



CONSTITUTIONAL RIGHTS FOUNDATION



PEOPLE
V.
DONOVAN

**ISSUES OF INVOLUNTARY MANSLAUGHTER, REMOVAL OF TRAFFIC
SIGNS, AND THE PROTECTION AGAINST SELF-INCRIMINATION**

Featuring a pretrial argument on the
Fifth, Sixth and Fourteenth Amendments
of the U.S. Constitution

Co-Sponsored by:

State Department of Education
State Bar of California
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Daily Journal Corporation

**OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION**



CRF195

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PROGRAM OBJECTIVES

For the students, the Mock Trial Competition will:

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. Develop understanding of the link between our Constitution, our courts, and our legal system.
3. Provide the opportunity for interaction with positive adult role models in the legal community.

For the school, the competition will:

1. Provide an opportunity for students to study key concepts of law and the issues of involuntary manslaughter, removal of traffic signs, and the protection against self-incrimination.
2. Promote cooperation and healthy academic competition among students of various abilities and interests.
3. Demonstrate the achievements of high school students to the community.
4. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.
5. Provide a challenging and rewarding experience for participating teachers.

CODE OF ETHICS

At the first meeting of the Mock Trial team, this code should be read and discussed by students and their teacher.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* of any kind is unacceptable. Students' written and oral work must be their own.

In their relations with other teams and individuals, CRF expects students to make a commitment to good sportsmanship in both victory and defeat.

Encouraging adherence to these high principles is the responsibility of each teacher sponsor. Any matter that arises regarding this code will be referred to the teacher sponsors of the teams involved.

***Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**

- NOTES -

CLASSROOM DISCUSSION MATERIALS

Making Decisions

- A youth has a reputation as a daring graffiti artist whose art mysteriously appears in difficult-to-reach locations. He wants to put his tag on a particular freeway exit sign that no other graffiti artist has successfully reached. He hangs down on the overpass with a spray paint can. He loses his balance, falls onto the freeway, and is severely injured. He is paralyzed below his waist.
- A young man is a pledge in the fraternity that his father belonged to as a college student. He's heard from many people that this is the most popular fraternity and has the best parties. During a hazing, he drinks a bottle of tequila while the fraternity brothers cheer him on. He passes out and is dragged to bed. During the night he stops breathing and dies. Medical experts rule that his death was the result of alcohol poisoning.
- Youngsters playing by a railroad start a game of "chicken." One youth is goaded by the others to lie on the tracks to feel the vibrations of the train approaching and stay as long as she dares. She is scared but doesn't want her friends to know it. So she lies on the tracks. When she feels the vibrations, she jumps up to run, but she trips, is struck by the train, and dies instantly.

Tragic stories such as these unfortunately do happen. Seemingly harmless pranks or things done on a dare can result in serious injuries, deaths, and other serious consequences. Sometimes it is difficult for young people to take control of situations and make informed, responsible decisions, especially when they are motivated by peer pressure, a desire to fit in, or a thirst for attention. However, thinking before acting can prevent senseless accidents from occurring. It is important to look at the situation, consider the facts, and identify the feelings and motivations that affect the situation. It also is very important to consider the consequences of possible actions.

Activity: Think Before You Act

1. Have students read "Making Decisions."
2. Discuss the three scenarios in the reading. What was the young person's motivation in each situation? How could the people involved in these situations have prevented the tragic consequences? Discuss points in the scenarios at which different decisions might have been made, with differing results.
3. Divide the class into groups of three by having students count off 1,2,3. Assign each triad one of scenarios described below.
4. The student assigned #1 in each group will take the role of the person described in the scenario. The students who counted off #2 and #3 will play the roles of friends trying to convince #1 to change a course of action. Those two students should consider the following questions:

- a. What is the motivation of the actor? Why is he/she doing that action?
- b. What are the possible consequences of his/her actions?
- c. What actions can you take to get the person to change his/her mind?

The two students should then talk to the first student and give that student reasons or arguments for not doing the action that student is intending.

5. Lead a discussion about the activity. Ask the #2 and #3 students to share some of their thoughts on what was motivating #1. Have #1 students share some reactions to the arguments they heard and which arguments they thought were the most persuasive. Compare the differences and similarities in approaches utilized by the students to influence their peers.

Scenarios

1. Your group of friends decide to TP the house of your rival team's head cheerleader. She has been shouting rude comments at you at all the games and you want to teach her a lesson. You show your friends that you've brought some eggs to throw at her car. You also bring out a box of permanent markers for her front door.
2. You are driving along Suicide Curve with two friends in your sports car. You've spent a lot of time and money making the car look really hot and making the engine powerful. Another car pulls up and the driver shouts out a challenge to race around the curve to the next stop sign at the bottom of the hill. You rev up your engine.
3. You are at the mall with friends and you see a T-shirt with the name and logo of your favorite band. You would love to wear that shirt to a party Saturday night, but you have no money. You pick up the shirt and get ready to stuff it in your backpack when the sales clerk's attention is diverted.
4. You and your friends are having a water balloon fight on a hot day. You throw a balloon at a friend, but you miss and it hits the windshield of a passing car. The car's driver panics a little and swerves, then speeds off. You think this is funny and decide to wait for another car to come along to throw another balloon.
5. There is a club in your neighborhood that you have wanted to join for a year. You finally have gotten the attention of the club president who tells you about the initiation process. You have to lie down on the double yellow line in the center of the main street from 11:00 to 11:10 p.m. and tonight is your only chance.

CALIFORNIA MOCK TRIAL FACT SITUATION

1
2
3 Santa Elenora is a small rural town in Central California. On July 11, 1997 at
4 approximately 9:15 p.m., a gas truck exiting off Interstate 110 at Elm Street in Santa
5 Elenora collided with a car going the wrong way up the 110 exit ramp. There was a
6 massive explosion. Both drivers and the passenger of the car were killed. The driver of
7 the truck was identified as Jonathan Cooper, a truck driver for Academy Oil. The driver
8 and passenger of the car were identified as Mike and Denise Richards, a newlywed
9 couple on their honeymoon. At the time of the accident, the wrong way-do not enter sign
10 marking the Interstate 110 exit at Elm Street was missing.

11
12 Randy Smith, a jogger who witnessed the accident, went to a nearby pay phone and
13 called the police. Detective Pat Jones went to the scene of the accident and arrived
14 there approximately six minutes after the accident occurred. While at the scene of the
15 accident, Detective Jones talked to Randy Smith. Smith told Detective Jones that there
16 had been a suspicious looking person examining the wrong way-do not enter sign at
17 about 8:15 p.m. Smith described to the detective a person wearing a burgundy and gold
18 Santa Elenora University sweatshirt.

19
20 The next morning, Detective Jones was visited by Marty Bryant, a student at Santa
21 Elenora University. Based on information provided by Bryant, Detective Jones went to
22 the home of Chris Donovan, another Santa Elenora University student, at around 1:30
23 p.m. Donovan answered the door. Detective Jones told Donovan that the police had a
24 few questions about the wrong way-do not enter sign at Elm Street. Before Donovan had
25 a chance to answer, Detective Jones saw a wrong way-do not enter sign leaning on a
26 wall by the front door. The police officer entered, examined the sign, and arrested
27 Donovan. Donovan was taken down to the police station and was properly Mirandized.
28 Donovan requested that counsel be appointed.

29
30 Two days after the arrest, formal charges were filed against Donovan -one count of
31 interference with traffic devices and three counts of involuntary manslaughter. At this
32 time, Ryan O'Neil, a public defender had been appointed for Donovan. O'Neil was
33 unable to show up for this preliminary hearing and called the courthouse just as the
34 hearing started. The hearing was continued. Detective Jones escorted Donovan out of
35 the courthouse A conversation started between Donovan and Detective Jones, on their
36 way back from the courthouse:

37
38 Detective Jones said, "Another typical day in court." Donovan said, "I can't believe that
39 O'Neil! He's my attorney and he doesn't show up! What a lousy system this is."
40 Detective Jones replied, "Stop whining. What do you expect? Three people are dead
41 because of you!" Donovan then stated, "I never should have told that jerk Marty that I
42 wanted that sign. This is all Marty's fault." Detective Jones said, "It's all about you, isn't
43 it!"

44
45 That same day, Reese Parker, a traffic controller for the city of Santa Elenora, examined
46 the street sign seized from Donovan's house and told the Detective that it was the sign
47 taken from Elm Street.

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CHARGES:

The prosecution charges Chris Donovan with four counts:

- Count 1 -Interference With Traffic Devices (California Vehicle Code section 21464(a))
- Count 2 - Involuntary Manslaughter (California Penal Code section 192(b))
- Count 3 - Involuntary Manslaughter (California Penal Code section 192(b))
- Count 4 - Involuntary Manslaughter (California Penal Code section 192(b))

EVIDENCE:

Only the following items may be introduced at trial. Either the defense or the prosecution may bring:

1. A faithful reproduction of the map of Santa Elenora, California, which appears in this packet. Map should be no larger than 22" x 28".
2. A faithful reproduction of the front of the wrong way-do not enter sign sign taken from the Elm Street Interstate 110 exit. Reproduction shall be no larger than 22" x 28".
3. A faithful reproduction of the back of the wrong way-do not enter sign taken from the Elm Street Interstate 110 exit, showing the bar code on the back of the wrong way-do not enter sign. Reproduction should be no larger than 22" x 28".

STIPULATIONS: Prosecution and defense stipulate to the following:

1. No argument concerning the search and seizure of Chris Donovan’s house and the admissibility of any evidence taken from Chris Donovan’s house will be heard at pretrial or during the trial.
2. Both parties stipulate that a conversation took place between Chris Donovan and Detective Jones as quoted in the Fact Situation. For the purposes of this mock trial, if the defense prevails in the pretrial argument, the defendant’s post-*Miranda* statement to the police will not be admissible at trial for any purpose.
3. In the city of Santa Elenora, 12 blocks equals approximately one mile in distance.
4. According to the U.S. Weather Service, the temperature in vicinity of Santa Elenora on July 11, 1997 reached a high of 84 degrees and a low of 69 degrees.
5. Sunset on July 11, 1997 was at 8:13 p.m.
6. Several other undistinguishable fingerprints were found on the street sign along with Chris Donovan’s fingerprints.

PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. The **judge's ruling** on the pretrial motion will have a **direct bearing** on the admissibility of certain pieces of evidence and possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues. These materials can be used as a classroom activity or incorporated into a local mock trial competition.

In the area of criminal due process, the Fifth Amendment guarantees that an individual cannot be forced to testify against him or herself in a court of law or while being interrogated in police custody. The Sixth Amendment provides that all persons under arrest have the right to be represented by legal counsel. The parameters of what constitutes an "interrogation" has been the subjects of much legal debate.

ARGUMENTS

In the pretrial motion, the **defense** will argue that the testimony of Officer Pat Jones, which describes the statement made by the defendant exiting from the courthouse after the continuance of the preliminary hearing, should be excluded as a violation of the defendant's Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel. The defense will contend that the officer engaged in conversation with and posed a question to the defendant without a lawyer present in violation of the defendant's earlier request for assistance of counsel after being read *Miranda* rights.

In the pretrial motion, the **prosecution** will argue that defendant waived *Miranda* rights by initiating a conversation with the officer after the continuance of the preliminary hearing. They will further contend that the officer did not question the defendant or attempt to elicit information; the defendant made the statements voluntarily and without coercion.

SOURCES

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, California Penal Code, edited court opinions, and the Mock Trial Fact Situation.

The U.S. Constitution and Supreme Court holdings are binding and must be followed by California courts. In developing arguments for this mock trial, both sides should compare or distinguish the facts in the cited cases from one another and from the facts in *People v. Donovan*.

1 **LEGAL AUTHORITIES**

2
3 **U.S. Constitution, Amendment V**

4 “No person shall be . . . subject to the same offense to be twice put in jeopardy of life or
5 limb, nor shall be compelled in any criminal case to be a witness against himself, nor be
6 deprived of life, liberty, or property without due process of law”

7
8 **U.S. Constitution, Amendment VI**

9 The right of an accused in a criminal prosecution to “a speedy and public trial by an
10 impartial jury of the State and district [where] the crime [took place], to be informed of
11 the nature and cause of the accusation, [to confront witnesses], to obtain witnesses in
12 his favor, and to have assistance of counsel for his defense.”

13
14 **U.S. Constitution, Amendment XIV**

15 Section 1. All persons born or naturalized in the United States and subject to the
16 jurisdiction thereof, are citizens of the United States and of the State wherein they
17 reside. No State shall make or enforce any law which shall abridge the privileges or
18 immunities of citizens of the United States; nor shall any State deprive any person of life,
19 liberty, or property, without due process of law; nor deny any person within its jurisdiction
20 the equal protection of the laws.

21
22 **Statutes:**

23
24 **California Vehicle Code, Section 21464**

25 Interference With Traffic Devices

26
27 [a] No person shall without lawful authority deface, injure, attach any material or
28 substance to, knock down, or remove, nor shall any person shoot at, any official
29 traffic control device, traffic guidepost, traffic signpost, motorist callbox, or historical
30 marker placed or erected as authorized or required by law, nor shall any person
31 without lawful authority deface, injure, attach any material or substance to, or
32 remove, nor shall any person shoot at, any inscription, shield, or insignia on any
33 device, guide, or marker.

34

35 [c] Any willful violation of subdivision (a) ... which results in injury to, or the death of,
36 a person is punishable by imprisonment in the state prison, or imprisonment in a
37 county jail for a period of not more than six months, and by a fine of not less than five
38 thousand dollars (\$5,000) nor more than ten thousand (\$10,000).

39 **California Penal Code, Section 192(b)**

40 Involuntary Manslaughter

41
42 Manslaughter is the unlawful killing of a human being . . .

