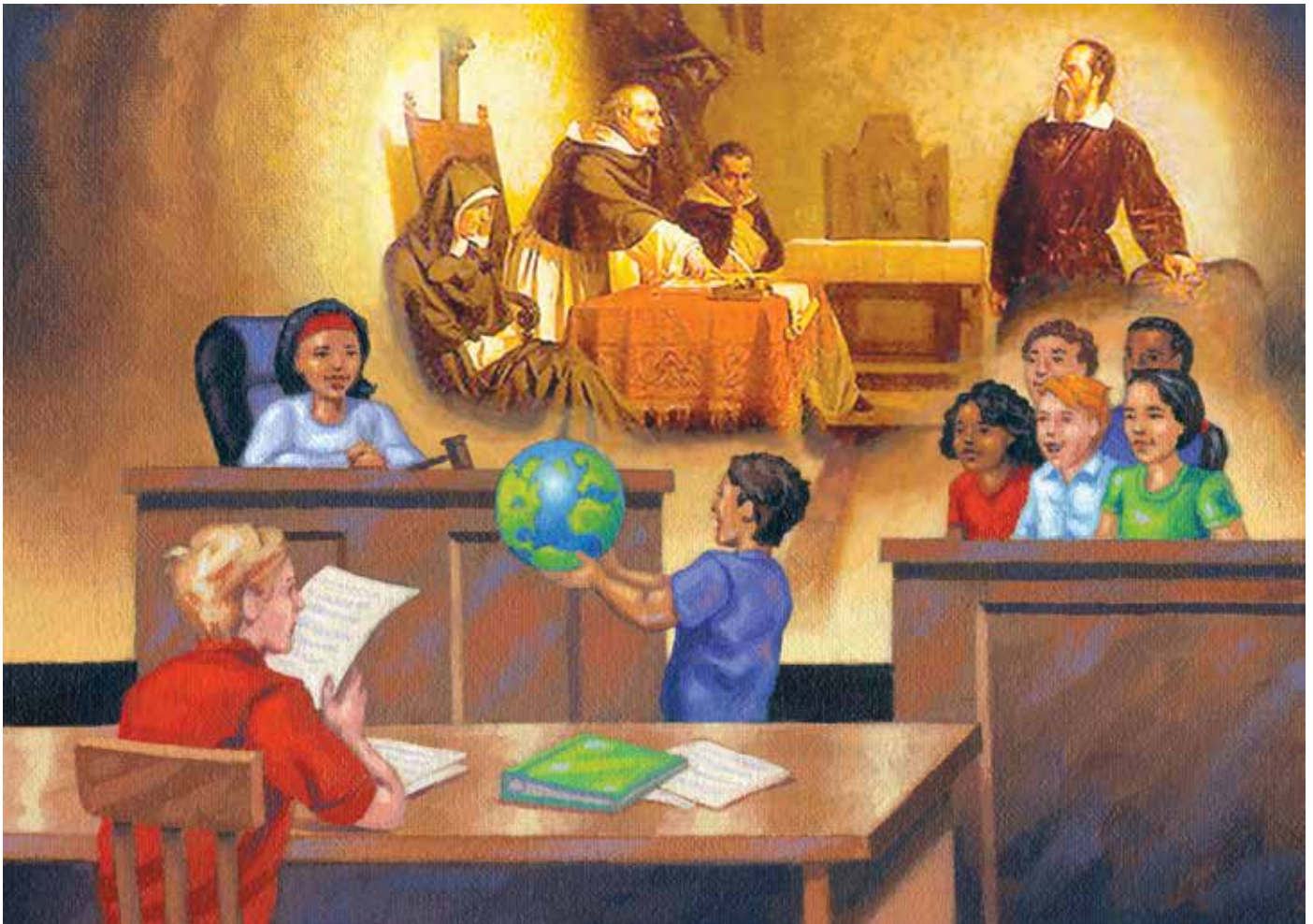


A Day in Court

How Mock Trials Bring Learning to Life



BY DAVID SHERRIN

We are at a courthouse in Brooklyn for a mock Rwandan genocide trial of Athanase Seromba, a Catholic priest who allegedly participated in Hutu massacres of the Tutsi. A student playing a defense attorney strides to the podium to question the witness for the prosecution. They are both confident and prepared.

