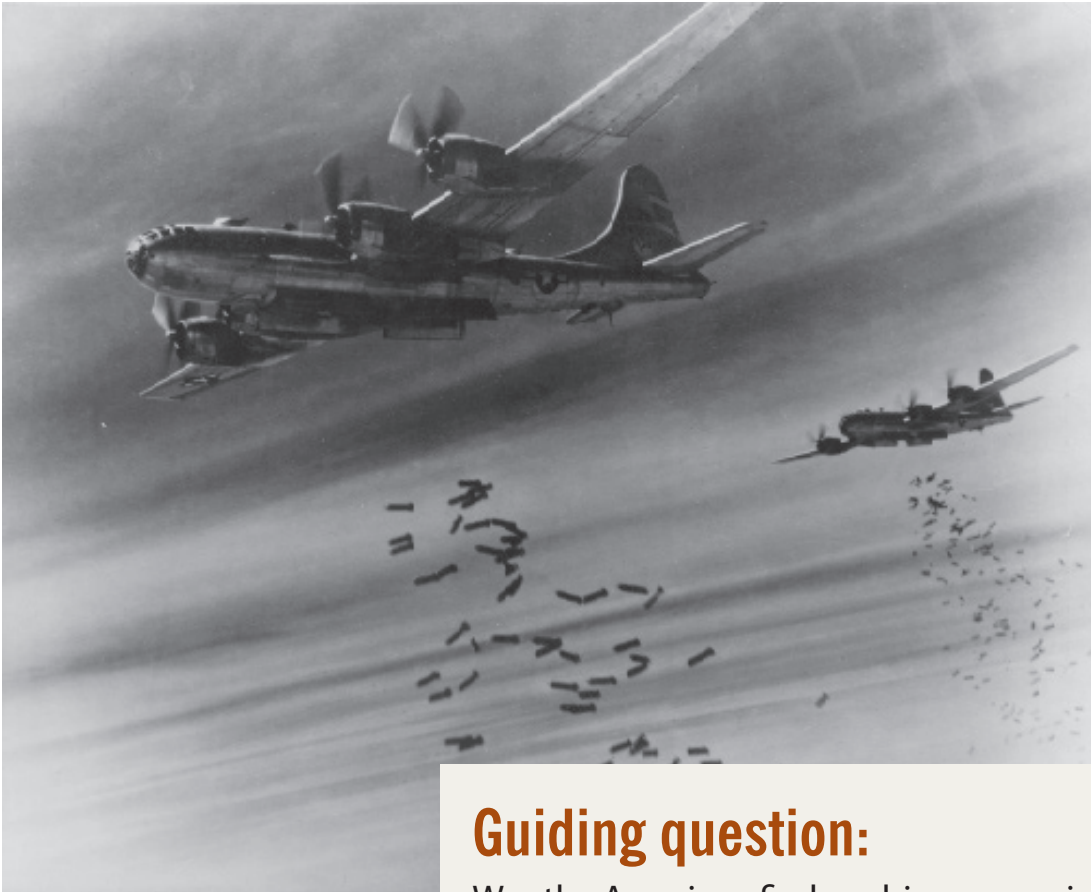




UNDERSTANDING
SACRIFICE

Activity: Tokyo Fire Raids Mock Trial



Guiding question:

Was the American firebombing campaign at the end of World War II in Japan necessary to destroy vital Japanese war industries?

DEVELOPED BY SCOTT JOHNSON

Grade Level(s): 9-12

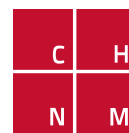
Subject(s): Social Studies

Cemetery Connection: Honolulu Memorial, located within the National Memorial Cemetery of the Pacific

Fallen Hero Connection: First Lieutenant Philip Schlamberg



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Overview

This is an interactive activity based around the rules and concepts common to mock trials. Students will take on the roles of judges, attorneys, and witnesses. Both the judges and attorneys will learn basic rules of evidence so that they are able to make objections to each other's questions and rule upon those objections. This court case concerns the March 1945 firebombing of Tokyo, which killed over 100,000 civilians. The trial is a simulated lawsuit in 1970 by Japan against the United States in the International Court of Justice, the judicial branch of the United Nations.

Historical Context

In 1945, the United States was preparing for an all-out assault on Japan. The Allied leaders stated at both the Cairo and Potsdam Conferences that the Allies would accept nothing less than the unconditional surrender of Japan. American land and sea forces experienced incredibly savage fighting on Iwo Jima and Okinawa. General Curtis LeMay sought to damage Japanese war production using the new B-29 Superfortress bombers. He shifted his tactics in March 1945 from daylight raids to the use of incendiary bombs on major cities where military industries and residential neighborhoods were interspersed. Political leaders approved this plan to help bring the war to a speedy conclusion and avoid an invasion of mainland Japan.

Objectives

At the conclusion of this lesson, students will be able to

- Understand the key events of World War II history in the Pacific including total war, the savage nature of the Pacific campaigns, and the decisions that culminated in the firebombing of Tokyo in March 1945;
- Understand how the firebombing and the atomic bombs brought about a Japanese surrender without a land invasion of the home islands; and
- Apply basic legal principles and practice in a simulation of the International Court of Justice.

“In the Understanding Sacrifice program I had the opportunity to meet Captain Jerry Yellin, who spoke to our group in an impromptu speech about his friend, First Lieutenant Philip Schlamborg, who died escorting bombers on a raid in Japan on August 14, 1945. I decided to focus on the 1945 firebombing of Tokyo to help students understand the major issues being debated by military leaders at the end stages of the Pacific War.”

— Scott Johnson

Johnson teaches at Battle Ground Academy in Franklin, TN.

Standards Connections

Connections to Common Core

CCSS.ELA-Literacy.W.9-10.1.B Develop claim(s) and counterclaims fairly, supplying evidence for each while pointing out the strengths and limitations of both in a manner that anticipates the audience's knowledge level and concerns.

CCSS.ELA-Literacy.SL.9-10.1.C Propel conversations by posing and responding to questions that relate the current discussion to broader themes or larger ideas; actively incorporate others into the discussion; and clarify, verify, or challenge ideas and conclusions.

CCSS.ELA-Literacy.SL.9-10.4 Present information, findings, and supporting evidence clearly, concisely, and logically such that listeners can follow the line of reasoning and the organization, development, substance, and style are appropriate to purpose, audience, and task.

Connections to C3 Framework

D2.His.3.9-12. Use questions generated about individuals and groups to assess how the significance of their actions changes over time and is shaped by the historical context.

D2.His.13.9-12. Critique the appropriateness of the historical sources used in a secondary interpretation.

Documents Used ★ indicates an ABMC source

Primary Sources

Funato Kazuyo, "Hiroko Died Because of Me"

Haruko Taya Cook and Theodore Cook, *Japan at War: An Oral History*, 1992 (pages 346-349)

General Curtis LeMay, Tactical Mission Report for Mission #40, March 10, 1945 (excerpt)

National Archives and Records Administration (Record Group 18, Box 5446)

Photograph, Koyo Ishikawa, *Photograph of aftermath of the firebombing of Tokyo*, c. March 10, 1945

Wikimedia Commons

https://commons.wikimedia.org/wiki/File:Tokyo_kushu_1945-3.jpg

Photograph, Koyo Ishikawa, *Photograph of the body of a woman carrying a child on her back*, c. March 10, 1945

Wikimedia Commons

https://commons.wikimedia.org/wiki/File:Tokyo_kushu_1945-2.jpg

Oral History of Jerome Yellin, May 3, 2014 (excerpt)

Veterans History Project, Library of Congress

<http://memory.loc.gov/diglib/vhp/story/loc.natlib.afc2001001.95409/transcript?ID=mv0001>

Secondary Sources

World War II: A Visual History Interactive Timeline ★

American Battle Monuments Commission

https://www.abmc.gov/sites/default/files/interactive/interactive_files/WW2/index.html

Materials

- General Historical Background Handout
- General Legal Background and Pertinent Law Handout
- General Curtis LeMay Role Sheet
- Judge at the International Court Role Sheet
- Plaintiff Attorney Role Sheet
- Defense Attorney Role Sheet
- Objections Handout
- Objections Practice Sheet, Objections Practice Sheet Answer Key
- Plaintiff Evidence Handout
- Defense Evidence Handout
- Trial Procedure Teacher Guide
- Evidence Evaluation Sheet
- Trial Assessment Rubric

Lesson Preparation

- Preview all materials to ensure appropriateness for your students.
- Make one copy of each of the following for each student:
 - General Historical Background Handout
 - General Legal Background and Pertinent Law Handout
 - Objections Handout

- Objections Practice Sheet
- Assign roles for students. To do so:
 - Assign three to 15 students to be judges (the International Court of Justice uses panel of judges in place of a jury.) Make sure there are an odd number of students to render a verdict.
 - Assign four to eight lawyers to each legal team (plaintiff and defense).
 - Assign one student to be the witness, General Curtis LeMay (it is possible for more than one student to fill the role if needed). Choose a student who will stay in character and play the role.
- Make one copy of the following for each student with this particular role:
 - General Curtis LeMay Role Sheet
 - Judge at the International Court Role Sheet
 - Plaintiff Attorney Role Sheet
 - Defense Attorney Role Sheet
- Make one copy of Defense Evidence Handout and Plaintiff Evidence Handout for all attorneys and witnesses.
- Make one copy of the Evidence Evaluation Sheet for each Judge.
- Make one copy of the Objections Practice Sheet Answer Key and Trial Procedure Teacher Guide for teacher use.
- Provide a gavel or item that can be used as a gavel.
- Preset the classroom for the trial – the judges sit together on one side of the room, the plaintiff and defense lawyers on opposite sides – and create a witness stand for the testimony.
- Make one copy of the Trial Assessment Rubric for each student.

