Toronto, Ontario
M5C 2B8

Re: Mock Trial Tournament

Fax: (416) 869-1390

II. THIS YEAR'S ONTARIO TOURNAMENT AND ADDITIONAL RULES

This year's Kit is being distributed during the month of November, 1993. By October 15, 1993, interested teachers must notify the Twelfth Annual Ontario High School Mock Trial Tournament Committee of their interest in receiving the Kit. Attempts will be made to arrange for local lawyers to provide assistance to all teachers requiring such assistance. Attention is drawn to the rules set out in the "Mock Trial Tournament Guide" as well as to the rules herein.

Teams must be prepared to play the role of counsel for the Crown and the Accused. Teams will be assigned their roles on the basis of a coin toss preceding each round of the competition. Students portraying the witnesses must be familiar with two roles each, so that they can switch depending on the coin toss.

A. Participation and Eligibility

All students on a team must be full-time students at a high school in Ontario. Students who have participated in a past tournament as counsel in inter-school competition are ineligible to compete again in a current tournament. Students who have participated as witnesses may compete again.

B. Round One

Round One consists of a local in-school mock trial competition within the teacher's class or between classes within the same school. This will allow the teacher to form the best school team consisting of six students; four lawyers and two witnesses. At the end of Round One, the school should have selected a team to represent it if it wishes to continue further in the Tournament. At this stage, the teacher may feel that the educational objectives have been met and that he/she does not wish to proceed further. (We would of course encourage all schools to continue to the next round!) Should the teacher wish to continue on to Round Two, he/she must notify Janice Richardson at the CBAO of such intention in writing on or before 4:00 p.m. Monday, January 31, 1994. Please note that this deadline is firm, and no exceptions can be made.

C. Round Two

Round Two consists of regional inter-school competitions. The geographical boundaries of the regions will be arranged by the Committee following receipt of all notices of intention to proceed to Round Two. The teachers of the participating schools will be responsible for arranging the time, location and format of the regional play-offs, while adhering to the rules set out herein. Assistance will be provided by the Committee where necessary; however, it is expected that teachers and local lawyers will be able to assume responsibility for the Round Two play-offs. **It is anticipated that the precise boundaries of each of the north, south, east**

and west regions may vary from year to year depending on the numbers and locations of schools interested in participating in Round Two. The winners of the regional play-offs will advance to Round Three in Toronto.

Round Two must be completed on either **Thursday, March 24, Friday, March 25 or Saturday, March 26, 1994** and Janice Richardson advised as to the regional winners on or before 4:00 p.m. on **Monday, March 28, 1994**. Again, no exceptions will be made with respect to timing. Strict adherence to the deadline will be required in order that the necessary arrangements may be made for travel and accommodations in Toronto for Rounds 3 and 4. Keep in mind that school holidays may impose certain scheduling difficulties.

D. Round Three

Round Three consists of the semi-finals in Toronto on the morning of Law Day, April 14, 1994. The four best teams from the regional inter-school competitions will compete in a court room in Toronto before judges of the Ontario Court of Justice.

E. Round Four

Round Four consists of the finals in Toronto on the afternoon of Law Day. The two winning teams from the morning semi-finals will compete again before the presiding judges. All four teams will receive awards at the Law Day Banquet on the evening of April 14, which all four semi-finalist teams are invited to attend along with various local and provincial dignitaries and members of the Ontario judiciary and legal profession. The winning team will take home the Ontario High School Mock Trial Tournament trophy for the year.

F. Expenses

Schools participating in the Tournament must look after their own expenses in Round One (local in-school competition) and Round Two (regional inter-school competition). There are usually no costs associated with Round One and Round Two. Round Two competitions should occur on a Saturday in order to ensure full participation. Local Boards of Education might be approached for financial support by teachers if there are transportation or other costs. Limited financial assistance from the Canadian Bar Association - Ontario will be available for Round Three (semi-finals) and Round Four (finals) for accommodation and transportation, particularly for those schools having to travel some distance to Toronto, but **assistance is limited to the six member team (NO ALTERNATES) and the teacher.**

G. Law Day Re-Enactments

It is hoped that teachers whose teams have not reached the semi-finals and finals in Toronto will nevertheless re-enact their mock trials at school assemblies on Law Day, (April 14, 1994) so that other students and teachers will become aware of the significant benefits of both the mock trial activity and the study of law at the high school level.