"Isn't it true," she begins, "that you said you never saw Seromba at his house while the meeting was taking place?" The witness pauses. "Incorrect, he was there." She shuffles through papers, looking for the evidence. "That's not what you said in your affida-

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vit," she retorts. The silence of the crowd transforms into oohs and claps, as if it were a sporting event. "You never saw Seromba with a gun, right?" she continues. "You never saw Seromba killing anyone?" The witness has no place to go. "No, I did not," he replies. "No further questions," the lawyer finishes, as she turns away.

Experiences like this one in the courtroom are some of the moments that I most look forward to during the school year, and these are the times I know I've truly witnessed my students' learning. Role-plays infuse much of my teaching and are at the heart of what I value and do in the classroom.

My passion for mock trials runs deep. In my book *Judging for Themselves: Using Mock Trials to Bring Social Studies and English to Life*, from which this article is drawn, I discuss their effectiveness as tools for learning and assessments. As a mock trial day approaches, I teach in top gear, filled with adrenaline and excitement, more than at any other point in the year. The reasons are multiple: students are performing and their knowledge is public; the outcome depends entirely on their work, but it is based on my effective preparation and scaffolding; students are taking on

roles of historical or literary characters; outside partners, friends, and family are involved; and the students are engaging in some of the most challenging and multifaceted intellectual work that we can provide.

I first began using mock trials a decade ago as a first-year teacher, when I created an early ancestor of my current Galileo and Martin Luther trials. After looking at primary sources together, I divided students into roles of various historical figures ranging from Pope Urban to Copernicus, and I watched gleefully as prosecuting lawyers pinned down witnesses under withering cross-examination.

Over the years, my mock trial repertoire and strategies developed far beyond that first attempt. I began emphasizing historical authenticity and the use of actual trial testimonies in my genocide tribunal trials for the Holocaust and Rwanda. As my teaching started to include a humanities and English component, I created a mock trial for the famous case in *To Kill a Mockingbird* and also for imaginary literary trials, such as one based on the actions of characters in *The Pearl*. My mock trials have always been criminal trials, though my colleagues have shown me the value of civil ones as well.

Why We Should Do Mock Trials

Here is why I do mock trials: they are challenging, authentic projects in which students create and then do something “real.” The projects serve as both learning and assessment tools since students learn from doing the work and teachers have a tangible product for evaluating understanding and growth. Mock trials are engaging for students, and the role-playing aspect gets them out of their chairs, collaborating, and entering into the mindsets and perspectives of their characters.

Equally important, the preparation for the trials becomes what one of my colleagues called “one of the most rigorous projects I have ever seen students do.” Why is that? First, the type of work is hard enough that law students take at least three years to master the art of legal questioning. More specifically, mock trials require students to read texts even more closely than normal in order to break them down, manipulate them, look for what *is and isn't* there, and then try to understand and use them to serve the goals of a particular character.

A mock trial is not just about getting students to answer questions. It is about having them figure out the answers to questions that you haven't asked and then getting them to write the questions for someone else to give those answers. It is about seeing evidence that is there but also about widening tiny gaps of what isn't there into gaping holes that, perhaps, make a case burst open.

Mock trials are like role-plays with documents. Students recognize the challenging nature of the work. Students need to see a text through the lens of their claims and perspectives. Bias and credibility are crucial concepts not only in the historian's work but perhaps even more so in the eyes of a lawyer. In short, mock trials incorporate all of what great social studies teachers look for—claim, counterclaim, selection of evidence, use of evidence, perspective, and sourcing/bias—and put it into a tantalizing package.