Procedure

Activity One: Introduction and Trial Preparation (60 minutes)

- Distribute the General Historical Background Handout for students to read.
- Project the *World War II: A Visual History* Interactive Timeline. Click “enter,” “1945,” and use the timeline to provide context. The Ryukyus Campaign and the Air Offensive Japan Campaign will be the most relevant. Review and provide context for the state of the war in the Pacific in spring 1945.
 - **Teacher Tip:** Address the firebombing as well as the tactics used by the Japanese both in military combat and in dealing with civilians during World War II.
- Lead a discussion of the firebombing of Tokyo. Suggested questions:
 - *Describe the Japanese philosophy towards treatment of civilians and enemy prisoners during the war up to this point. Describe the American philosophy towards treatment of civilians and enemy prisoners during the war up to this point. Was there a difference? How did one affect the other?*

- *What does "total war" mean? How does this apply to Japan's war effort? How does it apply to America's war effort? Is there a marked difference between the two?*
- *How would the war in the Pacific change if the Soviet Union entered the fight against Japan?*
- *Why was the United States eager to force a Japanese surrender without having to invade the home islands?*
- Distribute the General Legal Background and Pertinent Law Handout for students to read.
- Lead a discussion of the International Court of Justice and international agreements like the Hague Rules for Aerial Warfare. Suggested questions:
 - *How should the phrase "human rights" be defined?*
 - *How careful do you think military planners should be regarding civilian lives when bombing?*
 - *How should a country balance the "need to win" versus the protection of human rights?*
 - *What matters more, enemy civilian lives, or the lives of a country's own soldiers, when planning military strikes? Defend your position.*
- Assign students roles in the mock trial simulation (judge, defendant's lawyers, plaintiff's lawyers, witness, etc.).
- Distribute (or make available electronically) needed materials to each group of students:
 - Witness: General Curtis LeMay Role Sheet, Plaintiff Evidence, Defense Evidence
 - Plaintiff Lawyers: Plaintiff Attorney Role Sheet, Plaintiff Evidence, Defense Evidence, Objections Handout, Objections Training
 - Defense Lawyers: Defense Attorney Role Sheet, Plaintiff Evidence, Defense Evidence, Objections Handout, Objections Training
 - Judges: Judge at the International Court Role Sheet, Objections Handout, Objections Training
- Allow students to begin preparing. Circulate to the groups of students and review the Pre-Trial Assignment homework assignments posted on the role sheets.

Activity Two: Trial (60 minutes)

- Collect student assignments from the previous night.
- Lead students through the simulation, inserting yourself as needed. Use the Trial Procedure Teacher Guide to assist.
 - **Teacher Tip:** Consider using a timer visible to the whole class to help keep the simulation running on time. Also consider projecting the evidence when it is presented so that all students can see what the lawyers have.
- Debrief the assignment at the end to have students analyze the major arguments presented.

Assessment

- Use Trial Assessment Rubric to evaluate individual student performances and preparedness.

Methods for Extension

- Students can bring in more witnesses - each with their own pieces of evidence.
- Teachers can apply this style of mock trial to other issues in history.
- The American Battle Monuments Commission maintains U.S. military cemeteries overseas. These cemeteries are permanent memorials to the fallen, but it is important that students know the stories of those who rest here. To learn more about the stories of some of the men and women who made the ultimate sacrifice, visit www.abmceducation.org/understandingsacrifice/abmc-sites.

Adaptations

- Teachers can allow more class time for pre-trial preparation if more support is needed.
- Teachers can adapt this project for younger learners by having them read opening and closing arguments that have already been created and by creating some questions over the pieces of evidence for them.
- Teachers can adapt the reading portions by making audio recordings of the readings for students with special needs or English Language Learners.
- Teachers can use grouping strategies to pair stronger students with students who are struggling a little more in order to help all students have an equitable and positive experience.
- Teachers can consider leading the objections practice as a live activity in class if time permits. If students practice live, they may be more likely to engage in this process during the trial.

General Historical Background

In early 1945, the United States shifted its attention from Europe to the Pacific. Japan remained defiant and unwilling to surrender despite the destruction of the majority of the Japanese Air Force and Navy in the Philippines. American naval forces endured brutal fighting and kamikaze attacks. American land forces experienced savage fighting on Okinawa and Iwo Jima.

In 1942, the United States, China, and Great Britain decided to require the unconditional surrender of Japan. As the war dragged on, American military commanders in the region grew increasingly frustrated with Japan's refusal to surrender and apprehensive over the anticipated casualties American forces would suffer invading the Japanese home islands. In early 1945, the atomic bomb had not yet been successfully tested. Military leaders needed to degrade military production and soften up Japan's defenses in preparation for a ground assault.

The U.S. had signed international treaties before the war, which banned the indiscriminate bombing of cities to kill civilians. As the war dragged on, the U.S. fought to capture airstrips in the Mariana Islands (including Saipan and Tinian) and moved the new B-29 Superfortress bombers there.

The Japanese in World War II bombed civilians and inflicted brutal atrocities on civilians in the places that they conquered. The Japanese bombed civilian centers in China with brutal disregard for civilians. This included its infamous Unit 731, a covert operation that experimented on Chinese people to see the impacts of chemical and biological weapons.

The new B-29 Superfortress bombers, based out of Saipan and Tinian, were used in daylight raids to attack Japanese military installations, but these raids were inaccurate and minimally effective.

General Curtis LeMay was appointed the new commander of the 21st Bomber Command on January 20, 1945. LeMay advocated for the firebombing of Japanese cities to spare the American lives that would be lost in an invasion of the home islands, and to quickly end the war with a Japanese surrender. He was given the freedom to conduct these raids, and he started with a surprise bombing raid on the capital city of Tokyo.

LeMay authorized the use of incendiary bombs in a bombing attack on the night of March 9, 1945. The 334 B-29's that flew this mission did not have specific military targets, such as buildings. Their mission was to destroy a large swath of the city of Tokyo known to be rich in military industries based in factories as well as in residential homes. These planes flew in at a low altitude to catch the anti-aircraft gunners off guard and delivered their ordnance on the citizens of Tokyo.



Map, *The Pacific and Adjacent Theaters, 1942* (cropped, with stars added), U.S. Center of Military History.

General Historical Background cont.

The effect of the bombing far surpassed the expectations of American commanders. Aided by a strong wind, the bombs started massive fires, which raged out of control in the densely packed neighborhoods of paper and wood houses. The "fire tornadoes" that were created were so intense that they burned everything in their path and were preceded by superheated plumes of poisonous gases that overcame victims before they were incinerated. In that single night, over 100,000 Japanese civilians, many of them women and children, were killed as fires raged across the city and burned large sections to the ground. More than one million were left homeless. This was, and still is, the single greatest number of people killed by a single air raid in the history of modern warfare.

Bodies that were charred black were everywhere, and the stench of human flesh burning nearly overcame some of the American pilots in the air. Survivors recounted scenes of unimaginable horror. Follow-up raids destroyed large swaths of Kobe, Osaka, and Nagoya with, further raids destroying even more of Tokyo. In the following few months, 66 cities were targeted. In July, the U.S. military began dropping leaflets on the few cities that had been spared so that civilians could flee before they were bombed. It is estimated that anywhere between 300,000 to 400,000 people died in the raids on these cities.

On July 16, 1945, the first atomic bomb was successfully tested in New Mexico. President Truman shifted his attention to the use of the atomic weapon. On August 6, 1945, the first atomic bomb dropped on Hiroshima, and three days later a second atomic bomb was dropped on Nagasaki. On September 2, 1945, Japan formally surrendered.

Tomorrow's mock trial case is based on a hypothetical lawsuit brought by the country of Japan in the International Court of Justice in 1970 seeking damages against the United States of \$20 billion for loss of human life, destruction of property, and for the violation of international human rights law.



Photograph, Tokyo burns under B-29 fire bomb assault, May 26, 1945, Library of Congress (LC-USZ62-111427).

Sources:

Griffith, Charles. *The Quest: Haywood Hansell and American Strategic Bombing in World War II*. Honolulu: University Press of the Pacific, 2005.

Hoyt, Edwin. *Inferno: The Fire Bombing of Japan: March 9 - August 15, 1945*. Lanham: Madison Books, 2000.

Weinberg, Gerhard. *A World at Arms: A Global History of World War II*. New York: Cambridge University Press, 1994.

General Legal Background and Pertinent Law

The League of Nations established an international court called the Permanent Court of International Justice, which lasted from 1922 to 1945. When the United Nations formed in 1945, the court was re-chartered as the International Court of Justice (ICJ). This court, housed in the Peace Palace in the Hague, Netherlands, was set up to settle disputes between nations through arbitration and to try individuals for crimes against humanity. The court was designed to help nations to resolve their differences peacefully, rather than through armed conflict.

The ICJ is the setting for our simulated trial. For the purposes of this activity, Japan (the plaintiff), is bringing a civil suit against the United States (the defendant) for monetary damages to compensate the nation and the Japanese citizens for the death and destruction caused by the firebombing of Tokyo. Japan alleges the attack was part of a massive "terror bombing" strategy, in clear violation of international law. Students will be able to question and cross-examine a witness.

The ICJ judges based on international law, not on the laws of any single nation. Article 38 of the Statute of the International Court of Justice explains this:

1. "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - international custom, as evidence of a general practice accepted as law;
 - the general principles of law recognized by civilized nations;
 - subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. "This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."



Photograph, *Public Hearing at the International Court of Justice, International Court of Justice.*

The statute states that the court primarily uses international agreements and conventions the nations had previously signed. Member nations also can rely on the court to decide the case *ex aequo et bono* (in justice and fairness) if no international convention, law or agreement exists on which to base a cause of action. This has never been done, however, since the court has always been able to find applicable international law.

¹Statute of the International Court of Justice," International Court of Justice, last modified 2017, accessed June 27, 2017. http://www.icj-cij.org/en/statute#CHAPTER_II.

General Legal Background and Pertinent Law cont.

As a result of this legal framework, Japan is suing the United States under the Hague Rules of Air Warfare. Aerial bombardment was used for the first time in World War I. This 1923 agreement was prompted by the International Red Cross, who called for limits on aerial bombardments to prevent civilian casualties during war.

Great Britain and France refused to adopt the Hague Rules of Air Warfare, but the United States and Japan adopted the rules and pushed other nations to do so throughout the 1920s.² This convention was recognized by both the United States and Japan in 1945. This serves as the primary legal basis for Japan's lawsuit.

Japan is pointing specifically to Article XXIV, which states:

"1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

"2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres [sic] engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.

"3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

"4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

"5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article."³

In this simulation, Japan is arguing that the United States resorted to "terror bombing" tactics and that according to Article 24 Section 5 of the Hague Rules of Air Warfare, the United States is liable to pay compensation for injuries to persons and property involving the deliberate targeting of civilians. This is the legal basis of the case.

²Alexander Gillespie, *A History of the Laws of War: Volume 2: The Customs and Laws of War with Regards to Civilians in Times of Conflict* (Portland: Hart Publishing, 2011).