H. Inconsistencies in Materials

In the event of any inconsistencies between the Mock Trial Tournament Guide and the Format of Tournament and Specific Case, the Format of Tournament and Specific Case will take precedence and its rules should be observed by all participants.

III. FACT SHEETS FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 1994

This section of the materials contains the role descriptions for the accused and the witnesses. Teachers should make these Fact Sheets available to students early on in the process and the students should be encouraged to find out as much as possible about the character of the role they represent. Note, however, that students must **NOT** deviate from the role descriptions, in a manner that constitutes "unfair deviation" as described below.

In order to carry out the "witness" role successfully, the two Crown witnesses (Constable Brown and Jake Hefner) should meet before trial to work out other details about their characters. Similarly, the two defence witnesses (the accused and Fran Goodheart) need to work out some details together. **Please Note: While we encourage students to develop the characters of the witnesses and to elaborate on their personalities, teams will be penalized for unfair deviation from the fact sheets. "Unfair deviation" includes, but is not limited to changing relevant facts, the refusal to admit a fact which is included in a fact sheet when asked about it in cross-examination, and the addition of any fact including personal characteristics of a witness which might unfairly influence the result of the case.**

Although witnesses will attempt to prepare for every possible question that may be asked of them, they must also be prepared to respond, on the spot, to questions which were not anticipated. Witnesses must be flexible. On the other hand, if the testimony is not consistent, the Judge may begin to doubt the truth of the statements. Establishing credibility will present a challenge to every witness in this trial.

CONSTABLE M. BROWN

CROWN WITNESS#1

Police Constable M. Brown (Brown) is 35 years old. Brown spent 7 years on traffic duty and for the last seven years has been on the homicide squad. Most of Brown's time on homicide has been spent on two cases; both of which remain unsolved. Needless to say he/she is anxious to obtain a successful conviction under his\her belt.

On Saturday, September 18, 1993 Brown was on duty when a call came in from the 911 dispatcher to report to 1313 Mockingbird Lane, the home of Dr. Richard Kimball (Kimball). Brown arrived at the Kimball residence at 10:45 pm (5 minutes after the call came in) and found Kimball at the house with the body of his dead wife, Marsha Kimball. Brown commenced his\her investigation.

Brown discovered that Mrs. Kimball had been strangled in her bedroom. She was wearing lingerie and there was no sign of a sexual assault or of a break in. Mrs. Kimball's body lay across the bed.

Kimball was drunk when Brown arrived on the scene. Subsequent tests revealed that Brown had consumed just over the legal limit of alcohol for operating a motor vehicle. Kimball denied his intoxication at the time.

Brown interviewed Kimball in the police station that evening and Kimball was cooperative and volunteered the following information:

- a. Kimball was once a top surgeon in Toronto but had not worked in two years because he had a serious addiction to alcohol. The addiction had placed a significant strain on the Kimball's marriage.
- b. Kimball advised that he had come home to find his wife dead in the bedroom. The door to the home was slightly open and he went directly upstairs to see his wife. From his medical expertise he concluded that she had been dead for about 1 hour. [This is a fact that is not disputed]. He immediately called 911 and waited about 10 minutes for the police to arrive.
- c. Kimball admitted that he was the sole beneficiary under the life insurance policy of his wife. The policy would result in Kimball receiving \$1,000,000 provided he is not convicted of murdering his wife.
- d. Kimball said that "this would never have happened if she had not cheated on me."

Brown will disclose under cross examination that he/she did not interview any potential witnesses in this case other than Kimball. Brown will say that he/she did not interview anyone else because he/she believed Kimball had admitted to murdering his wife. Brown will also say that Kimball did not seem to be remorseful about his wife's death, although that is just his/her opinion.

DR JAKE HEFNER

CROWN WITNESS #2

Jake Hefner (Hefner) claims to have been the boyfriend of Mrs. Kimball. Hefner will testify that for the past two years he has been having a discreet affair with Mrs. Kimball and that it was her intention to divorce Kimball. Hefner will testify that Kimball alienated his wife by drowning himself in alcohol.

Hefner is a doctor and former colleague of Kimball's. Now that Kimball is no longer practising, Hefner has taken over his responsibilities at the hospital. Hefner will admit that he has competed with Kimball since their university days but that until Kimball became an alcoholic, Kimball would always win these battles.