A strong mock trial cultivates student engagement that leads to high-quality work. One of my quietest students wrote: “The mock trial was like an experience of it actually happening. I think

going into a courtroom* and role-playing it is really fun because we don't just read and write—we act. My favorite part out of the whole class was the courtroom. It helps us learn in a living experience way.”

Before the day in court, mock trials are about intellectual preparation. Students are engaged in the heavy-duty work of lawyers—reading carefully, crafting questions, thinking about holes in arguments, experimenting, and piecing together a case. When trial day comes around, they've finished the intellectual lifting and now need to put it in practice, in public, for all to see. It is a performance of their learning in the truest sense.

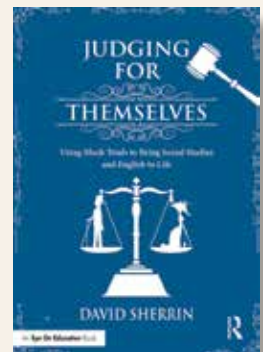
The rigorous nature of this strategy does not mean it is only for the elite. I have incorporated mock trials with diverse groups of students. I began them at the Facing History School, a public high

Role-plays infuse much of my teaching and are at the heart of what I value and do in the classroom.

school in New York City that serves a high-needs population of students. I taught mainly ninth grade and developed mock trials to support students who were behind grade level. My current school, Harvest Collegiate High School, serves a wider spectrum of the New York City population, and the inherent differentiation within mock trial roles allows me to challenge the highest performers and to meet struggling students at their level.

*The classroom or an auditorium is always a venue option for a trial. But I try to plan ahead and secure a courtroom. It is necessary, of course, to obtain permission from officials at the courts beforehand, but I have found local courthouses eager to open their doors for student mock trials.

Judging for Themselves: Using Mock Trials to Bring Social Studies and English to Life, by David Sherrin, is published by Routledge, which is offering a 20 percent discount off the purchase of the book through February 2017. To order, visit www.routledge.com and use discount code JFT20 (cannot be combined with any other offer).



Creating a Mock Trial

The term “mock trial” can take on various meanings. Most often, in schools, we use it to refer to a mock trial club in which students learn the intricacies of legal proceedings, including areas like the introduction of evidence and objections, in order to take on a fictitious criminal or civil case and compete against other schools.

My strategy, which is meant to be used in the classroom, attempts to use the core of the legal format (witnesses, evidence, opening and closing statements, and direct and cross-examination questions) in order to build a realistic experience for students that develops important academic skills. For the most part, I am not concerned with the minutiae of trial rules unless they contribute to a key skill and comprehension of content and themes in social studies and English.*

Preparing a successful mock trial can be daunting, so I’ve broken down the necessary steps: choosing and teaching a story, selecting a defendant, choosing the witnesses, creating the affidavits and exhibits, and assigning the students.



Choosing and Teaching a Story

Each of the two to three trials I hold during the school year reflects a central moment in a much larger chapter in human history, whether it’s the Protestant Reformation, the Scientific Revolution, or the Holocaust. Given the demands of preparing and executing a mock trial, it makes more sense if the project fits into the larger content goals of your course. For example, only do a trial of Julius and Ethel Rosenberg if you’re spending time looking at American reactions to the Cold War.

For the trial to have meaning, it needs to come after learning about the larger event and the larger context of history. Before our Nuremberg trial, my students spend weeks learning about the causes of the Holocaust, Nazi policies, and the concentration camps. We study Martin Luther and Galileo before our cases on them, not only because it provides meaning for them, but also

*Many people ask me the extent to which I delve into legal technicalities such as objections and introducing exhibits during these trials. I focus only on the core legal strategies for opening statements, closing statements, and questioning, which lead to rigorous thinking about claims, counterclaims, evidence, and sources.

because they cannot try these cases in “court” without that base comprehension. Since we are using primary sources set in those times and places, there is too much complex vocabulary—e.g., “indulgences” or the “Copernican system”—that can trip students up unless they already understand it.