³"The Hague Rules of Air Warfare," International Law of War Association, last modified December 8, 2010, accessed June 27, 2017. http://lawofwar.org/hague_rules_of_air_warfare.htm.



Photograph, The International Court of Justice, located at the Peace Palace at the Haque, 2017.

General Curtis LeMay Role Sheet

In this trial, you will play the role of General Curtis LeMay. It is very important that you understand your character. You will be subject to questioning that will require you to creatively answer questions while staying in character.

You were born on November 15, 1906, to Erving and Arizona LeMay in Columbus, Ohio. Your dad was a handyman who was often unemployed. Your family was very poor. Being the oldest child in the family, you shared the responsibility of providing as the family followed your father from one job to another.

Once, your dad moved the entire family to Montana, where you lived in a shack in subzero winter temperatures while he served as a handyman for a local park. At age eight, you fished through the ice for trout to help feed your family, which included you and five siblings. Your next stop was California. The family was moved from one tenement building to another while your father continued to get and lose jobs. Eventually you ended up back where you started, in Columbus, Ohio. After completing high school, you attended Ohio State University, working your way through school at a factory and joining the ROTC program, eventually graduating with a degree in civil engineering.



Photograph, *Somewhere in China, General Joseph W. Stilwell talking with Major General Curtis E. LeMay of the 20th Bomber command, at a B-29 base, October 11, 1944, Library of Congress (LC-USZ62-132808).*

You were accepted into flight school as the U.S. Army Air Corps was beginning to grow. You had always been drawn to planes from your earliest days, and became a talented pilot. You were commissioned as a pilot in January 1930, and in 1934 you married Helen Maitland who would remain your wife for the rest of your life. You were one of the first pursuit pilots to get specialized training in aerial navigation.

When the United States entered World War II, you were rapidly promoted and put in charge of the 350th Bombing Group, Eighth Air Force, stationed in Great Britain. A creative commander, you developed a new method for bombing, which dramatically reduced the number of planes shot down while improving the accuracy of bombing.

The men called you "Old Iron Pants." You meticulously planned missions to help reduce casualties, and flew on each mission on the lead plane, putting your own life at risk. You walked around with a cigar in your mouth. When you got angry (which was often), you would clinch the cigar in your teeth in a menacing manner, becoming quite a character in the process. You believed in constantly training your men so that in the chaos of battle and they would be more likely to walk out alive. Your men grew to respect and love you in spite of your crusty demeanor.

You introduced and developed the P-51 Mustang fighter plane to escort the bombers. You were promoted to Brigadier General, the youngest in the U.S. Army Air Force, because you got results. By the time you left the European Theater, the American Allied air campaign, based around your innovative strategies, significantly limited German industrial capacity and their ability to wage war.

General Curtis LeMay Role Sheet cont.

In Europe, you witnessed the devastating impact of the British mass "terror bombing" of Hamburg, Germany. In response to the Blitz on London, the British responded with their own night raids. In spite of the effectiveness of such tactics, you preferred daytime bombing of military targets to improve accuracy.

In August 1944, U.S. Army Air Corps General "Hap" Arnold reassigned you to the China-Burma-India Theater. General Arnold had pushed the government to develop a massive long range bomber, the B-29 Superfortress. It was much bigger than the B-17 Flying Fortress and could carry a larger bomb payload. Developing the plan cost \$3 billion. General Arnold sent you to India to fix the mechanical issues to increase bombing accuracy. You succeeded, and results improved.

In January 1945, you were placed in charge of the air campaign over Japan. Marine victories in the Marianas established landing strips for the B-29s on Saipan and Tinian. General Haywood Hansell's bombers were struggling to achieve results. You analyzed the situation and noted four major problems with the strategy:

- Bombers flew at high altitude, where cloud cover made precision targeting very difficult;
- The powerful jet stream made it very difficult for planes to stay on target;
- Constant mechanical problems increased casualty rates; and
- The Japanese had learned from the German example and decentralized their industry throughout the major cities. Reports claim that some industrial equipment was moved to people's homes and backyards so civilian homes became part of the factory system.

Your response to these challenges was to lead a campaign of mass incendiary bombing. The planes would fly at a much lower altitude (much easier on their engines), and try to catch Japanese air defenses off guard.

A surprise night attack on Tokyo on March 9, 1945, devastated the city. Fire tornadoes swept around the city, killing over 100,000 people in the single deadliest raid of the war. Soon you were targeting cities all over Japan with incendiary bombs, causing massive damage and severely crippling Japan's war industries.

Morale in the U.S. Army Air Forces and back home improved. Your picture was on the cover of *Time* magazine. Facing this destruction, the Japanese refused the surrender. Horrific battles raged on Iwo Jima and Okinawa. American commanders dreaded the upcoming invasion of Japan.



Photograph, *Colonel Curtis LeMay officially congratulates a bomber crew of the 306th Bomb Group in front of their B-17 Flying Fortress, February 6, 1943, Roger Freeman Collection, American Air Museum in Britain (FRE 4378).*

General Curtis LeMay Role Sheet cont.

When asked, you told General Arnold that by November you could level every major Japanese city. You continued, but were required to divert some of B-29s to mine the waters around Japan for the Navy. Later you realized the mining created an effective blockade of Japan, cutting off almost all shipping and starving the Japanese people dependent on imported food.

Following President Roosevelt's death, President Harry S. Truman authorized the testing of a new weapon in the New Mexico desert. The atomic bomb was the last attempt to secure a Japanese surrender.

As you continued firebombing Japanese cities, criticism mounted over the large numbers of civilian casualties. You were ordered to drop warning leaflets encouraging Japanese civilians to evacuate cities.

The atomic bombs were assembled on the island of Tinian and your crews delivered them to their targets, with devastating effect. Tens of thousands died in the blasts and from the after effects of the radiation. The incredible destructive power of the atomic bomb drops on Hiroshima and Nagasaki changed warfare forever.

With all hope for a negotiated peace gone, Japan formally surrendered to the United States on September 2, 1945. You visited Japan after the surrender and saw firsthand the deadly effect of your campaigns. You also noticed that spread throughout the residential neighborhoods were burned out pieces of industrial manufacturing equipment, confirming intelligence reports.

After the war, you were assigned to head up a defense contractor in California to help the newly formed U.S. Air Force (which became an independent branch of the military in 1947) incorporate rocket and missile technology captured from the Nazis. After playing a role in the Berlin Airlift, you became the commander of Strategic Air Command, the branch of the Air Force responsible for delivering nuclear weapons against the enemy in the event of a nuclear war.

In the Korean War, incendiary bombs (such as napalm) were used to great effect against enemy land forces. You became the Air Force Chief of Staff in 1961. You clashed with President John F. Kennedy during the Cuban Missile Crisis, advocating air strikes and an invasion of Cuba.

Under President Lyndon B. Johnson, you developed the Rolling Thunder Campaign to cut North Vietnamese supply lines along the Ho Chi Minh trail in Vietnam, using incendiary weapons. You clashed repeatedly with President Johnson and his Secretary of Defense, Robert McNamara, over the strategy of the war. You wanted to expand the bombing campaign to all of the major cities and ports in North Vietnam, which you saw as the only real way to win the war. Johnson and McNamara refused, wanting to concentrate the war in South Vietnam and avoid Chinese intervention.



Photograph, B-29s dropping bombs over Japan, c. 1945, National Park Service.

General Curtis LeMay Role Sheet cont.

In 1965, you retired from the Joint Chiefs of Staff.

You declined offers to run for office after your retirement, until you accepted the vice presidential nomination of George Wallace's segregationist American Independent Party in 1968.

You lost the election to Richard Nixon, and your association with a virulent racist like George Wallace destroyed your reputation and tarred your legacy. Many called you racist, despite your ardent support of President Truman's 1948 decision to desegregate the military.

President Richard Nixon used your strategy of firebombing North Vietnamese cities to bring the Vietnam War to an end on American terms.

Now it is 1970. There are some important considerations as you prep for the trial:

- You must "be in character" and do your best to say only what General Curtis LeMay would say from his point of view.
- Your biggest weakness is your seeming lack of care for civilian lives in the advocating for the use of incendiary bombing and nuclear weapons and your association with racism. Defend these positions using evidence from above.
- You will be questioned by the defense team of lawyers for the United States. They are on your side, and you should work with them and help them present the American side of the case. Speak in advance. Remember, they cannot "lead a witness." They should prepare for what you will likely encounter on cross examination.
- You do not want to be impeached (contradict yourself) on the stand during the trial because this will destroy your credibility as a witness. When you and the U.S. lawyers lay out the case for the United States in your direct testimony, be careful not to contradict statements you made. Be careful what you say on cross examination, where Japanese lawyers will try to tear your testimony apart. If you stay in character, you stand a much better chance of avoiding impeachment.
- Have fun with this role and be creative. Do some independent research to make it as realistic as possible. You will get additional points on the grade rubric if you do this.

Pre-Trial Assignment: General Curtis LeMay

In preparation for the mock trial, you need to understand your role sheet. You will research Curtis LeMay's life and find at three to five quotes that you can use as part of your testimony.

You are allowed one sheet of paper to use during the trial. Include key notes about LeMay's life as well as three to five quotes that you can use during your testimony.

Hint: Work with the defense team to plan out how you are going to answer their questions.

Sources:

Kozak, Warren. *LeMay: The Life and Wars of General Curtis LeMay*. New York: Regnery Publishing, 2009.

Tillman, Barret. *LeMay: A Biography. Great Generals Series*. New York: St. Martin's Press, 2007.

Judge at the International Court Role Sheet

The International Court of Justice has 15 judges who preside over the trial, weigh the evidence presented, and issue the verdict. Judges have a very important role in this activity, both during and after the trial. During the trial they rule on objections. One judge has the opportunity to rule on an objection, and then he or she passes the gavel to the next judge to rule on the next objection.

The protocol for making such rulings is as follows:

As one of the lawyers asks a question, or as a witness speaks, a lawyer from the other side will say, "Objection your honor!" and then state what the objection is (relevance, hearsay, lack of foundation, etc.).

Step 1: Ask the lawyer who made the objection, "Why does the _____ objection apply here?" They will argue why the objection is legitimate. (For example, if the objection is relevance, they will explain why they think the lawyer's question or line of questioning is not relevant to the case being brought before the court.)