43 (b) Involuntary - in the commission of an unlawful act, not amounting to a felony; or
44 in the commission of a lawful act which might produce death, in an unlawful manner,
45 or without due caution and circumspection. This subdivision shall not apply to acts
46 committed in the driving of a vehicle.

1 **CASES:**

2 **I. Federal Cases**

3
4 1. *Miranda v. Arizona*, 384 U.S. 436 (1966)

5
6 **Facts:** Miranda was accused of kidnapping and raping an 18-year-old woman in
7 Phoenix, Arizona. After being arrested and identified in a line-up, Miranda was taken into
8 an interrogation room and questioned for two hours. The interrogation resulted in a
9 written and signed, confession which was used at trial to convict Miranda. Miranda
10 appealed to the Supreme Court claiming that he would not have confessed had he been
11 advised of his right to counsel and to remain silent.

12
13 **Holding:** The Supreme Court held that Miranda's Fifth Amendment privilege against
14 self-incrimination had been violated. It stated that before anyone in police custody may
15 be questioned, that person must be advised of the following constitutional rights: the
16 right to remain silent; the knowledge that any statement the person makes may be used
17 as evidence against him or her; the right to have an attorney present during questioning;
18 and the right to have an attorney appointed if he or she can not afford one. These
19 protections are necessary to assure that the individual is accorded his or her Fifth
20 Amendment privilege against self-incrimination.

21
22 2. *Rhode Island v. Innis*, 446 U.S. 291 (1980)

23
24 **Facts:** Innis was arrested as a suspect for armed robbery. Innis was unarmed at the
25 time of his arrest. He was advised of his *Miranda* rights several times. On the way to the
26 police station, two officers engaged in a conversation in which they stated there were a
27 lot of "handicapped children running around in this area" and "God forbid one of them
28 might find a weapon and hurt themselves." Although Innis had asked for an attorney, he
29 voluntarily responded to this statement (even though it was not directed towards him)
30 and showed the officers where the weapon was located.

31
32 **Holding:** The Supreme Court stated that the *Miranda* safeguards are necessary
33 whenever a person in custody is subject to either express questioning or its functional
34 equivalent. They defined functional equivalent as any words or actions on the part of the
35 police that the police should know are reasonably likely to elicit an incriminating
36 response from the suspect. In this case, the court found nothing to suggest that the
37 officers were aware that Innis was particularly susceptible to an appeal to his conscience
38 concerning the safety of handicapped children, or that in the context of the brief
39 conversation, the officers should have known that Innis would suddenly be moved to
40 make a self-incriminating response. The court stated that Innis had not been
41 "interrogated," and therefore officers did not violate his *Miranda* rights to remain silent
42 until he consulted with a lawyer.

43 3. *Edwards v. Arizona*, 451 U.S. 477 (1981)

44
45 **Facts:** Edwards was arrested for burglary, robbery, and murder. He was properly
46 Mirandized and taken to the police station. Edwards understood his rights and agreed to
47 talk to the police. Edwards sought to cut a deal, but stated that he wanted an attorney

1 before he cut any deal. The interrogation stopped. The next morning, two detectives
2 came to the jail to talk to Edwards. Edwards refused. They told Edwards that “[h]e had’
3 to talk.” He agreed. The statements Edwards made implicated him in the crime. The trial
4 court allowed his statements from the second interrogation to be admitted into court.
5

6 **Holding:** The Fifth Amendment prohibits police interrogation of “an accused person in
7 custody who has ‘expressed his desire to deal with the police only through counsel . . .
8 until counsel has been made available to him, unless the accused himself initiates
9 further communication, exchanges or conversations with police.’” A valid waiver must be
10 made voluntarily, knowingly, and intelligently. Just because an accused responds to
11 questioning does not mean that the accused has waived his Fifth Amendment rights.
12 Edwards did not give a valid waiver of his Fifth Amendment rights and therefore the
13 statements made during the second interrogation were obtained illegally.
14

15 4. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983)
16

17 **Facts:** Bradshaw was arrested and taken to the police station. During questioning, he
18 invoked his right to an attorney. As he was transferred from the police station to the
19 county jail, Bradshaw asked a police officers what was going to happen to him. The
20 officer told Bradshaw that he did not have to talk unless he wanted to. Bradshaw
21 indicated that he understood. Bradshaw and the officer started talking. The officer
22 suggested that Bradshaw take a polygraph examination. Bradshaw was informed of his
23 *Miranda* rights and signed a written waiver. A polygraph examination was administered
24 to Bradshaw. Incriminating statements were made by Bradshaw after the examination
25 when the examiner accused Bradshaw of lying.
26

27 **Holding:** The Supreme Court stated that by asking “Well, what is going to happen to me
28 now?,” Bradshaw initiated conversation with the police and therefore waived his right to
29 an attorney. The court noted, however, that there are times when an accused will make
30 a request that can not be considered initiation of a conversation with the police, such as
31 requesting to use a telephone or asking for a drink of water.
32

33 5. *Michigan v. Jackson*, 475 U.S. 625 (1986)
34

35 **Facts:** Defendants requested the appointment of counsel after they were formally
36 charged. Before the defendants had an opportunity to consult with counsel, police
37 advised defendants of their *Miranda* rights, questioned them, and obtained signed
38 confessions. Both defendants were convicted.
39

40 **Holding:** A defendant has a Sixth Amendment right to counsel at post-arraignment
41 critical stages. Interrogations are considered a critical stage. Once a suspect has
42 invoked his right to counsel, police may not initiate interrogation of that suspect. Any
43 waiver of right to counsel obtained as a result of police-initiated interrogations is invalid.
44 The only time a waiver is valid is if the suspect initiated the interrogation.
45

46 6. *Colorado v. Connelly*, 479 U.S. 157 (1986)
47

1 **Facts:** Connelly was arrested for murder after approaching a Denver police officer and
2 stating that he had murdered someone and wanted to talk about it. Connelly was
3 advised of his *Miranda* rights and said he understood them but still wanted to talk. The
4 next day, Connelly became visibly disoriented and was sent to a state hospital for
5 evaluation. At that time, Connelly told a psychiatrist that he confessed because he was
6 following the “voice of God.” The psychiatrist determined that Connelly was suffering
7 from psychosis that prevented him from making rational decisions, including the decision
8 to waive his *Miranda* rights.
9

10 **Holding:** The Supreme Court held that a waiver is not invalid just because an accused
11 feels compelled to waive his rights, “even if the compulsion does not flow from the
12 police.” Absent police coercion, a defendant’s mental state is not a determining factor in
13 deciding the voluntariness of an accused’s statements. The court stated that whenever
14 the state bears the burden of proof in a motion to suppress a statement allegedly
15 obtained in violation of the *Miranda* doctrine, the state need prove waiver only by a
16 preponderance of the evidence. In order to find that a waiver is not voluntary, evidence
17 of police coercion is necessary.
18

19 7. *Colorado v. Spring*, 479 U.S. 564 (1987)
20

21 **Facts:** Spring was arrested for illegally selling firearms. He was properly Mirandized.
22 Spring stated that he understood his rights and was willing to answer questions without
23 an attorney present. During the interrogation, the police asked him some questions
24 about a murder that he was suspected of committing. Spring had no idea that the police
25 were going to ask him questions outside of the sale of firearms. Spring confessed to the
26 murder and signed a written statement admitting his guilt. The trial court held that,
27 because the statement was made voluntarily, the confession was admissible even
28 though Spring was not informed that the police would be questioning him about murder .
29

30 **Holding:** The court held that the confession was admissible. The defendant was
31 properly Mirandized and informed that the police wanted to ask him some questions.
32 Therefore, since the procedure was proper, any confessions or statements obtained as
33 a result of the procedure is proper. The court used a two prong-test to determine the
34 validity of the confession given by Spring: 1) Was the right to counsel waived voluntarily
35 (i.e. no deception, coercion, etc.); 2) Did the accused fully understand his rights and the
36 consequences of waiving those rights? Spring had not alleged that he did not fully
37 understand his rights. The U.S. Constitution does not require that an accused be told
38 every possible consequence of waiving the right to an attorney. Not telling an accused
39 the subject matter of an interrogation is not “trickery.”
40

41 8. *Collazo v. Estelle*, 940 F.2d 511 (1991)
42

43 **Facts:** Collazo was arrested for murder. After he was taken to the police station, Collazo
44 was taken to an interview room and read his *Miranda* rights. He refused to talk and
45 requested a lawyer. Officer Destro told Collazo that “This [was his] last chance to talk to
46 [the police],” and “[o]nce you get a lawyer, he’s gonna say forget it . . . then it might be
47 worse.” The officers left Collazo alone. A few hours later, Collazo changed his mind. He

1 was re-read his Miranda rights. Collazo confessed to his involvement in the murder. The
2 trial court allowed the confession to be admitted into court, reasoning that Collazo
3 voluntarily talked to the police, and Collazo was convicted.
4

5 **Holding:** Following the test set forth in *Colorado v. Spring*, the appellate court held that
6 Collazo's confession was not made voluntarily. The court believed that Officer Destro's
7 psychologically manipulative words were the reason why Collazo agreed to speak to the
8 police. Although there was a break between the first and second times the police talked
9 to Collazo and Collazo initiated the second interrogation, these facts are of no
10 significance because the first interrogation led to the second interrogation. Therefore,
11 the first interrogation tainted the second interrogation. The court then examined the use
12 of the evidence at trial to determine whether or not the confession contributed to the
13 verdict. At the trial, the prosecution relied on Collazo's confession heavily, therefore the
14 verdict is not harmless error and must be set aside.
15

16 9. *Shedelbower v. Estelle*, 885 F.2d 570 (1988)
17

18 **Facts:** Shedelbower was picked up for questioning by police as a suspect in a murder
19 and rape. The police properly Mirandized Shedelbower and Shedelbower waived his
20 right to an attorney. Shedelbower made incriminating statements regarding his
21 involvement in the murder and rape. About an hour after the interrogation began,
22 Shedelbower did not want to talk anymore and wanted to obtain an attorney. The police
23 then told Shedelbower that he was under arrest. As the officers went to leave, one of
24 them told Shedelbower that the victim had identified Shedelbower in a photographic line-
25 up and Dominick, one of the people that committed the crime with Shedelbower, had
26 been taken into police custody. Dominick had been taken into custody, but the victim
27 had not seen any pictures of Shedelbower. A few minutes later, Shedelbower told police
28 that he wanted to talk to them and did not need an attorney present. The police checked
29 with the prosecutor to make sure it was okay to talk to Shedelbower even though he had
30 invoked his right to an attorney. The prosecutor told the police that it was okay, so they
31 reminded Shedelbower of his rights and questioned him again. Shedelbower confessed
32 to the crime. The trial court admitted the confession reasoning that the statements made
33 by the officer did not constitute part of the interrogation.
34

35 **Holding:** The appellate court held that the statements made by the officer just after
36 Shedelbower invoked his Fifth Amendment rights did not constitute part of an
37 interrogation. The statements were not questioning or a functional equivalent of
38 questioning that could be used to elicit a response (following *Rhode Island v. Innis*).
39 Following the two-prong test in *Colorado v. Spring*, the court further held that the
40 confession given by Shedelbower was voluntary. Shedelbower asked to talk to the
41 police the second time. Even though one of the statements made by the officer was
42 false, the confession was made independent of that statement. Shedelbower fully
43 understood his rights.
44

45 **II. State Cases**
46

47 10. *People v. Bradford*, 14 Cal. 4th 1005 (1997)

1
2 **Facts:** Defendant Bradford, convicted of murder and rape, appealed the admissibility of
3 several incriminating statements that he made to police on separate occasions. One of
4 these took place while Bradford was waiting to be fingerprinted. A detective, who knew
5 nothing about the defendant's case, was in the station being fingerprinted for a private
6 detective license. He said casually to Bradford that he "looked like a ticket" and asked,
7 "Is it just a warrant?" Bradford responded, "Murder." The detective left, but the defendant
8 started telling the booking officers about how he committed the crime. These officers,
9 who also had not worked on Bradford's case, listened for two minutes without saying
10 anything. Then, without advising Bradford of his *Miranda* rights, they asked him several
11 questions, which he answered.
12

13 **Holding:** The California Supreme Court ruled that only those incriminating statements
14 made before the booking officers started to question Bradford could be admitted. It
15 reasoned that "[n]either the detective's statement nor his question was 'reasonably likely
16 to [elicit] an incriminating response.'" Thus, when Bradford voluntarily started making
17 incriminating statements, these remarks could be admitted into evidence. But the
18 incriminating statements he made in response to their questions should be excluded.
19 They were the result of "custodial interrogation" and the defendant had not waived his
20 *Miranda* rights.
21

22 11. *California v. Engert*, 193 Cal.App.3d 1518 (1987)
23

24 **Facts:** A criminal complaint was filed against Engert charging him with murder. Engert
25 was arrested, but was not told that he was under arrest. The officers told Engert that
26 they were conducting an investigation of the murder and they wanted to find out what he
27 knew. Engert was read his *Miranda* rights and agreed to waive them. Engert was
28 interrogated about the murder. During the interrogation he made some incriminating
29 statements. After three hours of questioning, Engert said, "I'm not answering any more
30 questions." Shortly after that statement, Engert was told he was under arrest.
31

32 **Holding:** The appellate court held that Engert's Fifth Amendment rights were not
33 violated because Engert voluntarily agreed to talk. However, the deception by police
34 violated Engert's Sixth Amendment right to counsel. The court stated that the Sixth
35 Amendment right to counsel cannot be waived unless the defendant is informed or is
36 otherwise aware that he is under "arrest or that charges have been filed against him."
37 Engert was not told that he was under arrest or aware that he was under arrest.
38 However, the court held that admission of the defendant's statements was harmless
39 error (i.e. the evidence in question did not contribute to the verdict) in light of other
40 incriminating evidence.
41

42 12. *People v. Sultana*, 204 Cal. App. 3d, 511 (1988)
43

44 **Facts:** Sultana requested to speak to Officer Upton while in police custody and after a
45 criminal complaint had been filed charging Sultana with murder. Sultana had already
46 retained counsel and Officer Upton was aware that Sultana had retained counsel.
47 Sultana, who was informed of his *Miranda* rights, signed a written waiver of those rights.