One common question about mock trials is whether to do a trial that actually happened or an imaginary one. I fall firmly in the former camp, although it is a bit more from a gut reaction than anything else. My sense is that since there is so much “history” out there for students to learn that *did* happen, it doesn’t make much sense to spend time and effort engaging with something that *didn’t*. By focusing on a trial that did happen, we can then also have discussions about its real implications and consequences, and the perceptions around it. My goal is to make any role-play, even a trial, as authentic as possible, and that can happen only through using actual witnesses and sources.

Selecting a Defendant

To avoid having a trial end up too one-sided, I make sure to have a defendant who brings out moral complexities, who could be reasonably found either guilty or not guilty, and whose case matter is accessible to students. For instance, I considered a few possibilities in planning a Nuremberg trial. First, I looked for a doctor we could put on trial, perhaps one who had done experiments on Jews and abused his authority as a physician, but I could not locate enough primary source material to put together a great trial with authentic evidence. And I knew, of course, that if I put someone like Adolf Eichmann, Rudolf Hoess, or Hermann Goering on the stand, the defense would have a nearly impossible task. (Interestingly, the same year, there was a major mock trial of Goering at the National Model United Nations conference, which I thought was a mistake given his obvious culpability.)

So I began to consider three different witnesses who were defendants in the principal Nuremberg trial: Walter Funk, Albert Speer, and Julius Streicher. Funk and Speer were industrialists and economists, which raised an interesting moral dilemma about responsibility. Were those who financed the war, the army, and the camps responsible for the genocide? Streicher, meanwhile, was a propagandist who used his newspaper, *Der Stürmer*, as a launching pad to incite hatred of Jews.

To choose between these three defendants, I dove into the testimony of their cases to get a sense of what type of evidence would be available for the students to read. Using Yale University’s Avalon Project website,[†] which has translations of the original court transcripts, I pored over the transcripts of the trials to begin to separate out the statements of possible witnesses. I gathered evidence for about 15 witnesses for the Streicher case and about 13 possible witnesses for the Funk case. When I began to look deeper into Speer’s case, I realized that the economic nature of his work was just not as comprehensible. I couldn’t seem to glue together coherent statements that would make sense to my students. So, I threw him out of the running.

At that point, I realized that I had a similar issue with Funk’s testimony. Yes, there was enough of it, but the content was so highly economic and technical that my students would have an

[†]For the Avalon Project, visit http://avalon.law.yale.edu/subject_menus/mt.asp.

extra layer of difficulty to wade through without a strong economic vocabulary. There are enough other tough things for them to do in this project, and it probably wouldn't be as interesting for them.

In the case of Streicher, on the other hand, the evidence was available and the theme, propaganda, was both accessible and highly interesting to my students. The testimonies were at a reachable level, and his case raised thought-provoking issues about culpability. By the time the concentration camps were underway, the Nazi Party had mostly exiled Streicher and he was living on a farm. He took part in no major decisions involving the Holocaust, except possibly on Kristallnacht, and he was not involved in the organization or running of the camps or the firing squads. For him, then, the main question is whether the words and images that appeared in *Der Stürmer* served as a direct cause of the genocide. What is the power of our words? He became the right defendant.

Choosing the Witnesses

Choosing the witnesses can make or break the success of a case. My first rule of "witness selection" is to attempt to be as authentic as possible. Who was actually involved in the trial? When I first began my trials of Galileo and Luther, I stretched too wide and far in selecting witnesses. I chose people like Johannes Kepler and Erasmus who were involved in the wider discussions about Galileo and Luther but who played no role in their actual trials. I liked using them because they could discuss pieces of key evidence, like a letter that Galileo wrote to Kepler. But the students didn't learn how these particular trials and inquisitions that lacked witnesses really worked.