Step 2: Ask the other side's lawyer, "Why should _____ objection not apply here?" They will argue why the objection is not legitimate. For example, if the objection is relevance, they will explain why the question they asked is relevant to the case.

Step 3: You will rule on the objection using one of the two following formulas:

If you believe the objection is well-founded or correct you say, "Objection sustained. Rephrase the question, counselor, or move on to the next question." The lawyer will have to obey and either rephrase the question or move on to the next question. Do not allow the lawyer to ask the same question again.

or

If you believe the objection is poorly founded or incorrect you say, "Objection overruled. Proceed with your question, counselor." The lawyer will continue with the question or ask the same question again (to keep the witness from getting confused).

Trust your judgment based on your understanding of that particular objection. Please refer to the objections sheet for guidance on this, but do not worry about getting it exactly correct. Judges make bad rulings on objections all the time. It is like referees during a game. Sometimes the call is not perfect, but the game continues. Do your best and be fair. Do not favor your friends. Just like in sports, courtrooms work best when the lawyers on both sides know there is no favoritism involved.

Judges also evaluate the arguments the lawyers make. Your final duty as a judge is to conference with the other judges to deliberate over the evidence and the testimony of the witness. You will decide which side met their burden of proof in the case. Since this is a civil lawsuit, you will decide which side presented a more convincing case.

Be sure to weigh the evidence against the pertinent law that applies in this case. Judges should hold a discussion among themselves before voting. There will be an odd number of judges, and majority rules. Choose a judge to deliver the verdict, and be prepared to explain why you were convinced by one side's argument.

Pre-Trial Assignment: Judge at the International Court

In preparation for the mock trial, you need to understand two key ideas: the international law under discussion and the rules of objections.

Create for yourself a one-page "cheat sheet" reviewing both of these components. Use the materials provided and do a little research to develop your understanding at a deeper level. Then complete the Objections Practice Sheet.



Photograph, *Public hearings of the Court presided over by H.E. Judge Rosalyn Higgins, April 12, 2006, International Court of Justice.*

Defense Attorney Role Sheet (United States)

As a member of the team of defense attorneys for the United States, you represent the U.S. government, which is being sued by Japan. You need to argue the United States was within its rights to firebomb Japanese cities in 1945 and that raids like the fire-bombing of Tokyo did not violate international law to the extent that the United States should be found liable for civil damages (money).

The architect of the strategy, General Curtis LeMay, will testify. This allows you to argue that America had a strategic interest in conducting the raids. You will get multiple opportunities to do this. Divide your legal team into four groups, with each group focusing on a different role (Opening Statement, Questions on Direct, Closing Statement, or Objections).

Read General LeMay's role sheet so you can familiarize yourself with his career and the insights he has to offer. His testimony on what he saw and why he made the decisions that he did will be critical to building your case.

Opening Statement

Lawyer(s) Responsible: _____

You will have three minutes to present an opening statement to the court. Some tips to consider as you construct your opening statement:

- Begin with the following statement: "May it please the Court, the Japanese claim for damages against the United States in the firebombing of Tokyo is not a valid claim because..."
- Consider the following historical points:
 - American strategy needed to prioritize the saving of American lives;
 - B-29 raids at higher altitudes were not successful;
 - The Japanese had decentralized and diffused their industries into civilian neighborhoods;
 - Raids were a military success because they impacted vital Japanese war industries;
 - Civilian casualties in the raid were collateral to the military targets and unavoidable; and
 - Japan's refusal to surrender led the American government to consider options that were still less costly than an invasion of Japan.
- You are not limited to this evidence. Consider Japanese treatment of civilians and Allied prisoners of war (POWs).

Pre-Trial Assignment: Defense Attorney / Opening Statement

In preparation for the mock trial, you need to develop your opening argument. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page outline of your major arguments. Use the materials provided and do a little research to develop your understanding at a deeper level.



Photograph, *International Court of Justice hearing in the case of "Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece),"* March 23, 2011, International Court of Justice.

Defense Attorney Role Sheet (United States) cont.

Questions on Direct

Lawyer(s) Responsible: _____

You will have ten minutes to present your case by directly questioning the witness, General Curtis LeMay. Some tips to consider as you construct questions:

- You have two pieces of evidence to present as well as General LeMay's public record.
- Remember that you can only ask General LeMay questions. You cannot make statements during this time.
- You want General LeMay to tell the story of what happened, but in a way that proves your point.
 - Consider LeMay's military experience and leadership in the European Theater of Operations and as his successes in the China-Burma-India Campaign.
 - Consider the early attempts to bomb Japan and the problems with that strategy.
 - Consider presenting Defense Exhibit A to the court. This is the after action bombing report LeMay wrote.
 - Ask about the state of the war in the Pacific in early 1945.
 - Introduce Defense Exhibit B to emphasize the deep responsibility LeMay felt to save American lives.
- Remember that you cannot ask leading questions. A leading question is a question that is looking for a specific answer. To prevent your questions from being leading, ask general questions and let the witness respond.
 - Example of a leading question: "Isn't it true, General, that you saw burned out drill presses in the neighborhoods when you drove through them?"
 - Example of correct question: "What did you see then?"
- Talk with General LeMay in advance and plan out what you want him to say in response to your questions.
- When finished questioning the witness say, "Your honor, the defense rests."

Pre-Trial Assignment: Defense Attorney / Questions on Direct

In preparation for the mock trial, you need to develop a list of at least 20 questions you want to ask General LeMay. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page list of your questions. Use the materials provided and do a little research to develop your understanding at a deeper level.

Defense Attorney Role Sheet (United States) cont.

Closing Statement

Lawyer(s) Responsible: _____

You will have up to five minutes to present a closing statement. Revisit each of the key points presented in your opening statement and explain how they were proven by the testimony before the court. You want to mention any major mistakes by the other side. Start with, "May it please the court...."

Pre-Trial Assignment: Defense Attorney / Closing Statement

In preparation for the mock trial, you need to develop your closing argument. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page outline of your major arguments. Use the materials provided and do a little research to develop your understanding at a deeper level. Leave space on your page to add your notes on how to rebut the arguments made by the opposition.

Objections

Lawyer(s) Responsible: _____

You are responsible to keep the plaintiff's side playing by the rules of the court. You are encouraged to object to the other side as often as you can. Not only does this throw off their rhythm and get them flustered, but it can also destroy a line of questions.

Pre-Trial Assignment: Defense Attorney / Objections

In preparation for the mock trial, you need to understand the rules of objections.

Create for yourself a one-page "cheat sheet" reviewing the rules of objections. Use the materials provided and do a little research to develop your understanding at a deeper level. Then complete the Objections Practice Sheet to help prepare.

Hint: Use this to help the lawyers on your team avoid the common pitfalls that lead to objections.

Plaintiff Attorney Role Sheet (Japan)

As a member of the team of plaintiff attorneys for Japan, you represent the Japanese government, which is suing the United States. You need to argue the United States was not within its rights to firebomb Japanese cities in 1945 and that raids like the firebombing of Tokyo did violated international law to the extent that the United States should be found liable for civil damages (money).

The architect of the strategy, General Curtis LeMay, will testify. This allows you to cross-examine him and argue that America violated international law by intentionally targeting civilians. You will get multiple opportunities to do this. Divide your legal team into four groups, with each group focusing on a different role (Opening Statement, Questions on Cross-Examination, Closing Statement, or Objections).

Research General LeMay so you can attack his decisions regarding the raids and his credibility as a witness. Keeping track of his testimony on what he saw and why he made the decisions that he did will be critical to the ultimate weapon at your disposal. If you catch General LeMay contradicting something he said earlier on the stand, you can "impeach" him (show him contradicting himself) and destroy his credibility.

Opening Statement

Lawyer(s) Responsible: _____

You will have three minutes to present an opening statement to the court. Some tips to consider as you construct your opening statement:

- Begin with the following statement: "May it please the Court, the Japanese claim for damages against the United States in the firebombing of Tokyo should be granted by the court because..."
- Consider the following historical points:
 - General LeMay chose to use bombs with an incendiary chemical that would stick to objects and human beings and burn with high intensity;
 - He targeted a residential area where the houses made from wood and paper were populated mostly by women, children and the elderly;
 - The raid may have knocked out war industries, but it was the civilian neighborhoods that were the real targets;
 - More than 100,000 civilians died in this attack. The vast majority were women and children; and
 - General LeMay repeatedly showed a willingness to bomb areas with large civilian populations later in his career.
- You are not limited to this evidence. Consider other statements General LeMay made during his career.
- Remember that General LeMay may not be terribly cooperative. Try to structure your questions so that he will be limited to yes or no answers.

Pre-Trial Assignment: Plaintiff Attorney / Opening Statement

In preparation for the mock trial, you need to develop your opening argument. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page outline of your major arguments. Use the materials provided and do a little research to develop your understanding at a deeper level.



Photograph, *International Court of Justice hearing in the case of "Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)," March 23, 2011, International Court of Justice.*

Plaintiff Attorney Role Sheet (Japan) cont.

Questions on Cross-Examination

Lawyer(s) Responsible: _____

You will have ten minutes to present your case by directly questioning the witness, General Curtis LeMay. Some tips to consider as you construct questions:

- You have two pieces of evidence to present as well as General LeMay's public record.
- Remember that you can only ask General LeMay questions. You cannot make statements during this time.
- Remember you are trying to destroy LeMay's credibility as a witness and build your case to try to get LeMay to admit to the arguments in your statement.
 - Consider LeMay's campaign in the European theater to lead precision bombing missions on German military targets.
 - Consider LeMay's ability to solve the problems presented in both the European Theater and China-Burma-India Campaign without resorting to widespread civilian casualties.
- Introduce Plaintiff Exhibit A, an eyewitness account to the bombings. Consider reading the most crucial piece aloud to the court.
- Introduce Plaintiff Exhibit B, the images of the bodies.
- Consider LeMay's post-war career and public statements.
- Remember that General LeMay is not going to be a cooperative witness.
- Remember that the defense team cannot ask leading questions. A leading question is a question that is looking for a specific answer. Object if they do so.
 - Example of a leading question: "Isn't it true, General, that you saw burned out drill presses in the neighborhoods when you drove through them?"
 - Example of correct question: "What did you see then?"
- When finished questioning the witness, say, "Your honor, the plaintiff rests."



Photograph, *International Court of Justice hearing in the case of "Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece),"* March 23, 2011, International Court of Justice.