1 During the interview, Sultana said that he no longer had private counsel because he
2 could not afford it and he was going to get the public defender. Officer Upton did not
3 contact Sultana's private counsel to determine whether or not he was still representing
4 Sultana. During the course of the interview, Sultana made several incriminating
5 statements.

6
7 **Holding:** The appellate court held that Sultana's Fifth Amendment rights were not
8 violated because he was aware of his rights and agreed to talk anyway. Although
9 Sultana believed that he no longer had an attorney, he knew he could obtain a public
10 defender for free. There was no police coercion involved. The court further held that
11 Sultana's Sixth Amendment right was not violated because Officer Upton did not contact
12 his retained counsel. In this case, Sultana waived his Sixth Amendment right to counsel
13 because he initiated the interview with Officer Upton.

THE MOCK PRETRIAL MOTION HEARING

The following procedures provide a format for the presentation of a mock pretrial motion in the local and state competitions as well as for classroom use and discussion.

Specific Procedures for the Mock Pretrial Motion

1. Ask your coordinator if your county will present pretrial arguments before every trial of each round. We urge coordinators to require a pretrial motion hearing in as many rounds as possible both for its academic benefits and to prepare the winning team for state finals in Sacramento where it will be a required part of the competition. Performances will be scored according to the criteria on the scoring sheet.
2. Prior to the opening of the pretrial motion arguments, the judge will have read the background provided in the case materials.
3. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.
4. Arguments should be well-substantiated with references to any of the background sources provided with the case materials and/or any common-sense or social-interest judgments. Do not be afraid to use strong and persuasive language.
5. Use the facts of *People v. Donovan* in the argument. Compare them to facts of cases in the background materials that support your position, or use the facts to distinguish a case that disagrees with the conclusion you desire.
6. Review the constitutional arguments to assist in formulating arguments.
7. The conclusion should be a very short restatement of your strongest arguments.

1 **WITNESS STATEMENT** - Prosecution Witness: Officer Pat Jones
2

3 I am an officer with the Santa Elenora Police Department. I am 36 years old. I grew up in
4 Santa Elenora and attended Santa Elenora University. I joined the police department
5 about 15 years ago. I started out as traffic cop and slowly worked my way up to
6 detective. I was the officer in charge of investigating the accident at the Interstate 110
7 exit at Elm Street.
8

9 On July 11, 1997, at approximately 9:15 p.m., a cargo truck collided with a car driving
10 the wrong way onto the Elm Street Interstate 110 exit. The truck was carrying gasoline
11 and exploded upon impact, causing a huge fire engulfing the entire truck and the car.
12 The driver of the truck, driver of the car, and passenger in the car were all killed. The
13 driver of the truck was later identified as Jonathan Cooper, a truck driver for Academy
14 Oil. The driver and passenger of the car were identified as Mike and Denise Richards, a
15 newlywed couple on their honeymoon. The Richards were driving to San Francisco for
16 their honeymoon and stopped at Santa Elenora for gas. At the time the accident
17 occurred, the wrong way-do not enter sign was gone. The Richards, who were from out
18 of town, apparently thought that they were at the on-ramp to Interstate 110 and drove
19 onto the off-ramp instead. The on-ramp is actually located 1/4 mile further past the off-
20 ramp.
21

22 I was at the station when a call came in about the accident. Randy Smith, a Santa
23 Elenora resident who lives near Elm Street, saw the accident and called the station. I
24 went to the scene of the accident and arrived there approximately six minutes after it
25 had occurred. Firefighters and paramedics arrived shortly after I did, but the vehicles
26 were all fully engulfed and it was impossible to save any of the victims. Randy Smith was
27 at the scene of the accident when I arrived. Smith was out running and witnessed the
28 accident. Smith went to a nearby pay phone to call the police after the accident
29 occurred. Prior to the accident Smith stated that there was a suspicious person wearing
30 a burgundy and gold Santa Elenora University sweatshirt and jeans at approximately
31 8:15 p.m. near the wrong way-do not enter sign marking the off-ramp to Interstate 110.
32 The suspect stared at the back of the sign and tried wiggling the sign. The description of
33 the suspect matches Chris Donovan's profile.
34

35 Early the next morning after the accident, Marty Bryant came into the Santa Elenora
36 Police Station. Marty Bryant told me about the 4S Club at Santa Elenora University and
37 the remark Chris Donovan made after lunch the day before about the wrong way-do not
38 enter sign. Marty Bryant described Chris Donovan to me. The description given by
39 Randy Smith matched Bryant's description of Chris Donovan. I asked Bryant what Chris
40 was wearing the day of the accident. Bryant told me that Chris was wearing a burgundy
41 and gold Santa Elenora University sweatshirt and jeans. I went to Chris Donovan's
42 house with a couple of officers to check out the lead Marty Bryant gave to me.
43
44

45 When we arrived at Chris Donovan's house at around 1:30 p.m., Donovan answered the
46 door. It looked as if Donovan had just woken up. I told Donovan that I had a few
47 questions about the street sign for the Interstate 110 exit off Elm Street. Before Donovan

1 even had a chance to answer, I noticed part of a street sign leaning on a wall near the
2 front door. I immediately entered the house and ascertained that the street sign was a
3 wrong way-do not enter sign. I arrested Donovan. I took Chris and the sign down to the
4 station. Chris Donovan has always denied taking the Interstate 110 exit sign. I properly
5 Mirandized Donovan when we got to the station. I asked if Donovan wanted to contact
6 an attorney or if he/she would like a public defender appointed. Donovan asked me to
7 contact the public defender's office and have one of their attorneys appointed to the
8 case. So, I contacted the public defender's office and had one appointed for Donovan.
9

10 Two days after Donovan was arrested, I spoke to Reese Parker, a traffic controller for
11 the city of Santa Elenora. The day of the accident, Parker had checked the street signs
12 on the west side of Santa Elenora to ensure that all street signs were intact and in good
13 condition. Parker had checked the Interstate 110 exit sign at around 5 p.m. and at that
14 time the sign was intact and in good condition. Parker also told me that all Santa Elenora
15 street signs have an identifying bar code on the back to ensure that they are placed at
16 the right location. Parker examined the street sign taken from Donovan's house and
17 identified it as the sign taken from the Interstate 110 exit.
18

19 That same day, I had to take Donovan to the courthouse for a preliminary hearing. The
20 public defender did not show up, he called at the last minute and said that he couldn't
21 make it. The hearing was continued. As we were walking out of the courthouse, I made a
22 remark about it being another typical day in court for me. Then Donovan started
23 complaining to me. Donovan was whining about how the public defender didn't show up.
24 Donovan said, "I can't believe that O'Neil! He's my attorney and he doesn't show up!
25 What a lousy system this is." I just wanted Donovan to shut up, so I yelled at Donovan. I
26 said, "Stop whining. What do you expect? Three people are already dead because of
27 you!" Then the defendant made the following statement: "I never should have told that
28 jerk Marty that I wanted that sign. This is all Marty's fault." I just said, "It's all about you,
29 isn't it!"

1 **WITNESS STATEMENT - Prosecution Witness: Randy Smith**
2

3 My name is Randy Smith. I live at 975 Oak View Lane, Santa Elenora, California. I am a
4 native of Santa Elenora and live approximately one mile from the Interstate 110 off-ramp
5 at Elm Street. I jog usually at least three times a week. There are three routes that I like
6 to take when I jog. Each route takes me past the Elm Street Interstate 110 exit. I
7 normally jog a total of about 20 to 25 miles per week.
8

9 The night of the accident, July 11, 1997, I was out jogging. I started jogging at about 8
10 p.m. I passed the Interstate 110 off-ramp at around 8:15 P.M. I've jogged past there for
11 over five years. As I was jogging westbound on the south side of Elm Street, I
12 approached the Interstate 110 off-ramp and noticed a suspicious person near the wrong
13 way-do not enter sign. The person was staring at the back of the sign and wiggling the
14 sign. The person did not look like a city official or anything like that. The person was
15 wearing a pair of jeans and a burgundy and gold Santa Elenora University sweatshirt
16 and jeans. I had not seen that person around there before, but I later learned that the
17 person I saw was Chris Donovan. I tried to see what the person was doing near the sign,
18 but I did not want to make it look obvious. The person must have heard me coming,
19 because the person turned around and looked at me and then quietly walked away from
20 the sign. Although I didn't get a good look at the person's face, I definitely remember the
21 clothes the person was wearing. I figured that the person was not going to do anything
22 with me watching, so finally I decided to go ahead because I thought the person wouldn't
23 do anything if I was there to see it.
24

25 I jogged for about another two miles, but I was got a leg cramp and started slowing
26 down. So I headed home, walking part of the way and jogging when I could. As I was
27 passing the Interstate 110 off-ramp at Elm Street, I looked to see if the wrong way-do
28 not enter sign was still there. It was missing. Just then, I noticed a car trying to enter the
29 110 by driving up the off-ramp. Suddenly, a gasoline truck came down the off-ramp. The
30 driver of the truck started honking to warn the car. The truck driver tried to stop but was
31 unable to avoid hitting the car. The truck collided with the car. There was a massive
32 explosion and both vehicles were engulfed with flames. I didn't know what to do. I ran to
33 a nearby pay phone and called the police.
34

35 About five minutes after the accident, people from the police and fire departments
36 arrived. I went to talk to the police officer in charge of investigating the accident,
37 Detective Pat Jones. I told the detective about what I had seen earlier, though I never
38 saw that person actually remove the sign.

1 **WITNESS STATEMENT - Prosecution Witness: Marty Bryant**
2

3 My name is Marty Bryant. I live at 907 W. Willow. Santa Elenora, California. I am 19-
4 years-old and am currently a sophomore at Santa Elenora University. I am majoring in
5 fine arts and minoring in acting. I am a member of the 4S Club, an unofficial group
6 composed of Santa Elenora University students. The 4S Club was created by a group of
7 students who were interested in collecting street signs. As of present, the 4S Club has
8 approximately 20 members. For the past four or five months there has been a
9 decreasing interest in the taking of street signs. Some members still take street signs to
10 complete their personal collection. Chris Donovan, a member of the 4S Club, is one of
11 the members who continues to take street signs. Chris is a very competitive person and
12 has always bragged about having such a great street sign collection.
13

14 The day of the accident, July 11, 1997, the 4S Club had a lunch social at noon. It was a
15 short lunch because a lot of the members had other things to do. After the lunch was
16 over, Alex Johnson, Chris Donovan, and I were just sitting around talking. We started
17 discussing the lack of interest in collecting street signs. Donovan said Donovan's own
18 street sign collection and how it was missing a wrong way-do not enter sign. Donovan,
19 also, stated that there was a wrong way / do not enter sign at the Elm Street Interstate
20 110 off-ramp at Elm Street. Donovan sounded serious about taking that sign. Alex and I
21 both tried to talk some sense into Donovan. We told Donovan how dangerous that could
22 be if the sign were taken away. Donovan eventually agreed to leave the sign alone. I
23 thought that we had convinced Donovan that it was dangerous.
24

25 The day of the accident was pretty uneventful for me. I had a major paper due in about
26 four days for my history class. So, after lunch I went to the library to do some research.
27 Then I went to my 4:40-5:45 p.m. class. After that I went home to write my paper. If I
28 was going to get my paper done on time I knew that I needed to stay home and work on
29 it over the weekend. Late that night, around midnight, I was listening to the radio and
30 heard about the horrible accident. The reporter stated that the sign marking the
31 Interstate 110 off-ramp was missing. I knew that Donovan must have taken that sign. I
32 agonized about what I should do with this information. Finally, early the next morning, I
33 went to the Santa Elenora Police Station. I talked to Detective Jones about what
34 happened after lunch the day of the accident. Detective Jones asked me what Donovan
35 had been wearing the day before. I told the detective that Donovan had been wearing a
36 white T-shirt and a burgundy and gold Santa Elenora University sweatshirt tied around
37 the waist.
38

39 It was hard for me to go to the police. Although Chris and I are not friends, we travel in
40 the same group. It makes me feel awkward around my friends who are also friends with
41 Chris. I've always been nice to Chris out of respect for our mutual friends, but I really
42 don't like Chris' competitive personality. That often gets on my nerves. When the
43 accident at Elm Street occurred I knew I had to say something. Chris needed to take
44 responsibility for taking that wrong way-do not enter sign, especially since it caused
45 three deaths. The families of the victims deserve some sort of vindication.

1 **WITNESS STATEMENT - Prosecution Witness: Reese Parker**

2
3 My name is Reese Parker. I live at 395 Apple Stree, Santa Elenora, California. I am 47-
4 years- old and divorced. I am a traffic controller for the city of Santa Elenora. My main
5 duties are to monitor the street signs and ensure that they are in good condition. I have
6 worked for the city of Santa Elenora for approximately 20 years. Over the past year or
7 two there has been a 40 percent increase in the taking of street signs. The number of
8 street signs taken increased from 25 to 36. People taking street signs need to realize the
9 danger involved. If a driver does not know the area that he or she is driving around in, it
10 can cause fatal results, as evidenced by the accident at the Interstate 110 off-ramp.