Hefner will testify that the Kimball's marriage was over in every way except that they were not divorced. The two Kimballs shared a townhouse apartment but did not see much of each other. Hefner says this because he spent almost all of his free time with Mrs. Kimball, whom he intended to marry, although he had no explanation as to why they had not yet made any plans.

Hefner said the following occurred, on September 18, 1993.

He had lunch with Mrs. Kimball at 3:00 PM. She had resolved to tell her husband of the affair but was too scared to do so. She asked Hefner to tell her husband for her. Hefner will testify that he met Kimball at 5:00 PM at the townhouse and told him about the affair he was having with his wife. He claims that Kimball was extremely upset and began drinking. In fact, he will say that Kimball, upon hearing the news, ran to the bar cabinet and proceeded to drink a half bottle of whisky. He said Kimball became violent and tried to hit him and physically threw him out of the townhouse. Kimball shouted something about being provided for financially but Hefner could not recall exactly what was said.

Hefner left the townhouse at approximately 5:20 PM and spent the rest of the evening at home alone working.

Hefner will admit under cross-examination that he had significant gambling debts at the time of Marsha Kimball's death. If those debts were not paid within 3 weeks of her death he would have had no choice but to declare personal bankruptcy and lose everything. Hefner will also admit tht he is now involved in a relationship with a wealthy woman who has taken care of his financial concerns.

Hefner will admit to being a bit of a swinger. He has dated hundreds of women and will admit that he dated other woman while he was seeing Mrs. Kimball. He will also admit to having a relationship with Fran Goodheart before he began seeing Mrs. Kimball. Hefner says that Fran broke off that relationship when she became aware that Hefner was seeing other women behind her back. He denies telling Fran that she was not rich enough. He claims that Fran is

bitter about the circumstances of the ending of their relationship and has not spoken to him since. Hefner thinks Fran is out to get him.

Hefner will admit that he knew Marsha was planning on changing the beneficiary in her life insurance policy from Kimball to himself but that was a decision that Marsha had made without his input. Hefner will admit that he believed that Marsha had made the change before she died and only found out afterwards that this was not so.

DR RICHARD KIMBALL (THE ACCUSED)

DEFENCE WITNESS #1

Dr. Richard Kimball is 48 years old. He is a graduate of Harvard University medical school where he obtained a degree in medicine. He has been known for the last 20 years as the world's most notable authority in the field of brain surgery. He has received awards for his accomplishments as a surgeon.

Twenty years ago Kimball married his wife Marsha who was one year his junior. They lived together in a two bedroom townhouse and had no children.

Two years ago Kimball started drinking. At first it was not that serious a problem but eventually he was drunk virtually all the time. Two years ago he was on call but could not report to duty because he was drunk. He was disciplined by the College of Physicians and Surgeons and was forced to cease the practise of medicine until he had his alcoholism under control.

He admits that Hefner met him on September 18, 1993 to tell him that he was having an affair with his wife. He admits to having a violent exchange with Hefner and to escorting Hefner to the door and telling him that he was no longer welcome in the Kimball home. No punches or blows were exchanged, but there was some pushing. Kimble will admit to drinking that night. He will testify that his wife returned home at about 8:00 o'clock.

He confronted his wife at 8:00 o'clock when she returned home. Kimball will testify that he and his wife talked for about an hour and that it was the first meaningful discussion they had had in two years. He told her that he was seeking counselling for his alcohol addiction and that everything could go back to the way it was before. He will testify that they agreed to give it a try.

At about 10:00 o'clock, he went out for a walk where he saw no one and returned home to find his wife dead.

Kimball admits that he and his wife had been alienated for the past two years but he did not know of his wife's relationship with Hefner. He was not surprised that she was having an affair. He was aware that he was the sole beneficiary under his wife's will and that he stood to gain \$1,000,000 in the event of her death. He will admit that this money will come in handy because he has not worked in two years.

Kimball will admit saying "this would never have happened if she had not cheated on me". Kimball says that that was his way of pointing the finger at Hefner.

FRAN GOODHEART

DEFENCE WITNESS #2

Fran was Marsha Kimball's best friend. Both Marsha and Fran were nurses at the hospital where Hefner and, until two years ago, Kimball had worked. Fran believes that Hefner murdered Marsha and she wants to see him brought to justice.