Pre-Trial Assignment: Defense Attorney / Cross-Examination Questions

In preparation for the mock trial, you need to develop a list of at least 20 questions you want to ask General LeMay. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page list of your questions. Use the materials provided and do a little research to develop your understanding at a deeper level.

Plaintiff Attorney Role Sheet (Japan) cont.

Closing Statement

Lawyer(s) Responsible: _____

You will have up to five minutes to present a closing statement. Revisit each of the key points presented in your opening statement and explain how they were proven by the testimony before the court. You want to mention any major mistakes by the other side. Start with, "May it please the court..."

Pre-Trial Assignment: Plaintiff Attorney / Closing Statement

In preparation for the mock trial, you need to develop your closing argument. Bring in two copies of your homework – one to submit to your teacher and one to use for the trial.

Create for yourself a one-page outline of your major arguments. Use the materials provided and do a little research to develop your understanding at a deeper level. Leave space on your page to add your notes on how to rebut the arguments made by the opposition.

Objections

Lawyer(s) Responsible: _____

You are responsible for keeping the defense playing by the rules of the court. You are encouraged to object to the other side as often as you can. Not only does this throw off their rhythm and get them flustered, but it can also destroy a line of questions.

Pre-Trial Assignment: Plaintiff Attorney / Objections

In preparation for the mock trial, you need to understand the rules of objections.

Create for yourself a one-page "cheat sheet" reviewing the rules of objections. Use the materials provided and do a little research to develop your understanding at a deeper level. Then complete the Objections Practice Sheet to help prepare.

Hint: Use this to help the lawyers on your team avoid the common pitfalls that lead to objections.

Objections

Objections are a legal process that ensures that both sides need to follow the rules in regard to questions, responses, and documents and objects offered as evidence. They also make mock trial fun - both for the judges and the lawyers. Use objections as a tool to make it challenging for the other side to make its case.

Only lawyers can object. Each group of opposing lawyers has the opportunity to keep the lawyers on the other side honest as they are trying to lay out their case.

To object, say "Objection, your Honor _____!" and fill in the blank with any of the objection terms below.

- Examples: Objection your honor, relevance! Objection your honor, hearsay! Objection your honor, asked and answered!

The judge will stop what is happening in the courtroom and he or she will turn to the lawyer who made the objection, and ask why the objection applies. Simply explain your logic for making the objection.

- Example: Judge, "why isn't this relevant?" Lawyer replies, "Your honor, what does General LeMay's childhood have to do with the bombing raids on Japan?"

Then the judge will turn to the opposing counsel to explain why the objection does not apply.

- Example: "Your honor, I was asking the general about his childhood because I wanted to get at the motivating factors in his personality, so the court can understand his thought process when he is making decisions."

Once both lawyers have made their arguments, the judge rules. There are two possible outcomes:

- "Sustained!" means that the judge agrees with the objection. This means the lawyer who was objected to will have to break up his or her question, rephrase it, or move on to a new question.
- "Overruled!" means that the judge does not agree with the objection and that the lawyer or witness can continue with what they were asking or saying.

Common Objections

Remember - fill in the blank with one of the boldfaced legal terms below: "**Objection your honor, _____!**"

Objections usable by both sides at any time during a lawyer's questions or a witness' answers:

- **Relevance:** The question or answer has little or nothing to do with the case.
 - **Example:** "What is your favorite color?" Each question needs to clarify some fact of importance to the case.
- **Hearsay:** The question asks for, or the witness is saying, what someone else said out of court.
 - **Example:** "What did General Arnold say?" or "General Arnold said..." No secondhand information allowed. If the court wants to know what General Arnold said, he has to be brought in, placed on the stand, and sworn in so he can be asked directly.
- **Asked and Answered:** Question already asked and witness already answered it. Some lawyers forget and some like to repeat questions for emphasis - this is not allowed.
- **Compound Question:** Question is asking for more than one answer, making it too complex.
 - **Example:** "What happened and how did you respond?" Needs to be broken into two questions.

- **Calls for a Narrative Answer:** Question asks for a long answer or a witness is giving one.
 - **Example:** "Tell us about your time in the military" asks for too much information at once or the witness tells a long story (more than five long sentences).
- **Calls for Speculation:** Question asks witness to guess about something they do not know.
 - **Example:** "What was he thinking?" or "Why did he do that?"
- **Calls for Conclusion:** Asks witness for an opinion on a topic in which they have no expertise. Only experts in subjects can draw conclusions about those subjects. General LeMay can be considered an expert on military strategy, but not on medicine, engineering, etc.
- **Unfair Use of Character Evidence:** Draws unfair conclusions from one's bad character.
 - **Example:** "Since you admitted you are a racist, you do not care about the lives of civilians either, do you?" The court must consider the evidence and not whether someone is bad or unlikable.

Objections usable against lawyers who are attempting to enter a piece of evidence into court:

- **Lack of foundation:** Lawyer has not established in the testimony of a witness that a piece of evidence exists before producing it and attempting to enter it into the official record of the court or asking questions about it. Lawyers need to follow this protocol:
 - Get the witness to say that the evidence exists.
 - Show the witness the evidence; and
 - Ask the judges if it can be entered into evidence.
 - Then questions about the evidence may be asked.

Objection usable against lawyers who are conducting a direct examination of a witness:

- **Leading Question:** A lawyer cannot ask questions that look for specific answers.
 - **Example:** "Isn't it true, General, that you saw burned out drill presses in the neighborhoods when you drove through them?" Correct non-leading example: "What did you see?"

Objections usable against lawyers who are cross-examining a witness:

- **Argumentative:** Counsel is arguing their case in their question.
 - **Example:** "You knew that women and children would die, but you decided to violate the rules of warfare anyway, didn't you?" Lawyers cannot do this on cross examination (unlike on television).
- **Badgering the Witness:** Counsel is pushing the witness too hard, trying to provoke them.
 - **Example:** "You don't care how many people you hurt, do you?" This is not allowed.

Objections usable against the witness by a lawyer who is cross-examining the witness:

- **Nonresponsive Witness:** The witness will not answer the question the way it is being asked. This is used when a witness is not being cooperative.

Objections Practice Sheet

Read the question or witness testimony, write the correct objection, and explain your reasoning.

Sample Question or Testimony	Objection	Reasoning
On direct questioning, the attorney asks General LeMay, "You saw evidence of drill presses in the burned out residential neighborhoods didn't you?"		
General LeMay testifies, "I knew the Japanese emperor would not stop fighting. We were friends once and I got to know him pretty well. He was psychotic and that prevented him from stopping this madness."		
Lawyer asks on cross-examination, "We all know you murdered a man in your youth General LeMay, and that tendency never went away did it? You were a murderer then and a mass murderer now."		
While discussing the bombing campaign in the Pacific, the lawyer on cross-examination asks, "General LeMay, your wife and you had been having some trouble in your marriage, hadn't you?"		
Lawyer on direct questioning asks, "What did General Arnold tell you to do?"		
Lawyer on cross-examination asks, "You were trying to terrorize the Japanese population into surrender, weren't you General LeMay?"		
Lawyer on direct questioning asks the witness, "General LeMay, what was going through that bombing commander's mind?"		

Objections Practice Sheet cont.

Sample Question or Testimony	Objection	Reasoning
<p>Lawyer on cross asks, "General LeMay, were you were having trouble making the B-29 program into a success?" General LeMay answers, "The B-29 program was one of the best investments our military ever made, when General Arnold started the program, nobody thought it would work."</p>		
<p>Lawyer on direct asks, "General LeMay, can you describe your military career for the court?"</p>		
<p>On cross-examination the lawyer asks, "You don't really care about civilians do you? Why did you bomb civilians if you care about them? Answer the question!"</p>		
<p>Lawyer asks on cross, "You knew there would be large civilian casualties didn't you?" LeMay answers, "Yes." Lawyer asks, this time in a triumphant tone, "So, you KNEW there would be large civilian casualties?"</p>		
<p>Lawyer asks on direct questioning, "Tell the court what happened next, and tell us how you felt about it."</p>		

Objections Practice Sheet Answer Key

Read the question or witness testimony, write the correct objection, and explain your reasoning.

Sample Question or Testimony	Objection	Reasoning
On direct questioning, the attorney asks General LeMay, "You saw evidence of drill presses in the burned out residential neighborhoods didn't you?"	Leading question	Lawyers on direct cannot ask questions that are looking for specific answers - they must ask general questions and let the witness relate what he saw.
General LeMay testifies, "I knew the Japanese emperor would not stop fighting. We were friends once and I got to know him pretty well. He was psychotic and that prevented him from stopping this madness."	Calls for conclusion	General LeMay is not an expert on psychology and therefore he cannot give an opinion on the emperor's state of mind. If he left out the part about knowing him well it would be speculation also because he would have no personal knowledge of the emperor's alleged condition.
Lawyer asks on cross-examination, "We all know you murdered a man in your youth General LeMay, and that tendency never went away did it? You were a murderer then and a mass murderer now."	Unfair use of character evidence	A bad act or character flaw in the past does not necessarily prove one in the present. The present case is based on the present evidence and attempting to prejudice the court with prior bad character is not allowed.
While discussing the bombing campaign in the Pacific, the lawyer on cross-examination asks, "General LeMay, your wife and you had been having some trouble in your marriage, hadn't you?"	Relevance	Unless the lawyer can show that this affected his judgment, it is not relevant to the case.
Lawyer on direct questioning asks, "What did General Arnold tell you to do?"	Hearsay	The court does not want to hear second-hand stories about what someone said - if they want to know what General Arnold said, they will bring him in and have him testify himself under oath. To look for hearsay, listen for keywords like "said," "told," "say."
Lawyer on cross-examination asks, "You were trying to terrorize the Japanese population into surrender, weren't you General LeMay?"	Argumentative	This is a central point the plaintiffs are trying to prove - they cannot simply turn it into a question and ask the witness, knowing he would say no or hoping he would stutter, in an attempt to grandstand or make a point to the court.
Lawyer on direct questioning asks the witness, "General LeMay, what was going through that bombing commander's mind?"	Calls for speculation	There is no indication General LeMay had personal knowledge of what was going on in that bombing commander's mind.

Objections Practice Sheet Answer Key cont.