11
12 On the day of the accident, July 11, 1997, I checked the street signs on the west side of
13 Santa Elenora. The Interstate 110 off-ramp is part of the west side of Santa Elenora.
14 The Interstate 110 off-ramp is marked by a single sign that says wrong way. That day, I
15 checked the Interstate 110 off-ramp signs at around 5 p.m. At that time, the sign was still
16 intact and in good condition. Sometime between 5 and 9:30 p.m. (when the accident
17 occurred), the wrong way-do not enter sign was removed. The sign had been secured to
18 the sign post by two standard metric bolts. It would ordinarily take one of my crew
19 members five minutes to remove and replace a sign with the right tools.

20
21 Three days after the accident, I received a phone call from Detective Pat Jones.
22 Detective Jones was in charge of the investigating the accident. Jones asked me to
23 examine the sign and determine if it was the wrong way-do not enter sign taken from the
24 Elm Street Interstate 110 off-ramp. All street signs in Santa Elenora are marked with a
25 bar code on the back in order to indicate their location. After examining the wrong way-
26 do not enter sign the police obtained during their investigation, I determined that the
27 wrong way-do not enter sign was the sign from the Elm Street Interstate 110 off-ramp by
28 looking at the bar code on the back.

1 **WITNESS STATEMENT** - Defense Witness: Chris Donovan, Defendant
2

3 My name is Chris Donovan. I live at 1000 Cherry Lane, Santa Elenora, California. I am a
4 freshman at Santa Elenora University and I am 19 years old. I am an English major and
5 a political science minor. I am a member of the 4S Club, a small unofficial organization
6 at Santa Elenora University. The day before I was arrested, Friday, July 11, 1997, the 4S
7 Club got together for lunch at noon. It was a quick lunch because most of the members
8 had classes to attend. We are all taking summer session courses. Marty Bryant, Alex
9 Johnson, and I decided to hang around after lunch was over because we had no more
10 classes till late afternoon. I was surprised that Marty stayed. Marty and I have always
11 been civil to one another but I wouldn't say we're friends. Marty has always seemed sort
12 of defensive and cold to me.
13

14 At any rate, Marty stayed and we started talking about the 4S Club. In particular, we
15 discussed the diminishing interest in the club's main "hobby"—collecting street signs. The
16 4S Club was formed by a group of friends who thought it would be fun and daring to take
17 street signs. The group gradually increased until it reached its current size of 20. Over
18 the past six months, members of the group have become rather disillusioned with taking
19 street signs. It was fun for a while, but its thrill definitely wears off. I have had a pretty
20 good collection of street signs since the spring of 1997 anyway. During the discussion
21 Marty, Alex, and I had about the club, I mentioned that I did not have a wrong way-do
22 not enter sign and thought it would be a cool addition to my collection. I, also, mentioned
23 that there is a wrong way-do not enter sign a few blocks from my house at the Interstate
24 110 off-ramp off Elm Street. Alex and Marty got on my case right away about how
25 dangerous that would be and pleaded with me to leave the sign Elm Street sign alone. I
26 told Alex and Marty that it was only a thought. I was just joking and I knew about the
27 danger involved. I was not and never have been serious about taking that sign.
28

29 After lunch, I studied in the library for a while and then went to my 4:30-5:30 p.m. class. I
30 got something to eat with some friends after my 4:30 class and then I went to my 7:00
31 p.m. Public Administration class. My class schedule that Friday was really hectic
32 because I had to make up some work and there were only a few times available for me
33 to work in the lab. I always look forward to relaxing after all my classes and labs are
34 over.
35

36 That night, Alex and I had plans to go see the movie "Contact." It was a movie that Alex
37 and I both really wanted to see, and we wanted to see it on its opening night. We
38 decided to go to the 8:45 showing at Diamond Cinemas because my 7:00 p.m. review
39 session ended at 8:10. I was supposed to be at Alex's house at 8:30 so we could make
40 it to the movie on time. I was running a little late that night because I had to go to the
41 library to drop off a book. After going to the library, I walked to Alex's house. Alex's
42 house is approximately ten blocks away from the school and two blocks north of my
43 house. I arrived at Alex's about five minutes late even though I walked along Pine
44 Avenue, which was the most direct route. We left immediately, because it takes about 15
45 minutes by car to get to the Diamond Cinemas where the movie was playing. We arrived
46 just as the previews were ending. The movie was great. Alex and I both walked away
47 from the movie stunned. It is one of those movies that makes you think about the

1 meaning of life. After the movie, we went to get some coffee at the local Coffee
2 Company. By the time we left the coffee shop and Alex dropped me off at home, it was
3 1:00.
4

5 As Alex drove away and I was walking toward my front porch, the edge of my foot
6 touched something in the bushes. I turned on the porch light to see what it was. I was
7 surprised to see that it was a wrong way / do not enter sign. I thought that one of my
8 friends in the 4S had taken the sign for me because he or she knew that I didn't have a
9 wrong way-do not enter sign. I didn't realize that it was the sign from the Elm Street
10 Interstate 110 off-ramp. I opened the front door and brought the sign in. I placed the sign
11 by the front door because I was tired and did not feel like bringing it upstairs. I went to
12 sleep and did not wake up till early afternoon the next day.
13

14 At around 1:30 the next afternoon, the Santa Elenora police came by. I had no idea
15 why the police would be coming to my house. The officers mentioned the wrong way/do
16 not enter sign at Elm Street. That's when I realized that the sign I found hidden in the
17 bushes near my front porch must be the one at Elm Street. Before I could answer any
18 questions about the sign, the police forced their way into my home and arrested me.
19 The officers took me and the sign, which I had found the night before, down to the police
20 station. I was Mirandized, and Detective Jones asked me if I wanted to contact an
21 attorney or would like to have a public defender appointed. I asked to have a public
22 defender appointed. I was told the next day that Ryan O'Neil was appointed as my public
23 defender.
24

25 Two days after the accident, I was taken to court and charged with three counts of
26 involuntary manslaughter and one count of interference with traffic devices. My attorney
27 called the courthouse and said that he could not show up, right as the hearing started.
28 The hearing was continued. Bail was set for \$500,000. I couldn't come up with that kind
29 of money and I didn't want to ask anyone for that kind of money. So, I had to go back to
30 jail. Detective Jones escorted me back to the station. While we were walking out of the
31 courthouse, Detective Jones said something to me about this being a typical day in
32 court. I was so angry that my attorney did not show up. I needed someone to complain
33 to, so I started complaining to Detective Jones. It really upset me when Detective Jones
34 accused me of killing those people. I kind of went off. That stupid joke that I told at lunch
35 got me in all this trouble.
36

37 I can't believe this is happening to me. I would never take that wrong way-do not enter
38 sign because of the danger it would cause to others. I feel sorry for the family of those
39 killed in the accident, but I am not responsible for the accident. I don't know who put that
40 sign in my yard. I just hope that the person who really took that sign gets caught.

1 **WITNESS STATEMENT - Defense Witness: Alex Johnson**
2

3 My name is Alex Johnson. I am a 19-year-old sophomore at Santa Elenora University. I live at
4 1974 Twin Oaks Avenue, Santa Elenora, California. I am a member of the 4S Club. The 4S
5 Club was created by Santa Elenora University students who wanted to start a collection of
6 street signs. Over the past five months, the interest in taking street signs has diminished.
7 Members of the club have thought about the consequences of taking street signs. There are still
8 some members who take street signs, but the signs they take are normally just signs with street
9 names on them. My friend, and a fellow 4S member, Chris Donovan, used to really be into
10 taking street signs. Chris liked the thrill and excitement at first, but Chris got tired of this
11 "interest" at least two months ago.
12

13 The day of the accident, July 11, 1997, the 4S Club got together for lunch at noon. The club
14 gets together for lunch every two weeks. It's nice because its so rare that everyone is able to
15 get together. It wasn't a very long lunch because most of the members had class at 1 p.m. After
16 they had left, Chris Donovan, Marty Bryant, and I sat around talking. I was really surprised that
17 Marty stayed, because Marty and Chris have never really hung out at all. In fact, I was under
18 the impression that Marty didn't like Chris. Marty and Chris were always polite to each other, but
19 there was always obvious tension. It's hard to explain. There have also been a couple of nasty
20 words exchanged between Chris and Marty about differing political viewpoints and the way the
21 4S Club should be run. Anyway, Chris, Marty, and I were talking about the 4S Club and the
22 declining interest in collecting street signs. Chris mentioned that having a wrong way-do not
23 enter sign would be kind of cool and there was one right at the Elm Street Interstate 110 off-
24 ramp. At first I thought Chris was serious. I realized how much trouble this could get Chris in so
25 I mentioned how dangerous taking that sign could be. Marty was apparently thinking the same
26 thing and also told Chris how dangerous that could be. Chris said that it was just a joke. I was
27 convinced that Chris would not take the sign after that. Chris and I have been good friends for
28 since high school. I know Chris is a good person and I believe that Chris would not take that
29 sign, especially after saying so.
30

31 That night, Chris and I went to go see a movie. Chris had a late review session and was going
32 to come over after so we could leave for the movie theater. The movie started at 8:45 p.m., so
33 Chris was going to be at my house by 8:30. Chris arrived about five minutes late. We still made
34 it to the movies on time, though we got there just as the previews were ending. After the movie
35 was over, it was about 11:15. Chris and I decided to get some coffee at the Coffee Company.
36 We sat outside and talked for a while. I drove Chris home at about 1 A.M. I heard about the
37 accident and Chris' arrest the next afternoon. I was so shocked to hear Chris was arrested.
38 Chris would not take that street sign because of the danger it could cause others.
39

40 I was sure that Chris was not responsible for the accident when I heard that there was a
41 suspicious person wearing a burgundy and gold Santa Elenora University sweatshirt and jeans
42 seen near the sign the night of the accident. That day, Chris was wearing a white No Fear T-
43 shirt and jeans. Chris was wearing the same outfit when we went to the movies that evening. I
44 don't think that Chris even owns a burgundy and gold Santa Elenora University sweatshirt. But
45 even if Chris does have one, so do a lot of students at the University, including myself and
46 Marty Bryant.

1 **WITNESS STATEMENT** - Defense Witness: Aarin Grant

2
3 My name is Aarin Grant and I live at 995 Cherry Lane, Santa Elenora, California. I am
4 24-years-old and currently employed as an assistant manager at Kalie's, a local
5 restaurant specializing in Chinese-American cuisine. On July 11, 1997, the night of the
6 accident, I was at Kalie's working. It was a Friday night so we were pretty busy. The
7 restaurant closes at midnight. By the time servers had the restaurant all cleaned up and
8 I had finished the paperwork, it was about 12:40 a.m.. I decided to go home after work. I
9 had been working so much that week that I just wanted to go home and relax.

10
11 I got home at about 12:50 a.m. and decided to watch television for a while before I went
12 to bed. I went into the living room to look for the T.V. guide to see what was on. My pet
13 parrot, Billy, who was in his cage near the living room window started making noise. I
14 went over to the cage to see if he needed any water or food. I looked out the living room
15 windows and I noticed that someone was outside. It was my neighbor that lived across
16 the street, Chris Donovan. It looked as if Chris was just getting home because I saw a
17 car driving away from the Donovan house. Chris was walking up to the front porch. It
18 looked as if Chris noticed something in the bushes and stopped to examine it carefully.
19 Chris went to the front porch to turn on the outside lights. Chris then went to the bushes
20 and took something out of bushes. I couldn't tell what it was because some of the
21 bushes and trees on Chris' front lawn were blocking my view.

22
23 I don't really know Chris Donovan well. Chris Donovan and I have run into each other at
24 parties our neighbors have had. We've been introduced before, but have never really
25 had a chance to talk. I was surprised when I heard that Chris was arrested for taking that
26 sign at Elm Street. Chris has always seemed like a polite and kind person.

1 **WITNESS STATEMENT - Defense Witness: Jessie Martin**

2
3 My name is Jessie Martin. I live at 740 Cypress Drive, Santa Elenora, California. I am
4 27-years-old and have lived in Santa Elenora all my life. I am currently employed as a
5 computer programmer for Anderson Consulting. I live on the east side of Santa Elenora,
6 but drive to the west side every weekday for work. I drive past the Interstate 110 off-
7 ramp at Elm Street on my way to work.

