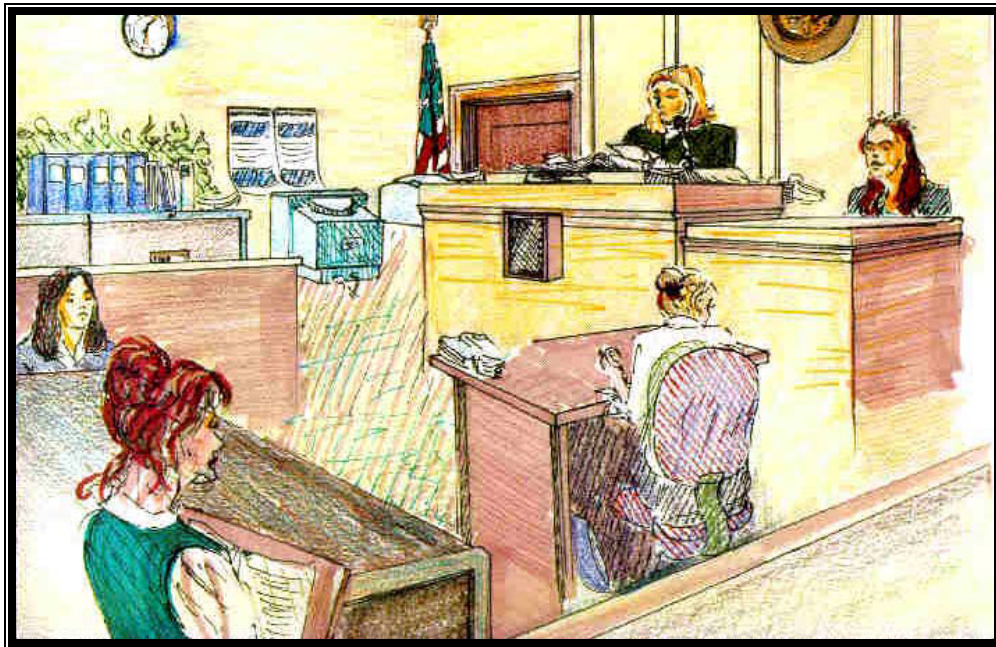


CONSTITUTIONAL RIGHTS FOUNDATION

PEOPLE V. WHITMAN

ISSUES OF CHILD ABDUCTION, GRAND THEFT, AND SELF-INCRIMINATION

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



Co-Sponsored by:

California Department of Education
State Bar of California
California Young Lawyers Association
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**OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM**



CRF242



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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 throughout history.
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 the Constitution (the Fifth and Fourteenth Amendments) and the issues of child abduction, grand theft, and 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

Lifestyles, Households and Children

The average American family has a working father, a mother who stays at home and two children. Right? WRONG! Far from describing the typical family, that statement fit fewer than one household in 10 even a decade ago. By choice or the force of circumstances, people today are living in a variety of arrangements that don't fit the traditional mold.

In the mock trial case, *People v. Whitman*, the facts involve a child born to young parents. The scenario can raise thoughts and discussion on parenthood and its ensuing responsibilities.

Households with children are still the most popular form of American home. Over half of all families have at least one child under 18 living at home. Having a child can radically alter your lifestyle and apply a whole new set of laws to you. Your experience as a child gives you one perspective on those laws; being a parent will give you a very different view. The law often supports the right of parents to control the upbringing of their children. Along with that authority comes responsibility to act in the child's best interests.

Once you become a parent, you are financially responsible for the care of your offspring. In millions of families, all of the support is supplied by one adult. Separation, divorce and out-of-wedlock births have made sole custody for one parent a common arrangement.

Single parent families grew 20 times faster than mother-father households in the 1970s and even faster in the 80s. In the post-World War II generation, more than 80 percent of children grew up in families with two biological parents who were married to each other. By 1980, however, only half of American children were likely to live in an intact family with their own mother and father through childhood [Barbara Dafoe Whitehead, "Dan Quayle Was Right," *The Atlantic Monthly*, April 1993, p. 47].

Depending on what has happened to the other parent, different sets of laws apply to those single parent homes. Married or not, the absent parent remains legally liable for some portion of the child's expenses until that child reaches 18.

Neither parent can release the other from liability to the child. Public policy favors that there be two supportive parents whenever possible. To enforce that policy, legal procedures are available to bring in money from the missing parent. When the absent parent has died or cannot be located, the remaining parent must shoulder the entire responsibility of raising the child. If that parent has no job, public assistance could be available.

Even with the availability of social services for children of single-parent families, these children are six times as likely to be poor, and they are likely to stay poor longer. Studies show that children in single-parent families are also two to three times more likely as children in two-parent families to have emotional and behavioral problems. And they are more likely to abuse drugs, drop out of school, get pregnant as teenagers, or get into

trouble with the law [Whitehead, p.47]. Many young people are making decisions which result in them becoming parents at an age when they cannot assume the responsibilities of marriage. As the abovementioned statistics indicate, these decisions can have significant impact on children of the next generation.

Licensing Parents--A Class Poll

Minimum ages or other qualifications are set for almost every part of adult life. Laws determine the age at which you can buy alcohol and cigarettes, make contracts, and work at a dangerous job. The legal age for many adult privileges and responsibilities differs from state to state. For example, the age at which parental consent is no longer required for getting married is 15 in some states, 16 or 17 in other states, and all states permit marriage without parental consent at 18. Yet, the most important quality of adulthood is unregulated. Only biological capability determines when people can have children. For this very difficult and socially important task, the government imposes no restrictions.

Why do you think that states don't license parents? Are children unimportant? Would such a law be too hard to enforce? Should laws regulate a person's decision to bring another child into the world? Decide whether you agree or disagree with the arguments presented below. Think carefully about the consequences of your choices.

Strongly Disagree					Strongly Agree
1	2	3	4	5	

- A. Nothing is more personal than the decision of two people to have a child. We don't need big government sticking its nose where it doesn't belong.
- B. Adoption agencies carefully screen applicants so that unqualified people aren't given a child. Natural parents should meet the same requirements. Their children are entitled to the same care.
- C. Laws regulating childbirth are against human nature. Having children isn't always a rational choice. People will be governed by their emotions, not by some law.
- D. Our laws rest on the premise that minors don't know what is good for them. Those same individuals certainly aren't ready to raise a child of their own. No one under 18 should be allowed to be a parent.
- E. Any form of licensing requirement would be used to discriminate against poor people. Middle-class and wealthy legislators would try to impose their values on all families.

- F. By not requiring parents to pass a licensing test before having children, we ignore the needs of the next generation. All those newborn babies would want capable parents.
- G. You can never know whether someone will be a good parent until a child is born. The principle of "innocent until proven guilty" would be abridged if people had to prove their fitness before they could have children.
- H. If the government did set a minimum age or require licenses, the law would have to be enforced. Children born to unlicensed parents could be automatically put up for adoption. Or parents could be fined.

Activity

1. Students should record their responses (1-5) to each item on the poll.
2. Appoint a team of four students to tally the results. To do this, collect the student forms and add up the totals for each item. To determine response percentages, divide by the number of students taking the poll.
3. Announce the results of the poll and have a class discussion on the following questions:
 - o Would people who are already parents have the same opinions? Why or why not?
 - o What other methods might be considered to make sure that people considering parenthood would be good parents?

[Adapted from article in *Bill of Rights in Action*, May 1982, Vol. XVI, No. 2.]

CALIFORNIA MOCK TRIAL FACT SITUATION

1
2
3 On Sunday, August 1, 1993, a one-year-old female child, Jennifer Whitman Davison, was
4 abducted from Barry Park, located in Clarence, California. Morgan Davison, Jennifer's
5 grandparent and legal guardian, discovered that the child was missing from her stroller at
6 approximately 10:30 a.m. After searching the park and questioning those around, Morgan
7 called the police at approximately 10:42 a.m. Police questioning of people in the park did
8 not result in any positive identifications of persons seen with Jennifer other than Morgan.
9 An all-points bulletin (APB) was issued for Clarence police officers to be on the lookout for
10 the missing child.

11
12 At 2:46 p.m. that afternoon, the police received a call from Carey Phillips, the manager at
13 the Stargazer Motel in Clarence. Phillips reported that an apparently abandoned child was
14 found in one of the motel rooms. Two pairs of officers responded to the call. The first pair
15 remained to investigate, while the second, Officers Jay Park and Courtney McClelland,
16 departed, but not before Officer Park heard Phillips give a basic description of a suspect
17 and vehicle.

18
19 Shortly after leaving the motel, Officers Park and McClelland observed Alex Whitman's
20 car passing through a red light at the intersection of Greenleaf and Figaro Streets at a
21 high rate of speed. They pulled the car over and Officer Park approached Whitman and
22 asked for license and registration. While Officer Park spoke with Whitman, Officer
23 McClelland entered the vehicle tag number into the police computer. The computer
24 revealed that Whitman was under warrant for outstanding traffic violations with fines worth
25 over \$1,000. Whitman's driving privileges had also been suspended as a result of these
26 violations. Alex Whitman was arrested and Mirandized as a result of the warrants and
27 requested counsel. All questioning by the officers then ceased. The time of arrest was
28 3:02 p.m.

29
30 Officer Park suspected that Alex Whitman was the same person wanted for questioning
31 regarding the abduction of Jennifer Whitman Davison. After relaying this suspicion to
32 Officer McClelland, the officers decided to purposely drive back to the station house on a
33 route that would go directly past the Stargazer Motel. Although this was not their normal
34 route, it was equivalent in distance to the other route but more time consuming due to
35 traffic patterns.

36
37 The officers said nothing directly to Alex Whitman during the ride. As they approached the
38 motel, an ambulance which had been called to the scene to attend to Jennifer was leaving
39 the motel. Upon seeing the ambulance, Officer Park made the following statement to
40 Officer McClelland: I sure hope they located the little girl's next of kin. The ambulance
41 approached the patrol car in the oncoming traffic lanes and as the vehicles passed each
42 other, Officer McClelland observed Whitman's behavior.