Fran will testify that she had warned her friend about Hefner's philandering ways and the fact that he was "bad news" but Marsha would not listen.

Fran went with Marsha to Marsha's lawyer's office on two occasions. The first occasion was several weeks before her death when they attended the lawyer's office in order to assist Marsha in getting a divorce. At that time the lawyer was also asked to obtain a change of beneficiary under Mrs. Kimball's policy of insurance. The lawyer was asked to prepare the necessary papers to designate the beneficiary under the policy from Kimball to Hefner. Because Marsha was so emotional about the matter she had asked Fran to attend with her and convey her intentions to the lawyer. Accordingly it was Fran who told the lawyer what Marsha's instructions were.

The second occasion was on the day of the murder at about 4:00 PM. At that time Marsha met with Fran and her lawyer and refused to sign the change in beneficiary papers. She did not indicate why but Fran assumes that it was due to Fran's repeated warnings about Hefner.

Fran will corroborate Kimball's testimony with respect to Marsha's intention to give their marriage a second chance, but under cross-examination will admit that this was just her impression.

Under cross-examination Fran will admit that she despises Hefner but that is only natural "after what he did to me". She will testify that before Marsha began dating Hefner she had had a "serious" relationship with him that had lasted about three months. She thought that they would eventually get married. The relationship ended when Hefner told her she wasn't "rich enough" for him. She has not spoken to him since. She will admit that at one time she loved Hefner and could understand how Marsha loved him too.

Fran is not surprised that Hefner is in financial difficulty. She describes him as a spendthrift who needlessly spends money to try and make woman think he's rich. He loves material things and had "coerced" Marsha into buying him expensive gifts. She will admit that ultimately the decision to buy those gifts had been Marsha's.

IV. THE INDICTMENT

THE ONTARIO COURT OF JUSTICE (GENERAL DIVISION)

CANADA

PROVINCE OF _____ ONTARIO _____

File Number

JUDICIAL DISTRICT OF _____

327053798

HER MAJESTY THE QUEEN

against

RICHARD KIMBALL

INDICTMENT

Richard Kimball stands charged:

That, in this city and county, in this province, on or about the 18th day of September, 1993, Richard Kimball did unlawfully commit murder in the first degree on the person of Marsha Kimball contrary to the provisions of s.235(1) of the Criminal Code of Canada.

DATED this 30th day of September, 1993, in this city and province.

GENERAL

AGENT FOR THE ATTORNEY

OF

ONTARIO

V. APPLICABLE LAW

Here are the relevant sections of the Criminal Code under which Kimball is charged:

Section 222(5) defines murder:

MURDER.

222(5) A person commits culpable homicide when he causes the death of a human being;

- (a) by means of an unlawful act;
- (b) by criminal negligence; and
- (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death.

Section 229 defines murder:

229. Culpable homicide is murder

A. where the person who causes the death of a human being

- (i) means to cause his death, or
 - (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
- (b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being, or
- (c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object with causing death or bodily harm to any human being.

Section 231 defines the difference between first and second degree murder:

231. (1) Murder is first degree murder or second degree murder.
- (2) Murder is first degree murder when it is planned and deliberate.
- (7) All murder that is not first degree murder is second degree murder.
232. (1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.
- (2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.
- 235 (1) Every one who commits first degree or second degree murder is guilty of an indictable offence and shall be sentenced for life.

There are differences in law between first degree murder, second degree murder, and manslaughter. The important element of difference is the intent involved. First degree murder is planned and deliberate. Second degree murder is not planned, but is intentional. For the purposes of this case, manslaughter is the killing of another person by an unlawful act such as an assault at a time when the Accused was provoked according to s. 232(1) and (2) of the *Criminal Code*.

The Crown is required to prove all elements of the offence beyond a reasonable doubt.

In conclusion, the following are the **ONLY** legal issues that need to be resolved in this case:

1. If the Crown can prove beyond a reasonable doubt that Kimball planned and deliberately killed his wife then, then Kimball is guilty of first degree murder.

2. If it can be proven that Kimball was provoked into killing his wife in the heat of passion then Kimball is guilty of manslaughter. **Note:** that once the Accused raises the defence of provocation the Crown must then prove beyond a reasonable doubt that the Accused was not provoked.
3. If neither of the above can be proved beyond a reasonable doubt then Kimball is to be found not guilty.