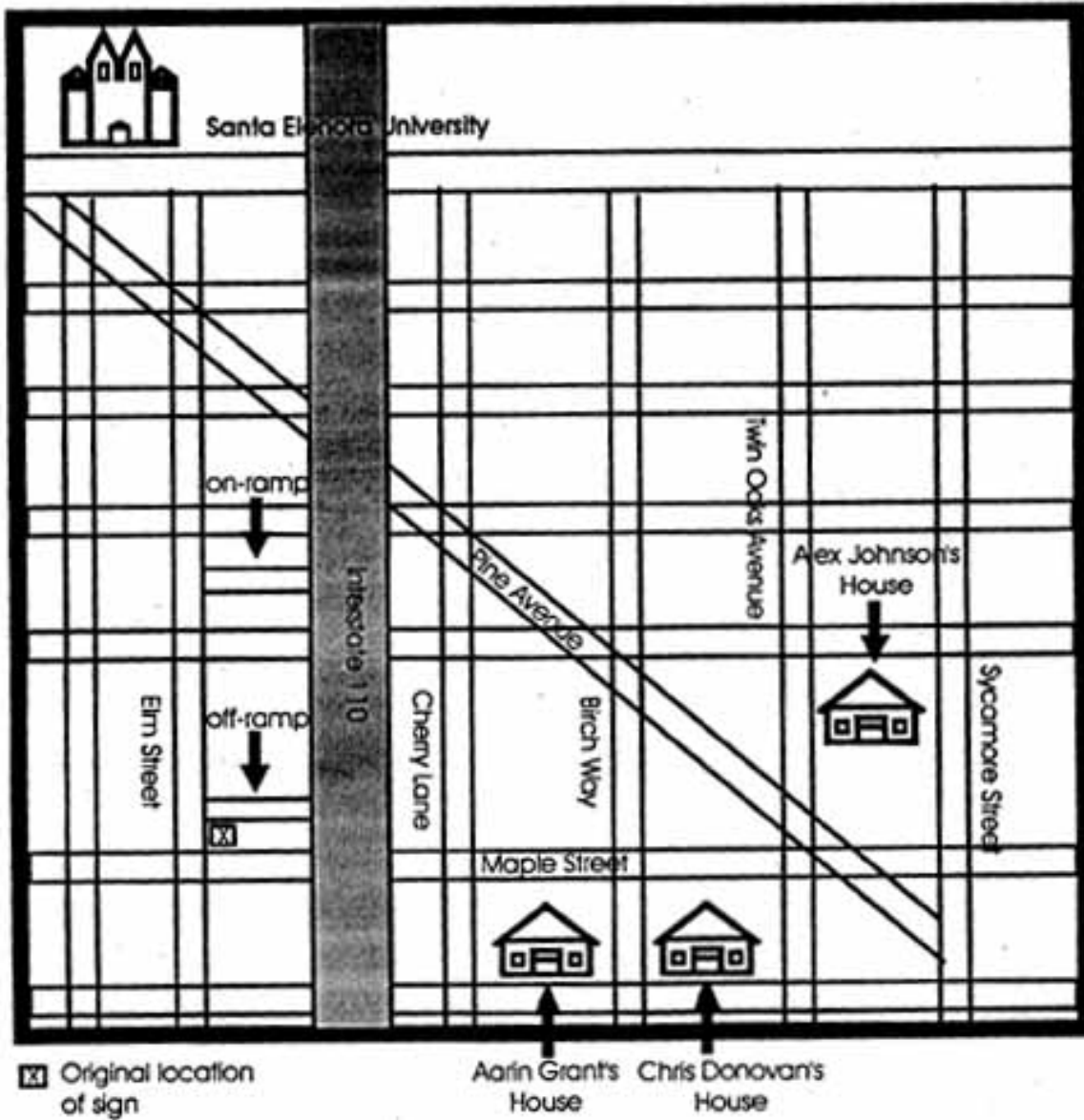
8
9 The day of the accident, July 11, 1997, I noticed that the wrong way-do not enter sign at
10 the Elm Street Interstate 110 off-ramp was gone. I noticed this at about 5:15 p.m., as I
11 was driving home from work. I remember that the sign was missing that day, because I
12 was having company over that night and they would have to use the Interstate 110 to
13 get to Santa Elenora. I thought some kid had probably taken it. I was shocked when I
14 heard about the accident and the arrest of my friend, Chris Donovan.

15
16 Chris Donovan and I have been friends for about five year now. I met Chris while I was
17 in grad school. We used to both work at a local video rental store together. We got along
18 right from the start. We have the same opinions on most issues and have similar
19 interests. We both love watching movies and reading. I can't believe that the police think
20 Chris took the sign. Chris would not do something that endangered others, like taking a
21 wrong way-do not enter sign.

22
23 About four months ago, I remember Chris calling me and telling me about the 4S Club.
24 Chris was upset because one of the members of the Club had taken a stop sign. I think
25 Chris said that person's name was Marty. Chris thought that taking a sign like that could
26 cause an accident. That's not what the club was all about. Chris made the person who
27 took the sign promise that he would never take another street sign that places other
28 people in danger. Chris is one of the nicest people I know. This is not something Chris
29 would do.
30

OFFICIAL DIAGRAM

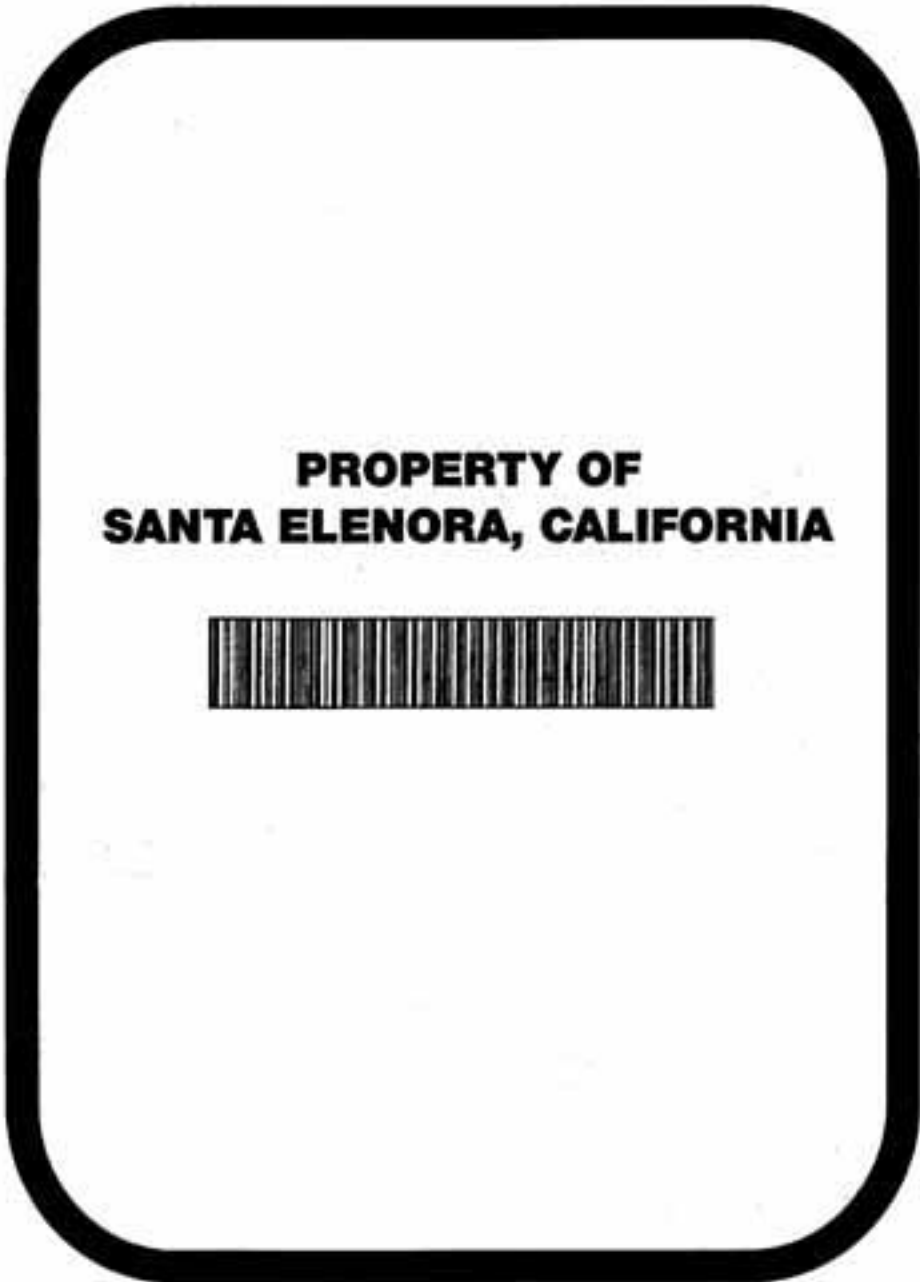
Map of Santa Elenora, California



OFFICIAL DIAGRAM



OFFICIAL DIAGRAM



THE FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

The penal (or criminal) code generally defines two aspects of every crime. These are the physical part and the mental part. Most crimes specify some physical act, such as firing a gun in a crowded room, and a guilty, or **culpable**, mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are culpable mental states. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirements prevent the conviction of an insane person. Such a person cannot form **criminal intent** and should receive psychological treatment rather than punishment. Also, a defendant may justify his/her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with the intent to steal. A person breaking into a burning house to rescue a baby has not committed a burglary.

The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, the prosecution bears a heavy burden of proof. Defendants are presumed innocent. The prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the trier of fact can say that he or she has an abiding conviction, to a moral certainty, of the truth of the charge.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (in the Mock Trial competition, the judge) applies his/her own best judgment in evaluating inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable.

ROLE DESCRIPTIONS

ATTORNEYS

The **pretrial motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position and answer questions by the judge as well as try to refute the opposing attorney's arguments in your rebuttal.

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

The **prosecutor** presents the case for the state against the defendant(s). By questioning witnesses, you will try to convince the judge or jury (juries are **not** used at state finals) that the defendant(s) is guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and will try to refute any defense alibis.

The **defense attorney** presents the case for the defendant(s). You will offer your own witnesses to present your client's version of the facts. You may undermine the prosecution's case by showing that the prosecution witnesses cannot be depended upon or that their testimony makes no sense or is seriously inconsistent.

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note rule #13, appearing on page 40 : "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Do the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

Each student attorney should take an active role in some part of the trial.

WITNESSES

You will supply the facts in the case. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts). Suppose that your witness statement states that you left the Ajax Store and walked to your car. On cross-examination, you are asked whether you left the store through the Washington or California Avenue off-ramp. Without any additional facts upon which to base your answer, you could reasonably name either off-ramp in your reply—probably the one closer to your car. Practicing your testimony with your team's attorney coach and your team attorneys will help you to fill in any gaps in the official materials. Imagine, on the other hand, that your witness statement included the statement that someone fired a shot through your closed curtains into your living room. If asked whether you saw who shot the gun, you would have to answer, "No." You could not reasonably claim to have a periscope on the roof or have glimpsed

the person through a tear in the curtains. Neither fact could be found in or reasonably inferred from the case materials.

The fact situation is a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply, "I don't know" or "I can't remember." It is up to the attorney to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the fact situation or a signed witness statement.

A witness can be impeached if he/she contradicts the material contained in his/her witness statement using the procedures outlined in this packet.

COURT CLERK, COURT BAILIFF

We recommend that you provide two separate people for these roles, but if you use only one, then that person **must** be prepared to perform as clerk or bailiff in any given trial. In addition to the individual clerk and bailiff duties outlined below, this person can act as your **team manager**. He/she will be responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager should also keep a record of all witness testimony and a copy of all attorney notes so that another team member may fill in if necessary.

When evaluating the Team Performance/Participation category in the score sheet, scorers will incorporate the contributions of the clerk and bailiff to the running of the trial into the point assessment.

The court clerk and the bailiff aid the judge in conducting the trial. In an actual trial, the court clerk calls the court to order and swears in the witnesses to tell the truth. The bailiff watches over the defendant to protect the security of the courtroom. For the purpose of the competition, the duties described below are assigned to the role of clerk and the role of bailiff.

Before each round of competition, the court clerks and bailiffs will meet with a staff person at the courthouse about 15 minutes before the trial begins. At this time, you will be paired with your opposing team's clerk, or bailiff, and will be assigned your proper role. **Prosecution teams will be expected to provide the clerk for the trial; defense teams are to provide the bailiff.** The clerks will be given the time sheets. After ensuring that all trials have a clerk and a bailiff, you will be sent to your school's trial.

Duties of the Court Clerk and Bailiff

Court Clerk

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court clerk.

In the Mock Trial competition, the court clerk's major duty is to time the trial. **You are responsible for bringing a stopwatch to the trial. Please be sure to practice with it and know how to use it when you come to the trials.**

An experienced timer (clerk) is critical to success of a trial.

INTERRUPTIONS IN THE PRESENTATIONS DO NOT COUNT AS TIME. For direct, cross and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Do not include time when:

- witnesses are coming into the courtroom.
- attorneys are making objections.
- judges are questioning attorneys or witnesses or offering their observations.

When a team has two minutes remaining in a category, call out "Two"; when one minute remains, call out "One," so that everyone can hear you. When time for a category has run out, announce "Time!" and **insist the students stop**. There is to be **no allowance for overtime under any circumstance**. This will be the procedure adhered to at the state finals in Sacramento. After each witness has completed his/her testimony, mark down the exact time on the time sheet. **Do not round off the time.**

Bailiff

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff.

In the Mock Trial Competition, the bailiff's major duties are to call the court to order and to swear in witnesses. Please use the language below. In addition, you are responsible for bringing the witnesses from the hallway into the courtroom. Sometimes, in the interest of time and if your trial is in a very large courtroom, it will be necessary to ask someone sitting in the courtroom close to the door to get the witnesses from the hallway for you when they are called to the stand.

When the judge has announced that the trial shall begin, say:

"All rise, Superior Court of the State of California, County of _____, Department _____, the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."

When you have brought a witness to testify, you must swear in the witness as follows:

"Do you solemnly affirm that the testimony you may give in the cause now pending before this court shall be the truth, the whole truth, and nothing but the truth?"

In addition, the bailiff is responsible for bringing to trial a copy of the "Rules of Competition." In the event that a question arises and the judge needs further clarification, the bailiff is to provide this copy to the judge.

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

Introduction of Physical Evidence

Attorneys may introduce physical exhibits, if any are listed under the heading "Evidence," provided that the objects correspond to the description given in the case materials. Below are the steps to follow when introducing physical evidence (clothing, maps, diagrams, etc.). All items are presented prior to trial.

1. Present the item to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.
2. When you first wish to introduce the item during trial, request permission from the judge, "Your honor, I ask that this item be marked for identification as Exhibit # ___."
3. Show the item to the witness on the stand. Ask the witness if she/he recognizes the item. If the witness does, ask him/her to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)
4. When you finish using the item, give it to the judge to examine and hold until needed again by you or another attorney.

Moving the Item Into Evidence

Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence at the end of the witness examination.