Sample Question or Testimony	Objection	Reasoning
Lawyer on cross asks, "General LeMay, were you were having trouble making the B-29 program into a success?" General LeMay answers, "The B-29 program was one of the best investments our military ever made, when General Arnold started the program, nobody thought it would work."	Nonresponsive witness	The lawyer was asking for a yes or no answer essentially and LeMay chose not to answer the question as asked.
Lawyer on direct asks, "General LeMay, can you describe your military career for the court?"	Calls for narrative	The answer to this question would be way too long - the lawyer is essentially asking the witness to tell a long story.
On cross-examination the lawyer asks, "You don't really care about civilians do you? Why did you bomb civilians if you care about them? Answer the question!"	Badgering the witness	This is just an attempt to provoke the witness into an emotional response or leave them tongue tied and stuttering. It may be good for TV, but it is not allowed in a real courtroom.
Lawyer asks on cross, "You knew there would be large civilian casualties didn't you?" LeMay answers, "Yes." Lawyer asks, this time in a triumphant tone, "So, you KNEW there would be large civilian casualties?"	Asked and answered	Once the witness has answered a question they do not have to answer it again. This is also flirting with the line on badgering the witness.
Lawyer asks on direct questioning, "Tell the court what happened next, and tell us how you felt about it."	Compound question	This is asking the witness to answer two separate questions.

Plaintiff Evidence Exhibit A

Funato Kazuyo, "Hiroko Died Because of Me" (excerpt)

Haruko Taya Cook and Theodore Cook, *Japan at War: An Oral History*, 1992 (pages 346-349)

The wind and flames became terrific. We were in Hell. All the houses were burning, debris raining down on us. It was horrible. Sparks flew everywhere. Electric wires sparked and toppled. Mother, with my little brother on her back, had her feet swept out from under her by the wind and she rolled away. Father jumped after her. "Are you all right?" he screamed. Yoshiaki shouted, "Dad!"

I don't know if his intention was to rescue Father or to stay with him, but they all disappeared instantly into the flames and black smoke. Everything was burning. In front of us were factories, red flames belching from windows. Koichi, Minorca, Hiroko, and I, the four of us, were the only ones left.

There was thick shrubbery and a slight dip at the foot of the bridge, and we huddled together there. Koichi shouted that we couldn't go further, and we really couldn't go back. Many people jumped into Onagigawa, twenty meters wide. We could just barely see a roadside shelter from where we were. Ditches had been dug along many roadsides in case of air raids. Koichi took Hiroko's hand and I clung to Minoru. We dashed across the road through the flames. Hiroko's headgear caught fire. It was stuffed with cotton. The four of us tumbled into the shelter. We tried to remove the burning cover from her head, but it was tied tight so as not to be blown away by the wind. Hiroko tried to pull it off herself, so both her hands were burned. Her hair burned, too. We were finally able to tear it off and smothered the fire with our legs. We lay flat on our stomachs, thinking that we would be all right if the fire was gone by morning, but the fire kept pelting down on us. Minoru suddenly let out a horrible scream and leapt out of the shelter, flames shooting out of his back. Koichi stood up calling, "Minoru!" and instantly, he too, was blown away. Only Hiroko and I remained.

There was someone else in the shelter, a schoolgirl. I was really saved by her. I don't think I could have endured the fear if it had been just Hiroko and me. There was no cover, and all the surroundings were aflame and sparks rained into the shelter, and Hiroko kept screaming, "It's hot, hot!" We would have jumped out, and my little Hiroko and I would have been killed. The schoolgirl came close to us. "I'm separated from my family. Let's do our best, the three of us." She was perhaps two years older than me. I don't remember if she told us her name or not. She covered Hiroko with her body and then we put Hiroko in between us and lay flat at the bottom of the air raid ditch. Hiroko was burned very severely. She kept crying, "My hands hurt, my hands hurt. Please give me water, Kazu-chan." I scratched out a hollow in the earth and put her hands into it. She said her hands felt cool and comfortable. We spent the night there, waiting for the fire to pass.

First the sounds stopped. At the earliest signs of dawn the girl said, "Let's go back where it's already burned. Everyone will probably be safe and will return there. You'll be able to go home then." The thought of being separated from this girl made me anxious. I asked her where she was going, and she told me the Eighth District. Our house was in the opposite direction. We left the shelter together. By the Shinkai Bridge many people had perished. Those who couldn't cross the street and make it to the shelter had jumped into the river. Dead bodies covered the water. Some people had tried to escaped by running under the bridge but they, too, had been roasted.

When I separated from the schoolgirl and recrossed the bridge I'd crossed only the night before, I saw charcoal-black people. It was truly horrendous. There were some whose clothes were still smouldering but whose bodies weren't moving. Not just one or two. At the foot of the bridge was a small police station. Only the concrete was left. But I thought a policeman might be there anyway. I let Hiroko lean back against a concrete wall. Then the thought came that Father and my brothers would pass this way, that we'd meet here and go back to the pharmacy together. I was probably afraid of walking the street alone. I waited at the foot of the bridge, but nobody came. Hiroko asked for water. People said she should be taken to a relief station for treatment. Finally, we arrived at the burned-out area that once was our house. I was able to locate it only because in front we had a large concrete cistern full of water. In it was a dead man, half his body in the cistern. He wasn't burnt at all. Many of the glass bottles in my father's drug store had melted down. The store itself was a pile of rubble.

Plaintiff Evidence Exhibit A cont.

Everything was so quiet. Hiroko and I sat on the concrete steps at the entrance to the store and waited. A young woman from the neighborhood association came by and said, "Your eldest brother's just over there." Koichi was sitting on a burnt-out truck in the garage of a delivery firm nearby. He couldn't see because he had run through the smoke. He was trembling. "How could you have come back safe?" he asked. He'd assumed we were all dead. Tears of joy streamed down his face. As he left the shelter, he'd been bowled over and tumbled far down the street. He regained consciousness flat on his stomach, resting against a slight curb. That little bit of curb saved him.

A little while later Father appeared with Yoshiaki. The people who came back were like ghosts, uttering no words. They simply staggered back, thinking somebody might be where their houses had been. Father said, "Minoru wouldn't let himself die. He's, too strong." He gave us first aid, using Mercurochrome and bandages. He told Hiroko, "You've been terribly burned, but Daddy's here. Don't worry." The five of us then waited for Mother. Quite a long time passed. Actually, Mother was already there, but no one recognized her. She wasn't shouldering my little brother. Her clothes were all charcoal. Her hair, too. She was covered from head to toe by a military blanket and she was barefoot. She was squatting down. Yoshiaki noticed her first, "Mom?" Father said, "What's happened to Takahisa?" My mother was silent. Her back and elbows were severely burned. Those who had run through that fire knew its savagery. We couldn't really ask what happened to our little brother. It was all one could do to save oneself. Mother's eyes were injured because of the smoke.

It's really a cruel thing to say, but I could see she had been holding Takahisa on her back. Where Takahisa's legs had touched her body there were horrible burns. Her elbows, where she was probably holding him to keep him from falling off, were burned so that you could see the raw flesh. She could barely walk. "You made it back, you made it back. That's wonderful!" was all my father could say. We put Mother in the garage and gave her some water and we all huddled together. Neighbors waited here and there for family members who hadn't returned. In my family, nobody else came back.

Near evening, our relatives from the Komatsugawa area, which hadn't burned, came to meet us with a pullcart. They said they'd seen red plumes of flames like lotus flowers in the distance. Father delayed leaving as long as he could. "Just a little bit longer, a little bit longer," he kept saying. Finally, he left a piece of paper from his Vigilance Corps notebook with the address we were evacuating to.

We made it to a farmer's house in Komatsugawa. Mother groaned but didn't say anything about Takahisa. She didn't even cry, just lay flat on her stomach. Father went back to the burnt-out area looking for Minoru, Teruko, and Grandmother. It took two or three times before he gave up. At first, we thought about finding the remains, but we never located them. We contacted Minoru's school in vain.

Hiroko's condition worsened. She asked for water all the time, but couldn't swallow any. Father said it must be tetanus. She had to be hospitalized, but most of the hospitals had been burned down. We were told there was a small one in Komatsugawa, so Father took her there on the back of the cart. As we thought, she had lockjaw. Father was told a serum shot might save her, but they had no serum there.

Hiroko's face was burned very severely and her bandages soon became soaked with blood and pus. There were so few bandages available that we washed hers at home and then took them back to the hospital. That day, it was my day to wind bandages for her. She hadn't been there many days. I walked into the hospital room with the bandages. There was just one bed in a square concrete room. I said, "Hiro-chan, why are you sleeping with your eyes open?" I tried to close them, but they couldn't close. "Hiroko, Hiroko," I called. She didn't say a thing. Usually it was "I want water!" or "It hurts." Father, who had been staying with her, came in and said "Hiroko just died, even though I brought serum for her." I never heard of the tetanus virus before. Now, I learned for the first time that it lived in the soil. I was the one who had put her hands into that hole I dug in the moist ground of the shelter. The tetanus virus must have entered her then through her burns. When I heard this I couldn't sit still.

Plaintiff Evidence Exhibit A cont.

Many of our relatives were at Komatsugawa, and some said, "Kazu-chan, you were there with her, and you don't even have one burn, but Hiro-chan died." I'd done my best to scratch the soil to make a hole to cool her hands. I'd done it with all my childish heart. They'd praised me then. "You did so well," they said. Now, nine days later, my sister Hiroko was dead and they were whispering quietly about the reason. Father assured me it wasn't my fault. In disasters, tetanus and typhoid occur. But he also said poor Hiroko's life had been needlessly lost.

Although Mother never expressed it in words, I think she had the most difficult time. She had let the child on her back die. We don't know if she left him somewhere, or whether he just burnt up and fell. Once people who were trying to collect records on the Great Air Raid pleaded with us to ask her, but we couldn't. She's now eighty-eight years old. While she was still able to get around I used to take her to pray at their graves. She'd pour water on them and say, "Hiroko-chan, you must have been hot. Teruko-chan, you must have been hot."

Plaintiff Evidence Exhibit B

Photograph, Koyo Ishikawa, *Photograph of aftermath of the firebombing of Tokyo, c. March 10, 1945*

Wikimedia Commons



Plaintiff Evidence Exhibit B cont.