VI. MOCK TRIAL TOURNAMENT TIME CHART 1994

	Maximum
1. Call to order, read charge, enter plea, introduction of teams	2 - 3 min
2. Crown - opening statement	4 min
3. Crown Witnesses	
Constable Brown - direct examination	6 min
- cross examination	4 min
Jake Hefner - direct examination	6 min
- cross examination	4 min
4. Defence - opening	4 min
5. Defence Witnesses	
Richard Kimball - direct examination	6 min
- cross examination	4 min
Fran Goodheart - direct examination	6 min
- cross examination	4 min
6. Summations	
Defence	5 min
Crown	5 min
7. Short Recess at Judge's discretion for deliberation	
8. Judge - verdict and team assessment	10 - 12 min
9. Judge - delivery of verdict and team assessment	10 - 12 min

CLERK OF THE COURT 1994

The clerk's job is to help the judge run the courtroom. To begin with, you should be familiar with the general trial script summary which is set out below:

A. Trial Script Summary

- (i) Court clerk escorts judge to bench and calls order.
- (ii) Counsel stand to identify themselves (Crown followed by defence).
- (iii) Court clerk reads the indictment and accused pleads to charges.
- (iv) Crown counsel makes opening statement.
- (v) First Crown witness called and sworn in by court clerk.
- (vi) Crown examines witness (direct examination).
- (vii) Defence examines witness (cross examination).
- (viii) Steps 5-7 are repeated for each Crown witness.
- (ix) Defence makes opening statement.
- (x) Steps 5-7 are repeated for each defence witness with defence conducting direct examination and Crown conducting cross examination.
- (xi) Defence presents closing arguments.
- (xii) Crown presents closing arguments.
- (xiii) Judge leaves.
- (xiv) Court adjourns briefly to await return of judge.
- (xv) Judge returns and tells the accused that he or she is "guilty" or "not guilty".
- (xvi) Judge evaluates teams.
- (xvii) Court is adjourned.

The specific duties of the court clerk will now be explained.

1. ANNOUNCE THE OPENING OF COURT:

When all participants have taken their places, you will usher in the judge and announce:

"All rise, this court is now in session."

It is also good to introduce the judge, by saying:
"Mr. Justice/Madam Justice _____presiding".

2. READ THE CHARGES TO THE ACCUSED:

After the Crown and defence lawyers identify themselves, you will read the charge as it is set out in the Indictment. A copy of the Indictment is in these materials. You will stand and say:

1. "Richard Kimball, you stand charged that on or about the 18th day of September, 1993, in the City of Toronto, in the Municipality of Metropolitan Toronto, you did unlawfully commit murder in the first degree of the Deceased, contrary to the provisions of s. 235(1) of the *Criminal Code of Canada*."
2. "How say you to this charge? Do you plead guilty or not guilty?"

3. SWEAR IN THE WITNESSES:

After the accused pleads "not guilty" to the charge, the Crown will begin its case. They will call their first witness to the stand, Constable Brown. You will be responsible for swearing in Constable Brown and all subsequent witnesses.

One way of doing this is to approach the witness with a book (Bible) for him/her to swear on. You then say:

"Will you state your name to the court please?"

After the name is given, the oath is given:

"Do you promise to tell the truth as you know it concerning this matter?"

or

"Do you swear that the evidence you are about to give to the court between our Sovereign Lady the Queen and the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth, so help you God?"

"Do you solemnly affirm to... etc." (for those who object to swearing an oath to God)

4. ANNOUNCE ADJOURNMENTS AND THE CLOSING OF COURT

After the closing arguments have been made by both sides, the judge will adjourn for 10-12 minutes to decide on the verdict and prepare the team evaluation. When ready to adjourn, you will rise and say:

"All rise, court will now adjourn (or recess) for 10 minutes"

When the judge is ready to return, you will call the courtroom back to order as you did at the beginning of the trial:

"All rise, this court is now in session"

The judge will then announce the verdict (guilty or not guilty) as well as which team delivered the best performance. When all is finished, you rise and say:

"All rise, court is adjourned"

5. MISCELLANEOUS DUTIES

There may be other jobs which you can perform for the judge, such as providing pens and paper, and a glass of water. It might also be wise to photocopy some "performance sheets" in case the judge forgets to bring one.