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit # ___, and request that the court so admit it."
2. At this point opposing counsel may make any proper objections she/he may have.
3. The judge will then rule on whether the item may be admitted into evidence.

The Opening Statement

The opening statement outlines the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

- Explain what you plan to prove and how you will do it.
- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

"Your honor, my name is _____ (full name), the prosecutor representing the people of the state of California in this action;" or

"Your honor, my name is _____ (full name), counsel for _____ (defendant) in this action."

Proper phrasing includes:

"The evidence will indicate that ..."

"The facts will show . . ."

"Witness _____ (full name) will be called to tell . . ."

"The defendant will testify that . . ."

Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination. See "Leading Questions" page 40.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

"Your honor, I would like to call _____ (name of witness) to the stand."

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to make the witness feel comfortable. Appropriate inquiries include:

- The witness's name.
- Length of residence or present employment, if this information helps to establish the witness's credibility.
- Further questions about professional qualifications are necessary if you wish to qualify the witness as an expert.

Examples of proper questions on direct examination:

"Could you please tell the court what occurred on _____ (date)?"

"What happened after the defendant slapped you?"

"How long did you see . . . ?"

"Did anyone do anything while you waited?"

"How long did you remain in that spot?"

Conclude your direct examination with:

"Thank you, Mr./Ms. _____ (name of witness). That will be all, your honor." (The witness remains on the stand for cross-examination.)

Cross-Examination

Cross-examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness' credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

- Call for answers based on information given in Witness Statements or Fact Situation.
- Use leading questions which are designed to get "yes" and "no" answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

In an actual trial, cross-examination is restricted to the scope of issues raised on direct examination. Because Mock Trial attorneys are not permitted to call opposing witnesses as their own, the scope of cross-examination in a Mock Trial is not limited.

Examples of proper questions on cross-examinations:

"Isn't it a fact that . . . ?"

"Wouldn't you agree that . . . ?"

"Don't you think that . . . ?"

"When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

"Thank you, Mr./Ms. _____ (name of witness). That will be all, your honor."

Impeachment During Cross-Examination

On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness's credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions.

Impeachment may also be done by introducing the witness's statement, and asking the witness whether she or he has contradicted something in the statement (i.e. identifying the specific contradiction between the witness's statement and oral testimony).

Example: (Prior conduct)

"Is it true that you beat your nephew when he was six years old and broke his arm?"

Example: (Past conviction)

"Is it true that you've been convicted of assault?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct **actually** happened.)

Examples: (Using signed witness's statement to impeach)

"Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"

"Would you read the third paragraph aloud to the court?"

"Does this not directly contradict what you said on direct examination?"

Re-Direct Examination

Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination **only**. They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination." It is sometimes more beneficial not to conduct it for a particular witness. The attorneys will have to pay close attention to what is said during the cross-examination of their witnesses, so that they may decide whether it is necessary to conduct re-direct examination.

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination during re-direct, the attorney whose witness has been damaged may wish to "save" the witness. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness's truth-telling image in the eyes of the court.

Work closely with your attorney coach on re-direct strategies.

Closing Arguments

A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:

- Be **spontaneous**, synthesizing what **actually happened in court** rather than being "pre-packaged."
- **Points will be deducted from the closing argument section of the scoresheet if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)

- **The prosecution** should emphasize that the state has proven guilt beyond a reasonable doubt.
- **The defense** should raise questions which suggest the continued existence of a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that . . . "

"Based on this testimony, there can be no doubt that . . . "

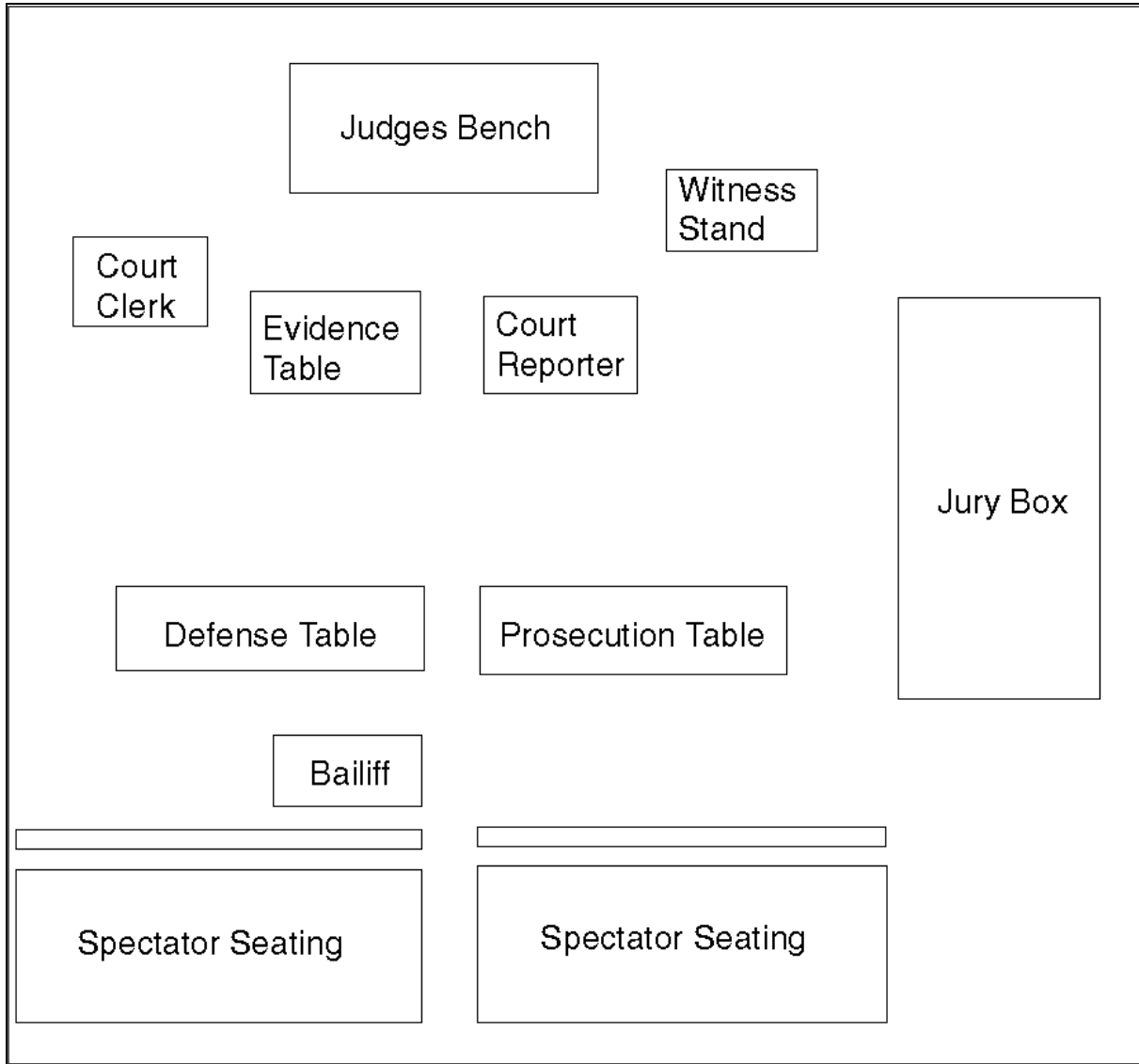
"The prosecution has failed to prove that . . . "

"The defense would have you believe that . . . "

Conclude the closing argument with an appeal to convict or acquit the defendant.

An attorney may use up to one minute of closing argument time for rebuttal. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal.

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you need to know about the role that evidence plays in trial procedure. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble those of an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Reasonable Inference

Due to the nature of the competition, testimony often comes into question as to whether it can be reasonably inferred given facts A, B, C, etc. It is ultimately the responsibility of the trier of fact to decide what can be reasonably inferred. However, **it is the students' responsibility to work closely within the fact situation and witness statements.**

Objections

It is the responsibility of the party opposing evidence to prevent its admission by a **timely and specific objection**. Objections not raised in a timely manner are waived. **An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. A *single objection* may be more effective than several objections.** Attorneys can and should object to questions which call for improper answers before the answer is given.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 46. **Other objections may not be raised at trial.** As with all objections, the judge will decide whether to allow the testimony, strike it, or simply note the objection for later consideration. **Judges' rulings are final.** You must continue the presentation even if you disagree. A proper objection includes the following elements:

- 1) attorney addresses the judge,
- 2) attorney indicates that he/she is raising an objection,
- 3) attorney specifies what he/she is objecting to, e.g. the particular word, phrase or question, and
- 4) attorney specifies the legal grounds that the opposing side is violating.

Example: (1) "Your honor, (2) I object (3) to that question (4) on the ground that it is compound."

Allowable Evidentiary Objections

1. Facts in the Record

One objection available in the competition which is not an ordinary rule of evidence allows you to stop an opposing witness from creating new facts. If you believe that a witness has gone beyond the information provided in the Fact Situation or Witness Statements, use the following form of objection:

"Objection, your honor. The answer is creating a material fact that is not in the record." or

"Objection, your honor. The question seeks testimony that goes beyond the scope of the record."

2. Relevance

Relevant evidence makes a fact important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue in the trial. Relevant evidence may be excluded by the court if it is unfairly prejudicial, confuses the issues, or is a waste of time.

Either **direct** or **circumstantial** evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e. if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Example: Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault, while testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun is circumstantial evidence of the defendant's assault.

Form of Objection: **"Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record." or**

"Objection, your honor. Counsel's question calls for irrelevant testimony."

3. Laying a Proper Foundation

To establish the relevance of circumstantial evidence, you may need to **lay a foundation**. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts.

Example: If attorney asks a witness if he saw X leave the scene of a murder, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof relates to the case.

Form of Objection: **"Objection, your honor. There is a lack of foundation."**

4. Personal Knowledge

A witness may not testify about any matter of which the witness has no personal knowledge. Only if the witness has directly observed an event may the witness testify about it. Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

Form of Objection: **"Objection, your honor. The witness has no personal knowledge to answer that question."** or

"Your honor, I move that the witness's testimony about.....be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)

5. Character Evidence

Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

Examples:

1. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.
2. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the evidence and

the prejudicial nature of the testimony would probably outweigh its probative value making it inadmissible.

Form of Objection: **"Objection, your honor. Character is not an issue here," or**

"Objection, your honor. The question calls for inadmissible character evidence."

6. Opinion of Lay Witness (non-expert)

Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible. It is admissible where it is (a) rationally based upon the perception of the witness AND (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Example: A witness could testify that, "I saw the defendant who was elderly, looked tired, and smelled of alcohol." All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Form of Objection: **"Objection, your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."**

7. Expert Witness and Opinion Testimony

An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if s/he has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. A qualified expert may give an opinion based upon personal observations as well as facts made known to him/her outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case an expert may **not** state an opinion as to whether the defendant did or did not have the mental state in issue.

Example: A doctor bases her opinion upon (1) examination of the patient and (2) medically relevant statements of patient's relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay but are proper basis for opinion testimony because they are reasonably relevant to a doctor's diagnosis.

Form of Objection: **"Objection, your honor. There is a lack of foundation for opinion testimony," or**

"Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

8. Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not under oath and cannot be cross-examined. Because they are very unreliable, these statements ordinarily are not admissible.

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.
2. However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. Hearsay is a very tricky subject.

Form of Objection: **"Objection, your honor. Counsel's question calls for hearsay."**
or

"Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

Courts have recognized certain general categories of hearsay that may be admissible. Exceptions have been made because of the practical necessity of including the information and circumstances that offer greater reliability to certain types of out-of-court statements. **The exceptions listed below and any other proper responses to hearsay objections may be used in the Mock Trial. Work with your attorney coach on the exceptions that may arise in this case.**

- a. **Admission by a party opponent**— statement made by a party to the legal action (or someone identified with him/her in legal interest) of the existence of a fact relevant to the cause of his/her adversary. (An admission is not limited to words, but may also include the demeanor, conduct and acts of a person charged with a crime.)
- b. **Excited utterance**—statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.
- c. **State of mind**— statement that shows the declarant's mental, emotional, or physical condition.
- d. **Declaration against interest**—statement that puts declarant at risk of civil or criminal liability.
- e. **Records made in the regular course of business**
- f. **Official record and writings by public employees**

g. **Past recollection recorded**—something written by a witness when events were fresh in that witness's memory, used by witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

h. **Statements for the purpose of medical diagnosis or treatment**

i. **Reputation of a person's character in the community**

Testimony not offered to prove the truth of the matter asserted is, by definition, *not* hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the statement's effect on a listener is admissible.

Allowable Objections for Inappropriately Phrased Questions

9. Leading Questions

Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

Example:

Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

Counsel could rephrase the question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

Form of Objection: **"Objection, your honor. Counsel is leading the witness."**

10. Compound Question

A compound question joins two alternatives with "or" or "and" preventing the interrogation of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example: "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Form of Objection: **"Objection, your honor, on the ground that this is a compound question."**

The best response if the objection is sustained on these grounds would be, "Your honor, I will rephrase the question," and then break down the question accordingly. Remember, there may be another way to make your point.

11. Narrative

A narrative question is one that is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable and the objections should be sustained.

Form of Objection: **"Objection, your honor. Counsel's question calls for a narrative."**

Other Objections

12. Argumentative Question

An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement.

Questions such as "How can you expect the judge to believe that?" are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit facts.

Form of Objection: **"Objection, your honor. Counsel is being argumentative." or**

"Objection, your honor. Counsel is badgering the witness."

13. Asked and Answered

Witnesses should not be asked a question that has previously been asked and answered. This can seriously inhibit the effectiveness of a trial.

Examples: 1. **On Direct Examination** Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me get your testimony straight. Did X stop for the stop sign?"

Counsel for X correctly objects and should be sustained.