Photograph, Koyo Ishikawa, *Photograph of the body of a woman carrying a child on her back, c. March 10, 1945*

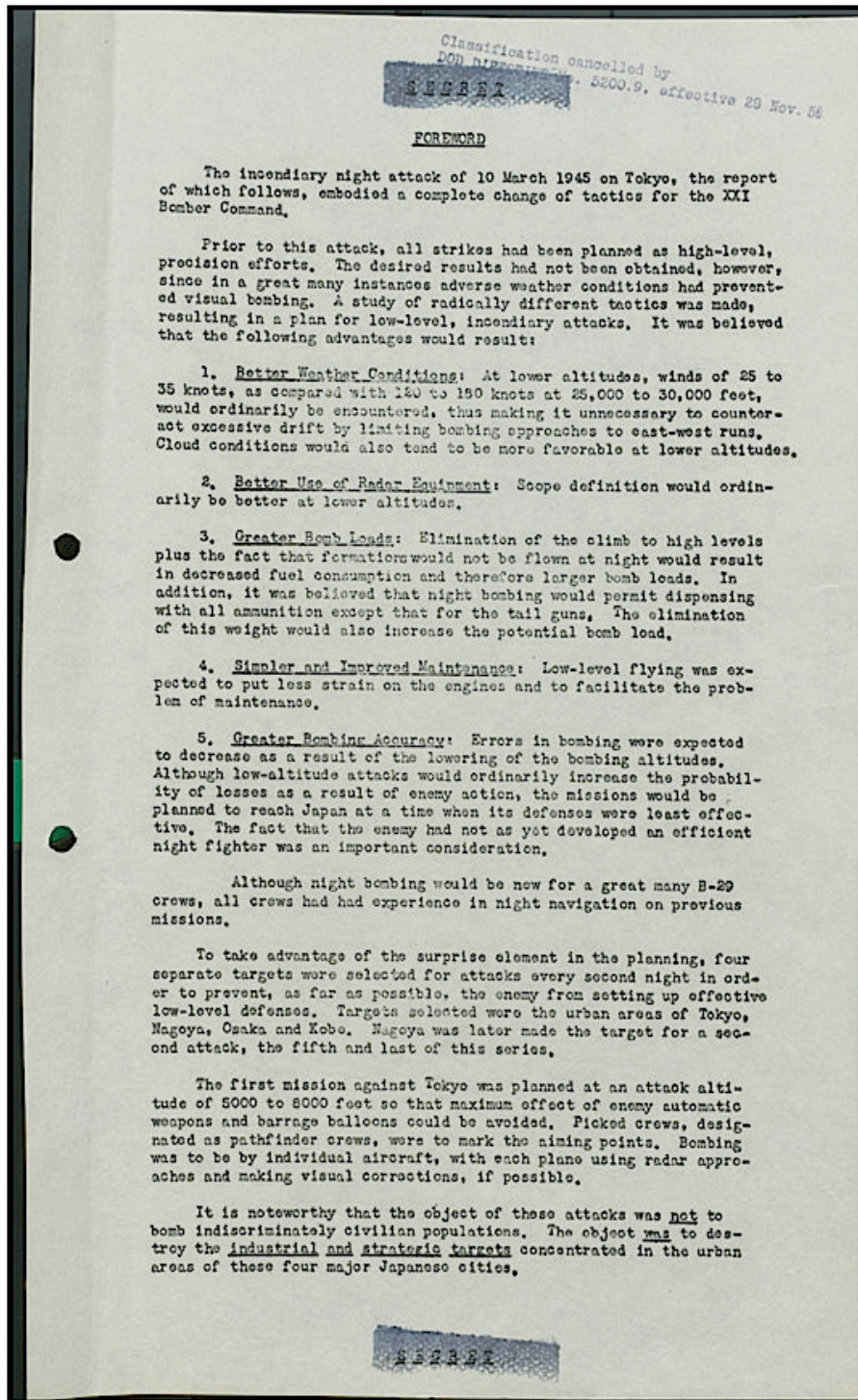
Wikimedia Commons



Defense Evidence Exhibit A

General Curtis LeMay, Tactical Mission Report for Mission #40, March 10, 1945 (excerpt), p.1

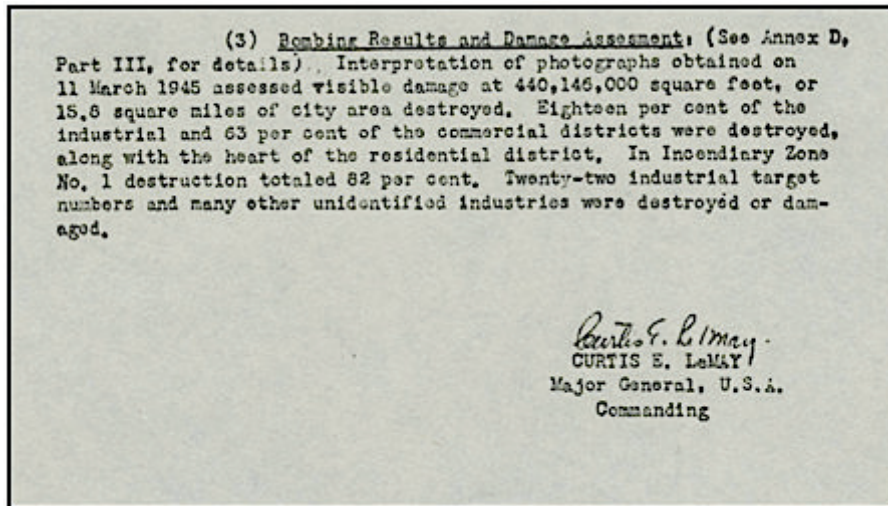
National Archives and Records Administration (Record Group 18, Box 5446)



Defense Evidence Exhibit A cont.

General Curtis LeMay, Tactical Mission Report for Mission #40, March 10, 1945 (excerpt), p.2

National Archives and Records Administration (Record Group 18, Box 5446)



Defense Evidence Exhibit A cont.

General Curtis LeMay, Tactical Mission Report for Mission #40, March 10, 1945 (excerpt), p.3

National Archives and Records Administration (Record Group 18, Box 5446)

<u>TARGET 334</u>	- Nisse Steel Mfg. Co.	- Destroyed.
<u>TARGET 335</u>	- Army Provisions Depot	- 60% destroyed, 1 main building and 4 warehouses still standing.
<u>TARGET 368</u>	- Shiodome Freight Yards	- Buildings 60% destroyed.
<u>TARGET 366</u>	- Steam Engineering and Rolling Stock Mfg. Co.	19 minor buildings destroyed; 5 -main buildings still standing.
<u>TARGET 826</u>	- Fujikura Electric Cable Works.	70% destroyed; administration building, reported cable factory and 2 miscellaneous buildings still standing.
<u>TARGET 904</u>	- Sakurada Engineering Works	30 small buildings destroyed; 3 main buildings still standing.
<u>TARGET 907</u>	- Tokyo Gas Co., Sunamachi Works	Destroyed; 2 gasometers still standing.
<u>TARGET 910</u>	- Rising Sun Petroleum Terminal	Destroyed.
<u>TARGET 1397</u>	- Japan Refining Works	Moderate damage - about 15% destroyed
<u>TARGET 911</u>	- Ogura Oil Co.	Destroyed.
<u>TARGET 912</u>	- Nisshin Spinning Mill.	Destroyed.
<u>TARGET 913</u>	- Hattori Company (Precision Instruments)	Destroyed.
<u>TARGET 914</u>	- Oriental Weaving Co.	Destroyed.
<u>TARGET 915</u>	- Oriental Weaving Co.	Destroyed.
<u>TARGET 1342</u>	- Japan Machine Industry	Destroyed
<u>TARGET 1350</u>	-Tokyo Kasai Co.	All small buildings destroyed; 4 large buildings still standing.
<u>TARGET 1370</u>	-Sumida River RR Yard, Joban Line	3 warehouses destroyed 3 warehouses damaged.
<u>TARGET 1430</u>	-Nippon Electric Wire & Cable Co.	Reported location is in a destroyed area.
<u>TARGET 1448</u>	-Tsukiji Market & Wholesale Warehouse	13 small buildings destroyed.
<u>TARGET 1449</u>	-Kanda Market	Destroyed.
<u>TARGET 1450</u>	-Koto Market	Destroyed.

Defense Evidence Exhibit B

Oral History of Jerome Yellin, May 3, 2014 (excerpt)

Veterans History Project, Library of Congress

And in December of 1944, we flew our airplanes, our P-51s, to Ford Island in the middle of Pearl Harbor. Our planes were put on board, landed, lifted onto the deck of a jeep aircraft carrier called the Sitkoh Bay, and we set out to sea to go to Guam. And about three days out we were called in to a briefing room and we were told that the island of Iwo Jima was going to be invaded by the Marines and when they took the first airstrip that we would fly from Guam or Saipan to Iwo Jima and work with the Marines and then escort B-29s over Japan. So when we got to Guam, we offloaded our airplanes, we flew to Saipan.

The Marines invaded. 67,000 Marines invaded Iwo Jima on February 19th, 1945. They secured the first airstrip, and the first group went down on March 6th, and then on March 7th, 1945, I landed a P-51 on Iwo Jima. And the sights and the sounds and the smells of that day are with me to this day. There are eight - Iwo Jima's eight square miles of land. There were 67,000 Marines fighting against 23,000 Japanese. 21,000 Japanese were killed. Nearly 7,000 Americans were killed. That's 28,000 people killed on eight square miles of land. Body parts were everywhere and the smell of death permeated the air. You couldn't get away from them. And we lived in a foxhole and we underwent mortar attacks.

And for one month we strafed for the Marines, and then on April 7th, I was the eighth-ranked pilot in the squadron, and the top 16 guys took off on April 7th to Japan to escort B-29s as they dropped bombs on Tokyo. And I remember that day very well. We were flying - my flight of four was flying high cover and I watched the B-29s drop their bombs on Tokyo, and little fires, little fires, little fires became big fires, and square miles of Tokyo were burning. And the smoke and the smell of the smoke came up to 20,000, 25,000 feet. And it never bothered me. I never thought that there were human beings on the ground. They were the Japanese, and they were my enemy.

I flew 19 missions over Japan escorting B-29s. I flew with 16 guys who didn't come back. On the 8th of July, Al Sherren called in that he was hit and he couldn't see and he was killed. My tentmate was killed on the 8th of July. I had three wingmen that were killed, one of them shot down off my wing. That was on August 14th, 1945, the day the war was over. And then two other guys. One guy took my place, Danny Mathis, because I had a toothache and they grounded me, and on June 1st he went in my airplane in my place, and an hour after they took off they went into a storm and the B-29 pilot that they were on the wing of led them into a big front and 27 fighter planes went down in a midair collision, including Danny Mathis, who was in my airplane.