In leaning toward greater authenticity over the years, I initially would whittle the witnesses down to people who were directly involved in those cases, like the pope or Cardinal Robert Bellarmine, although they were not actual witnesses at the trials. Only more recently, however, did I realize that even this narrow scope was not restricted enough. These were not American trials with outside witnesses; they were inquisition cases with only one witness: the defendant. The attempt to hold an inquisition trial using the American criminal justice format was hindering student understanding of the event and the idea of justice. I realized that the only witnesses to use were the only two actual witnesses: the defendants, Luther and Galileo. Everything needed to be about how they saw and responded to their own key statements and writings and those of authorities of the Church.

A literature trial like the one in *To Kill a Mockingbird* does the work for us. The obvious witnesses to use are the ones that the author created for the trial—Tom Robinson, Mayella Ewell, Bob Ewell (Mayella's father), and Sheriff Heck Tate.

A greater challenge is in putting together a full trial in the format of the American criminal justice system or an international genocide tribunal, whether we are talking about the trials of the killers of Emmett Till, the Rosenbergs, or Julius Streicher. Here, the first step is to understand who the witnesses actually were in the cases. In the Streicher case, for example, that meant first reading through court records and testimonies on the Avalon website. Some options were obvious: the people who were actually called to the stand, like Streicher

himself; his wife, Adele Streicher; Friedrich Strobel (a government official); and Fritz Herrwerth (his driver).

Needing more prosecution witnesses, I began to include people who spoke of Streicher in other texts, such as Viktor Lutze, chief of the Nazi Sturmabteilung. I made one of Streicher's illustrators into another witness. Each was there to comment on articles and drawings in *Der Stürmer*. Students had to try to understand the sources from these characters' perspectives and what they said about Streicher.

Now, however, I stick even closer to the actual process. At Nuremberg, the prosecution made its case not by calling its own witnesses but instead by submitting the astounding number of self-incriminating documents that the Nazis had created. In this project, the only witnesses are defense witnesses, the actual ones who were called to the witness stand, and the prosecution must make its case through cross-examination and use of exhibits.

Why not immerse our students in a learning activity that brings up wellsprings of emotion and excitement?

Creating the Affidavits and Exhibits

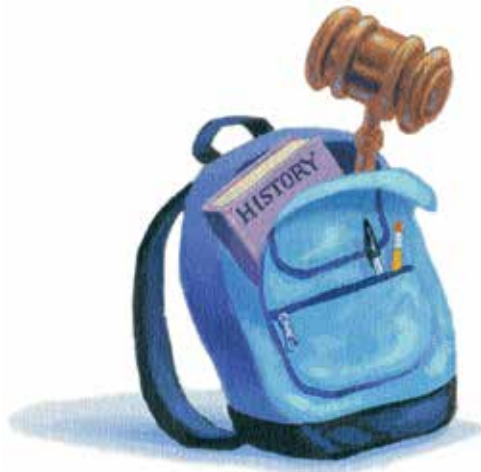
One reason I love these trials is that students spend so much time dissecting one or two sources. Normally, we read something and move on. With trials, the evidence sheets that I create for them, which include affidavits and exhibits, may appear too hard at first glance. They probably are. Students often don't understand their evidence sheets right away. This is the beauty of spending four days prepping for the trial, during which each student focuses on the same one to three pages of text. First, they struggle to understand it. Then, they strive to pull out ideas and evidence. Finally, they connect the dots, piece together a case, and write questions that support their positions.

My main rule for evidence sheets is to be authentic. If there is testimony from the trial, teachers can adapt it into an affidavit. If the trial refers to the defendant's writings or other texts, teachers can use them as exhibits. You may create general exhibits that all lawyers and witnesses have access to or ones that are specific to certain witnesses and included alongside their affidavits.

To clarify, affidavits refer to sworn testimony taken before a trial. In my mock trials, I use "affidavit" to refer to an evidence sheet that includes the actual words of a particular witness, which I normally excerpt and adapt from real court testimony. Exhibits

refer to additional documents or primary sources directly related to the case. For example, my evidence sheets for Adele Streicher include her adapted testimony as an affidavit (part of which is shown in Table 1 on page 37) and one of her husband's articles as an exhibit. The students playing the lawyers (whether prosecution or defense) questioning Adele may use any of these documents to compose their questions. The student playing her as a witness also has access to them to prepare.