BUT: 2. **On Cross-Examination** Counsel for X asks B, "Didn't you tell a police officer after the accident that you weren't sure whether X failed to stop for the stop sign?" B answers, "I don't remember." Counsel for X then asks, "Do you deny telling him that?"

Counsel A makes an **asked and answered objection**. The objection should be **overruled. Why?** It is sound policy to permit cross-examining

attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.

Form of Objection: **"Objection, your honor. This question has been asked and answered."**

14. Non-Responsive Witness

Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or he/she "forgets" the event in question. This is often purposely used by the witness as a tactic in preventing some particular evidence to be brought forth.

Form of Objection: **"Objection, your honor. The witness is being non-responsive."**

15. Outside the Scope of Cross-Examination

Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to.

Form of objection: **"Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."**

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE 1997-98 MOCK TRIAL

1. **Facts in Record:** "Objection, your honor. The answer is creating a material fact which is not in the record," or "Objection, your honor. The question seeks testimony which goes beyond the scope of the record."
2. **Relevance:** "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant testimony."
3. **Foundation:** "Objection, your honor. There is a lack of foundation."
4. **Personal Knowledge:** "Objection, your honor. The witness has no personal knowledge to answer that question," or "Your honor, I move that the witness's testimony about _____ be stricken from the case because the witness has been shown not to have personal knowledge of the matter."
5. **Character:** "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."
6. **Opinion:** "Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."
7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."
8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."
9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."
10. **Compound Question:** "Objection, your honor, on the ground that this is a compound question."
11. **Narrative:** "Objection, your honor. Counsel's question calls for a narrative." 10.
12. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."
13. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."
14. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."

15. **Outside Scope of Cross:** "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross examination."

Official Judge and Scorer
Information Packet

PEOPLE
v.
DONOVAN

ISSUES OF INVOLUNTARY MANSLAUGHTER, REMOVAL OF TRAFFIC
SIGNS, AND THE RIGHT TO COUNSEL

Featuring a pretrial argument on the
Fifth, Sixth and Fourteenth Amendments
of the U.S. Constitution



RULES OF COMPETITION

NOTE: At the first meeting of the Mock Trial team, the Code of Ethics appearing on page 1 should be read and discussed by students and their teacher.

I. ELIGIBILITY

To participate in the State Finals in Sacramento (March 27-29, 1998) , each county must implement the following procedures:

1. A county Mock Trial coordinator must be identified (usually through the county office of education).
2. Working in conjunction with CRF, the coordinator must plan and carry out a formal competition involving teams from at least two separate senior high schools in the county. These schools must be identified to CRF no later than **Friday, December 19, 1997.**

If a team from a county where there is no county competition participates in a local competition in another county, that team is eligible to represent its own county at the State Finals if it is the highest ranking team from its own county and the team won the majority of trial rounds in which it participated.

3. All local county competitions must be completed by **March 2, 1998.**
4. A teacher/sponsor and attorney coach volunteer must be identified for each team by the coordinator.
5. All team members must be eligible under school district and any state rules applicable to involvement in extracurricular activities. All team members must be registered in the school on whose team they are competing and be a member of the team at the time of both their county and the state competition.

The Mock Trial Team

6. A Mock Trial team must consist of a minimum of 9 students and may include up to a maximum of 20 students, all from the same school. At the local level, more students may be involved as jurors, but juries will not be used at the State Finals. At the State Finals, the mock trial is presented as a bench trial. We encourage you to use the maximum number of students allowable, especially at schools with large student populations.
7. Team Structure cInvolvement of all possible team members in the presentation of the case is reflected in the team performance/participation score. The team consists of the following members:

Two (2) Pretrial Motion Attorneys—one for the motion and one against the motion. You are required to use students that are different from those serving as trial attorneys during the same round.

Three (3) Trial Attorneys for Prosecution (maximum)

Three (3) Trial Attorneys for Defense (maximum)

Four (4) Witnesses for Prosecution (all four must be called in one trial)

Four (4) Witnesses for Defense (all four must be called in one trial)

One (1) Clerk

One (1) Bailiff

Teams may have alternates listed on the roster, with a maximum of 20 students total participating as performers and alternates.

It is highly recommended that different trial attorneys do the opening argument and the closing argument and that each trial attorney do at least one direct examination and one cross-examination.

We encourage that you use the maximum number of student attorneys and that all attorneys question witnesses. We also encourage you to involve as many students as possible in other support roles such as researchers, understudies, and photographers.

II. CONDUCT OF THE PRETRIAL MOTION

Note: The pretrial motion (oral arguments only) is a mandatory part of the Mock Trial competition at the state level.

1. Only the fact situation (page 5) and the materials on pages 7-15 can be used for the purposes of the pretrial motion.
2. Each student arguing a pretrial motion has four minutes to present a statement and two minutes for rebuttal. During these proceedings, students must be prepared to answer questions from the judge clarifying their position.
3. Each attorney is expected to display proper courtroom decorum and courtesy.
4. In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.
5. No written pretrial motion memoranda may be submitted to judges at local or state level.

III. CONDUCT OF THE TRIAL

1. All participants are expected to display proper courtroom decorum and courtesy.
2. Teachers and attorney coaches must identify themselves to the judge prior to the trial presentation. Teacher sponsors and attorney coaches are to remain in the seating area throughout the trial. Teachers are required to submit team rosters (page 69) to presiding judges and scoring attorneys at all rounds of the State Finals in Sacramento. No other materials may be furnished to the presiding judges or scoring attorneys by student team members, teachers, or attorney coaches.
3. The gender-neutral names allow students of either gender to play the role of any witness.
4. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams will have to begin without their other members or with alternates.
5. After the judge has delivered his or her introductory remarks, witnesses participating in the trial (other than the defendant) are to leave the courtroom until called to testify. After testifying, witnesses must remain in the courtroom for the remainder of the proceedings.
6. There must be no spectator contact with student team members once the trial has begun. Sponsors, coaches, other team members, and spectators may not talk, signal, and/or otherwise communicate with the students. There will be an automatic deduction of five points from a team's total score if the teacher or attorney coach, other team members, or spectators are found in violation of this rule either by the judge or by the Mock Trial staff.
7. Recesses will not be allowed in local or state competitions for any reason.
8. The fact situation and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts).
9. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. A witness can be impeached if he/she contradicts the material contained in his/her witness statement using the procedures as outlined on page 33.
10. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called, and the direct examination team will automatically receive a score of zero for the witness performance and direct examination for each witness not called. No other

witnesses may be called. If the cross-examination team runs out of time, the team will receive a cross-examination score of zero for each witness not cross-examined.

11. Prosecuting attorneys must provide the physical evidence listed under the heading "Evidence" in the case materials. No other physical evidence, if any, will be allowed. Additional charts or visual aids will not be allowed. Whether a team introduces, uses, and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 6.) If the prosecution team fails to bring physical evidence to court, it may be reflected in the team performance/participation score.
12. Attorneys may conduct re-direct examination when appropriate. Total time for direct/re-direct is 14 minutes.
13. Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.
14. Attorneys may use notes while presenting their cases. Witnesses are not allowed to use notes when testifying.
15. The Mock Trial Competition proceedings are governed by the "Mock Trial Simplified Rules of Evidence" on pages 37-46. Only specified types of objections will be recognized in the competition. Other more complex rules may not be used at the trial. Legal motions not outlined in the Official Materials will not be allowed.
16. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.) One minute of this time may be used for rebuttal to opponent's closing argument. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal. Formal reservation of rebuttal time will not be required at the State Finals.
17. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention before a verdict is rendered vocally in front of all present. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated and her/his word is final. (The bailiff **should have** a copy of the rules of competition for easy reference.) Unless a specific point deduction for a particular infraction is provided in these rules, it will be the individual decision of each scorer as to the amount of a deduction for a rule infraction.
18. No video/audiotaping of a trial competition outside of your own county is permitted. Please check with your local Mock Trial coordinator regarding guidelines for video/audiotaping your competition. **Videotaping is for educational purposes, and videotapes should not be shared with any other team before the State Finals without the permission of both teams videotaped. At the State Finals, videotaping is allowed in a courtroom only by the teams performing in that courtroom.**

19. The official diagram establishes only relative positions. Because the scale is approximate, the diagram cannot be used to definitively establish distances. The issue of distances should be based on the witnesses' testimony and is a matter of fact for the triers of fact.
20. At the State Finals, there will be 30 seconds provided at the end of the trial for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities regarding the Rules of Competition, which the team would like the judge and scorers to be aware of. This time should not be used to argue additional points of law or rebut opponent's closing argument. Regarding questions of rule violations, the judge's decision will be the final.
21. **Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and using realistic accents. Portrayals of racial or ethnic stereotypes are inappropriate and may adversely affect scores.**

IV. TIMING

1. Each team will have 40 minutes to present its case, including the pretrial motion. If no pretrial motion is presented, total time is 34 minutes. Time limits for each section are as follows:

Pretrial Motion	6 minutes
Opening Statement & Closing Argument.....	10 minutes
Direct & Re-direct Examination	14 minutes
Cross-Examination	10 minutes

The clock will be stopped for witnesses coming into the courtroom, attorneys making objections, and when judges are questioning attorneys and witnesses or offering their observations. The clock will not be stopped if witnesses are asked to approach the diagram or for other physical demonstrations. Time will not be rounded off.

Teams may divide the 10 minutes for opening statement and closing arguments, the 14 minutes for direct and re-direct examination, and the 10 minutes for cross-examination as desired (e.g. 3 minutes opening, 7 minutes closing). The time may be utilized however they choose, but the maximum allowable totals for each category must be observed. One minute of this time may be used for rebuttal to opponent's closing argument.

2. Two- and one-minute verbal warnings must be given before the end of each category. Students will be automatically stopped by the clerk at the end of the allotted time for each section. Thus, there will be no allowance for overtime.

3. One defense attorney at the counsel table or the bailiff may serve as an unofficial timer. This unofficial timer must be identified before the trial begins and may check time with the clerk twice during the trial, once during the prosecution's case-in-chief and once during the presentation of the defense's case. Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine if there has been a rule violation and whether to accept the clerk's time or make a time adjustment. Individuals not participating in trial presentation may not serve as unofficial timers.
4. At the end of the trial, the clerk will time the 30 second consultations and any formal presentations regarding irregularities. No extensions of time will be granted.

SUMMARY OF ORDER OF EVENTS IN THE PRETRIAL MOTION AND MOCK TRIAL

Pretrial Motion

1. The hearing is called to order.
2. The judge asks the defense to summarize the arguments made in the motion. The defense has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not part of the four-minute time limit.
3. The judge asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.
4. The judge offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues. The same attorney presents both the arguments and the rebuttal.
5. The judge offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.
6. At the end of the oral arguments, the judge will rule on the motion.
7. Beyond having a direct effect on the allowable evidence and outcome of the trial, scores for the pretrial motion presentations will be added to the Mock Trial scores in determining the winner of the trial.

Mock Trial

1. Attorneys present physical evidence for inspection.
2. Judge states charges against defendant.
3. Prosecution delivers its opening statement.
4. Defense may choose to deliver its opening statement at this point or may wait to open after the prosecution has delivered its case.
5. Prosecution calls its witnesses and conducts direct examination.
6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense may cross-examine the witness.
7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.
8. Defense may deliver its opening statement (if it did not do so earlier).

9. Defense calls its witnesses and conducts direct examination.
10. After each defense witness is called to the stand and has been examined by the defense, the prosecution may cross-examine the witness.
11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.
12. Prosecution gives its closing argument.
13. Defense gives its closing argument.
14. Rebuttal arguments (both optional)
15. Judge deliberates and reaches verdict.
16. Verdict is announced in court. (No scores/winners are announced at this time.)

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

1. A student from each school will present a team roster before the trial to the judge and scoring attorney(s). This form will have names and designated trial roles. Please keep in mind rule 13:

Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.

Please ask team members (including teacher sponsors and attorney coaches) to introduce themselves before the trial.

2. Please score every box.
3. No fractions are allowed.
4. When filling out score sheets, **please make your decisions independently**. There should be no need for conferring.
5. The presiding judge is to fill out the bottom portion of the score sheet, indicating which team he/she feels should be the overall winner in the event of a tie.
6. It is very important to read the fact situation and witness statements carefully. Because this a **mock** trial, students will refer to specific facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.
7. The fact situation and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts). Please keep in mind that witnesses can be impeached.
8. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. Witnesses can be impeached if they contradict the material contained in their witness statements. This rule is designed to limit, not eliminate, the need for reasonable inference by providing a familiar courtroom procedure.
9. Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and using realistic accents.
10. Please keep in mind that the Mock Trial competition involves timed presentations. One team's unreasonable running of the opposing team's time is inappropriate. Witnesses may be admonished, and poor sportsmanship may be reflected in the team performance score.

JUDGE'S ROLE

Pretrial Motion and Constitutional Issue

The pretrial motion section of this packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of fact situations, and analyze and debate constitutional issues. Although mandatory in the State Finals, the pretrial motion is **optional on the local level**. The county coordinator will inform you whether this will be part of the local competition. If it is, then the judge will read the "Pretrial Motion Instructions" on page 59 to the participants and the pretrial motion will be presented prior to the Mock Trial.

The judge's ruling on the pretrial motion will have a direct bearing on the evidence allowed in and the possible outcome of the trial. Please note that for the purposes of this mock trial, if the defense prevails at pretrial, the post-Miranda statement made by the defendant to the police is not admissible at trial for any purpose. The editors of this case packet acknowledge that, in a real trial, the statement might be admissible for impeachment purposes; however, mock trial judges are asked to apply the second stipulation.

Also note that when the pretrial motion is included, the score is added to the Mock Trial score when determining the winner.