And then Dick Schroepel was shot down following me on a strafing mission over Chichi Jima and he was killed. And then on the 13th of August, 1945, we saw a bulletin board that we were going to have to go on another mission. We'd already dropped two bombs, one on Nagasaki, one on Hiroshima, and we thought the war was over. And we asked the squadron commander why we were going, and he said, "We have to keep them honest."

And a young guy, Phil Schlamberg from Brooklyn, leaned over to me, he was 19 years old, a second lieutenant, and he said, "If I go, Captain, I'm not coming back." And I says, "What are you talking about?" He says, "The feeling I have." So I went to the CO and told him what Phil Schlamberg told me, and he said if Schlamberg agrees to go to the CO to see Doc Lewis, the flight surgeon, he's the only one that can get him off. So I told that to Phil Schlamberg. He said, "No. I'm going to go." On the morning of the 14th I briefed him. I said, "Just stay on my wing. We've got Dumbos in the air." There were B-17s and PBYS and then destroyers and then submarines all the way on the 700-mile track that we were going to follow. In case the war was over they were going to broadcast the code word Ohio.

We got to where we had to drop our external tanks. Nobody had heard the code word of Ohio. We dropped our tanks and we were in and we were strafing airfields. We needed 90 gallons of fuel to get back to Japan so the first one in the squadron that called 90 gallons, the whole squadron would fly out to the B-29 that was our escort ship. Somebody called 90 gallons. I looked over, Schlamberg was on my wing. I gave him a thumb's up, he gave me a thumb's up. I led my flight into some clouds. When I came out of the clouds, he was gone. There was no visual of him disappearing, there was no radio contact.

When we got back to Iwo Jima from Japan, we found out that the war had been over for three hours while we were strafing. He literally was the last man killed in World War II on an active mission, and I flew in that last mission of World War II.

Trial Procedure Teacher Guide

Teacher Tip: The teacher will act at the Court Bailiff in this simulation, maintaining order and timing. If desired, this role can be given to a student. Students may need hints or encouragement to encourage the objection process. When you see the need for an objection, consider offering a hint to the appropriate lawyers and encourage them to engage in this process. This will improve their reasoning skills and encourage them to think critically about the questions being asked.

Open the Hearing:

Court Bailiff: "All rise. The International Court of Justice will now hear the case of *Japan v. United States* regarding the firebombing of Tokyo Fire Raids. The honorable judges (state last name of each judge) presiding."

- Allow judges to sit and then address the courtroom.

Court Bailiff: "You may be seated."

- Allow everyone to be seated and then address the courtroom.

Court Bailiff: "Court is now in session."

Opening Statements (three minutes maximum for each side):

Court Bailiff: "The Plaintiff's lawyers will now make an opening statement. Counselor(s), you have a maximum of three minutes to present your argument."

- Allow the lawyers a maximum of three minutes to make their case.

Court Bailiff: "The Defense lawyers will now make an opening statement. Counselor(s), you have a maximum of three minutes to present your argument."

- Allow the lawyers a maximum of three minutes to make their case.

Swearing In of the Witness (two minutes):

Court Bailiff: "The defense lawyers have indicated that they would like to call General Curtis LeMay to the stand."

- Allow General LeMay to come to the witness stand at the front of the room.

Court Bailiff: "Hold up your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth under penalty of perjury? [Yes]. Defense attorneys, you have ten minutes to question your witness."

Direct Examination of the Witness by the Defense (ten minutes maximum):

Lawyers for the United States will stand to ask their questions and introduce their evidence at appropriate points in the questioning. Encourage plaintiff lawyers to make objections (provide assistance as needed). Once the defense is finished with their questions, the defense will rest.

Cross Examination (ten minutes maximum):

Court Bailiff: "The plaintiff's lawyers now have a maximum of ten minutes to cross examine the witness."

Lawyers for Japan will stand to ask their questions and introduce their evidence at appropriate points in the questioning. Encourage defense lawyers to make objections (provide assistance as needed). Once the plaintiff is finished with their questions, the plaintiff will rest.

Trial Procedure Teacher Guide cont.

Closing Arguments (ten minutes maximum):

Court Bailiff: "The witness has been excused. Now each side will have a maximum of five minutes to make a closing argument. The counselors representing Japan will begin."

- Allow the lawyers a maximum of five minutes to make their case.

Court Bailiff: "Now the court will hear from the counselors from the United States."

- Allow the lawyers a maximum of five minutes to make their case.

Judges Deliberation and Verdict (seven minutes):

Court Bailiff: "All rise. Court will now recess for judge deliberation."

- Allow the judges to leave the room.

Court Bailiff: "You may be seated."

The judges need to go out into the hall to confer and make sure that they have carefully considered their evaluation forms before casting a vote for either the plaintiff or the defense. There can be some deliberation within the time constraint. Since there is an odd number of judges, there will be a majority for one side. The judges will notify the Bailiff when they are ready to return and deliver the verdict.

Court Bailiff: "All rise. Court is now back in session."

- The judges will deliver the verdict. If time permits, ask each judge to explain his or her reasoning.

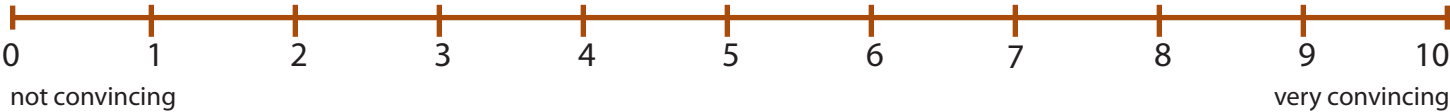
Court Bailiff: "Court is now adjourned."

Evidence Evaluation Form

Judges will complete this form as the trial progresses in order to evaluate the arguments being presented. This will help you render your final verdict.

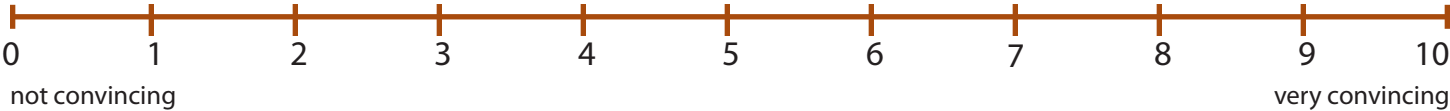
Opening Statement by the Plaintiff:

Circle from 0 being not convincing at all to 10 being very convincing



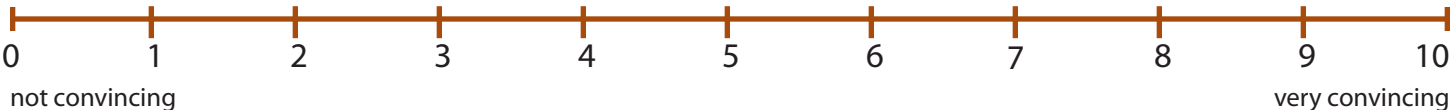
Comments:

Opening Statement by the Defense:



Comments:

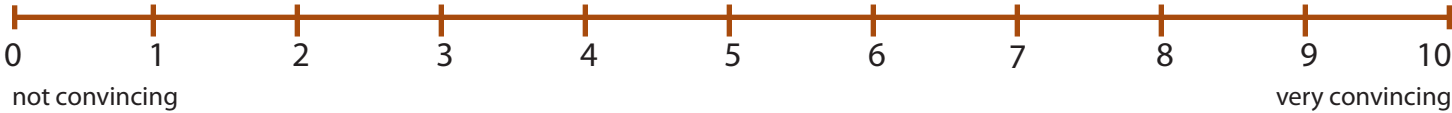
Direct-Examination of the Witness by the Defense:



Comments:

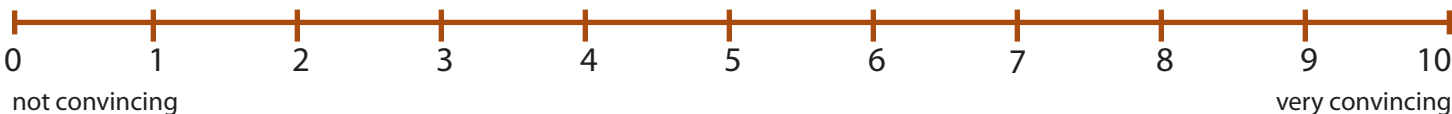
Evidence Evaluation Form cont.

Cross-Examination of the Witness by the Plaintiff:



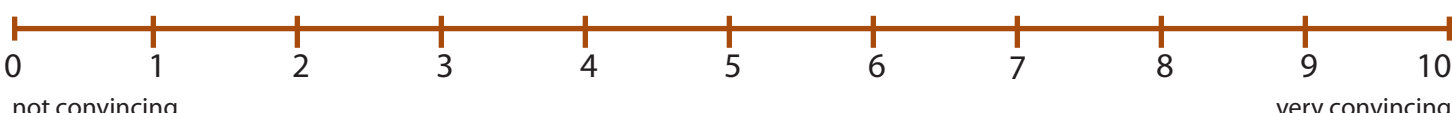
Comments:

Closing Statement by the Plaintiff:



Comments:

Closing Statement by the Defense:



Comments:

Trial Assessment Rubric

	Advanced	Proficient	Basic	Emerging
Preparation	<p>Student prepared for the trial at an exceptional level, completed all tasks thoroughly.</p> <p>Student incorporated outside research to increase the depth of knowledge.</p>	<p>Student prepared for the trial, completed all tasks thoroughly.</p>	<p>Student prepared for the trial, completed some tasks at a minimal level.</p>	<p>Student failed to prepare for the trial.</p>
Performance	<p>Student was engaged in the trial at a high level.</p> <p>Student provided sophisticated evidence to substantiate arguments.</p> <p>All tasks were completed at a superior level.</p>	<p>Student was engaged in the trial.</p> <p>Student provided evidence to substantiate arguments.</p> <p>All tasks were completed.</p>	<p>Student was somewhat engaged in the trial.</p> <p>Student made a basic attempt to provide evidence to substantiate arguments.</p> <p>Most tasks were completed.</p>	<p>Student was barely engaged in the trial.</p> <p>Student made little or no attempt to provide evidence to substantiate arguments.</p> <p>Few tasks were completed.</p>