I always "shop" first in the court record, whether I'm looking for the transcripts or a final judgment. In the Nuremberg case of Julius Streicher, I used the Avalon website, which provides the trial transcript. With it, I composed affidavits for all of the defense witnesses. As you can see from Adele's testimony, though, there are a few difficulties in using it. First, the text included the questions of the lawyer, Dr. Marx. I want students creating the questions, so I needed to get rid of them in the adapted version. When I did so, however, the text no longer made perfect sense because her statements were in the form of answers to questions that were no longer there. As a fix, I made minimal adaptations, in order to maintain the integrity of the original.



I also need to take into account that lawyers enter exhibits into evidence, which doesn't always come out in the transcript. At Nuremberg, the prosecution made its case against Streicher with copious examples of his speeches and articles from *Der Stürmer*. The students can't grasp the case or make cogent arguments without access to excerpts from the newspaper or his speeches. To provide them access, I used professor Randall Bytwerk's invaluable website* of Nazi propaganda. I excerpted the texts for length and matched up each one with an affidavit on a related topic. For example, one defense witness in his affidavit argues that Streicher never advocated violence against Jews. Hence, that witness's evidence sheet includes that statement, plus an exhibit with one of Streicher's speeches in which he proposes extermination. This allows the prosecuting lawyer, doing cross-examination, to attack the claim from the affidavit by comparing it with the exhibit.

The key move, for me, is to identify a main topic or theme for each witness and then to ensure that the witness's evidence sheet includes two texts: one that (mostly) supports the defense and

one that (mostly) supports the prosecution. Having contradictory texts side by side opens up a wealth of options for the lawyers on both sides to dig deeply in their questioning.

Every trial requires similar adaptations to provide what the students need in a manageable space.

Assigning the Students

One compelling aspect of mock trials is that they inherently differentiate for widely diverse skill levels. We can thoughtfully assign different roles and texts to challenge each student at just the right level.

I tend to have different lawyers for each witness, and I assign them based on the difficulty of each task or role. The hardest job, which I give my strongest students, is cross-examination, because they are not necessarily writing questions based on the evidence sheets. Instead, they must find holes, problems, biases, and contradictions.

The witnesses and the lawyers doing direct examination can work together on the questions. My "middle" learners become witnesses, and they can help create their own questions that they will answer on the stand. Being a witness requires the ability to think on one's feet and to process information quickly. My struggling students take on the role of lawyers doing direct examination, whether for the defense or the prosecution. Direct examination is easier, and they have the support of the witnesses.

This system for mock trials has increased collaboration, provided opportunities for all, and targeted the needs of each student. It is authentic differentiation.

The courtroom is often the setting for compelling drama in popular American literature and film, whether the behind-the-scenes dealings of *Twelve Angry Men*, the suspense of John Grisham's *The Firm*, or the sleazy dealings of *The Lincoln Lawyer*. While we know that the real-life dealings of most lawyers are far more tedious, the exaggerated tensions in those stories reflect a true drama at the heart of the law: the pursuit of justice.

Two personal stories, among many, stick out in my mind about the power of the courtroom. The first is about how one of my friends became an attorney. She had been "unfortunate" enough to be chosen for a jury and was, at first, reluctant to serve, but as she watched the case unfold before her, she became "taken" by what she saw. Soon after, she decided to enter law school, and she now works as a labor attorney.

The second story involves a class trip to a federal court in Manhattan, which one of my colleagues organized, to watch the sentencing of a man convicted as an accomplice to robbery. It was his first offense, and he had been threatened and coerced into joining the crime. He seemed genuinely repentant, and we had read his confession beforehand. Now we would learn the consequence. We sat there alongside the defendant's family as the judge cleared his throat to announce the sentence. We realized that this man's future was in the hands of this judge, whose view of justice would decide the defendant's fate. There was a sigh of relief as the judge announced that the defendant would not be sent to prison but would instead pay back the stolen money and complete community service. The defendant's mother then stood up to emotionally thank the judge.