Trial Proceedings: *People v. Donovan*

To the fullest extent possible, please conduct the case as you would under normal circumstances, familiarizing yourself with the case materials of *People v. Xxxx* before the trial. Although students will make errors, they must attempt to extricate themselves just as an actual attorney or witness would.

Please read the "Trial Instructions For Mock Trial Participants" on pages 59-60 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help to put the students at ease, and by **emphasizing the educational, rather than the competitive aspects** of the Mock Trial, you will help to bring the experience into proper perspective.

INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS PRIOR TO MOCK TRIAL PROCEEDINGS

"To help the attorneys and me check the team rosters, would each of you please state your name and what role you are taking? Attorneys, please identify the witnesses you will call to testify today. And would the teacher-sponsor and attorney coach for each team please identify yourself to the court?"

PRETRIAL MOTION INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS

"Both sides have four minutes to present their arguments. Defense will go first. I may interrupt to ask clarifying questions. Time spent answering my questions is not part of the four minute time limit.

"At the conclusion of your arguments, each side will be offered two minutes of rebuttal time. Please remember that the rebuttal time is to be used to counter your opponent's arguments. It cannot be used to raise new issues.

"Under the rules of this competition, the same attorney presents both the arguments and the rebuttal for his or her side.

"At the end of your presentations, I will rule on the motion.

"Please remember that under the rules the pretrial attorneys may not participate in the general trial presentation as trial attorneys.

"Scores for this pretrial motion presentation will be added to the Mock Trial scores in determining the winner of the trial.

"Is counsel for the defense ready to begin?"

TRIAL INSTRUCTIONS FOR JUDGES TO READ TO MOCK TRIAL PARTICIPANTS PRIOR TO THE BEGINNING OF THE TRIAL

"Presenting trial attorneys and the defendant should be seated at the prosecution and defense tables. Witnesses testifying today must go out into the hallway until called to testify. After testifying, they must remain quietly in the courtroom.

"I must remind you that witnesses are permitted to testify only to the information in the fact situation of which they would reasonably have knowledge, their own witness statements, and what can reasonably be inferred from that information. Also, please keep in mind that witnesses can be impeached for testimony contradictory to their witness statements.

"You must complete your presentations within the specified time limits. The clerk will signal you as your time for each type of presentation begins to run out. At the end of each section, you will be stopped when your time has run out whether you are finished or not.

"Attorneys must call four witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the 1997-98 Mock Trial.'

"The following items may be offered as **evidence** at trial:

1. A faithful reproduction of the map of Santa Elenora. Map should be no larger than 22" x 28".
2. A faithful reproduction of the front of the wrong way-do not enter sign. Reproduction should be no larger than 22" x 28".
3. A faithful reproduction of the back of the wrong way-do not enter sign. Reproduction should be no larger than 22" x 28".

"Prosecution and defense **stipulate** to the following:

(You may opt to have the student attorneys read the stipulations for the record.)

1. No argument concerning the search and seizure of Chris Donovan's house and the admissibility of any evidence taken from Chris Donovan's house will be heard at pretrial or during the trial.
2. Both parties stipulate that a conversation took place between Chris Donovan and Detective Jones as quoted in the Fact Situation. For the purposes of this mock trial, if the defense prevails in the pretrial argument, the defendant's post-Miranda statement to the police will not be admissible at trial for any purpose.
3. In the city of Santa Elenora, 12 blocks equals approximately one mile in distance.
4. According to the U.S. Weather Service, the temperature in vicinity of Santa Elenora on July 11, 1997 reached a high of 84 degrees and a low of 69 degrees.
5. Sunset on July 11, 1997 was at 8:13 p.m.
6. Several other undistinguishable fingerprints were found on the street sign along with Chris Donovan's fingerprints.

"At the end of the trial I will render a verdict of guilty or not guilty in relation to the charges brought. The teams will be rated based on the quality of their performances, independent of my decision on the verdict.

"Before court is called to order, I would like to make reference to the Code of Ethics of the competition. I am assured you have all read and discussed its significance with your teachers.

"Barring unforeseen circumstances, no recesses will be called. If for any reason a recess is necessary, team members should remain in their appropriate places and should have no contact with spectators.

"If there are no questions I will ask the witnesses to please step into the hallway, and the trial will begin."

SCORING MATERIALS FOR JUDGES AND ATTORNEYS

GUIDELINES FOR 1-5 SCORING METHOD

The following are general guidelines to be applied to each category on the scoresheet. They refer to both attorneys and witnesses. These guidelines provide a reasonable framework on which to base your judgment. It is strongly recommended that scorers use "3" as an indication of an average performance, and adjust higher or lower for stronger or weaker performances.

- 1 FAR BELOW AVERAGE -Unacceptable performance**
 - Disorganized
 - Shows lack of preparation and poor understanding of task and rationale behind legal procedure.

- 2 BELOW AVERAGE -Fair, weak performance**
 - Inadequate preparation and understanding of task
 - Stilted presentation

- 3 AVERAGE -Meets required standards**
 - Fundamental understanding of task and adequate preparation
 - Acceptable but uninspired performance

- 4 ABOVE AVERAGE -Good, solid performance**
 - Demonstrated a more fully developed understanding of task and rationale behind legal procedure.

- 5 EXCELLENT -Exceptional performance**
 - Demonstrated superior ability to think on her/his feet
 - Resourceful, original & innovative approaches
 - Portrayal was both extraordinary and realistic

EVALUATION CRITERIA

Students are to be rated on the five-point scale for each category according to the following criteria appropriate to each presentation. **Points should be deducted if criteria are not met or are violated.** Each team may be awarded a maximum of 110 points by each scorer and/or judge if the pretrial motion is presented, and 95 points if it is not.

1. Pretrial Motion

- P Clear and concise presentation of issues with appropriate use of authorities.
- P Well-developed, well-reasoned and organized arguments.
- P Responded well to judge's questions and maintained continuity in argument.
- P Effective rebuttal countered opponent's argument.

2. Opening Statement

- P Provided a clear and concise description of the anticipated presentation.

3. Direct/Re-Direct Examination

- P Questions required straightforward answers and brought out key information for her/his side of the case.
- P Attorney effectively responded to objections made.
- P Properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- P Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- P Attorney made **effective** objections to cross-examination questions of his/her witness when appropriate.
- P Throughout questioning, attorney made appropriate use of her/his time.
- P Attorney used **only** those objections listed in the summary of evidentiary objections.

4. Cross-Examination

- P Attorney made **effective** objections to direct examination (of the witness he/she cross-examined) when appropriate.
- P Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- P Attorney exposed contradictions in testimony and weakened the other side's case.

5. Witnesses

- P Witness was believable in her/his characterizations and convincing in testimony.
- P Witness was well prepared for answering and responded well to the questions posed to him/her under direct examination.
- P Witness responded well to questions posed under cross-examination without unnecessarily disrupting or delaying court proceedings.
- P Witness testified to key facts in a consistent manner and avoided irrelevant comments.

6. Closing Argument

- P Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.
- P Attorney incorporated examples from the actual trial, while also being careful **not** to introduce statements and evidence that were not brought out in her/his particular trial.
- P Attorney made an organized and well-reasoned presentation summarizing the most important points for his/her team's side of the case.
- P If and when questioned by the judge, attorney gave well-reasoned, coherent answers.
- P Effective rebuttal countered opponent's arguments.

7. Team

- P Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- P **All** team members were involved in the presentation of the case and actively participated in fulfilling their respective roles, including the clerk or bailiff.
- P As much as possible, **each** trial attorney displayed examination and argumentation skills, and when appropriate, displayed knowledge of Simplified Rules of Evidence in making objections.
- P Witnesses performed in synchronization with attorneys in presenting their side of the case.
- P The clerk or bailiff performed his/her role so that there were no disruptions or delays in the presentation of the trial.
- P Team members demonstrated cooperation and teamwork.

The behavior of teachers and attorney coaches may also impact team performance score.

MOCK TRIAL SCORING CALCULATIONS

Based on last year's success, we will continue to use the following system to address the issue of artificially high and low scores skewing results of trials. We are encouraging all counties to adopt this method for consistency and familiarity when teams arrive in Sacramento.

This system will not affect power matching, if done in your county.

Instead of adding the points from each judge into a grand total for each round of the competition, calculate the percentage difference between the two teams from the total number of points given in that trial. For example, from the chart below, Team A received 241 points and Team B received 247, creating a total of 488 points given in the trial. To calculate the percentages for both teams, you do the following:

Trial 1

Team A: $\frac{241}{488}$ (team points)
divided by 488 (total for both teams)=.4939

Team B: $\frac{247}{488}$ (team points)
divided by 488 (total for both teams)=.5061

Use the same process for Trial 2 and subsequent trials. If you are **not** doing power matching, these percentage scores are an alternative to cumulative raw scores. Please note that if percentage scores are released, teams will know whether they won or lost, since scores higher than .5000 always indicate a win.

TRIAL 1			TRIAL 2		
Teams	Raw Scores	Total % of Points Given	Teams	Raw Scores	Total % of Points Given
TEAM A			TEAM C		
Judge 1	90		Judge 4	90	
Judge 2	90		Judge 5	90	
Judge 3	61		Judge 6	87	
TOTAL	241	0.4939	TOTAL	267	0.4917
TEAM B			TEAM D		
Judge 1	92		Judge 4	92	
Judge 2	89		Judge 5	89	
Judge 3	66		Judge 6	95	
TOTAL	247	0.5061	TOTAL	276	0.5083
Sum	488		Sum	543	

NOTE: The percentage team scores for A & B and for C & D are within one percent, which reflects the relative closeness of the judging. **Team B, having won, will not be penalized unreasonably for having a much lower score than Team D.** Teams B & D will then be ranked by their percentage scores in the 1-0 bracket. This additional step de-emphasizes disproportionately high or low scores without disrupting the scoring relationship between any two schools in a single round (in other words, who won or lost).

Following Round 2 Each team's percentage scores for each successive round should be added and then ranked in the appropriate win-loss bracket. Power matching can proceed as usual. For example:

Team A: .4939 (Round 1)(lost)
 .5143 (Round 2)(won)
 1.0082

2B0	1B1	0B2
-----	-----	-----

Team A would be ranked somewhere in the (1-1) bracket.
 If this method is used after each round, the additional calculation **does not** have to be a part of cumulative point totals given out to teams.

AWARD NOMINATION SHEET

PROSECUTION NAME

DEFENSE NAME

Please list only the names of students whose presentations were noteworthy and would merit special recognition:

Outstanding Defense Pretrial Motion Attorney _____

Comments _____

Outstanding Prosecution Pretrial Motion Attorney _____

Comments _____

Outstanding Prosecution Attorney _____

Comments _____

Outstanding Prosecution Witness _____

Comments _____

Outstanding Defense Attorney _____

Comments _____

Outstanding Defense Witness _____

Comments _____

Scoring should be independent.

Work space:

TEAM ROSTER SHEET

**TEACHERS ARE REQUIRED TO SUBMIT COMPLETED ROSTERS
TO JUDGES AND SCORERS BEFORE TRIAL BEGINS**

Prosecution	Defense
Pretrial Motion Attorney:	Pretrial Motion Attorney:
Trial Attorneys:	Trial Attorneys:
Witness #1 Role: Name of Student:	Witness #1 Role: Name of Student:
Witness #2 Role: Name of Student:	Witness #2 Role: Name of Student:
Witness #3 Role: Name of Student:	Witness #3 Role: Name of Student:
Witness #4 Role: Name of Student:	Witness #4 Role: Name of Student:
Clerk:	Bailiff:

PRETRIAL MOTION TIME SHEET

_____ V. _____
 Defense - School Prosecution - School

Clerk _____

School _____

DEFENSE	PROSECUTION
Statement _____ (four minutes, excluding time judge asks questions and attorney answers them.)	Statement _____ (four minutes, excluding time judge asks questions and attorney answers them.)
Rebuttal _____ (two minutes, excluding time judge asks questions And attorney answers them.)	Rebuttal _____ (two minutes, excluding time judge asks questions and attorney answers them.)
TOTAL TIME	TOTAL TIME

NOTE: Give one-minute warnings before the end of **each** section.

Do not round off times.

MOCK TRIAL TIME SHEET

Clerk _____ Judge _____ Date _____

Prosecution - School V. _____
Defense - School

INSTRUCTIONS:

Mark the exact time on the time sheet. Do not round off. For direct, cross and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Stop clock (do not time) when:

- witnesses come into the courtroom;**
- attorneys make objections;**
- judges are questioning attorneys or making observations from the bench.**

PROSECUTION:

DEFENSE:

Opening Statement _____

Opening Statement _____

Direct/Re-Direct Exam (14 min.) _____

Cross-Exam (10 min.) _____

Prosecution Witness 1 ___/___

Prosecution Witness 1 _____

Prosecution Witness 2 ___/___

Prosecution Witness 2 _____

Prosecution Witness 3 ___/___

Prosecution Witness 3 _____

Prosecution Witness 4 ___/___

Prosecution Witness 4 _____

TOTAL TIME _____

TOTAL TIME _____

Cross-Exam (10 min.) _____

Direct/Re-Direct Exam (14 min.) _____

Defense Witness 1 _____

Defense Witness 1 ___/___

Defense Witness 2 _____

Defense Witness 2 ___/___

Defense Witness 3 _____

Defense Witness 3 ___/___

Defense Witness 4 _____

Defense Witness 4 ___/___

TOTAL TIME _____

TOTAL TIME _____

Opening Statement
(from above) _____

Opening Statement
(from above) _____

Closing _____

Closing _____

Rebuttal (1 min. max.) _____

Rebuttal (1 min. max.) _____

TOTAL TIME _____

TOTAL TIME _____

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