43
44 According to Officer McClelland who was seated in the back seat, prior to seeing the
45 ambulance, Whitman was sitting still although appearing to be somewhat nervous.
46 However when the ambulance passed, according to Officer McClelland, Whitman became
47 very agitated. Officer McClelland attests to observing that Whitman quickly turned to

1 watch the ambulance go by, then immediately turned back towards the motel. In the motel
2 parking lot were the original police officers on the scene, the motel manager, and several
3 other bystanders. The door to the room where Jennifer was found was wide open.
4 According to Officer McClelland, Alex Whitman made a partially audible statement which
5 sounded to the officer like, "Oh my God! What happened to...." The word "to," according to
6 Officer McClelland, was followed by a "j" or "ch" sound. Officer McClelland also attests to
7 observing Whitman, who was seated a slight distance from the car window, move quickly
8 to the window and stare in the direction of the motel. The statement was not completed,
9 nor were any further statements made for the duration of the ride. Whitman was taken to
10 the station house and booked on the outstanding warrants. Whitman's personal
11 possessions, including \$1,700 in cash, were inventoried and held.
12

13 During the subsequent investigation into the abduction reported by Morgan Davison, the
14 child found at the Stargazer Motel was identified as Jennifer Whitman Davison. The
15 investigation produced evidence leading to the indictment of Alex Whitman on a child
16 abduction charge. Included in the evidence leading to indictment were the reported
17 observations of defendant by Officer McClelland.
18

19 Additional evidence regarding items--including cash, a framed photo, and a
20 camera--reported missing by Morgan Davison led to Alex Whitman's indictment on a
21 grand theft charge.
22

23 **Charges:**

24
25 **Count 1: Child Abduction**

26 Cal. Pen. Code §278: Every person, not having a right of custody,
27 who maliciously takes, detains, conceals, or entices away, any
28 minor child with intent to detain or conceal that child from a person,
29 guardian, or public agency having the lawful charge of the child
30 shall be punished by imprisonment in the state prison for two, three
31 or four years, a fine of not more than ten thousand dollars
32 (\$10,000), or both, or imprisonment in a county jail for a period of
33 not more than one year, a fine of not more than one thousand
34 dollars (\$1,000) or both.
35

36 **Count 2: Grand Theft**

37 Cal. Pen. Code §487: Grand theft is theft committed in any of the
38 following cases:
39

- 40 1. When the money, labor, or real or personal property
41 taken is of a value exceeding four hundred dollars
42 (\$400)....
- 43 2. When the property is taken from the person of
44 another.
45
46
47

1 **Evidence:** Map of Clarence, CA
2 [Prosecution is responsible for bringing the evidence to trial.]
3

4 **Stipulations:** Prosecution and defense stipulate to the following:
5

- 6 1. Permanent legal guardianship of the child Jennifer was awarded to Morgan
7 Davison on July 2, 1993 after a previous guardianship decree issued on June 23,
8 1993 was challenged by Alex Whitman. The initial guardianship decree was
9 awarded with adequate notice and procedure.
- 10
11 2. Morgan Davison's housekeeper let Alex Whitman into the house on the morning of
12 August 1, 1993, but has no knowledge of what Alex did while in the house.
13
- 14 3. Alex Whitman had made a reservation at Sky High Mountain Resort on Sunday,
15 August 1, 1993 for "1-2 adults." The reservation was made for August 2-4, 1993.
16 The reservations computer also indicated that a "crib was requested."
17
- 18 4. Alex Whitman's car was searched and its contents inventoried pursuant to a
19 proper warrant based upon articulated probable cause resulting from the
20 investigation of the abduction of Jennifer Whitman Davison. No Fourth
21 Amendment argument will be heard at pretrial regarding this search.
22
- 23 5. Items inventoried from Alex Whitman's car included: a red sweater; a small travel
24 bag with some of defendant's clothing and toiletries; a brochure and map to Sky
25 High Mountain Resort; a shopping bag containing baby clothes, baby supplies,
26 and toys--a ball, a stuffed teddy bear, a toy car; a grocery bag containing baby
27 food, blue disposable diapers, diaper wipes, and milk; a camera; and a framed
28 photo of Chris Whitman and Jennifer Whitman Davison.
29
- 30 6. The police investigation determined that the groceries found in Alex Whitman's car
31 were purchased at a local supermarket. No individuals working at the market
32 remembered any facts relevant to the case.
- 33 7. The camera found in Alex Whitman's car was positively identified by make, model
34 and serial number as the one reported missing from Morgan Davison's home.
35
- 36 8. The outstanding violations and warrants against Alex Whitman were adjudicated in
37 and settled upon in separate proceedings.
38
- 39 9. Defense witness Tracy Michaels will not be called as an expert witness. No issue
40 of doctor/patient privilege will be considered at trial.
41
42

MOCK PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the mock trial packet 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.

The pretrial motion in this case relates to issues of *Miranda* warnings and the Fifth Amendment. The 1966 landmark case of *Miranda v. Arizona* resulted in certain well-known rights guaranteed to any person subjected to a situation of custodial interrogation. These are: the right to remain silent; the knowledge that any statement a person makes may be used as evidence against him/her; the right to have an attorney present during questioning; and the right to have an attorney appointed if the person cannot afford one. In this case, the Supreme Court decided it was necessary for a person to have these rights to uphold the Fifth Amendment guarantee against self-incrimination. Subsequent court cases (summarized below) have clarified, refined, and in some cases restricted the application of these rights. You can use these cases to help you decide whether the evidence presented by the testimony of prosecution witness Officer Courtney McClelland is admissible or not.

The pretrial is designed to complement a new aspect of the proceedings--each side will be allowed to call four out of five witnesses. Thus, if the testimony about incriminating statements is ruled inadmissible, the prosecution will have to decide whether the witness whose testimony is primarily based upon those statements will be called to testify. Likewise for the defense, they will have to decide whether or not the defendant should testify.

Arguments

In the pretrial motion, the **defense** will argue that the testimony of Officer McClelland, which describes a statement and mental state observations of the defendant after *Miranda* warnings were given and counsel requested, should not be allowed. The defense will argue that the actions of the officers taking a route which drove by a scene related to the abduction was the functional equivalent of questioning for *Miranda* purposes, and that Alex Whitman's statement and/or behaviors were testimonial or communicative in nature and were incriminating, and that the use of those statements would violate Alex's Fifth Amendment rights.

In the pretrial motion, the **prosecution** will argue that the officers' driving by the abduction scene was reasonable and was not directly intended to elicit incriminating remarks to use against Alex Whitman. Furthermore, the prosecution will claim that the partial statement and brief description of Alex's reactions are standard observations and are not testimonial for *Miranda* purposes.

1 **Sources**

2
3 The sources for the pretrial motion arguments consist of excerpts from the United States
4 Constitution, California statutes, edited court opinions, and the Mock Trial Fact Situation.

5
6 The U.S. Constitution is the source of a person's right against self-incrimination. Through
7 various court opinions, the Supreme Court interprets the language of the Constitution to
8 make it applicable and binding to the states, including California. In general, however, the
9 Supreme Court's decisions are based on the specific facts of each case it hears. In
10 developing arguments for this Mock Trial, both sides should compare or distinguish the
11 factual patterns in the cited cases from one another and from the facts in this case,
12 *People v. Whitman*.

13
14 **Legal Authorities**

15
16 **Statutes:**

17
18 1. *U.S. Constitution, Amendment V*

19
20 "[No person shall be] subject for the same offense to be twice put in jeopardy of life or
21 limb, nor shall be compelled in any criminal case to be a witness against himself, nor be
22 deprived of life, liberty, or property, without due process of law..."

23
24 2. *U.S. Constitution, Amendment XIV*

25
26 "Section 1. All persons born or naturalized in the United States and subject to the
27 jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

28 No State shall make or enforce any law which shall abridge the privileges or immunities
29 of citizens of the United States; nor shall any State deprive any person of life, liberty, or
30 property, without due process of law; nor deny to any person within its jurisdiction the
31 equal protection of the laws."

32
33 **Cases:**

34
35 1. *Miranda v. Arizona*, 384 U.S. 436 (1966)

36
37 **Facts:** Ernesto Miranda was accused of kidnapping and raping an 18-year-old girl in
38 Phoenix, Arizona. After being arrested and identified in a lineup, Miranda was taken into
39 an interrogation room and questioned for two hours. The interrogation resulted in a
40 written and signed confession which was used at trial to convict Miranda. Miranda
41 appealed to the Supreme Court claiming that he would not have confessed had he been
42 advised of his right to counsel and to remain silent.

43
44 **Holding:** The Supreme Court held that Miranda's fifth amendment privilege against self-
45 incrimination had been violated. They stated that any person subjected to a situation of
46 custodial interrogation must be advised of certain constitutional rights. These are: the
47 right to remain silent; the knowledge that any statement he/she makes may be used as

1 evidence against him/her; the right to have an attorney present during questioning; and
2 the right to have an attorney appointed if he/she cannot afford one. These protections are
3 necessary to assure that the individual is accorded his/her Fifth Amendment privilege
4 against self-incrimination.

5
6 **2. *Schmerber v. California*, 384 U.S. 757 (1966)**

7
8 **Facts:** Armando Schmerber was involved in an automobile accident and arrested for
9 drunken driving. While hospitalized for injuries received in the accident, a doctor,
10 following police orders, took a blood sample from Schmerber which revealed that his
11 blood alcohol level was at the intoxication level. This evidence was used against him at
12 trial where he was convicted. Schmerber appealed this decision on the grounds that the
13 blood sample was taken from him without his consent thus violating his right to self-
14 incrimination.

15
16 **Holding:** The Supreme Court held that the Fifth Amendment privilege against self-
17 incrimination is not violated by compelling a person to submit to a blood-alcohol test
18 against his/her will. The Fifth Amendment privilege protects an accused from being
19 compelled to testify against him or herself or from otherwise providing the state with
20 evidence of a testimonial or communicative nature. The privilege does not extend to
21 situations where the suspect or accused's body is the source of real or physical evidence.
22

23 **3. *U.S. v. Wade*, 388 U.S. 218 (1967)**

24
25 **Facts:** Wade was arrested and convicted of bank robbery and conspiracy. Several
26 weeks after his arrest, Wade was placed in a lineup in which he had to wear tape on his
27 face, as the robber allegedly had done. Wade also had to repeat words that the robber
28 allegedly used by the robber. Wade was identified by two bank employees and this
29 identification was used at the trial resulting in his conviction. Wade appealed on the
30 grounds that the conduct of the lineup violated his Fifth Amendment privileges against
31 self-incrimination.

32
33 **Holding:** The Supreme Court held that Wade's Fifth Amendment privilege against self-
34 incrimination was not violated. The Court stated that merely exhibiting his person for
35 observation by witnesses and using his voice as an identifying physical characteristic
36 involved no compulsion of the accused to give evidence of a testimonial nature against
37 himself.
38
39

1 4. *Gilbert v. California*, 388 U.S. 263 (1967)

2
3 **Facts:** In this co-case with *Wade* (above), Gilbert was accused of armed robbery and the
4 murder of a police officer. As part of the evidence used against him, Gilbert was forced to
5 give handwriting samples to compare with a demand note used during the robbery. Wade
6 claimed that the admission into evidence of the analysis of the sample was a Fifth
7 Amendment violation.

8
9 **Holding:** The Supreme Court ruled that the mere taking of a handwriting sample, not
10 used for the content of what is written, but used only for identifying physical characteristics
11 is outside the scope of the Fifth Amendment privilege against self-incrimination. The
12 Court further pointed out that no claim was made that the content of the exemplars was
13 testimonial or communicative in nature.

14
15 5. *Rhode Island v. Innis*, 446 U.S. 291 (1980)

16
17 **Facts:** The defendant, Innis, was arrested as a suspect for armed robbery. Innis was
18 unarmed when he was arrested. He was advised of his *Miranda* rights several times. On
19 the way to the police station, two officers engaged in a conversation in which they stated
20 there were a lot of "handicapped children running around in this area" and "God forbid one
21 of them might find a weapon and hurt themselves." Although defendant had asked for an
22 attorney, he voluntarily responded to this statement (even though it was not directed at
23 him) and showed the officers where the weapon was located.

24
25 **Holding:** The Supreme Court stated that the *Miranda* safeguards are necessary
26 whenever a person in custody is subjected to either express questioning or its functional
27 equivalent. They defined functional equivalent as any words or actions on the part of the
28 police that the police should know are reasonably likely to elicit an incriminating response
29 from the suspect. In this case, the court found nothing to suggest that the officers were
30 aware that Innis was particularly susceptible to an appeal to his conscience concerning
31 the safety of handicapped children, or that in the context of the brief conversation, the
32 officers should have known that Innis would suddenly be moved to make a self-
33 incriminating response. The court stated that Innis had not been "interrogated" in violation
34 of his *Miranda* rights to remain silent until he consulted with a lawyer.

35
36 6. *Brewer v. Williams*, 430 U.S. 387 (1977)

37
38 **Facts:** Williams, the defendant, was arrested in Davenport, Iowa for a murder committed
39 in Des Moines, Iowa. Williams requested the presence of an attorney before questioning.
40 On the way from Davenport to Des Moines, the police officers in the car told the
41 defendant that the murdered girl's parents needed to know where the body was so that
42 they could give her a proper "Christian burial." The police officers knew that Williams was
43 a former mental patient and was deeply religious. The officer, Detective Leaming,
44 addressed Williams as "Reverend" and presented his point as a statement directed at
45 Williams, not as a question.
46
47

1 **Holding:** The Supreme Court held that the officers clearly intended to elicit incriminating
2 responses from Williams, that Detective Leaming's "Christian Burial" speech was
3 tantamount to interrogation, that Williams right to counsel had been violated, and that he
4 had not waived that right. The Court stated that "Detective Leaming deliberately and
5 designedly set out to elicit information from Williams just as surely as...if he had fully
6 interrogated him."
7

8 7. *U.S. v Dionisio*, 410 U.S. 1 (1973)
9

10 **Facts:** Dionisio was among 20 people subpoenaed by a grand jury to give voice samples
11 to compare with voice recordings in a gambling investigation. All 20 people, including
12 Dionisio, were advised that they were potential defendants in a criminal action. Dionisio
13 and others refused to give the voice samples stating that they would violate their right
14 against self-incrimination.
15

16 **Holding:** The Supreme Court stated that the compelled production of voice exemplars
17 (voice samples) does not violate the Fifth Amendment privilege against compulsory self-
18 incrimination if they are to be used only for identification purposes, and not for the
19 testimonial or communicative content of the utterances.
20

21 8. *Colorado v. Connelly*, 479 U.S. 157 (1986)
22

23 **Facts:** Connelly was arrested for murder after approaching a Denver police officer and
24 stating that he had murdered someone and wanted to talk about it. Connelly was advised
25 of his *Miranda* rights and said that he understood them but still wanted to talk. The next
26 day, Connelly became visibly disoriented and was sent to a state hospital for evaluation.
27 At that time, Connelly told a psychiatrist he confessed because he was following the
28 "voice of God." The psychiatrist determined that Connelly was suffering from a psychosis
29 that prevented him from making rational decisions, including the decision to waive his
30 *Miranda* rights.
31

32 **Holding:** The Supreme Court held that, although a defendant's mental state does affect
33 the voluntariness of a confession, in the absence of police coercion, it by itself cannot be
34 the determining factor. Furthermore, the Court stated that whenever the State bears the
35 burden of proof in a motion to suppress a statement allegedly obtained in violation of the
36 *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence.
37 In order to find that a waiver is not voluntary, evidence of police coercion is necessary.
38

39 9. *Cape v. Francis*, 741 F.2d 1287 (1984)
40

41 **Facts:** The defendant, Garnett William Cape, was accused of murdering the 15-year-old
42 step-daughter of his niece. The judge in the case ordered Cape to be examined by a
43 psychiatrist before the trial. Cape was not given the opportunity to consult with his lawyer
44 before the examination. At the trial, the psychiatrist testified as to his opinion of
45 defendant's capability to stand trial and also to defendant's mental state at the time of the
46 crime.
47

1 **Holding:** The Court of Appeals ruled that admission of the psychiatrist's mental state
2 observations of the defendant relating to the commission of the crime did violate Cape's
3 Fifth and Fourteenth Amendment rights since the psychiatrist's testimony was based on
4 his interviews with the defendant. Because the psychiatrist was acting as a state officer,
5 the defendant should have been given proper warnings and opportunity to consult with
6 counsel. However, the court ruled that the admission of this evidence was harmless error
7 (was not instrumental in the outcome) in light of all the other overwhelming evidence
8 presented against the defendant at trial.

9
10 10. *U.S. v. Hinckley*, 672 F.2d 115 (1982)

11
12 **Facts:** On March 30, 1981, an assassination attempt resulted in the wounding of the
13 President of the United States, Ronald Reagan; his Press Secretary, James Brady; a
14 secret service agent, and a metropolitan police officer. John Hinckley Jr. was arrested on
15 the scene, Mirandized, and taken into federal custody. Hinckley invoked his right to
16 counsel. Despite this, five FBI agents began interrogating him. During this questioning,
17 Hinckley made several incriminating remarks which he sought to have suppressed,
18 claiming that the interrogation violated his Fifth Amendment rights. At trial, the FBI agents
19 who questioned Hinckley were not allowed to testify as to what Hinckley said during the
20 interrogation, but they did testify about Hinckley's behaviors and demeanor during that
21 time.

22
23 **Holding:** The District of Columbia Court of Appeals ruled that this additional interrogation
24 by the FBI was not analogous to a booking procedure, as they claimed, but that the
25 agents clearly questioned Hinckley at this time. The court ruled that the statements made
26 during this interrogation were not admissible. Further, the court ruled that FBI agents'
27 testimony about Hinckley's demeanor during the interview (which occurred five hours after
28 the assassination attempt) was also inadmissible. The court stated that, although it is
29 possible that certain questions asked of Hinckley could theoretically be permissible, it is
30 not possible to distinguish whether the agents' testimony regarding Hinckley's demeanor
31 was based upon the "permissible" or "impermissible" portions of the interview. The court
32 concluded that, since the interrogation session was improper in its entirety, the demeanor
33 testimony was also tainted and therefore inadmissible.

34
35 11. *Gholson v. Estelle*, 675 F.2d 734 (1982)

36
37 **Facts:** Barry Gholson was arrested for capital murder in Bell County, Texas. Prior to trial,
38 the court ordered that Gholson and his co-defendant, Ross, be examined by a psychiatrist
39 to see if they were competent to stand trial. Gholson was interviewed by Dr. Holbrook, a
40 state employee, for one and a half hours. Gholson's attorney was not informed about the
41 examination. At trial, Dr. Holbrook testified that he believed Gholson had no remorse and
42 was a threat to commit criminal acts of violence in the future. The doctor testified not only
43 to what was said but also to observations he made of Gholson's behavior and appearance
44 during the interview.

45
46 **Holding:** The court ruled that the admission of the psychiatrist's testimony was
47 unconstitutional. The court based its decision on the fact that the testimony was based on

1 a court-ordered interview in which the defendant was not given his *Miranda* warnings, and
2 the psychiatrist's conclusions were based, not only on what was said during the interview,
3 but also observations of the defendant's silence during the interview. Also, the court ruled
4 that the physiological reactions elicited from Gholson were, by themselves, testimonial in
5 nature where, in this case, the type of examination used was specifically aimed at
6 procuring evidence by measuring physical behavioral reactions to interrogation.

7
8 12. *Jones v. Dugger*, 839 F.2d 1441 (1988)

9
10 **Facts:** Defendant, Oliver Jones, allegedly committed sexual battery against two women
11 at gunpoint. As he fled from the scene, he was apprehended by a police officer, Detective
12 Holsberry, who began to question him about himself--whether he could read or write, etc.
13 At that time, Jones denied involvement, but two hours later began crying and confessed to
14 the crime. Jones was found incompetent for trial for several months. Eventually, the trial
15 court found him competent and Jones was tried for the crime. Sanity was a central issue
16 at the trial. Detective Holsberry appeared to testify to Jones' demeanor at that time he
17 questioned him. Jones sought to have this testimony suppressed since it was obtained in
18 violation of *Miranda*.

19
20 **Holding:** The Eleventh Circuit court ruled that Det. Holsberry's testimony of observations
21 of Jones' mental state during questioning was still admissible even though the questioning
22 violated *Miranda* because, in this case, Holsberry's "observations" were not based upon
23 the content of the interrogation. The officer did not testify as to what was said but
24 reported on Jones' apparent level of awareness of consequences, right or wrong, as
25 indicated by the fact that defendant was crying. The court decided this evidence was non-
26 testimonial in nature and was therefore admissible.

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 you to present one 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. Whitman* 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.

Order of Pretrial Motion Events

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 to be 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.

1 **WITNESS STATEMENT** - Prosecution Witness: Morgan Davison

2
3 My name is Morgan Davison. I live at 4312 Greendale Avenue in Clarence. I am 42 years
4 old and the legal guardian of my granddaughter, Jennifer. Jennifer was born on August
5 14, 1992. Chris, who was my adopted child and Jennifer's parent, was killed on December
6 17, 1992 in a terrible car accident. Although I was not Chris' biological parent, we were
7 always very close, as if Chris were my own. Chris' death was very painful.

8
9 I think the only thing we ever really disagreed on was Chris' relationship with Alex. When
10 they announced they were getting married because they were having a baby, I was very
11 upset. But, Chris was 18 and old enough to make these kinds of decisions. I knew Alex
12 was going to be trouble from the start.

13
14 I was right, too. When they started out, they had no money, nothing. I kept offering to help
15 out, but Alex had very strong feelings against me and kept refusing. I think Alex's pride
16 must have prevented them from having any chance of being happy and made Chris and
17 Jennifer's lives miserable. To me, it was the best thing that could have happened when
18 Alex left home. Poor Chris came home one day to find that Alex had left a note saying,
19 "This was all a big mistake. I am not ready to be a parent or to be married. I know you
20 love Jennifer very much and will be a good parent to her. You're both better off without
21 me." We never heard from Alex again.

22
23 Chris decided to move back in with me and let me help raise Jennifer properly. When
24 Chris died, I was devastated. Thankfully, I had Jennifer. It was like having a little part of
25 Chris still living. It seemed perfectly logical for me to take over raising Jennifer. I filed for
26 permanent legal guardianship in January but the first decree wasn't issued until May. The
27 day they told me Jennifer was mine was one of the happiest days of my life.

28
29 When Alex came back into town, all that changed. Alex came in demanding to have
30 Jennifer back. Of course I understand that a biological parent is entitled to certain rights
31 and has certain ties to the child, and I don't deny that Alex truly loves Jennifer. But as far
32 as I'm concerned, that disappearing act of Alex's really showed Alex's true nature. When
33 things get troublesome and times are bad, who's to say that Alex won't take off again?
34 Even after finding out that Chris had died, Alex, who supposedly loved Chris and Jennifer
35 so much, never called, and never checked on Jennifer. No decent parent would act that
36 way. I think the judge agreed with me because I am still Jennifer's legal guardian. I didn't
37 necessarily think that Alex was a bad person. But Alex is definitely not equipped to be a
38 full-time parent to Jennifer.

39
40 One of the things Jennifer and I enjoy the most is spending time at Barry Park. It's located
41 only about three blocks from our home. What I like most about Barry Park is that it is quiet
42 and safe. Or so I thought.

43
44 On Sunday morning, August 1st, Jennifer and I took a stroll to the park. We had only been
45 there for about 20 minutes. I got up to throw some trash away. Jennifer was asleep in her
46 stroller and I didn't want to disturb her, so I left her there for just a moment. I only had my
47 back turned to her for a little while. The trashcan was only about 15 yards away. There
48 were people around--my neighbors--and I thought this was a safe place for us! I couldn't

1 believe it when I walked back to the stroller and Jennifer was gone.
2

3 For a moment I was totally in shock. I looked around on the grounds, to see if a friend or
4 neighbor was holding her, I looked everywhere. I asked everyone if they had seen
5 anything, but nobody had. I didn't know what to do. Suddenly, something came into my
6 mind--Alex. I hated to think that Alex might do something like this, but since returning to
7 town, it has been clear that Alex was determined to get Jennifer back somehow. I
8 immediately called the police.
9

10 I have never been so scared and upset in all my life. When the police got there, they
11 asked me all kinds of questions about what I was doing, where Jennifer was, who was
12 around. Everything seemed so normal. The only thing I could think of was that Alex was
13 involved. I didn't want to believe it, though. I may not have the best relationship with Alex,
14 but I never thought Alex was capable of something this terrible. I even tried to deny my
15 suspicions and, at the police officers' suggestion, I called when I got home to let Alex
16 know that Jennifer was missing. I had to leave a message on the answering machine.
17

18 I became even more upset, however, when I discovered that my emergency fund that I
19 keep hidden in my home was missing. I didn't know that Alex had been at the house, but
20 when Jackie mentioned seeing Alex go in and out of the house, I got worried. Chris knew
21 where I kept that money--in an old strongbox under my desk in the study--and may have
22 told Alex. Sure enough, the money was gone, all \$1,200. I couldn't believe what was
23 happening. I went into Chris' old room to sit and think, try to clear my head and stay calm.
24 I don't go in there often, but at that moment I felt I needed to be closer to Chris. But I
25 noticed while in the room that the picture of Chris and Jennifer that used to be on the
26 dresser was missing. I started looking around to see if anything else was gone, and I
27 remembered that Chris had used a really nice camera to take pictures of Jennifer after
28 she was born. I couldn't find the camera anywhere. I reported this all to the police. I later
29 learned that it was found in Alex's car. I think I gave Alex more credit than Alex truly
30 deserved for Chris' sake, but no more. I now know what kind of person Alex really is.
31

32 I was so thankful when Jennifer was returned to me unharmed.
33

1 **WITNESS STATEMENT - Prosecution Witness: Officer Jay Park**

2
3 My name is Officer Jay Park. I work for the Clarence Police Department as a patrol officer.
4 I have been with the department for four years.

5
6 On August 1, 1993, at approximately 2:45 or 2:50 p.m., an emergency call came over the
7 radio stating that officers were needed at the Stargazer Motel and that an abandoned
8 child had been found there. My partner, Officer McClelland, and I had just gone on duty
9 and were driving nearby so we responded to the call. When we arrived on the scene,
10 another unit had arrived a few minutes before. There had been an APB issued earlier that
11 morning for a female child abducted from Barry Park. We were all on the lookout for her.
12

13 When I entered the room where the child had been found, the motel's manager was giving
14 the officers a description of a possible suspect and lead on the suspect's vehicle. The
15 description was very vague. The manager could recall only that the person was wearing
16 something red. The motel registration form had the car listed as a "1987 Hynda" but the
17 manager stated that it may have been a Honda. The room statement also indicated that
18 one phone call was made at 11:10 a.m. It was clear that the responding officers had
19 everything under control. As I was leaving, one of them went to call a medical unit to
20 attend to the child.
21

22 I returned to the patrol car and my partner and I continued on our patrol. We had traveled
23 south on Grand then headed west on Figaro when, as we were approaching the
24 intersection of Figaro and Greenleaf, we saw an oncoming black Honda run the red light
25 at a high rate of speed. We immediately pulled a U-turn and proceeded to pull the vehicle
26 over. As I exited the car to approach the driver, my partner called in the vehicle's tag
27 number to check it in the police computer. I asked the driver for license and registration.
28 The driver's name was Alex Whitman. I observed that in the back seat, there was a red
29 sweater and a framed picture of someone with a baby. There was also a shopping bag
30 which appeared to be full of baby toys and clothes. Another grocery bag was on the floor
31 of the back. The bag was full and sitting on the top of it were some baby food and blue
32 disposable diapers.
33

34 I returned to the patrol car to complete the citation, when Officer McClelland informed me
35 that the computer revealed that there were over \$1,000 worth of warrants outstanding for
36 Alex Whitman's arrest on various moving violations and that Whitman's driving privileges
37 had been suspended since November of '92. I returned to the vehicle and asked the driver
38 about this situation. The driver didn't say much in response but seemed very angry and at
39 a loss for words. We proceeded with proper arrest procedures. After being given *Miranda*
40 warnings, Whitman asked to speak with an attorney. At that point, Officer McClelland and
41 I knew we could not ask any more questions about anything. I already had my suspicions
42 that this person may have been involved in the child abduction, though, especially after
43 noting that the suspect shared a name with the child described in the earlier APB. The
44 time of arrest was 3:02 p.m.
45

46 After I placed Whitman in the back seat, Officer McClelland and I discussed the possibility
47 that this was the kidnapping suspect--the red sweater, the baby toys, the diapers, the
48 picture, the 1987 Honda all led me to agree that it was possible.

1
2 From where we were at that time, facing eastbound on Figaro near the intersection with
3 Greenleaf Street, we had two routes we could have taken to get back to the station house
4 that would have been about the same distance. We could have gone westbound on
5 Figaro two blocks to Orchid, then proceed north on Orchid until we hit Wilson. The station
6 house is located on Wilson, a block east of Orchid. Or we could have continued
7 eastbound on Figaro and gone back the way we came--north on Grand and west on
8 Wilson.

9
10 Under normal circumstances, we would probably take the Orchid Avenue route because,
11 although both routes are about the same distance, the Orchid Avenue one takes less
12 time. But under the circumstances, Officer McClelland suggested we take Grand Street
13 back instead. When I saw the ambulance pulling out of the motel parking lot, I said
14 something to Officer McClelland about hoping that they found the little girl's next of kin. I
15 was sure that the baby's family was worried, and I was hoping the child had been
16 identified and the family notified. I didn't see what Whitman did when we passed the motel
17 since I was driving. Likewise, I didn't really hear anything, either, but I was paying
18 attention to other things at the time. My partner was the one paying attention to Whitman.

19
20 When we got back to the station house, Alex Whitman was booked on the outstanding
21 warrants. At that time, Whitman's personal possessions were inventoried and held,
22 including \$1,700 in cash. We learned that the baby found at the Stargazer Motel was, in
23 fact, Jennifer Whitman Davison who earlier had been reported missing.

24
25 In our subsequent investigation, Officer McClelland and I returned to the motel and spoke
26 with Carey Phillips, the manager. We showed Phillips pictures of the suspect and Carey
27 Phillips identified Alex Whitman from the picture as having been the person in red who
28 checked into the motel earlier that day. Later in our investigation, we found out that,
29 according to phone company records, the phone call made from the room in which the
30 child was found--the one listed on the room statement--was made to the phone number of
31 Tracy Michaels, a friend of Alex Whitman.

32
33 Also during our investigation, Morgan Davison reported \$1,200 cash missing from a
34 strongbox in the study and other items missing from a bedroom in the Davison home.
35 These items--a camera and a framed photo of Chris Whitman and Jennifer Whitman
36 Davison--were found in Alex Whitman's car.
37

1 **WITNESS STATEMENT - Prosecution Witness: Officer Courtney McClelland**

2
3 My name is Courtney McClelland and I am a 12-year veteran officer with the Clarence
4 Police Department. I am 36 years old and have lived in Clarence most of my life.
5

6 I know of the defendant, Alex Whitman, because my partner and I arrested Alex on
7 Sunday, August 1 on warrants for outstanding traffic violations. It was just before 3:00 in
8 the afternoon when we spotted a vehicle running a red light at the intersection of
9 Greenleaf and Figaro. I know this because we had come on duty at 2:45 and already
10 made one brief stop at the Stargazer Motel. When we pulled the vehicle over, my partner,
11 Officer Park, got out to approach the driver. Meanwhile, I ran the tag number through the
12 computer and found out that the owner of the vehicle was wanted on outstanding
13 warrants.
14

15 Jay came back to the car, and I told Jay about the warrants. Jay told me that this car was
16 an '87 Honda, and that the driver appeared very anxious and had a red sweater and a bag
17 of baby toys and things in the back seat. Jay had a feeling that this person was the
18 suspect wanted in the child abduction case. I was not familiar with what had happened at
19 the Stargazer since Officer Park was the one who checked things out there. I've been a
20 police officer for many years and experienced many types of crimes, but the ones
21 involving children--whether they be kidnapping, abuse, neglect, whatever--are still very
22 emotionally charged. Those are the kinds of people you want to get as soon as you can,
23 lock them up, throw away the key, and hope the kid doesn't remember anything or wasn't
24 hurt in any way. Officer Park has very good instincts and is usually right about such
25 suspicions. I wanted to find out if this "hunch" was right.
26

27 So we went back to the station house the way we came--going up Grand, right past the
28 Stargazer. I, personally, wanted to see what Whitman would do as we went by there. I
29 thought the suspect, if really involved, might do something to give indication of that. We
30 had no intention of stopping at the Stargazer or interrogating the suspect about it. We
31 were simply going back to the station house. Per our departmental arrest and
32 transportation practices, I sat in the back next to Whitman during the ride back to the
33 station house. We always have someone ride next to an arrestee or suspect being
34 transported so that the person cannot try to harm us in any way. It's a standard practice
35 for many police departments.
36

37 Because I was seated there, I was able to observe Whitman's behavior clearly. From the
38 time we starting going back until right before we approached the Stargazer, the suspect
39 sat fairly still in the back seat, although it was clear, from demeanor and facial expression,
40 that the defendant was anxious or nervous. I think there was also some anger about being
41 arrested. As we approached the Stargazer, the ambulance that had responded on the
42 scene was pulling out of the Stargazer parking lot. Jay said to me, "I sure hope they
43 located the little girl's next of kin." I think the sirens caught Whitman's attention, who all of
44 a sudden became very agitated. We stopped as the ambulance crossed over the street to
45 head south on Grand and from our vantage we could see the Stargazer. Whitman
46 watched as the ambulance went past then quickly turn back towards the Stargazer. In the
47 parking lot were two police officers and several other people. One of the motel room doors
48 was open.

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At this point, we started moving forward again. Whitman, who was not sitting right next to the window, suddenly moved, almost lunged, towards the car window to be able to look out. Whitman was staring at the activity in the motel parking lot. I heard Whitman say, "Oh my God, what happened to..." At this point, Whitman was very agitated but was not speaking very loudly. After that where's, I thought I heard a "ch" or "j" sound. Just as Whitman was about to complete the sentence, Whitman turned and saw that I was watching and immediately became very still and quiet. Although sitting still, it was clear that Whitman was shaken up.

In my mind, the suspect's conduct at that point cinched the case--Whitman reacted like someone who knew that a baby was supposed to be in that motel room, not just like a curious passerby.

1 **WITNESS STATEMENT** - Prosecution Witness: Carey Phillips

2
3 My name is Carey Phillips. I live at 9123 Orchid Lane in Clarence. I am 28 years old, and I
4 am the manager of the Stargazer Motel located on Grand Street in Clarence. Grand is a
5 pretty major thoroughfare and its on the side of town closest to the city, so we are usually
6 pretty busy with a lot of different tourist groups.
7

8 A little after 2:30 on that Sunday, a customer called the office to complain that a baby had
9 been crying in the room next door for the last 30 minutes. I went to the room and knocked
10 but nobody answered. The baby was crying very loudly, so I used the master key and
11 opened the door. Apparently, the baby had been left there by itself for quite some time.
12 There were no baby supplies or clothes or anything indicating that anyone else was
13 supposed to be there with the baby. I figured she was abandoned. She was on the floor--I
14 think she must have fallen off the bed. Her diaper was wet and she was very upset. I
15 immediately called the police. When the police came they told me that a baby girl had
16 been kidnapped earlier that day at Barry Park and they thought this might be the one.
17

18 I checked the computer to see who had registered for that room. The room had been
19 rented earlier that morning to someone registering as "J. Smith." I remember checking this
20 person in but just vaguely. Unfortunately, this person came in at the same time as a large
21 tourist group. That was the second group to check in that morning. I normally don't do
22 check-ins, but this was an especially large group and they came in all at once, so I was
23 trying to help the clerk out. I don't really remember the actual person very well, but I
24 remember the situation. I remember thinking how vague the name was, but since the
25 person had come in with this group, I automatically assumed they were together. We were
26 moving so fast trying to get everyone placed that I didn't pay much attention to it. I didn't
27 even ask for full registration information because we were in such a hurry. Now I really
28 regret it. For instance, instead of asking for the year, make, model, tag number, and color
29 of the person's car, I just got down that it was a "1987 Hynda." I'm not sure if that was a
30 "Honda" or "Hyundai" but I think it was probably a "Honda." As I said, I thought this person
31 was with the rest of them. One big mistake I did make, though, was not getting this person
32 to sign the registration form.
33

34 We were very busy that day. It was pretty much assembly-line check in. I was staring at
35 the computer screen almost the whole time while people just filed up to the desk and
36 recited their information to me. I know that's bad customer relations, but it was faster for
37 all of us, and I don't think they minded at all. I remembered that while most everyone else
38 was wearing a blue jacket, this person had on something red, maybe a sweater or
39 sweatshirt. But again, I didn't think anything of it. Maybe the person just didn't have the
40 jacket on or whatever. When the police were there that day, I couldn't really remember the
41 person's face, but later on they came back and showed me some pictures. Although I
42 couldn't remember enough to give a good description, I did recognize the person's face as
43 soon as I saw the picture.
44

1 **WITNESS STATEMENT - Prosecution Witness: Jackie Orsino**

2
3 My name is Jackie Orsino, and I live at 4314 Greenglade Avenue in Clarence. I've lived
4 here for about three years. Ever since I've lived here, Morgan and Chris have lived next
5 door. They were such a nice family to live next to--very caring, close. Although it was
6 just the two of them, I could tell they had a very good relationship. The only time I've
7 known them to really disagree with each other was when Chris started dating Alex. I
8 could tell that Morgan disliked Alex from the start. In a way, I got the feeling that Morgan
9 felt Chris could do better. Morgan always thought that Alex was nothing but trouble and
10 didn't have a very good sense of responsibility. Like many parents, Morgan had some
11 lofty aspirations and hopes for Chris. If it hadn't been for Jennifer, I think Morgan would
12 have died when Chris was killed.

13
14 I remember when Alex disappeared, Morgan was pretty happy about it. Morgan said,
15 "That's the smartest thing Alex has ever done." Chris told me once that a lot of the
16 arguments that Alex and Chris had revolved around Morgan. Chris also said that,
17 although Alex's leaving was very painful, Chris almost understood why Alex felt it was
18 necessary. "The pressure of the whole situation was unbelievable," Chris once told me.

19
20 I met Alex while they, Alex and Chris, were dating. They seemed very close to each
21 other. I wasn't really surprised when they announced they were getting married and
22 having a baby. Morgan was furious! From what I know of Alex, though, I was not really
23 surprised to hear that Alex took off. I don't think Alex realized what kind of responsibility
24 came with becoming a parent. I think Jennifer is better off with Morgan since Morgan is
25 a very stable person, emotionally and financially. But I did see a change when Alex
26 came back into town last May. Alex seemed to really care about Jennifer and wanted to
27 spend time with her. Maybe that time away was good for Alex--some time to think things
28 through. Alex visited Jennifer as often as possible. Morgan was pretty good about
29 letting Alex visit. Morgan could have made it very difficult. I know there was still a lot of
30 tension between them, but I think Morgan recognized that Alex really did care about
31 Jennifer, although Morgan always made sure the visits were scheduled and supervised.

32
33 That's why I was kind of surprised when Alex showed up that Sunday morning. I didn't
34 think that was one of their normal visitation days. Morgan and Jennifer had gone to the
35 park. I think it was about 10:15. I was doing yard work and I remember seeing Alex's
36 black Honda pull up. Then Alex got out, went to the front, the housekeeper opened the
37 door, and Alex went in. I didn't see Alex come back out of the house, but I heard a car
38 door close, and there was Alex going back into the house again. A minute later, Alex
39 came back out, said "Hello" to me, and asked me where Morgan and Jennifer were. I
40 told Alex that they had gone to the park, and then Alex got in the car and headed north
41 in the direction the park. I assumed that's where Alex was going. I'd say that Alex was
42 at the house for about 5 minutes. The next thing I knew the police were knocking on my
43 door asking me if I knew anything about Jennifer being kidnapped.

1 **WITNESS STATEMENT - Defense Witness: Alex Whitman, Defendant**

2
3 My name is Alex Whitman. I am 19 years old, and I live in Clarence. My address is
4 14409 Northstar Lane, Apartment 401. I have lived in Clarence since I moved here at
5 the age of 15 to live with some relatives after my parents passed away. I am not very
6 close to my family, and I have no brothers or sisters. That's why Chris became such an
7 important person to me. I always knew Chris was the right person for me. That was not
8 an issue when I left, and Chris understood that. I know everyone else, especially
9 Morgan Davison, thought that I was an irresponsible, unreliable, immature kid who
10 couldn't face up to my responsibilities. That may have been somewhat true at the time,
11 but there was much more to it than that. The pressure was incredible, especially from
12 Morgan. I suppose Morgan acted out of love for Chris, but Morgan's obvious hatred for
13 me was tearing Chris apart. I really thought I was doing the best thing for everyone. I
14 admit that I was scared, confused, and had very low self-esteem at the time, but I left
15 for Chris and Jennifer's sake. I think I was starting to believe some of the things Morgan
16 had been saying about me.

17
18 I did a lot of thinking and growing up while I was gone. I didn't want to let Chris know
19 why I really left but I still loved both Chris and Jennifer very much, so every once in a
20 while I would contact a friend, Sam Johnson, to get an update on them. I never even
21 told Sam where I was. When Sam told me that Chris had been killed in a car accident, I
22 almost died. For a long time, I refused to believe that it was true. It took me quite a while
23 to get myself together to the point where I could start thinking straight again. Then it hit
24 me. I needed to find out what was happening to Jennifer. I called Sam who told me that
25 Morgan had Jennifer. At the time, my family did not consent to this, but they were not in
26 any position financially to support Jennifer or to compete with Morgan's high-powered
27 attorney. I wanted to get back to take care of my daughter.

28
29 When I returned to Clarence, it was the last week of May. I immediately got an
30 apartment and a job as an office clerk. I wanted to show everyone that I had changed
31 and was here to stay. And I wanted Jennifer. Morgan was bound and determined to
32 keep her though, and I couldn't compete with Morgan's money and lawyers. I tried my
33 best to convince the judge that I could take care of Jennifer, but the judge felt that my
34 actions spoke louder than my words and that the way I left Chris and Jennifer and didn't
35 come back even after I found out Chris had died were very damaging to me. The judge
36 said that it was in Jennifer's best interest for her to remain with Morgan. I was very
37 disappointed, but I guess I understand. From someone else's point of view, what I did
38 must have looked really bad.

39
40 I tried to visit Jennifer as much as possible although Morgan didn't make it easy. I never
41 got to spend any time alone with her, take her anywhere, or even spend long periods of
42 time with her. But Jennifer is still my daughter and not even Morgan can deny that.
43 Morgan also knows that I love Jennifer and would never do anything to hurt her. So I
44 couldn't believe it when I was accused of kidnapping Jennifer and leaving her alone in a
45 motel room. I would never do something like that! I want Jennifer back, but legally. I
46 have been looking into the possibility of appealing the custody decree. A friend of mine,
47 Tracy Michaels, has been encouraging me to talk to lawyers about it. I visited Tracy the
48 morning that Jennifer disappeared. Tracy has been a great friend through this whole

1 custody battle. After talking with Tracy for a while, I went to see Jennifer. I usually don't
2 go over there on Sundays, but I was getting ready to go out of town for a vacation--I
3 needed to get away and I was going to take a few days off from work.
4

5 I stopped by Morgan's and the housekeeper let me in when I first got there. She told me
6 that no one was home, and I asked if I could use the phone. I went back to my car to
7 get the number for Kids World, then I made my phone call to find out when they would
8 be open, but there was no answer. The housekeeper didn't know where Morgan and
9 Jennifer had gone, but I saw Morgan's neighbor who told me that they had gone to the
10 park. By the time I left, it was about 10:30 or so. After that I ran some other errands until
11 noon, because I guessed that Kids World would be open by then. I was planning to go
12 back to see Jennifer in a few hours. I wanted to get Jennifer some things and bring
13 them to her since I was going to be gone for a while. After shopping for Jennifer, I took
14 care of a few more things. Sometime during my shopping trip, I left a phone message
15 for Sam and I called Tracy, who was just leaving, so we got off the phone quickly.
16

17 I got home around 2:45, and there was a message on my machine from Morgan saying
18 that Jennifer was missing. I couldn't believe it! The message was recorded around
19 12:30 and, on it, Morgan said it had happened a few hours earlier. I was frantic over
20 Jennifer and angry at Morgan at the same time. Why did it take so long for Morgan to let
21 me know what was going on? I immediately got into my car, and without thinking about
22 anything but Jennifer, just went speeding towards Morgan's. I must have run a red light.
23 I got pulled over and then arrested for some old tickets. Because I had been gone for so
24 long, I forgot all about them. I didn't realize they had accumulated so much. I also didn't
25 know my license had been suspended.
26

27 By that point, I didn't know what to say or do. I figured the best thing to do was to go to
28 the police station, talk to a lawyer, and take care of everything. As we were driving back
29 to the police station, we passed by a motel where something must have happened. I
30 was feeling really on edge anyway, and when I saw that ambulance and heard those
31 police officers talking about finding the little girl's next of kin, I immediately thought
32 something happened to Jennifer. I don't know why, but I think I even said something out
33 loud. She was all I was thinking about.
34

35 I was supposed to go away that night. I had made a reservation to go to Sky High for a
36 while. Sam was going to come with me if Sam could get permission to take Jesse
37 along--Sam has a kid, too, but just like me, doesn't have custody. I needed to get away
38 and really relax. I even took all of my money out of the bank so I could make sure I had
39 enough to do everything I wanted on this trip and not have to worry about money. I took
40 out close to \$900, I think. Plus, I had borrowed about \$300 from a friend, and I had a
41 little stored away at home as emergency money. That's why I had so much cash with
42 me. Morgan thinks I took that money from the house, along with a picture of Chris and
43 Jennifer and a camera. I'm sure Morgan would like to believe I stole all those things
44 from the house. But I don't know when the last time Morgan checked to see if those
45 things were in Chris' old room or not. I have had these things ever since I came back in
46 May. The first time I went by there, I took them, and I asked Morgan if I could. Morgan
47 said "Yes, just take it and leave." The camera was mine anyway.
48

1 **WITNESS STATEMENT - Defense Witness: Sam Johnson**

2
3 My name is Sam Johnson. I am a friend of Alex Whitman. Alex and I have been very
4 close friends since we were kids. Like Alex, I am 19 years old, and I have a son named
5 Jesse. Just like Alex, I don't have custody of Jesse either, but that's because when he
6 was born, my family and Terry's family--Terry is Jesse's other parent--decided it would
7 be better this way since Terry and I didn't want to get married. I guess because Alex
8 and I have known each other for so long and we've been through a lot of similar things,
9 we get along very well. We can really relate.

10
11 This whole thing with Jennifer has been very hard on Alex. I have a hard time only
12 seeing Jesse a couple times a week, and Terry or Terry's folks don't give me a hard
13 time about it at all, but some of the things that Alex is up against are pretty bad. Alex
14 tells me things about Morgan. There's so much tension between the two of them. Any
15 time the two of them are together in a room, you can just feel it. I've gone with Alex on a
16 few visits with Jennifer and I would take Jesse along. Jesse is just a few months older
17 than Jennifer. Morgan or someone else has to be there at all times. And Morgan never
18 allows Alex to take Jennifer anywhere. It's very hard on Alex, but overall I think Alex
19 handles it really well--much better than I ever would.

20
21 Chris was a friend of mine too. Actually, I kind of introduced them to each other. I knew
22 they would be good together. It was really unfortunate the way things worked out. If it
23 were just the two of them without all the outside interference and circumstances, they
24 would've been the happiest couple in the world. But if I were in the same situation, I
25 might have done what Alex did, too. When Alex left I was kind of surprised. After that,
26 Alex would call me once a week, mostly to see how Chris and Jennifer were doing.
27 Although I asked where Alex was a million times, Alex refused to tell me, saying it was
28 better for everyone that no one knew. Alex didn't want to put me in a bad position where
29 Chris was concerned. For Chris' sake, Alex made me promise never to tell Chris that
30 Alex had been calling to check on them. That was very hard.

31
32 But the hardest thing I've ever had to do was to tell Alex that Chris had died. Alex really
33 loved Chris, and Chris loved Alex too. Alex was devastated. I was afraid the news
34 would destroy Alex. For a while after that call, I didn't hear from Alex. I was worried that
35 Alex had gone off the deep end or worse. It was about four months or more before I
36 heard from Alex again. At that point, I noticed a change in Alex. Before, Alex was
37 always so insecure, so unsure about what to do with everything. When Alex first left, I
38 would try to get Alex to open up and let things out, but Alex would never talk about it.
39 Even though we were very close, I think the only one close enough to Alex to talk about
40 things this personal would have been Chris. But when Alex finally called in the
41 beginning of May, our conversation was very different.

42
43 I could tell that Alex must have really been thinking about things. Somehow, Alex
44 seemed to have a better handle on life and was willing to talk about things now. Alex
45 even admitted to me that it would have been better to let it out from the beginning. Alex
46 told me, "I've done a lot of growing up in the last few months. I think I'm ready to come
47 back and face my responsibilities." Then I had to tell Alex that Morgan had custody of
48 Jennifer. Alex was angry, but handled the news very calmly. Alex said, "I can't do

1 anything about it from here. I'll be back there as soon as I can."
2

3 I helped Alex find a job and an apartment after returning to town. Alex had really
4 changed, become very stable and mature. Even after Alex and Morgan went back to
5 court and Morgan retained custody, Alex didn't fall apart. I admire Alex's strength. Since
6 then, though, I can tell it's been very stressful for Alex. That's why we decided to go
7 away for a while. We had planned to go to Sky High Mountain Resort for a few days. I
8 was hoping to be able to take Jesse along, but a couple days before we were supposed
9 to leave, Alex decided to go alone and called to tell me. Alex said, "I think I need to be
10 by myself to clear my head. Having Jesse along would only make it worse for me right
11 now." I tried to convince Alex otherwise, and Alex just said, "I'll think about it." I got a
12 message from Alex on my machine that Sunday morning saying that "I'm going to be
13 running errands this morning but I'll call you a little later to work out the details." I
14 assumed that meant we were going.
15

16 For anyone to think that Alex would steal Jennifer then leave her at a motel by herself is
17 crazy. Alex loves Jennifer and would never put her in that kind of danger.
18

1 **WITNESS STATEMENT - Defense Witness: Tracy Michaels**

2
3 My name is Tracy C. Michaels. I am a 26-year-old counselor at the local family center,
4 and I live in Clarence. I met Alex Whitman last June through some mutual friends. Alex
5 and I started talking on a regular basis, just as friends. Alex told me about Jennifer,
6 Alex's daughter, and about Chris. I could tell it was a painful subject, but Alex seemed
7 to be dealing with it well. Just the fact that Alex was willing to talk about it was a good
8 thing. It's good to let your feelings out when you suffer a loss. In this case, Alex suffered
9 two different kinds of losses--one by death, and one by law. Alex and I are friends, and
10 Alex never came to me on a professional basis. Out of our friendship, even though we
11 hadn't known each other long, I know Alex was going through some hard times, so I
12 made myself available to Alex to talk about Chris and Jennifer.

13
14 The times that Alex and I spent together were never like a counseling session. In
15 situations like this, there's a whole different set of questions and discussions that I
16 would cover. I didn't think Alex needed or wanted counselling. Alex just wanted a friend,
17 and that's what I was--a friend, not a counselor.

18
19 It was clear to me from the very start how much Alex truly cared about both Chris and
20 Jennifer. I remember going to Alex's apartment once. There wasn't much furniture
21 there--just the bare necessities--but there were pictures of Jennifer everywhere. There
22 were also pictures of Chris and Alex together, and one really nice picture of Chris and
23 Jennifer. It was in a beautiful wood and gold frame. It kind of stood out because the
24 other pictures were in plastic frames.

25
26 The day that Jennifer disappeared, Alex had stopped by my place in the morning. I think
27 it was around 9:30. We just sat and talked for a while. Alex seemed pretty down, not
28 very talkative. It seemed as though there was a lot on Alex's mind. Alex was kind of
29 distracted. But the mood changed when Alex mentioned going to see Jennifer. Alex
30 said something about just dropping by there. It didn't seem as though this was a
31 scheduled visit, but Alex didn't seem too worried about it. Alex said something about
32 figuring out a way to deal with Morgan.

33
34 Alex called me a little later that day. I get a lot of calls at home even on weekends--
35 mostly from clients and sometimes from salespeople. But I remember Alex's call
36 because I was on my way out the door to meet a friend for lunch. It must have been a
37 little after 12:00 because my lunch appointment was at 12:30. I believe that Alex was
38 calling from home because I thought I heard the television on in the background.

39
40 Overall I think that Alex is a good person. Alex often says that "I'm a totally different
41 person now from the time I left." I know that, since returning to Clarence, Alex has been
42 trying very hard to show this to others. I feel Alex is pretty responsible too. There have
43 been a couple times when Alex has needed to borrow some money from me, but then
44 Alex would always repay me right away. The only money Alex didn't repay was the
45 \$300 Alex borrowed to take on that trip in August. But with all the things that happened
46 with Jennifer's disappearance and the arrest, that was probably the last thing on Alex's
47 mind. And it's no big deal to me.

1 I'm not sure how Alex manages financially. I know what it's like to live on such a tight
2 budget. I feel sorry for Alex. I hope someday that Alex will get Jennifer back. We talked
3 about the idea of trying to appeal the decision or maybe waiting a little while and then
4 challenging custody again. You never know, a different judge could decide in Alex's
5 favor. Alex would make a good parent.
6

1 **WITNESS STATEMENT - Defense Witness: Jean Duarte**

2
3 My name is Jean Duarte. I live at 1609 Steward Lane in Clarence. I am a bank teller at
4 State National Bank. Alex Whitman used to have a checking account at our branch but
5 on Saturday, July 31, 1993, Alex came in and closed the account. I assisted Alex with
6 this transaction.

7
8 Alex was a very friendly and nice person. The bank wasn't too busy, which was very
9 unusual for a Saturday morning, so Alex and I spent a bit of time talking and joking
10 around as we conducted our business. At first Alex wanted to withdraw a few hundred,
11 but then decided to go ahead and close the account. I joked with Alex about not
12 "spending it all in one place." Alex mentioned planning a trip but wasn't sure for how
13 long and felt that, to be on the safe side, all the funds might as well be withdrawn.

14
15 At one point I was a little confused about this trip because Alex said, "I wish it was
16 enough for us to go somewhere where they could never find me." I thought it was
17 strange because Alex referred to both "us" and "me" so I didn't know if Alex was going
18 alone or with someone else. A little earlier Alex had mentioned having a daughter. I saw
19 a picture of her--she was very cute. Alex seemed very proud of her. I asked Alex if she
20 would be going on the trip too, but Alex said, "For that to happen, it would either take a
21 miracle or I'd have to steal her." Alex laughed about that and then explained that,
22 although Jennifer was Alex's daughter, Alex did not have legal custody. "It's a long,
23 complicated story," said Alex. "Maybe I'll tell you about it sometime." I got the
24 impression that there was a very sad story behind it, but it was good that Alex could
25 joke about it. I told Alex I'd like to hear the story sometime, and Alex said something
26 like, "Don't worry, I'll be back. How far can I go on \$700?"

27
28 When the account was closed, I gave Alex a check for a little over \$700, but Alex
29 wanted cash instead. Alex mentioned having a little extra emergency money at home.
30 Alex said that "between this money and that, it's all I've got in the world." Our
31 conversation was nice and I got a very good impression of Alex, even though we only
32 met that once.

1 **WITNESS STATEMENT - Defense Witness: B.J. Scanlon**

2
3 My name is B.J. Scanlon. I live at 1779 Helena Avenue in Clarence. I work at the Kids
4 World store, a large children's department store. The stores sells everything you could
5 need for a kid.
6

7 I met Alex Whitman when I was working on Sunday, August 1. I remember Alex
8 because the store had just opened and Alex was one of the first customers of the day.
9 The store opens at 12:00 on Sundays. Alex mentioned wanting to get a lot of things
10 done that day and having called that morning to find out our hours but getting no
11 answer. I agreed that we really should get an answering machine for the store and
12 leave our store hours on it.
13

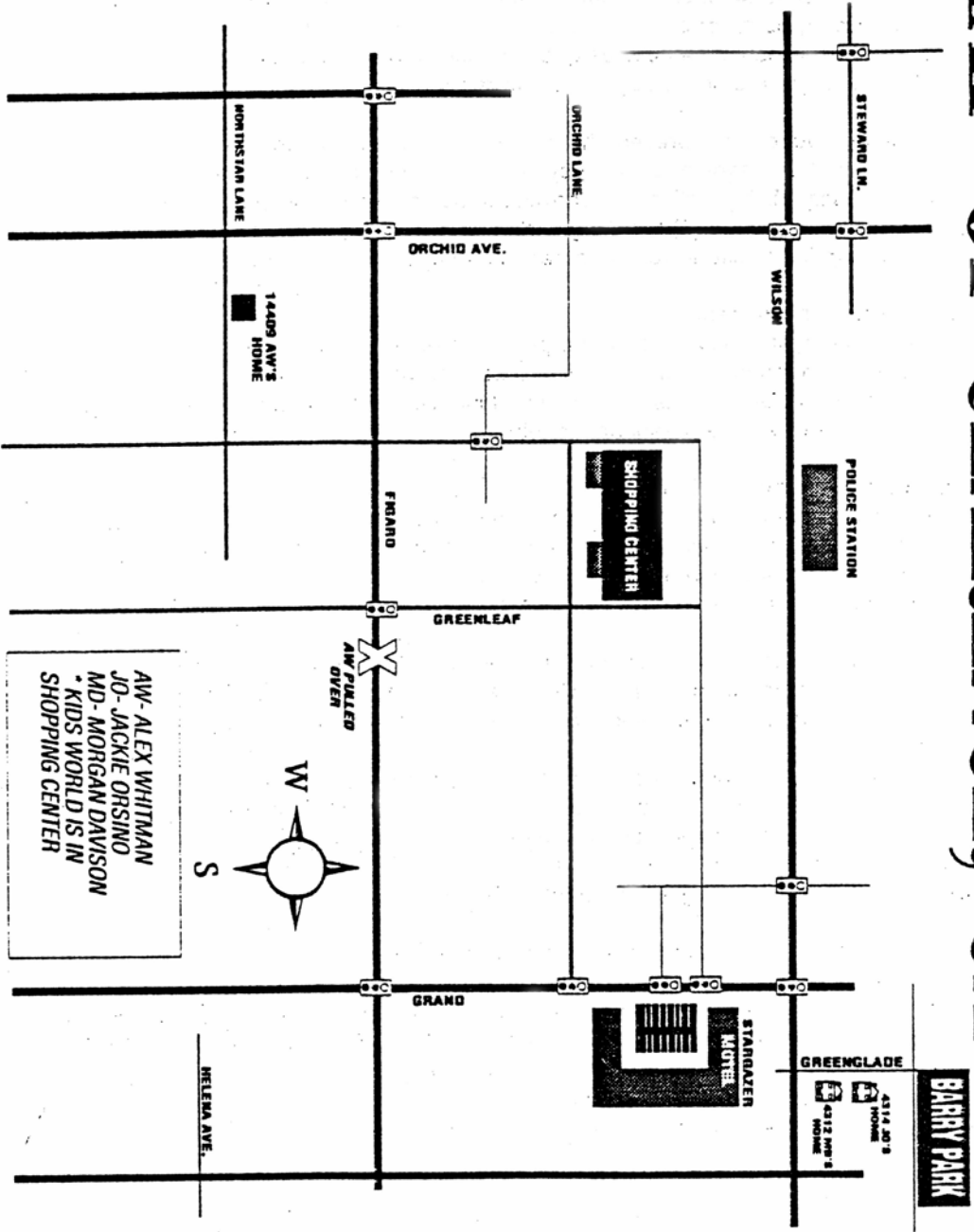
14 Alex bought a lot of stuff--clothes, toys, stuffed animals, supplies, everything. I think that
15 the total bill was close to \$250. And Alex paid in cash. Actually, it seemed that Alex had
16 a large amount of cash, maybe a couple of thousand. I saw quite a few \$100 bills. Then
17 again, Alex could be like me--I always have a few large bills with me, but I always seem
18 to have many more small bills. It makes it appear that I am carrying a lot more than I
19 really am.
20

21 Alex said that most of the things were for Jennifer, Alex's daughter. Alex even showed
22 me a picture. She was a really cute little girl. Alex also said something about going on a
23 trip that day. I asked where, and Alex said, "It doesn't matter, as long as it's not here."
24 Alex laughed after saying that, and I jokingly said, "Can I go too?" Alex explained that,
25 along with a friend, Alex was going to the mountains for a few days. Then we talked a
26 little bit about how hard life can be sometimes, without getting into any details. I could
27 tell that Alex must be going through a lot of stress right now. I have enough of my own
28 to recognize when someone else is suffering, too.
29

30 Alex also bought a few things that I'm pretty sure were not for Jennifer. Alex asked me
31 to bag them separately. It seemed obvious that these things were for a little boy as
32 opposed to things you would buy for a girl--cars, balls, that kind of thing. Even though
33 our encounter was brief--maybe 10 minutes altogether--I found Alex to be a very nice
34 person. It was obvious Alex truly cared about Jennifer but I also got the impression that
35 Alex was very caring about other things as well. Maybe I got that idea from Alex's T-
36 shirt--it was white with a big picture of the world and an arrow pointing to it which said,
37 "Our planet--let's take care of it! It's the only one we've got!" I like a person who's
38 environmentally conscious. It was a great shirt. I even asked Alex where I could get
39 one.

MAP OF CLARENCE, CA

OFFICIAL DIAGRAM



For use at trial, refer to the Rules of Competition (section III, Conduct of the Trial, Rule 19)

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. 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.

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.

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 towards guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points towards 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 towards 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 60: "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 Sheet 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 exit. Without any additional facts upon which to base your answer, you could reasonably name either exit 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 Sheet 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 implied 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 which 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 which is not generally known or cannot be reasonably inferred from the fact situation or a signed witness statement.

Witnesses can be impeached if they contradict the material contained in their witness statements using the procedures as outlined on page 44.

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 someone else may fill in if necessary.

When evaluating the Team Performance/Participation category in the scoresheet, 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 fifteen 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 will 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 on the time sheet the time to the nearest one-half minute.

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, 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 finished 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 51.)
- 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 Sheets 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:

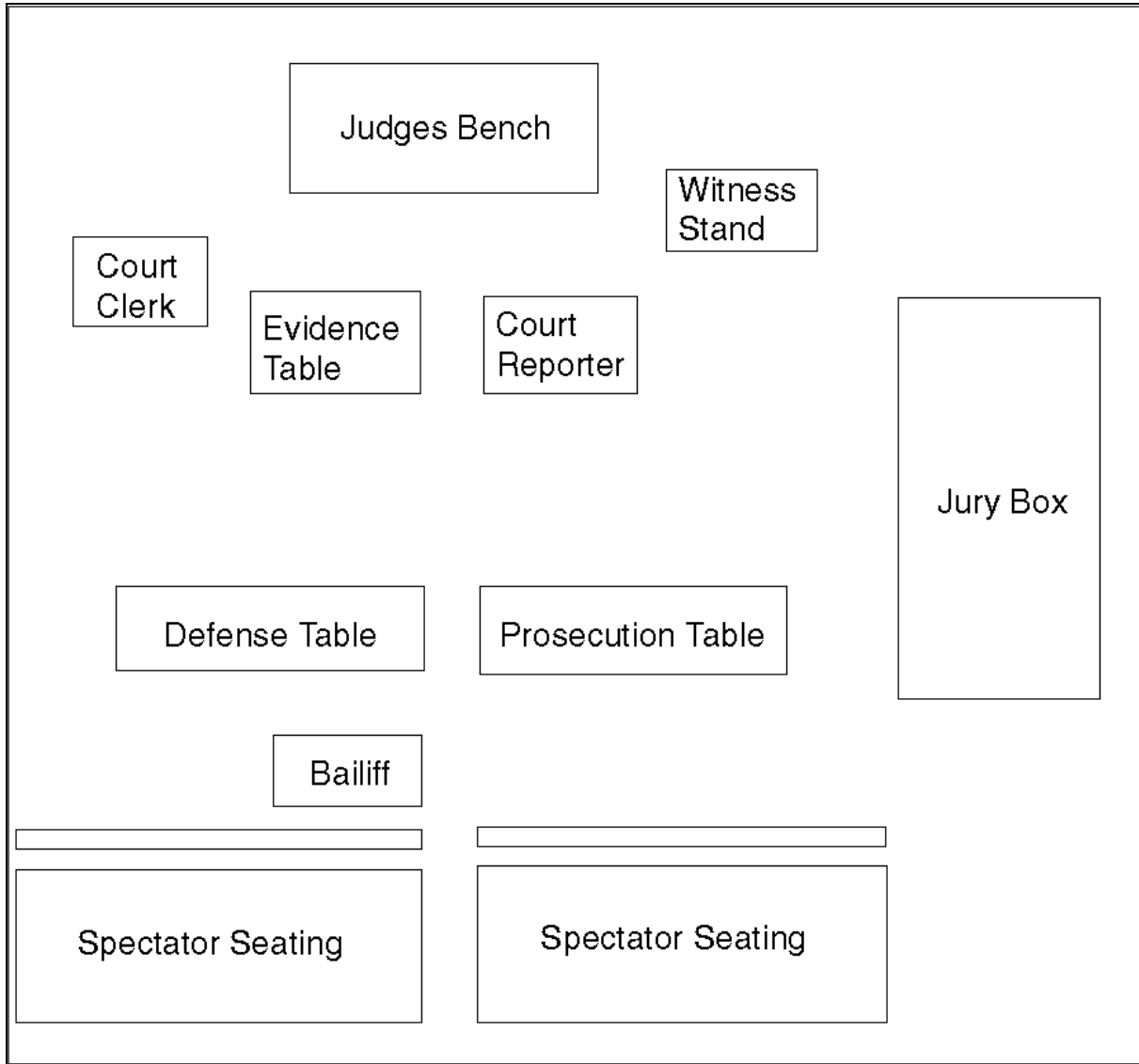
- Be **spontaneous**, synthesizing what **actually happened in court** rather than being "pre-packaged."
- Points will be deducted from the closing argument section of the scoresheet if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts which 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.

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 will need to know a little 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. Consider the following:

Defendant while inside a department store puts a necklace into her purse. The security guard sees her. The guard approaches defendant and says, "I want to talk to you." The defendant runs away.

The fact at issue is, did the defendant steal something? The logical inference is that a reasonable person does not run away if he/she has nothing to hide. The fact of running away can be used to show the defendant's **state of mind**, i.e. that the defendant had a culpable (guilty) mind.

The above hypothetical is an example of an accurate use of reasonable inference. 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 as closely within the fact situation and witness statements as possible.**

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. It should be noted that a single objection may be more effective in achieving this goal 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 55. **Other more complex rules may not be raised at trial.** As with all objections, the trier of fact 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) 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 Sheets, use the following form of objection:

"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

To be admissible, any offer of evidence must be relevant to an issue in the trial. This rule prevents confusion of the essential facts of the case with details which do not make guilt more or less probable.

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) which, 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.

- Examples:
1. A witness may say that she saw a man jump from a train. This is direct evidence that the man had been on the train. It is circumstantial evidence that the man had just held up the passengers.
 2. 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 in question, 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

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. 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.

- Examples:
1. The witness knew the victim and saw her on March 1, 1991. The witness heard on the radio that the victim had been shot on the night of March 3, 1991. The witness lacks personal knowledge of the shooting and cannot testify about it.
 2. 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 which 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/Speculation

Witnesses may not normally give their opinions on the stand. Judges and juries must draw their own conclusions from the evidence. However, estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

Example: A taxi driver testifies that the defendant looked like the kind of guy who would shoot old people. Counsel could object to this testimony and the judge would require the witness to state the basis for his/her opinion.

Form of Objection: **"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. Hearsay

If a witness offers an out-of-court statement to prove a matter asserted in that statement, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth of the witness's testimony. **For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced. Work with your attorney coach on the exceptions which may arise in this case.**

- 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 which may be admissible. The following exceptions (and others not listed) 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:

- a. Admission by a party opponent--a statement made by a party to the legal action (or someone identified with him/her in legal interest) of the existence of a fact which is 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--a statement made shortly after an event, while the declarant is still excited.
- c. State of mind--a 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. Prior inconsistent statements--generally admissible only as impeachment but not for the truth of the fact asserted.

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

8. Leading Questions

As a general rule, the direct examiner is prohibited from asking leading questions: he/she cannot ask questions that suggest the desired answer. Leading questions are permitted on cross-examination.

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

On the other hand, counsel could rephrase her/his 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."**

9. Argumentative Questions

An argumentative question challenges the witness about an inference from the facts in the case.

Example: Assume that the witness testifies on direct examination that the defendant's car was going 80 mph just before the collision. You want to impeach the witness with a prior inconsistent statement. On cross-examination, it would be permissible to ask, "Isn't it true that you told your neighbor, Mrs. Ashton, at a party last Sunday that the defendant's car was going only 50 mph?"

The cross-examiner may legitimately attempt to force the witness to concede the historical fact of the prior inconsistent statement.

Now assume that the witness admits the statement. It would be impermissibly **argumentative** to ask, "How can you reconcile that statement with your testimony on direct examination?" The cross-examiner is not seeking any additional facts; rather, the cross-examiner is challenging the witness about an inference from the facts.

Questions such as "How can you expect the judge to believe that?" are similarly 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."

10. Asked and Answered

Asked and answered is just as it states, that a question which had previously been asked and answered is asked again. 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."**

11. 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.

Examples: 1. (Using "Or") "Did you determine the point of impact (of a collision) from conversations with witnesses, or from physical marks, such as debris in the road?"

2. (Using "And") "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.

12. 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."**

13. 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. This is a ploy and the questioning attorney may use this objection to "force" the witness to answer.

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

14. 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 as "outside the scope of cross-examination."

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

Special Simplified Rule of Evidence for 1993-94

In *People v. Whitman*, if defense's pretrial motion is granted, defense may object if prosecution attempts to bring into the trial testimony ruled inadmissible at pretrial. However, in cases where evidence is excluded from the prosecution's case-in-chief because it was obtained in violation of *Miranda* requirements, the Supreme Court has allowed the excluded evidence to be used, **only for impeachment purposes**, if a witness contradicts that evidence. The evidence may not be introduced to prove the matter asserted therein.

In the case of *Harris v. New York* (401 U.S. 222, 1971), the Supreme Court supported a lower court's decision allowing the prosecution, when a defendant testified under oath and denied charges, to introduce for impeachment purposes contradictory statements obtained from the defendant in violation of *Miranda*. The Supreme Court stated that this exception was necessary to prevent *Miranda* protections from being used as a shield to commit perjury. (For further clarification of impeachment, see page 44, "Impeachment During Cross-Examination.")

**SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS
FOR THE 1993-94 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.**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."
- 8.**Leading Question:** "Objection, your honor. Counsel is leading the witness."
- 9.**Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or
"Objection, your honor. Counsel is badgering the witness."
- 10.**Asked and Answered:** "Objection, your honor. This question has been asked and answered."
- 11.**Compound Question:** "Objection, your honor, on the ground that this is a compound question."
- 12.**Narrative:** "Objection, your honor. Counsel's question calls for a narrative."
- 13.**Non-Responsive:** "Objection, your honor. The witness is being non-responsive."
- 14.**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.
Whitman**

Issues of child abduction, grand theft, and self-incrimination

Featuring a pretrial constitutional argument about
the Fifth and Fourteenth Amendments

- NOTES -

RULES OF COMPETITION

NOTE: At the first meeting of the Mock Trial team, the Code of Ethics appearing on page 3 should be read and discussed by students and their teacher.

I. ELIGIBILITY

To participate in the state finals in Sacramento (April 8-10, 1994) 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 17, 1993**. [Original Mock Trial Competition]
- 3.All local county competitions must be completed by **March 5, 1994**. [Original Mock Trial Competition]
- 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. We encourage you to use the maximum number of students allowable, especially at schools with large student populations.
- 7.Team Structure - Involvement 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:
 - 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.
 - 3 Trial Attorneys for Prosecution (maximum)
 - 3 Trial Attorneys for Defense (maximum)
 - 5 Witnesses for Prosecution (only four may be called in one trial)**
 - 5 Witnesses for Defense (only four may be called in one trial)**

1 Clerk

1 Bailiff

A student may be assigned two witness roles on the roster, but he/she may perform only one of those witness roles during the same trial.

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 (pages 8-10) and the materials on pages 12-17 can be used for the purposes of the pretrial motion.
2. Each student arguing a pretrial motion has four minutes to present his/her 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 side/position in the most persuasive manner, students should carefully review and become familiar with 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. Teachers are required to submit team rosters (page 74) to presiding judges and scoring attorneys at all rounds of the state finals in Sacramento. No other materials can 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. Teacher sponsors and attorney coaches are to remain in the seating area throughout the trial. There must be no spectator contact with student team members once the trial has begun. The sponsors and 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 starting on page 8 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. Witnesses may testify to any matter directly stated or reasonably implied in the official case materials.
9. 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 using the procedures as outlined on page 42.
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 as described in the case materials. No other physical evidence, if any, will 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 10.) 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. (See "Procedures," pages 40-43.) 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 45-53. Only specified types of objections will be recognized in the competition (see page 53). Other more complex rules may not be used at the trial.

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.)
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, 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 will be provided with 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.
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's testimony and is a matter of fact for the triers of fact.

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.

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.

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.

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

1. Court is called to order.
2. Defense (moving party) presents pretrial motion arguments.
3. Prosecution (opposing party) presents pretrial motion arguments.
4. Rebuttal arguments (both).
5. Judge rules on motion and thus determines which charges will be in contention during the trial.
6. Attorneys present physical evidence for inspection.
7. Judge states charges against defendant.
8. Prosecution delivers its opening statement.
9. Defense may choose to deliver its opening statement at this point or may wait to open after the prosecution has delivered its case.
10. Prosecution calls its witnesses and conducts direct examination.
11. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense may cross-examine the witness.
12. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.
13. Defense may deliver its opening statement (if it did not do so earlier).
14. Defense calls its witnesses and conducts direct examination.
15. After each defense witness is called to the stand and has been examined by the defense, the prosecution may cross-examine the witness.
16. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.
17. Prosecution gives its closing statement.
18. Defense gives its closing statement.
19. Judge deliberates and reaches verdict.
20. 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 points/facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.

7. The fact situation starting on page 8 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. Witnesses may testify to any matter **directly stated or reasonably implied** in the official case materials.

8. **VERY IMPORTANT!** 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. Costuming is **not** a factor in the Mock Trial competition. Therefore, costuming is not to be taken into account when scoring presentations.

Order of Pretrial Motion Events

- 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.

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.

"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?"

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 64 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. 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. Whitman*

To the fullest extent possible, please conduct the case as you would under normal circumstances, familiarizing yourself with the case materials of *People v. Whitman* before the trial. Although students will make errors, they must attempt to extricate themselves just as an actual attorney or witness would. The short debriefing session after the trial provides the opportunity to suggest improvements.

Please read the "Trial Instructions For Mock Trial Participants" on pages 66-67 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.

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

"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 four witnesses you will call to testify today. And would the teacher-sponsor and attorney coach for each team please identify yourself to the court?"

"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, their 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 of their five witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the 1993-94 Mock Trial.'

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

Evidence: Map of Clarence, CA

[Prosecution is responsible for bringing the evidence to trial.]

Stipulations: Prosecution and defense stipulate to the following:

1. Permanent legal guardianship of the child Jennifer was awarded to Morgan Davison on July 2, 1993 after a previous guardianship decree issued on June 23, 1993 was challenged by Alex Whitman. The initial guardianship decree was awarded with adequate notice and procedure.
2. Morgan Davison's housekeeper let Alex Whitman into the house on the morning of August 1, 1993, but has no knowledge of what Alex did while in the house.
3. Alex Whitman had made a reservation at Sky High Mountain Resort on Sunday, August 1, 1993 for "1-2 adults." The reservation was made for August 2-4, 1993. The reservations computer also indicated that a "crib was requested."
4. Alex Whitman's car was searched and its contents inventoried pursuant to a proper warrant based upon articulated probable cause resulting from the investigation of the abduction of Jennifer Whitman Davison. No Fourth Amendment argument will be heard at pretrial regarding this search.
5. Items inventoried from Alex Whitman's car included: a red sweater; a small travel bag with some of defendant's clothing and toiletries; a brochure and map to Sky High Mountain Resort; a shopping bag containing baby clothes, baby supplies, and toys--a ball, a stuffed teddy bear, a toy car; a grocery bag containing baby food, blue disposable diapers, diaper wipes, and milk; a camera; and a framed photo of Chris Whitman and Jennifer Whitman Davison.

6.The police investigation determined that the groceries found in Alex Whitman's car were purchased at a local supermarket. No individuals working at the market remembered any facts relevant to the case.

7.The camera found in Alex Whitman's car was positively identified by make, model and serial number as the one reported missing from Morgan Davison's home.

8.The outstanding violations and warrants against Alex Whitman were adjudicated in and settled upon in separate proceedings.

9.Defense witness Tracy Michaels will not be called as an expert witness. No issue of doctor/patient privilege will be considered at trial.

"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 unique | |

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 115 points by each scorer and/or judge if the pretrial motion is presented, and 95 points if it is not.

1. Pretrial Motion

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

2. Opening Statement

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

3. Direct/Re-Direct Examination

- Questions required straightforward answers and brought out key information for her/his side of the case.
- Attorney effectively responded to objections made.

- Properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney made **effective** objections to cross-examination questions of his/her witness when appropriate.
- Throughout questioning, attorney made appropriate use of her/his time.
- Attorney used **only** those objections listed in the summary of evidentiary objections.

4. Cross-Examination

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

5. Witnesses

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

6. Closing Argument

- Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.
- 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.
- Attorney made an organized and well-reasoned presentation summarizing the most important points for his/her team's side of the case.
- If and when questioned by the judge, attorney gave well-reasoned, coherent answers.

7. Team

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- **All** team members were involved in the presentation of the case and actively participated in fulfilling their respective roles, including the clerk and bailiff.
- Witnesses performed in synchronization with attorneys in presenting their side of the case.
- The clerk and bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial.
- 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: $\frac{241 \text{ (team points)}}{488 \text{ (total for both teams)}} = .4939$

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

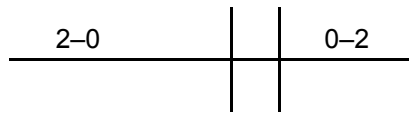
Use the same process for Trial 2 and subsequent trials. If you are **not** doing power matching, these percentage scores are an alternative to cumulative raw scores. Please note that if percentage scores are released, teams will know whether they won or lost, since scores higher than .5000 always indicate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



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.

**Constitutional Rights Foundation's California Mock Trial Competition
Judge/Attorney Score Sheet**

Motion: Granted / Denied
Verdict: Count #1:G / NG #2:G / NG #3:G / NG

President's Tie Breaker _____

Scorer's Name _____

President's Name _____

Please refer to the guidelines and the evaluation criteria in your Mock Trial case packet to assist you in evaluating the performances. The judge's verdict should have no bearing on your scoring decisions. **Do not announce any winners or scores at the end of this trial. Do not confer with anyone regarding scores. FILL IN ALL SCORE BOXES AND DO NOT USE FRACTIONS WHEN SCORING.** Please indicate the verdict by circling the appropriate letters above.

0=Penalty 1=Far Below Average 2=Average 3=Average 4=Above Average 5=Excellent

PROSECUTION _____ DEFENSE _____

		PROSECUTION	DEFENSE	STUDENT'S NAME
PRETRIAL MOTION (Defense presents)		<input type="checkbox"/> x3=	<input type="checkbox"/> x3=	_____
OPENING STATEMENTS		<input type="checkbox"/> x2=	<input type="checkbox"/> x2=	_____
PROSECUTION'S FIRST WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
PROSECUTION'S SECOND WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
PROSECUTION'S THIRD WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
PROSECUTION'S FOURTH WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
DEFENSE'S FIRST WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
DEFENSE'S SECOND WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
DEFENSE'S THIRD WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
DEFENSE'S FOURTH WITNESS	Direct/Re Exam by Attorney Cross-Exam by Attorney Witness Performance	<input type="checkbox"/>	<input type="checkbox"/>	_____
CLERK (Prosecution) BAILIFF (Defense)		<input type="checkbox"/>	<input type="checkbox"/>	_____
CLOSING ARGUMENTS		<input type="checkbox"/> x3=	<input type="checkbox"/> x3=	_____
PARTICIPATION AND TEAM PERFORMANCE		<input type="checkbox"/> X2=	<input type="checkbox"/> X2=	_____
TOTAL		_____	_____	_____

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.

Workspace:

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:
Witness #5 Role: Name of Student:	Witness #5 Role: Name of Student:
Clerk:	Bailiff:

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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	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.

Round off times to the nearest one-half minute.

Examples: 3 minutes, 10 seconds = 3 minutes
 4 minutes, 15 seconds = 4 1/2 minutes
 2 minutes, 45 seconds = 3 minutes

MOCK TRIAL TIME SHEET

Clerk _____ Judge _____ Date _____

Prosecution School V. _____
Defense School

INSTRUCTIONS:

Mark the exact time in the appropriate blank. Do not round off. For direct, cross, and re-direct examination, record only the time spent by attorneys asking questions or witnesses answering questions.

Stop the clock (do not time) when:

- witnesses enter the courtroom;
- attorneys make objections;
- judges question attorneys or make 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.)			
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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