*For Randall Bytwerk's website, visit <http://research.calvin.edu/german-propaganda-archive/www2era.htm>.

Mock trials, whether they are based on historical trials like that of Julius Streicher or literary ones such as Tom Robinson's in *To Kill a Mockingbird*, can be just as dramatic. Moreover, they can help students develop critical-thinking and communication skills and learn about events that help define our sense of justice. Why not immerse our students in a learning activity that brings up wellsprings of emotion and excitement?

And when we begin to delve into not only the intricacies of a particular case but also its implications for the concept of "justice," then we are engaging in a deep philosophical and ethical conversation that has its roots in Hammurabi, Deuteronomy, Confucius, and Aristotle. As a result, our students become part of that chain of thinkers who question what is right, what is just, and how we order a society in which we have some hope of achieving those lofty goals. □

Table 1: Adapting a Trial Transcript into a Witness Evidence Sheet

| Original Transcript | Adapted Transcript |
|---|---|
| <p>Dr. Marx: When did you become Herr Streicher's secretary, and for how long were you in that job?</p> <p>Frau Streicher: On 7 June 1940, I became Julius Streicher's secretary, and I remained in that job until the end of the war.</p> <p>Dr. Marx: And during that period, you were continuously on his farm?</p> <p>Frau Streicher: Yes, I was always with him.</p> <p>Dr. Marx: Were you also in charge of all the correspondence for Herr Streicher?</p> <p>Frau Streicher: Yes.</p> <p>Dr. Marx: What did that correspondence mainly consist of?</p> <p>Frau Streicher: Mainly letters to his sons and to relatives.</p> <p>Dr. Marx: What were Streicher's activities during that period of five years?</p> <p>Frau Streicher: Julius Streicher did mainly physical work—that is, agriculture and gardening—and from time to time he wrote articles for <i>Der Stürmer</i>.</p> <p>Dr. Marx: During these five years, did he leave the farm at all or was he ever absent from the farm for any length of time?</p> <p>Frau Streicher: During the first few years of his stay there, Julius Streicher did not leave the farm at all; later, once in a while, he would pay a visit in the neighborhood. His longest absence did not comprise an entire day, and never a single night.</p> <p>Dr. Marx: Did you know that it was prohibited for prominent Party members to visit Herr Streicher?</p> <p>Frau Streicher: Yes, there was such a prohibition.</p> <p>Dr. Marx: How did you know that?</p> <p>Frau Streicher: From conversations. Then, too, I myself remember, when Dr. Goebbels visited the farm, that Julius Streicher said to him, "Doctor, you dare to come here? Do you not know that it is prohibited by the Party chiefs to visit me?"</p> <p>Dr. Marx: When did the visits of Dr. Ley and Dr. Goebbels occur?</p> <p>Frau Streicher: Dr. Ley came to the farm on 7 May 1944. The visit of Dr. Goebbels occurred on 4 June 1944.</p> | <p>On 7 June 1940, I became Julius Streicher's secretary, and I remained in that job until the end of the war. I was always with him on the farm, and I was in charge of his correspondence, which was mainly letters to his sons and to relatives.</p> <p>During that time, Julius Streicher did mainly physical work—that is, agriculture and gardening—and from time to time he wrote articles for <i>Der Stürmer</i>.</p> <p>During the first few years of his stay there, Julius Streicher did not leave the farm at all; later, once in a while, he would pay a visit in the neighborhood. His longest absence did not comprise an entire day, and never a single night.</p> <p>When Dr. Goebbels visited the farm, Julius Streicher said to him, "Doctor, you dare to come here? Do you not know that it is prohibited by the Party chiefs to visit me?"</p> <p>Dr. Ley came to the farm on 7 May 1944. The visit of Dr. Goebbels occurred on 4 June 1944.</p> |