

THE MAVERICK JUDGE

This activity can be used with students learning about the right to a fair trial and the rule of law. Through this activity students will apply their understanding of key principles of a fair trial by identifying examples of procedural unfairness and explaining what is required for a fair trial. This activity has been designed to follow the 'What Makes A Good Judge' activity, and has been adapted from *The Rule of Law for Citizenship: Understanding Justice* resource pack published by the Bingham Centre For The Rule of Law.

Teaching notes

In pairs or small groups, students should read through the scenario and the statements of the maverick judge.

To make the activity clearer for students, model working through one statement as a class. Prompt students to identify any issues of unfairness in the statement and explain why they feel the defendant might not be treated fairly by the judge. Ask students for suggestions for how this issue of unfairness might be resolved, encouraging students to connect their answers back to the principles of a fair trial.

This activity can be differentiated for lower ability students. For these students, consider reducing the number of statements they work on. You may also like to give students the first sentence of each of the answers in the guide below and ask them to match them to the statements.

Answer guide:

- **The defendant must be given enough time to prepare to defend the case.** Without all the information and enough time, the defendant is not given the opportunity to tell his side of the story. The short time frame the judge is proposing is insufficient time to prepare to defend the serious charge of murder and is fundamentally unfair. (Statement 3 and 5)
- **The defendant must be told all of the details of the prosecution's case against him.** If he does not know what the prosecution plans to say, then he can't properly prepare to defend the case. For example, the defendant might not plan to ask particular questions to a witness that are crucial to disproving an argument raised by the prosecution towards the end of the trial because the defendant didn't know that it would be relevant. The idea of 'ambushing' a defendant in court is unfair and not allowed in the Australian criminal justice system. (Statement 1 and 5).

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- **The defendant must have an interpreter so that he can fully understand what is being said in court.** The defendant will be significantly disadvantaged if he cannot comprehend the arguments being made against him, or what questions the judge is asking. Again, this would lead to an unfair trial because the defendant cannot fully defend himself. (Statement 1)
- **The judge is wrong, and the defendant doesn't have to prove he is innocent.** The principle is that the defendant is "innocent until proven guilty." The prosecution must prove that the defendant is guilty beyond a reasonable doubt. (Statement 6)
- **The judge must be impartial and should not be influenced by other people's ideas or information from outside the trial.** The judge should not speak to anyone about the trial and he should make his decision based only on what is said in the courtroom. He should not decide whether the defendant is guilty or not guilty based on what he thinks the public wants. It would not be a fair trial if the judge was basing his decision on information that the defendant didn't know about and doesn't have the opportunity to challenge. (Statement 4, 6 and 7)
- **The defendant cannot be forced to give evidence.** The defendant has a "right to silence", meaning they can refuse to answer questions from police or from lawyers or judges in the court. The only questions a person must answer is their full name, address, place of birth and date of birth. The judge is not allowed to conclude that the defendant is guilty based on their decision not to give evidence. (Statement 4)
- **The defendant cannot be forced to admit to the crime.** If the defendant has been threatened, then he may confess, not because he committed the crime, but in order to protect his family. Any confession made "under duress" (extreme pressure or fear) cannot be used as evidence in court to prove the defendant is guilty. (Statement 4)
- **The trial should be held in open court.** The public and media must be able to come and watch and see if the trial is fair. If the court is closed, then unfair things could be going on (as with his case) and nobody would ever know. The judge must give clear reasons for their decision so that everyone can see that they made their decision based on the facts of the case and the law, and not for arbitrary or irrelevant reasons. If the decision is illogical, then the defendant is able to appeal against it. (Statement 2)

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Imagine that you are an associate (a recent law graduate) working for a maverick judge. This judge is independent-minded and does not have all the characteristics of a fair and just judge. A trial is about to take place for a man who has been charged with the murder of policeman.

The person charged has pleaded not guilty and says he has been wrongly arrested and charged. There has been a rise in gang violence over the last year and the media has been publishing lots of stories about the threat gangs pose to police and the community. There has been a lot of negative public opinion about him and most people want him to be found guilty and locked away.



The defendant has elected (chosen) a judge-alone trial, rather than a trial by jury. This means that the maverick judge will be required to make decisions about the facts of the case and how the law applies to the case. It will be the maverick judge who will decide whether the man is guilty or not guilty.

You have some doubts about how the maverick judge is planning to conduct the trial. Below are some of the things the judge has said about the trial.

What advice would you give the judge in order to make sure the trial is fair?

This is what the judge has told you in his own words:

1 - "I don't want him to know the facts the prosecution plan to use against him because it will be much easier to see if he's lying if he isn't prepared for what the prosecution say about him in court. It's quite convenient that he doesn't speak English very well because he won't be able to question the case proving he is guilty too much."

2 - "I think it's best to close the court and not allow anyone to sit in the public gallery. There has been lots of media coverage already and I don't think it's a good idea to let journalists or members of the public into the court. I won't give too much reasoning for my decision. All the media and public will do is criticise me and ask difficult questions. That just creates more trouble than it is worth."

3 - "The sooner this trial finishes and the murderer is found guilty, the better. I can rest easy in the knowledge he is behind bars and a message has been sent to the other gang members that we are tough on crime. Everyone will feel safer in their homes."

4 - "I'm sure we'll get a confession out of him by the end of the trial. He has a wife and two young children and I'm sure he won't want anything to happen to them. We can let him know that if he wants them to be safe then he should go into the witness box and tell me what happened."

5 - "I just want to get this trial over and done with as quickly as possible. Maybe we should get started next week. We don't need to tell the defendant until the day before. That way he won't have much time to invent stories to tell the judge."

6 - "The police are saying that this man has been involved with the gangs and has a history of theft and drug use. I trust the police and he's obviously a criminal. He's going to have to prove that he didn't do it."

7 - "I might call my friend Bernard – he's a police officer who went to the crime scene and spoke to the victim's family. I'll ask him what he thinks about the case. "

Advice you would give the maverick judge:

