PEOPLE
V.
CLEVENGER

ISSUES OF VANDALISM, COMPUTER CRIMES, AND SEARCH AND SEIZURE

Featuring a pretrial argument on the
Fourth and Fourteenth Amendments of the
United States Constitution

Co-Sponsored by:

State Department of Education
State Bar of California
California Young Lawyer's Association
Daily Journal Corporation

OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION

ACKNOWLEDGMENTS

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The California State Mock Trial Competition is a program of the Constitutional Rights Foundation and the California State Department of Education, and is additionally sponsored by the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation.

*Case adapted from *People v. Dennis*, developed by Karen Lash, Clore Warne Intern, and Richard Chrystie, Los Angeles County District Attorney, published by Constitutional Rights Foundation, 1985.

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ERRATA

People v. Clevenger

- Page 31, line 12 - replace "February 9" with "February 8"

- Page 26, line 34 - replace "he" with "the witness"

- Page 25 (Principal Drew Hill's witness statement) was printed without line numbers. Teams may number the lines in the same manner as other witness statements are numbered and refer to line numbers at trial.

- The official diagram on page 32 establishes relative positions. Nothing in the diagram or written materials is intended to indicate gender of any individual.

Revised October 29, 1996

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 law and the issues of youth violence, homicide, and privacy.

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."**

1996-97 MOCK TRIAL COMPETITION

This packet contains the official materials which student teams will need to prepare for the Sixteenth Annual California State Mock Trial Competition, sponsored and administered by the Constitutional Rights Foundation. Co-sponsors are the State Department of Education, the State Bar of California, the California Young Lawyers' Association, the Daily Journal Corporation.

Each participating county will sponsor a local competition and declare a winning team from among the competing high schools. The winning teams from each county will be invited to compete in the state finals in Sacramento, April 4-6, 1997. In May of 1997, the winning team from the state competition will be eligible to represent California in the National High School Mock Trial Championship in Nashville, TN.

The Mock Trial is designed to clarify the workings of our legal institutions for young people. In the Mock Trial, students portray each of the principals in the cast of courtroom characters. As student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system. Students participate as counsel, witnesses, court clerks, and bailiffs.

As in recent years, a pretrial motion is included as part of the case. The pretrial motion has a direct bearing on the charges in the trial itself. In both the pretrial motion and the trial, students present their cases in court before actual attorneys and judges. Since teams are unaware of which side of the case they will present until shortly before the competition begins, they must prepare a case for both the prosecution and defense. All teams must present both sides at least once.

The phrase "beauty is in the eye of the beholder" points out the differences that exist in human perceptions. That same subjective quality is present in the scoring of the Mock Trial. Even with rules and evaluation criteria for guidance, as in real life, not all judge and attorney scorers evaluate a performance identically. While we do everything possible to ensure consistency in scoring, the competition reflects this quality that is a part of all human institutions, including legal proceedings.

CLASSROOM DISCUSSION MATERIALS

The Law of Search and Seizure

One of the most important and complex areas of criminal procedure comes from the Fourth Amendment. This amendment affects how police officers investigate crimes and gather evidence, because the Supreme Court has ruled that illegally seized evidence may not be used at trial. The Fourth Amendment provides:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

All police searches, seizures of evidence, and arrests must comply with this amendment. Courts have interpreted the amendment's meaning in hundreds of search-and-seizure cases. These interpretations have grown into a full body of law, known as the law of search and seizure. Although the law is complicated, determining whether a search or seizure is legal comes down to two basic questions:

- Has a governmental search or seizure taken place?
- If so, was the search or seizure reasonable?

In the section that follow, you will learn how to determine whether a search or seizure has taken place.

Has a Search and Seizure Taken Place?

Did a government employee or agent conduct the search or seizure?

The first step in analyzing search-and-seizure problems is to determine who conducted the search or seizure. The Fourth Amendment protects citizens from actions by government officials. The Fourth Amendment does not usually cover actions by private individuals. If, for example, your neighbor breaks into your house, finds evidence of a crime, and turns it in to the police, your rights under the Fourth Amendment would not have been violated. If you were prosecuted, this evidence could be used against you at trial. Of course, the police could also arrest the person who broke into your house for burglary and you could sue the person in civil court.

Note, however, that if the police had requested your neighbor to break into your house, then Fourth Amendment protections would come into play. The neighbor would be considered an agent of the government.

Was it a search or seizure as defined by the courts?

The Fourth Amendment protects people from unreasonable searches and seizures of their "persons, houses, papers, and effects." But what is a "search"? What is a "seizure"? The next consideration is to decide whether a government official's conduct amounted to a search or seizure.

In the landmark case of *Katz v. U.S.* in 1967, the Supreme Court defined a search as any governmental intrusion into something in which a person has **a reasonable expectation of privacy**. This privacy interest covers places and things such as houses, yards, garages, apartments, diaries, briefcases, and mail.

The court has held, however, that there is no reasonable expectation of privacy in places or things that are in **plain view**. For example, a person growing a four-foot-high marijuana plant in a front bay window cannot claim that a search was conducted if a police officer spots it from the street. But officers who detect things in plain view must do so from places they have a legal right to be in. For instance, if an officer climbs over a six-foot fence surrounding a yard and spots marijuana growing in some back corner, a search has taken place. Persons normally have a reasonable expectation of privacy in their private property which cannot be seen except by trespassing.

But the court has held there is no reasonable expectation of privacy for **open fields** away from a residence. Even though they are private property, they usually are readily accessible to the public. Thus police walking through open fields are not conducting a search.

A similar rule applies to **abandoned property**. For example, if a person placed letters containing incriminating statements into the trash, the police could retrieve them from the garbage dump without having conducted a search. There is no reasonable expectation of privacy in such items.

The idea of "seizure" is somewhat easier to understand. A seizure is any taking into possession, custody, or control. Property may be seized, but so may people. An arrest is one form of seizure, because in making an arrest, the police take someone into custody. Thus arrests fall under the requirements imposed by the Fourth Amendment.

For Discussion

1. What is the difference between a search and a seizure?

2. The Supreme Court has ruled that the police have **not** conducted a search if the object is in plain view, in an open field, or has been abandoned. Why does the court say this in each instance? Do you agree? Why or why not?

3. Why do you think the Fourth Amendment protects only against intrusions by the government? Are these intrusions more dangerous than intrusions by individuals? Why or why not?

4. For each of the following, decide whether a search or seizure has taken place and explain why or why not. Don't be concerned whether it was legal.

a. Mark Weylon, an off-duty police officer, arrests Mary Clark for shoplifting.

b. Lois Kindel, a custodian at the Shadyville Police Department, believes her neighbor deals drugs. She tells police but they have no evidence. She agrees to keep a close watch on her neighbor. One day she spots a marijuana plant, which has grown taller than her neighbor's fence.

c. Officer Sanchez climbs a hill in a public park and spots three stolen cars in a nearby backyard surrounded by a 10-foot-high fence.

d. On surprising George Meyers, a known narcotics dealer, police observe him swallow several capsules. They take him to the hospital and have his stomach pumped.

e. The police stop Anna and question her for a few minutes about where she's been and what she has been doing the past few days. (Anna has been arrested twice in the last year for prostitution but has never been convicted.)

A Search and Seizure Checklist

This checklist provides a summary analysis of whether the Fourth Amendment has been violated. Use the checklist to help you determine the legality of searches and seizures.

Major Questions — Considerations Checklist

I. Has a search or seizure taken place?

- o Did a government employee or agent conduct the search or seizure?

  [If NO, then no violation]

- o Was it a search or seizure as defined by the courts?
  - o Did the person have a reasonable expectation of privacy?

    [If NO, then no violation]
  - o Was the item
    - o in plain view?
    - o in an open field?
    - o abandoned?

    [If YES, then no violation]

II. Was the search or seizure reasonable?

- o Was the search or seizure conducted with a valid warrant?

  [If YES, no violation]

- o If not, does one of the court recognized exceptions to the warrant requirement apply?
  - Motor Vehicles
  - Incident to a Lawful Arrest
  - Stop and Frisk
  - Consent
  - Hot Pursuit
  - Emergency Circumstances
  - Border Searches
  - Airline/Security Searches

  [If YES, no violation]

CALIFORNIA MOCK TRIAL FACT SITUATION

Toward the end of a television movie on the night of Wednesday, February 8, 1995, Ronnie Silva's Airedale, Bill, began barking. This alerted Silva to the sound of breaking glass coming from Sierra City High School across the street. Silva peered out the window but did not see anything suspicious. When the movie was over at 9:30 p.m., Silva took Bill outside for a walk. As the two were walking in the neighborhood, Silva saw a dim light through the blinds of a window in the southernmost building at Sierra City High School. Proceeding north on Oak Street, Silva noticed a figure dressed in dark clothes leaving campus and heading north. Silva and Bill returned to the house.

Early the next morning, Thursday, February 9, Whitney Marshall, Sierra City High School's computer teacher, picked up messages in the main office and proceeded to the separate bungalow that housed the school's computers.

Getting closer to the computer room Marshall saw something was wrong. The frosted window in the bungalow's front door was shattered. Marshall began running toward the door. It swung open when Marshall touched the door knob. Marshall saw chairs overturned, papers everywhere, drawers pulled out and other items all over the place. Red spray paint covered some desks and computers and the viewing screens on three of the student terminals were smashed. Across the west wall in the same red paint were the words "Marshall is a fascist."

After surveying the damage, Marshall checked the school's main records computer. The unit was situated behind a shoulder-high divider in the far corner of the room. Walking around the divider Marshall saw that the computer also had red paint on the sides, though there was none on the keys or the screen. It did not appear to be damaged in any other way.

When the computer was first installed, Marshall designed a program which would show the precise times that the computer was used. Marshall turned the computer on. It was still working. Marshall then checked the previous day's "log on" and "log off" notations, discovering that the records data base was accessed at 9:09 p.m. and exited at 9:22 p.m. Marshall turned the power off and hurried to the principal's office to inform Principal Drew Hill of the vandalism and to call the police.

Detective Jean Blanc arrived at 8:50 a.m. and began an investigation. Haley Jackson, Sierra City High's counselor and Brett Phillips, the main office clerk, were also told about the vandalism and instructed not to discuss the crime with students.

When Marshall and Hill returned to the room, they took inventory of the damage and estimated the loss to be between $12,000 and $15,000. The only good news was that nothing had been stolen.

Hill noted the bold red letters calling Marshall a "fascist." When Hill questioned the computer teacher about it, Marshall agreed that it was unusual. Marshall did recall recently

hearing one of the computer students, Casey Clevenger, use the term after Marshall had told Casey that Casey would get a "B" in the class.

Both Marshall and Hill were aware, as well, that Clevenger was a potential recipient of a full computer science scholarship to the State Technical College and, consequently, would be very disturbed to receive a "B." Putting this together with the fact that the records computer had been turned on the night before, they decided to check the grade entries. They accessed the Grades file with the proper code and looked for Advanced Computer Studies and Clevenger's name. An "A" appeared on the screen where Marshall had entered a "B" for the fall semester grade. Three other students' grades also had been changed for that course. Officer Blanc left Marshall and Hill to check the other buildings for forceable entry.

By this time, first period was almost over. Officer Blanc decided to check Casey Clevenger's locker. After obtaining the locker combination from the office clerk, Brett Phillips, Blanc went outside to the row of lockers along the main building where Clevenger's locker was located.

Inside the locker and on top of Casey's calculus book, calculator and what appeared to be some personal papers, the officer found one latex glove. Another glove dangled inside by one finger from the upper vent of the locker. Both gloves were covered with red paint that looked like the red on the bungalow walls and furniture in the computer room.

Walking on the campus, Principal Hill found a flashlight with red paint on it in the grass outside the lunch area across from student lockers. The flashlight had the initials "CC" printed in what appeared to be black indelible marker on the end of the handle. Taped on the handle was a piece of paper with "htsfrd" typed on it.

After the principal returned to the main office, the officer also returned and showed the latex gloves from Clevenger's locker to Marshall and Hill. Hill showed the officer the flashlight. The principal and teacher both recognized the letters typed on paper taped to the flashlight as the access code needed to break into the computer file of student grades. Hill, Marshall and Detective Blanc took the gloves and flashlight to the computer room and verified that the color on the gloves matched the red on the wall. The bell rang for second period to begin.

Hill had Casey Clevenger summoned from class. When Casey entered the principal's office, Hill gestured toward the flashlight, gloves and paper laying on the desk and said, "Well?" Clevenger replied, "I don't know anything about this stuff."

Hill then ordered Clevenger to remain in the office. Hill went out and asked Jackson to call Casey's guardian, Cam Wu. Hill returned and told Casey that the items on the desk had been discovered in Casey's locker. Casey again claimed to have never seen them. Detective Blanc arrested Casey Clevenger for vandalism and computer crimes.

After Blanc read Casey Miranda rights, Casey stated: "Maybe I'd better get a lawyer--it looks like I'm really in trouble." Conversation ceased and Detective Blanc led Clevenger to the patrol car.

CHARGES

Count 1 - Vandalism (Penal Code Section 594)
Count 2 - Computer Crimes (Penal Code Section 502)

EVIDENCE:

Only the following items may be introduced at trial. The prosecution is responsible for bringing:

1. A faithful reproduction of the map of Sierra City High School which appears in the packet. Map should be no larger than 22" x 28".
2. Flashlight stained with red paint, with CC on the base of the handle and a piece of paper with "htsfrd" typed on it taped to the handle.
3. Pair of latex gloves stained with red paint.

STIPULATIONS: Prosecution and defense stipulate to the following:

1. No fingerprints were able to be lifted from the latex gloves, flashlight or paper with "htsfrd."

2. In order to get a locker, each first year student must go to the main office during the first week of classes. There they are given a card with a locker number and combination and the printed words:

> You may use this locker for as long as you are enrolled at Sierra City Public High School. You alone have use of this locker for storage. Do not share the combination with anyone.

3. No Fifth Amendment arguments will be presented at pretrial or during the trial.

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.

In the area of criminal due process, the Fourth Amendments protect individuals from governmental power by prohibiting unreasonable searches and seizures and imposing barriers against the power of law enforcement of officials to search and seize whenever and wherever they might wish. The extent of these barriers and their appropriateness have been the basis for bitter and continuing conflict for many years. The exercise that follows provides students with an opportunity to argue the differing points of view in this debate over individual freedom and governmental power.

Search and Seizure

The Fourth Amendment prohibits "unreasonable searches and seizures" and prescribes that "no warrants shall issue, but upon probable cause...." The United States Supreme Court has interpreted these clauses to require government agents and police to obtain prior approval from a judge in the form of a search warrant before they may conduct a search. "Probable cause" has been defined as: "Facts and circumstances within the officer's knowledge that would lead a reasonable person to believe a crime has been committed." Probable cause must exist prior to a search. If there is no probable cause, the search is illegal and any evidence discovered during the course of the search will be inadmissible in court.

The Fourth Amendment was designed to balance society's interest in maintaining law and order with an individual's interest in assuring privacy. In order to accommodate the realities of its application, the United States Supreme Court has recognized several exceptions to the warrant requirement. For example, a search incidental to a lawful arrest, evidence in plain view, a consent search, a search in an emergency, and searches conducted by private (i.e., non-law enforcement) individuals and parents, escape Fourth Amendment obstacles. The rationale is that in each of these scenarios the person being searched has lost or given up his/her right to privacy or has a very low expectation of privacy because of the surrounding circumstances.

ARGUMENTS

In this case, the defense will argue that Officer Blanc acted unconstitutionally by searching Casey Clevenger's locker without Casey's consent or a warrant since no exception to the warrant requirement existed in this case. The defense may argue that the locker search by Officer Blanc was not an administrative search and therefore a warrant was required before the police office searched the locker. The defense also may argue that, even if the locker

search is held to be an administrative search, the requirement of reasonable suspicion for searches by school administrators was not met. If the trial judge could be convinced that an illegal search had been conducted in violation of the Fourth Amendment, it would then be impossible for the prosecution to introduce the gloves as evidence at Casey's trial.

The prosecution will respond that the locker search was valid for several reasons. They may contend that defendant did not have a reasonable expectation of privacy in a school locker, therefore, the items seized are not subject to Fourth Amendment analysis and the exclusionary rule. Even if the court finds that a "search" did occur under the meaning of the Fourth Amendment, this search was conducted during an investigation on campus and thus could be based upon "reasonable suspicion." The prosecution will maintain that the events of the morning required the officer to pursue all possibilities that might lead to the apprehension of the vandal(s), the officer had enough evidence to suggest that Casey was a likely suspect; consequently, and the decision to open Casey's locker and take possession of its contents was justified and conforms to the standards of the Fourth Amendment.

SOURCES

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

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

LEGAL AUTHORITIES

STATUTES:

U.S. Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment XIV

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

California Penal Code, Section 594
Vandalism; penalty

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases otherwise than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage or destroy the property.

. . . . . .

(b)(2) If the amount of defacement, damage or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in the county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

California Penal Code Section 502
Computer crimes

(b) For purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or

modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) ... any person who commits any of the following acts is guilty of a public offense:

(1) knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer,computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d)(1) Any person who violates any provisions of paragraph (1), (2), (4) or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

. . . . . .

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e)(1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control of custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision, the court may award attorney's fees to a prevailing plaintiff.

. . . . . .

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction....

CASES:

I. Federal Cases

1. Mapp v. Ohio, 367 U.S. 643 (1961)

Facts: Police forced their way into the defendant's home without a warrant and obtained incriminating evidence against her. The search was illegal since it violated the Fourth Amendment to the U.S. Constitution and therefore the evidence was excluded from trial. This is a landmark case because the court ruled that Fourth Amendment protections apply to actions of state authorities by incorporation through the due process clause of the Fourteenth Amendment.

Holding: Evidence seized in violation of the Fourth Amendment shall not be admissible at trial, in either the state or federal courts. Courts must uphold and promote the Constitutional rights of the people of the United States. "The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard of the character of its own existence."

2. New Jersey v. T.L.O., 105 S.Ct. 733 (1985)

Facts: A teacher at a New Jersey high school observed defendant, a 14-year-old freshman, and another student smoking cigarettes in the girls' restroom. The two young women were taken to see the vice principal. During the questioning, T.L.O. denied that she had been smoking. The vice principal demanded to see the defendant's purse. Inside he found a pack of cigarettes and a package of cigarette rolling papers. Suspicious of the rolling papers, he went through her entire purse and found some marijuana, a pipe, plastic bags, an index card reading "people who owe me money" followed by a list of names and two letters that implicated her in marijuana dealing. The school official called in T.L.O.'s mother and the police. The state brought delinquency charges against the defendant based on possession of marijuana with intent to distribute.

In juvenile court, a motion to suppress the evidence found in T.L.O.'s purse was denied. The appellate court affirmed. The New Jersey Supreme Court reversed and ordered the suppression of the evidence found in the defendant's purse, holding that the search of the purse was unreasonable.

Holding: In a 6 to 3, decision, the Supreme Court held that (1) The Fourth Amendment's prohibition of unreasonable searches and seizures applies to searches conducted by public school officials, though officials do not need "probable cause," and (2) The search of student's purse was reasonable.

"...[T]he accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider 'whether the... action was justified at its inception,' [Terry v. Ohio; 88 S.Ct. 1868, 1879 (1968)]; second, one must determine whether the search conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place.'" [Id.]

"Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

3. Zamora v. Pomeroy, 639 F 2d 662 (CA10 1981)

Facts: The assistant district attorney in Albuquerque, New Mexico, provided Roswell High School with "sniffer" dogs to conduct a search of student lockers. This was a general investigation, as no one was suspected of possessing marijuana. The dogs identified two lockers which were opened without a search warrant.

Zamora's locker contained some marijuana and nothing more. When questioned, he denied that he ever used the locker. Soon after, Zamora was transferred to another school. At the beginning of the school year, the administration gave every student a copy of a publication entitled, "Rights, Responsibilities and Limitations of Students." It stated that lockers remain under the jurisdiction of the school, and that the school could inspect all lockers at any time.

Holding: The United States Courts of Appeals, Tenth Circuit, held the search did not violate plaintiff's Fourth Amendment rights.

"Inasmuch as the school had assumed joint control of the locker it cannot be successfully maintained that the school did not have a right to inspect it. Therefore, the search was legal once the probability existed that there was contraband inside of the locker.

"The basic theory is that although a student has rights under the Fourth Amendment, these rights must yield to the extent that they interfere with the school administration's fundamental duty to operate the school as an educational institution and that a reasonable right to inspect is necessary in the performance of its duties, even though it may infringe, to some degree, on a student's Fourth Amendment rights.

. . . . . .

"...The school retained control and access to all lockers, and maintained a confidential file of all lockers and the combinations thereto. Both Worley and Mallory [the principal and vice-principal] retained master keys to all lockers. The evidence shows that Vidal was given a handbook containing the regulations bearing on lockers, and that he was aware of the rules."

4. Williams v. Ellington, 936 F.2d 881 (Sixth Cir. 1991)

Facts: A high school student told the principal that Williams was taking drugs in school. Also, Williams' teacher informed the principal that she had found a note that Williams had written which discussed the use of drugs. The principal informed Williams' parents of this information. In response, Williams' parents told the principal that Williams had recently stolen $200.00 from them. Several days later, another student told the principal that Williams was currently taking drugs in class. When the principal subsequently confronted Williams, she turned over a vial of "rush." After the assistant principals searched Williams' locker, the principal strip-searched Williams. Williams sought monetary damages under 42 U.S.C. § 1983 for the warrantless searches arguing that both searches violated her constitutional rights.

Holding: The court held that the principal and the assistant principal are qualifiedly immune from suit under 42 U.S.C. §1983. The court noted that in light of the student's eyewitness account, the teacher's testimony, the parents' information and Williams' admission, the principal had a reasonable basis to believe that Williams' locker contained drugs. Once the principal learned that the locker did not contain drugs, he was justified in believing that Williams had drugs on her person. Therefore, the court held that the searches were reasonable under T.L.O. because "on the totality of the circumstances [the principal had)

both the quality and the quantity of information to reasonably suspect that Williams was concealing evidence of illegal activity."

5. Cason v. Cook, 810 F.2d 188 (8th Cir. 1987)

Facts: Several students contacted the high school principal to report that someone had broken into their gym lockers and stolen their wallets. The principal later learned that Cason had been in the locker room at the time of the theft even though she did not have gym class at that time. The principal and a liaison police officer took Cason to a restroom. There, the principal searched Cason's purse and discovered one of the missing wallets. The police officer then conducted a pat-down search of Cason. The principal later searched Cason's locker. Cason sued the principal and the police officer for constitutional violations under 42 U.S.C. §1983.

Holding: The court held that the search of Cason's purse and locker did not violate Cason's constitutional rights. Based on the students' complaints and the report that Cason had been in the locker room at the time of the crime, the principal had reasonable grounds to believe that Cason's purse contained evidence of the crime. The principal's subsequent locker search and the police officer's pat-down search were also reasonable in light of the fact that the principal discovered one of the stolen wallets in Cason's purse. The court also held that the pat down was reasonably related to the initial objective of the search and was not excessively intrusive. Finally, the police officer's limited involvement in the search did not violate Cason's constitutional rights because "the imposition of a probable cause warrant requirement . . . would not serve the interest of preserving swift and informal disciplinary procedures in schools."

6. Singleton v. Bd. of Education USD 500, 894 F. Supp. 386 (Dist. Kansas 1995)

Facts: An adult woman, who was visiting the high school, contacted the assistant principal and accused Singleton of stealing $150.00 out of the front seat of her car. The woman also told the principal that Singleton had prior problems with the police. In response, the assistant principal brought Singleton to her office where she and another assistant principal searched Singleton. The assistant principals later searched Singleton's locker. Singleton sued the school and the assistant principals individually for violations of his constitutional rights under 42 U.S.C. §1983.

Holding: The court held that the assistant principals did not violate Singleton's constitutional rights. In reasoning that the principal was justified in conducting the initial search of Singleton, the court noted that several courts have held that "information provided by an informant can serve as a basis for a reasonable suspicion that a student may be engaged in illegal activity." Also, the search was reasonable in light of Singleton's age and sex because the principals conducted the search privately and without undue intrusion. The court also held that the assistant principals' search of Singleton's locker did not violate Singleton's constitutional rights because the school's policy states that "a student's possession of his locker is not exclusive as against the school." A school locker policy such as this lowers the student's expectations of privacy. Singleton had notice that the school

maintained joint control of his locker. As a result, the court held that the assistant principals did not violate Singleton's rights when they searched Singleton and his locker.

Ii. State Cases

7. In re Joseph G., 32 Cal. App. 4th 1735 (1995)

Facts: A parent of a student confidentially told the high school principal that her son had seen Joseph with a gun at the school football game. The woman explained that she reported this information out of concern for her child's safety. The next day, the principal, accompanied by a campus security guard, searched Joseph's locker but found only books. Later that day, the principal saw Joseph place a backpack in his locker. The principal searched the locker again and found a loaded handgun. Joseph appealed his juvenile court order declaring him a delinquent arguing that the evidence of the gun found in his locker should be excluded because: (1) the principal initially searched his locker without a reasonable belief that it contained a gun and (2) the principal searched his locker the second time completely without cause.

Holding: The court refused to exclude the evidence. The court noted that the T.L.O. standard requires articulable facts, together with rational inferences from those facts, to warrant an objectively reasonable suspicion that the student to be searched is violating a rule or regulation. The court then reasoned that since the parent identified herself (confidentially), specifically named Joseph and called the principal out of concern for her son's safety, the woman was a reliable public informant "whose report should prompt an investigation." As a result, the court held that the principal's first search was reasonable and constitutional. The court additionally held that the principal's second search was constitutional because the principal reasonably believed that the backpack was a likely place for Joseph to hide a gun. Because reports of gun possession must be taken seriously, the principal was justified in making the minimal intrusion of searching Joseph's locker a second time.

8. S.A. v. State of Indiana, 654 N.E.2d 791 (1995)

Facts: After a series of student locker break-ins, a high school student informed the principal that S.A. had possession of the principal's master locker combination book. Based on this information, the principal instructed the school security guard to search S.A.'s locker. The guard found nothing. The following day, the same student told the principal that S.A. had the master locker combination book in his book bag. The principal then brought S.A. to her office to question him. The principal later searched S.A.'s book bag and found the master locker combination book. At his delinquency trial, S.A. sought to exclude all evidence and statements obtained as a result of the searches of his locker and of his book bag.

Holding: The court admitted all of the evidence obtained from the searches. The court noted that the high school's student search policy is clearly articulated in the student handbook and notifies students of the school's ability to search their lockers. As a result, the court reasoned that since "a student locker is the property of the school corporation . . . the

student has no expectation of privacy in that locker or its contents." Therefore, the court held that the search was reasonable under T.L.O. because: (1) the principal had ample information to believe that she would find the missing book in S.A.'s book bag and (2) the principal limited the search to the book bag.

9. Commonwealth v. Carey, 407 Mass. 528 (1990)

Facts: Two students informed a teacher that Carey had shown them a rifle that he had brought to school in response to an altercation that had occurred on the previous Friday. Because he believed the students to be reliable, the teacher, who had worked at the school for 18 years, notified the principal of this information. The principal subsequently contacted the police and searched Carey. When the search failed to disclose a gun, the principal searched Carey's locker and found the rifle. After being found guilty for unlawful possession of a firearm, Carey appealed his conviction and sought to exclude the evidence of the rifle on the grounds that the principal's search of his locker violated his fourth amendment rights.

Holding: The court did not rule on the specific issue of Carey's expectation of privacy in his locker because the trial court did not determine whether the school had an established locker search policy. Regardless, the court ultimately held that the search was justified under the reduced constitutional standard of reasonableness announced in T.L.O. In its evaluation, the court noted that reasonable suspicion of wrongdoing is a "common sense conclusio[n] about human behavior upon which practical people - including government officials - are entitled to rely." In addition, "a student's direct statement to a person in authority, indicating personal knowledge of facts which establish that another student is engaging in illegal conduct, may provide school authorities reasonable grounds to search the second student's locker." Therefore, on the basis of the principal's pre-existing knowledge of Carey's prior altercation, the two students' eyewitness report, the exigency and danger associated with an armed student in a large high school and the principal's failure to find the rifle on Carey, the court held that the principal's search of Carey's locker was reasonable both at its inception and in its scope. The court also noted that, since the principal and not the police officer conducted the search, the proper standard for the search was reasonableness rather than probable cause.

10. Commonwealth v. Snyder, 413 Mass. 521 (1992)

Facts: A high school student informed a teacher that Snyder had asked him if he wanted to buy marijuana. The student also stated that Snyder kept the marijuana in his book bag. The teacher, who had worked at the school for 15 years, reported the incident to the principal. The principal and the assistant principal located Snyder in the cafeteria but decided not to question him in front of all the other students. The principals then searched Snyder's locker and discovered several bags of marijuana. Snyder appealed the trial court's denial of his motion to suppress evidence of the marijuana found in his locker arguing that the warrantless search of his locker violated his constitutional rights.

Holding: The court noted that other recent court decisions have recognized that, "barring some express understanding to the contrary, students have a reasonable and protected expectation of privacy in their school lockers." In this case, the school administration

explicitly acknowledged in their school code that each student had the right not to have his or her locker subjected to an unreasonable search. The court further noted that under T.L.O., the test for school officials' locker searches is "whether the search was reasonable in all the circumstances." As a result, the principal was not required to obtain a search warrant. In evaluating the reasonableness of the search, the court noted two facts: (1) an identified student reported that he was an eyewitness to an attempted drug sale and (2) there was a danger that Snyder would attempt to sell drugs to other students at the school. Therefore, the principal had a reasonable basis and probable cause to believe that Snyder had marijuana in his book bag and that the book bag was in Snyder's locker. The court also held that the principal's decision to search the locker first rather than Snyder was reasonable and less intrusive.

11. In re Dumas, 357 Pa. Super. 294 (1986)

Facts: A high school teacher observed Dumas get a pack of cigarettes from his locker and give one to another student. The teacher notified the principal. The principal approached the students, took the cigarette from the second student, searched Dumas and discovered a pack of cigarettes. The principal then searched Dumas' locker and found another pack of cigarettes which contained marijuana. The Commonwealth appealed an order suppressing the evidence of the marijuana seized in Dumas' locker.

Holding: The court affirmed that the evidence seized from Dumas' locker was inadmissible. The court noted that under T.L.O, the fourth amendment's prohibition against warrantless searches and seizures does not apply to searches conducted by public school officials. Rather, the search must only be reasonable under all of the circumstances. Since the principal did have reasonable grounds to believe that Dumas had possession of cigarettes in violation of school rules, the principal was justified in initially searching Dumas. However, once the principal discovered the cigarettes, he had no reasonable basis to suspect that Dumas had more cigarettes or marijuana in his locker. Because a student has a reasonable expectation of privacy in a school locker provided by the school for the storage of the student's personal items, the principal's warrantless search of Dumas' locker violated Dumas' constitutional rights.

12. State v. Michael G., 106 N.M. 644 (1987)

Facts: A high school swimming coach informed two assistant principals that a student had told him that Michael G. had attempted to sell him marijuana. The assistant principals contacted Michael G., searched his locker and discovered marijuana. At the time of the incident, Michael G. was on probation for a prior unrelated conviction. Based on the discovery of the marijuana, the state filed a petition to revoke his probation. Michael G. sought to reverse the revocation of his probation arguing that the evidence of the marijuana in his locker was the fruit of an unreasonable search that violated his fourth amendment rights.

Holding: The court noted that under T.L.O., warrantless searches in schools must be based on reasonableness rather than probable cause. In addition, the court confirmed that the T.L.O standard applies to searches of lockers as well as to students. In evaluating the

reasonableness of the search, the court noted that the basis of the search was an identified student's eyewitness account of a breach of school rules, rather than mere rumor or suspicion. "A student's direct statements to a person in authority, indicating personal knowledge of facts which establish that another student is engaging in illegal conduct, may provide school authorities reasonable grounds to search the second student's locker." The court concluded that, under these circumstances, the principal had reasonable grounds to search Michael G.'s locker.

13. In the Interest of S.C. v. State of Mississippi, 583 So.2d 188 (1991)

Facts: A high school student notified the principal that S.C. had offered to sell him guns. The principal requested that the student ask S.C. whether he had the guns on campus. The student complied and later reported that S.C. confirmed that he had guns at school. The principal then located S.C., searched his locker and found two guns. In his delinquency hearing, S.C. challenged the search of his locker arguing that the warrantless search violated his constitutional rights.

Holding: The court first noted that students have a reasonable expectation of privacy in their school lockers such that school officials can only search student lockers if they have a reasonable belief that the locker contains evidence of illegal activity. In its subsequent evaluation of the reasonableness of the principal's search, the court reasoned that high school students are generally less suspect informants than the average citizen and that "school officials may ordinarily accept at face value the information they supply." As a result, the court held that the student's initial eyewitness report of S.C.'s actions and the student's second confirmation provided the principal with reasonable grounds to search S.C.'s locker without a warrant.

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. Clevenger* 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.

WITNESS STATEMENT - Prosecution Witness: WHITNEY MARSHALL

I spent 12 years in the military and then five years as president of a small computer company. Last year I accepted the computer teaching position at Sierra City High because the job allowed me the time to write software. I like my students and, though I am aware that there have been complaints about my teaching style, I know my course is valuable.

I arrived at work as usual on Thursday morning, February 9. When I walked into the computer room, which I call the "refuge," I was horrified. Instead of using my free first period to add more data to the school's records computer and prepare for the rest of the day as I normally would, I spent it looking for clues with Detective Blanc. The vandalism must have been done by someone very angry at me because of the writing on the wall and because my desk had been rummaged through and papers torn up and yet nothing taken. The pocket calculators and a small radio were visible but left behind.

I am well aware that many of my students call my "refuge" the "refuse." But the only direct critical remark I have ever heard was from Casey Clevenger, my brightest and most promising computer student. Casey became visibly angry and upset when I explained that Casey would receive a "B" because of never handing in any of the preliminary exercises I assigned. I had repeatedly warned the student that not doing so would result in a lowered grade, even though the work Casey did complete was always perfect. Casey complained about being made to suffer because the rest of the class was so "stupid" and had to perform such elementary tasks.

After this conversation, I overheard Casey complaining to other students that I didn't know what I was talking about. Casey indicated that I must have been a sergeant during the Gulf War--I treated them like I was a fascist.

When the new school records computer was first installed in my room, the principal requested that I provide some safeguards to prevent unauthorized entries. I established access codes, or passwords, that utilized the subject of the data base, i.e., "Budget," but added on a random combination of two other digits or letters, i.e., "Budget QP." The access code for the grades was "htsfrd." I also designed a program that was attached to the computer's internal clock to record the precise time of each file's entry and exit--this would allow me to monitor every use of the computer. I assumed the precautions were adequate. Now, with a little hindsight, I see that it was not enough protection.

Part of my job is to enter grades into the computer. The printer was out of order when the fall semester's grades were entered so there is no print-out of the data. I know that Casey Clevenger's grade for Advanced Computer Studies was changed from a "B" to an "A" because I personally entered the "B" along with my other students' grades one week earlier.

After Detective Blanc left the campus, I spent the afternoon checking all student grades and found only three other grades had been changed and no other parts of the data base had been disturbed. I believe that Casey changed the three other students' grades in an attempt

to divert suspicion. Only myself, Principal Hill, the clerk and the counselor know the access code. Neither Casey Clevenger nor any other student was authorized to use that computer in any way.

WITNESS STATEMENT - Prosecution Witness: PRINCIPAL DREW HILL

I have been principal of Sierra City High School for 18 years. Prior to that, I taught science in the public school system for 13 years.

When the school first acquired its records computer, it was placed in Whitney Marshall's classroom. I was only mildly concerned about security since Sierra City's crime rate was so low. I reasoned that any student clever enough to get into the grades file would not be a criminal--nonetheless, I ordered minimal precautions, which I left to Whitney's discretion. In addition, we blocked off the corner of the room where the unit was located to discourage contact when the room was occupied by students.

I felt that Casey Clevenger was a very likely suspect because of the changed grade, Casey's use of the term "fascist" and Casey's exceptional ability with computers. In addition, I knew that Casey needed a high G.P.A. to win a college scholarship. As principal, it is my job to maintain the school's security. This includes protecting the school from vandalism and accomplishing what is necessary to uncover the vandals. Thus, I felt it was my duty to call the police and to instruct school staff to cooperate in the investigation. There has never been a locker search at Sierra City High before.

I deliberately did not make any announcement to the student body about the vandalism and instructed the office staff not to discuss it until further notice. While the Officer Blanc conducted the investigation, I walked on campus and discovered a flashlight smeared with red paint sitting in the grass next to the entrance of the lunch areas across from the row of student lockers. The base of the flashlight's handle was marked "CC" in what appeared to be black indelible marker. A piece of paper with the letters "htsfrd" was taped to the handle of the flashlight. It took a moment for me to remember, but it occurred to me that those letters were the access code for student grades in the school computer. I brought the flashlight back to the office, and soon Officer Blanc returned with the gloves from Casey's locker. After checking them against the paint in the bungalow, we returned to my office.

When Casey Clevenger was called to my office Casey was <u>not</u> told the reason. I intentionally did not accuse Casey of anything but merely asked, "Well?" as I motioned toward the evidence removed from the locker. Casey replied, "I don't know anything about this stuff." I believe that Casey answered so quickly that Casey must have known that the vandalism had occurred.

I recognized the red paint as being the same paint used to touch up the school fire extinguisher. I was also aware that some of the paint cans were missing from the work area next to the plant maintenance building.

WITNESS STATEMENT - Prosecution Witness: DETECTIVE JEAN BLANC

I arrived at Sierra City High School at 8:50 a.m. on February 9, 1995 and reported to the principal's office. Whitney Marshall and I then examined the damage done in the computer room. The frosted pane of non-security glass in the bungalow's door had been shattered with a blunt instrument. No other windows were disturbed. I found no fingerprints.

Marshall turned on the computer to verify for me that the computer had been in use the night before and informed me of Clevenger's changed grade and Clevenger's use of the term "fascist." Being used to investigating school vandalism calls, I checked the other buildings just to be thorough but found no evidence of a forceable entry anywhere else. I went back to the office and I requested Clevenger's locker number and combination from the clerk.

In the locker, I found a textbook, calculator and what appeared to be personal letters and ruled paper. I also found latex gloves stained with red paint. One glove was on top of the other items in the locker. The other glove hung from the upper slat of the locker by a fingertip. I returned to principal's office with the paint-stained gloves, and the principal showed me the flashlight also stained with red paint. Principal Hill and Whitney Marshall identified the letters "htsfrd" on the paper taped to the flashlight's handle to be the access code for the school computer. The three of us then went to the bungalow. I carefully examined the color on the flashlight, gloves and the wall and concluded that they were of the same origin. I searched the bungalow area for a discarded paint can but found nothing.

I then returned, with Hill and Marshall, to the principal's office where Casey Clevenger was waiting. I made the arrest and read Clevenger Miranda warnings. Clevenger said, "Maybe I'd better get a lawyer--it looks like I'm really in trouble."

I took Clevenger to the police station for booking. I carefully checked Clevenger's hands for red paint but found no traces anywhere. I then returned to the campus to continue the investigation. Hoping to find a witness, I talked with all the neighbors whose homes might be within sight or sound of the school. My efforts were rewarded when I discovered that Ronnie Silva, who lived on Oak Street, had been out walking a dog between 9:30 p.m., and 9:45 p.m. on the evening of February 8, 1995. I interviewed the witness who was able to describe the person he had seen leaving the school that evening.

In the course of my investigation, I also checked into the whereabouts of the other students whose grades had been changed in the school computer. All three were accounted for on the evening of February 8. Several students and teachers saw them that night at a basketball game held at a school 15 miles away. The game ended after 10:00 p.m. and all three students were reported to have stayed through the entire game.

WITNESS STATEMENT - Prosecution Witness: RONNIE SILVA

I have been renting a one-bedroom house directly across the street from Sierra City High School for about one year. I was not too happy about living so close to a high school, but I decided to take the tiny house because the landlord said I could keep my dog.

On the night of February 8, I was home relaxing in front of the television set. Toward the end of movie I was watching, my Airedale, Bill, started barking wildly at the front door. I stuck my head out of the window that faced the street hoping to see what was disturbing the dog. I couldn't see anything, but I did hear a noise like breaking glass coming from the southern end of the school where the computer bungalow was located.

Satisfied that I was not in any danger, I returned to the movie. When it was over at 9:30 p.m., I called Bill, picked up the dog's leash and proceeded down the sidewalk with my dog. As I waited, I looked at the bungalow, where I had heard the noise earlier. I saw a dim light cross the blinds of the windows that face the street several times, possibly like a flashlight's glow.

I proceeded north toward the intersection of Elm and Oak, getting as far as the northern end of the main school building, but still on the west side of Oak Street. About 10 minutes later, as I was turning back toward my house, Bill started barking again. I looked in the direction my dog was facing and saw a figure appear from behind the main building and head north toward the intersection of Oak and Elm. I watched as a young person hopped over the low hedge along the north end of the school.

The person I saw was wearing dark pants and a dark hooded sweatshirt with the hood pulled. I was standing about 75 feet away from where the young person was, so I couldn't see the face very well. There is a street light located at the intersection, and I thought I recognized the person as someone I had seen before leaving campus after class hours, though this was a little later than in the past. The other times, the youth had been carrying books and leaving campus in the evening, right around the time the school library closes. This time, the youth had a slightly hurried pace but was not running. The young person's arms were swinging freely and did not appear to be carrying anything.

I took note of the young person because it was rare to see people walking the streets this late at night in the neighborhood. I suppose that if there had been a group of young people leaving the campus I would have been more suspicious--I just assumed it was a student returning to school because of having forgotten something in a locker. I realize now that I should have notified the police about it, because Officer Blanc came to my house the next day and asked me if I had seen or heard anything the night before. I told the officer about the young person I saw. I believe the person I saw was the youth I now know is named Casey Clevenger.

WITNESS STATEMENT - Defense Witness: CASEY CLEVENGER, DEFENDANT

I am 18 years old and a senior at Sierra City High School. I expect to graduate with highest honors. I had straight "A's" in everything except for the "B" I got from Whitney Marshall in Advanced Computer Studies. I live on Oak Street three blocks north of school in a small apartment with my guardian, Cam Wu.

My father, the only parent I ever knew, was killed in the Gulf War when I was 14. After he died, I went to live with Cam. Life has been difficult for Cam and me, but somehow we manage. My interest in computers has motivated me to think about my future.

On the night of February 8, I was at home studying. That night I wore jeans and a white shirt. Cam can verify this. I admit that I'm not crazy about Marshall and I was angry about my grade, but I would never stoop to vandalizing the computer room. I have too much respect for computers to ever think about damaging one. Because of my overall G.P.A. I could not imagine one "B" would hurt my chances of receiving the college scholarship. I had no motive.

Certainly others share my dislike of Marshall, which could be someone else's motive for the vandalism. On many occasions I have heard other students call the computer bungalow "refuse" instead of "refuge" as Marshall prefers. It is possible that I used the word "fascist" because I learned the word during my junior year when I took the required course in U.S. history and studied World War II.

This is a frame. I see now that my impatience with the academic pace of my peers probably alienated them. I should have been more tolerant when they didn't understand the material instead of laughing at their ignorance and calling them names. Perhaps I angered someone enough to do this. Many students knew that my grade was lowered, and I know it gave many of them great pleasure because they were jealous of my academic achievements. I have not used my locker for several days. The last time I looked, the only things inside were my calculus book, an old calculator and last month's pages from my planner.

"Htsfrd" is an access code that anyone--not just someone with my computer mastery--could break. Furthermore, it is so easy to remember I would not have to write it down. It's just one letter over from "grades" on the keyboard. And I have no idea how my flashlight got stained or ended up in the grass. Last time I saw it was weeks ago. I didn't even recognize it at first in the principal's office because it was covered with paint. As for those gloves, someone must have stuffed them in my locker through the vents. I would not be so stupid as to store evidence in my locker.

I knew about the vandalism prior to entering the principal's office because I overheard other students talking about it in the hall between first and second period. Someone had said the "refuse" was broken into and that there was red paint all over everything. I figured that what I overheard was probably true because I had seen a patrol car parked out in front of the school.

WITNESS STATEMENT - Defense Witness: BRETT PHILLIPS

I have worked at Sierra City High School for six years. Because the school is relatively small, as is the town, security has tended to be fairly lax overall.

Student lockers at Sierra City are typical school lockers with rows horizontal vents at the top and bottom. In order to get a locker, each first year student must go to the main office during the first week of classes. There they are given a card with a locker number and combination and the printed words:

> You may use this locker for as long as you are enrolled at Sierra City Public High School. You alone have use of this locker for storage. Do not share the combination with anyone.

They must then print their name and address at the bottom and return it to the clerk who makes sure that each student retains the perforated attachment so that he or she has a copy of the new locker number and combination. Casey Clevenger had told me about losing the attachment and had asked me for a new combination two weeks before the vandalism occurred. I had not gotten around to taking care of Casey's request.

There are four, four-drawer file cabinets located behind the front desk. Inside one of them is an alphabetical list of each student's locker number and combination in a file marked "Lockers." Locker combinations are changed every year. The access code, "htsfrd" is also in the file cabinet in a file marked "Records."

The cabinet does have a lock on it, but the key is usually kept in the lock itself--this is done for convenience since Haley Jackson, the counselor, and I use this cabinet so often. Three students work in the office during each of the day's six periods. Although they are instructed not to go in the cabinet without permission, a student could easily get in and not be noticed. In fact, many other students pass the filing cabinet carrying notes and passes back and forth from teachers' classrooms. I pass the cabinet daily.

On the morning of February 9, Principal Hill informed the office staff of the previous night's vandalism and told us not to discuss it with the students. I don't think anyone violated this instruction; however, it is possible that a student overheard the office employees talking about the incident.

WITNESS STATEMENT - Defense Witness: HALEY JACKSON

I received my Bachelor's degree in Developmental Education in 1982 and have been a counselor at Sierra City High School for five years. Prior to that, I worked as manager of the personnel department for a large marketing firm.

I know Casey Clevenger well. I admire Casey's academic ability and knowledge of computers especially. I encouraged Casey to pursue higher education and wrote a letter of recommendation for Casey for the State Technical Institute Scholarship. Because of limited financial resources, I know that without the scholarship Casey would be unable to attend college. I hate to see Casey's chances jeopardized because of this accusation.

Casey Clevenger's intelligence and sharp tongue have resulted in alienation from many of the students. Casey doesn't seem to know how to relate to them. I have overheard chiding remarks directed at Casey and I have heard Casey respond by calling the students "stupid" and, in a mocking voice, pretend to "pity" their "ignorance."

As a counselor, I am not surprised that Casey has had a problem with Whitney Marshall. Other students and parents have also complained about Marshall's manner and teaching style. Being new to the teaching profession, Marshall's style will probably improve with experience.

My office joins the main office through a common door and I can validate Brett Phillips's statement about the key and the file cabinet. I have seen many students behind the counter talking, even though they do not work in the office.

Despite the problems that Casey Clevenger has had interacting with others, I will vouch for Casey's honesty. As a counselor and an expert on teenage behavior, I do not believe that Casey would vandalize the "refuge," damage the computers that Casey respects so much or change grades, thus risking the loss of the scholarship.

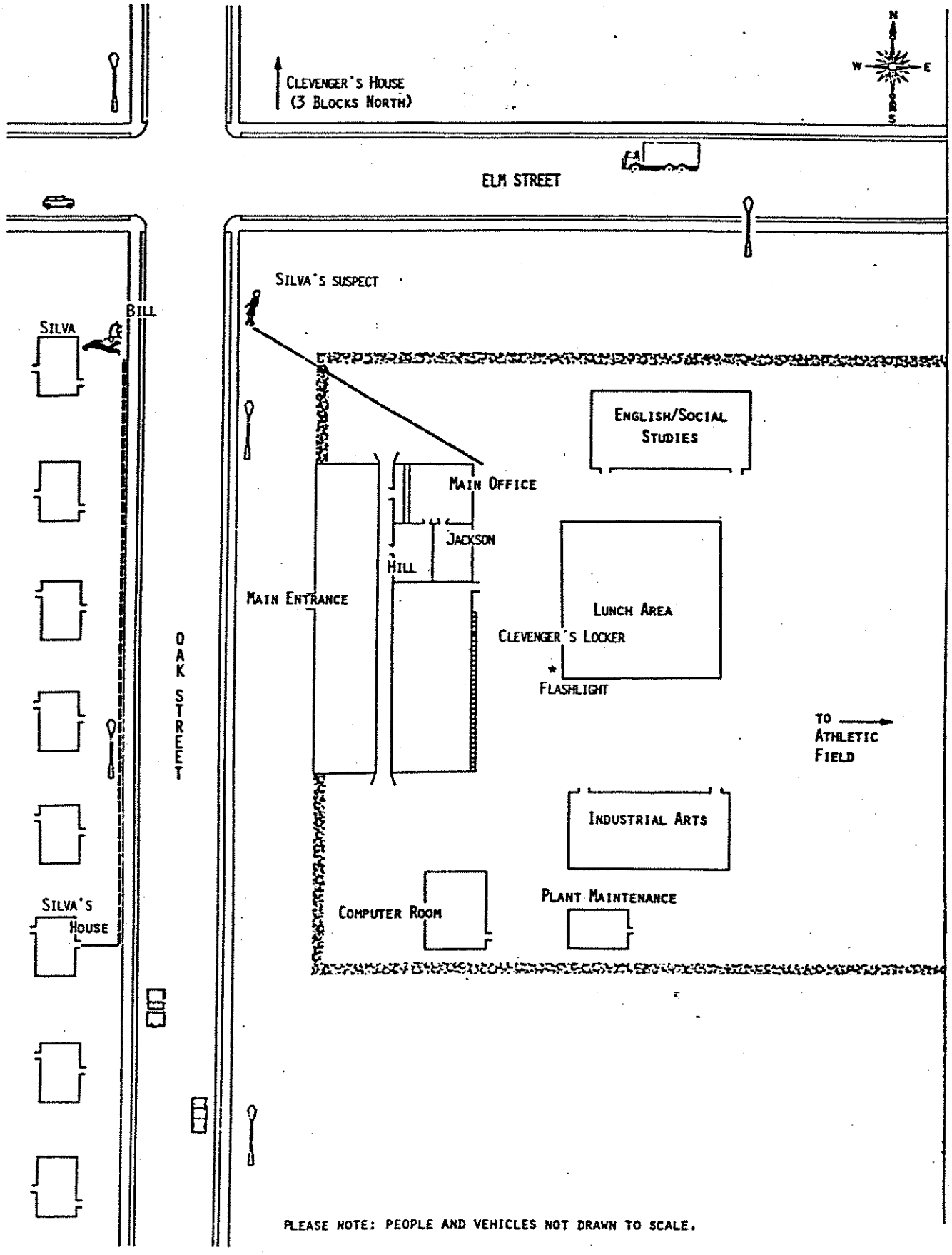
Casey's academic standing is one of the highest in the school and there is not a single disciplinary infraction on Casey's record.

WITNESS STATEMENT - Defense Witness: CAM WU

I am single and I have worked at a number of odd jobs since becoming Casey's guardian when Casey's father was killed. Finances have been difficult in the last few year, but I would never have had Casey go to a stranger after such a tragic loss and Casey is like my own flesh and blood. I am presently working as a telephone operator. I am very proud of Casey's performance at school. I know that the scholarship is Casey's only chance for a good education which would allow Casey to avoid the kinds of jobs that I have had to put up with. Casey is smart and courageous like Casey's father, who served in the marines during the Gulf War.

On the evening of February 9, 1995, Casey was home studying. Casey was wearing jeans and a white button-down shirt. At 8:45 p.m. I joined Casey in the kitchen to have a snack. Casey then returned to the living room to study. So as not to disturb Casey, I went into my bedroom to read the newspaper. I am convinced Casey did not leave the house. At 9:45 p.m. Casey went to sleep in the next bedroom. We have a very small, old apartment with creaky doors and windows, and I am a light sleeper, so I hear everything that goes on at home.

Casey's attorney questioned me on February 12, which was the first time I was asked to recall the events of the 8th.



PLEASE NOTE: PEOPLE AND VEHICLES NOT DRAWN TO SCALE.

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 54: "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Do the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

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

WITNESSES

You will supply the facts in the case. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts). Suppose that your witness statement states that you left the Ajax Store and walked to your car. On cross-examination, you are asked whether you left the store through the Washington or California Avenue 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 statement included the statement that someone fired a shot through your closed curtains into your living room. If asked whether you saw who shot the gun, you would have to answer, "No." You could not reasonably claim to have a periscope on the roof or have glimpsed the person through a tear in the curtains. Neither fact could be found in or reasonably inferred from the case materials.

The fact situation is a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified. If you are asked a question calling for an answer 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.

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

COURT CLERK, COURT BAILIFF

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

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

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

Before each round of competition, the court clerks and bailiffs will meet with a staff person at the courthouse about 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 exact time. **Do not round off the time.**

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

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

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

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

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

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

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

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

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

1. Present the item to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

2. When you first wish to introduce the item during trial, request permission from the judge, "Your honor, I ask that this item be marked for identification as Exhibit # __."

3. Show the item to the witness on the stand. Ask the witness if she/he recognizes the item. If the witness does, ask him/her to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)

4. When 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 46.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

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

The witness will then be sworn in before testifying.

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

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

Examples of proper questions on direct examination:

"Could you please tell the court what occurred on _____ (date)?"
"What happened after the defendant slapped you?"
"How long did you see . . . ?"
"Did anyone do anything while you waited?"
"How long did you remain in that spot?"

Conclude your direct examination with:

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

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

- Call for answers based on information given in Witness Statements or Fact Situation.

- Use leading questions which are designed to get "yes" and "no" answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

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

Examples of proper questions on cross-examinations:

"Isn't it a fact that . . . ?"
"Wouldn't you agree that . . . ?"
"Don't you think that . . . ?"
"When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

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

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

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

Example: (Prior conduct)

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

Example: (Past conviction)
"Is it true that you've been convicted of assault?"

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

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

"Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"
"Would you read the third paragraph aloud to the court?"
"Does this not directly contradict what you said on direct examination?"

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

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

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

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

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

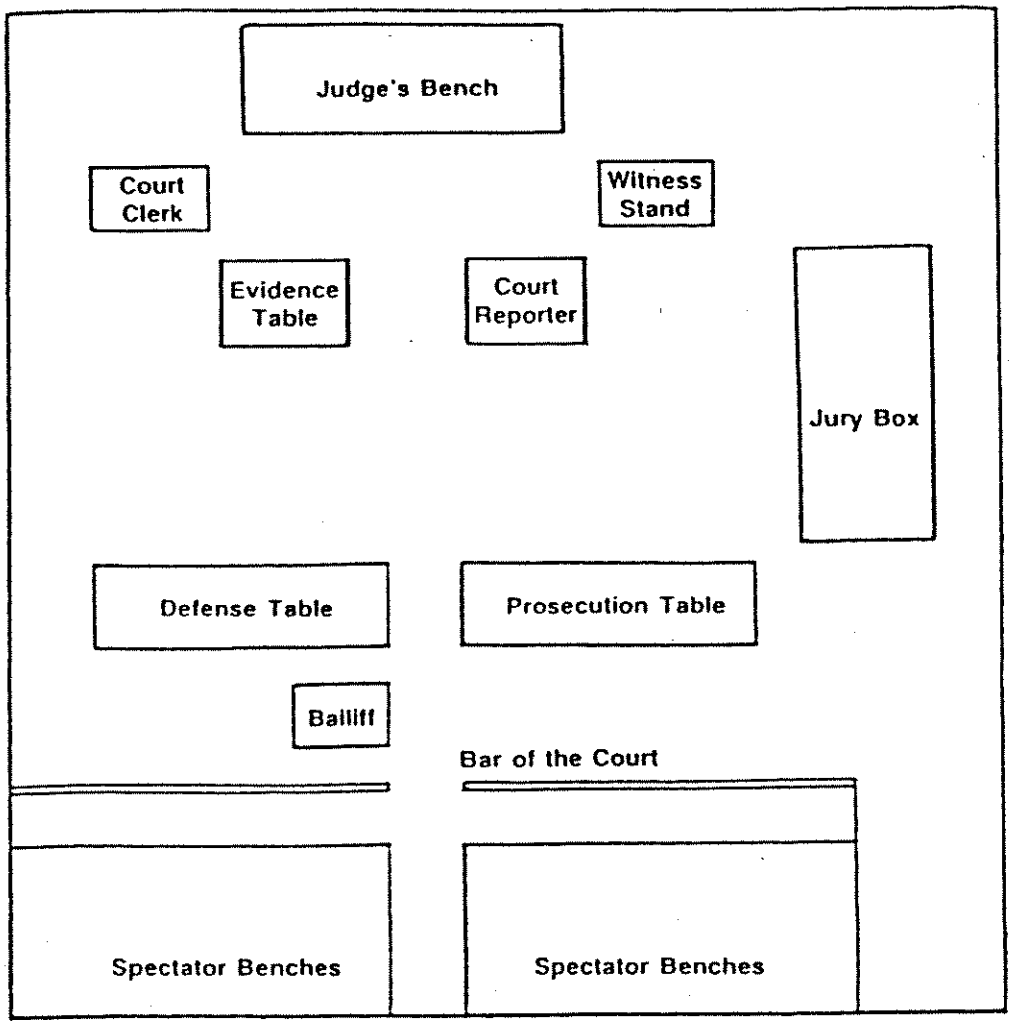
Proper phrasing includes:

"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.

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

DIAGRAM - A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

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

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

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

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 49. **Other objections may not be raised at trial.** As with all objections, the judge will decide whether to allow the testimony, strike it or simply note the objection for later consideration. **Judges' rulings are final**. You must continue the presentation even if you disagree. A proper objection includes the following elements:

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

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

Allowable Evidentiary Objections

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

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

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

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

Either **direct** or **circumstantial** evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial evidence is a fact (Fact I) 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.

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

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

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

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

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

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

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

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

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

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

"Your honor, I move that the witness's testimony about.....be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness 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 of Lay Witness (non-expert)

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

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

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

7. Expert Witness and Opinion Testimony

An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if s/he has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. A qualified expert may give an opinion based upon

personal observations as well as facts made known to him/her outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case an expert may **not** state an opinion as to whether the defendant did or did not have the mental state in issue.

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

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

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

8. Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not under oath and cannot be cross-examined. Because they are very unreliable, these statements ordinarily are not admissible. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced.

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

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 a startling event, while the declarant is still excited or under the stress of excitement.

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. Statements for the purpose of medical diagnosis or treatment.

I. Reputation of a person's character in the community.

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

Allowable Objections for Inappropriately Phrased Questions

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

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

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."**

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

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

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

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

11. 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."**

12. Compound Question

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

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

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

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

13. 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."**

14. Non-Responsive Witness

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

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

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

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

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE 1996-97 MOCK TRIAL

1. **Facts in Record:** "Objection, your honor. The answer is creating a material fact which is not in the record," or "Objection, your honor. The question seeks testimony which goes beyond the scope of the record."

2. **Relevance:** "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant testimony."

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

4. **Personal Knowledge:** "Objection, your honor. The witness has no personal knowledge to answer that question," or "Your honor, I move that the witness's testimony about ___ be stricken from the case because the witness has been shown not to have personal knowledge of the matter."

5. **Character:** "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."

6. **Opinion:** "Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."

7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."

10. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."

11. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."

12. **Compound Question:** "Objection, your honor, on the ground that this is a compound question."

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

14. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."

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

OFFICIAL JUDGE AND SCORER INFORMATION PACKET

People
v.
Clevenger

Issues of vandalism, computer crimes, and search and seizure

Featuring a pretrial argument on the Fourth and Fourteenth Amendments of the United States Constitution

RULES OF COMPETITION

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

I. ELIGIBILITY

To participate in the state finals in Sacramento (April 4-6, 1997) 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 20, 1996**.

3. All local county competitions must be completed by **March 9, 1997**.

4. A teacher/sponsor and attorney coach volunteer must be identified for each team by the coordinator.

5. All team members must be eligible under school district and any state rules applicable to involvement in extracurricular activities. All team members must be registered in the school on whose team they are competing and be a member of the team, at the time of both their county and the state competition.

The Mock Trial Team

6. A Mock Trial team must consist of a minimum of 9 students and may include up to a maximum of 20 students all from the same school. At the local level, more students may be involved as jurors, but juries will not be used at the state finals. At the state finals, the mock trial is presented as a bench trial. We encourage you to use the maximum number of students allowable, especially at schools with large student populations.

7. Team Structure - 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)

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

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

1 Clerk

1 Bailiff

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

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

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

II. CONDUCT OF THE PRETRIAL MOTION

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

1. Only the fact situation (pages 7-9) and the materials on pages 11-21 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 70) 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 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts).

9. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. A witness can be impeached if he/she contradicts the material contained in his/her witness statement using the procedures as outlined on page 39.

10. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called, and the direct examination team will automatically receive a score of zero for the witness performance and direct examination for each witness not called. No other witnesses may be called. If the cross-examination team runs out of time, the team will receive a cross-examination score of zero for each witness not cross-examined.

11. Prosecuting attorneys must provide the physical evidence listed under the heading "Evidence" in the case materials. No other physical evidence, if any, will be allowed. Additional charts or visual aids will not be allowed. Whether a team introduces, uses, and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 9.) If the prosecution team fails to bring physical evidence to court, it may be reflected in the team performance/participation score.

12. Attorneys may conduct re-direct examination when appropriate. Total time for direct/re-direct is 14 minutes.

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

14. Attorneys may use notes while presenting their cases. Witnesses are not allowed to use notes when testifying.

15. The Mock Trial Competition proceedings are governed by the "Mock Trial Simplified Rules of Evidence" on pages 42-48. Only specified types of objections will be recognized in the competition. Other more complex rules may not be used at the trial. Legal motions not outlined in the Official Materials will not be allowed.

16. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.) One minute of this time may be used for rebuttal to opponent's closing argument. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal. Formal reservation of rebuttal time will not be required at the state finals.

17. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention, before a verdict is rendered vocally in front of all present. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated and her/his word is final. (The bailiff **should have** a copy of the rules of competition for easy reference.) Unless a specific point deduction for a particular infraction is provided in these rules, it will be the individual decision of each scorer as to the amount of a deduction for a rule infraction.

18. No video/audiotaping of a trial competition outside of your own county is permitted. Please check with your local Mock Trial coordinator regarding guidelines for video/audiotaping your competition.

19. The official diagram establishes only relative positions. Because the scale is approximate, the diagram cannot be used to definitively establish distances. The issue of distances should be based on the witnesses' testimony and is a matter of fact for the triers of fact.

20. At the state finals, there will be 30 seconds provided **at the end of the trial** for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities **regarding the Rules of Competition** of which the team would like the judge and scorers to be aware. **This time should not to be used to argue additional points of law or rebut opponent's closing argument.** Regarding questions of rule violations, the judge's decision will be the final.

IV. TIMING

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

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

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

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

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

3. One defense attorney at the counsel table or the bailiff may serve as an unofficial timer. This unofficial timer must be identified before the trial begins and may check time with the clerk twice during the trial, once during the prosecution's case-in-chief and once during the presentation of the defense's case. Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine if there has been a rule violation and whether to accept the clerk's time or make a time adjustment. Individuals not participating in trial presentation may not serve as unofficial timers.

4. At the end of the trial, the clerk will time the 30 second consultations and any formal presentations regarding irregularities. No extensions of time will be granted.

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

Pretrial Motion

1. The hearing is called to order.

2. The judge asks the defense to summarize the arguments made in the motion. The defense has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not part of the four-minute time limit.

3. The judge asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.

4. The judge offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues. The same attorney presents both the arguments and the rebuttal.

5. The judge offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.

6. At the end of the oral arguments, the judge will rule on the motion.

7. Beyond having a direct effect on the allowable evidence and outcome of the trial, scores for the pretrial motion presentations will be added to the Mock Trial scores in determining the winner of the trial.

Mock Trial

1. Attorneys present physical evidence for inspection.

2. Judge states charges against defendant.

3. Prosecution delivers its opening statement.

4. Defense may choose to deliver its opening statement at this point or may wait to open after the prosecution has delivered its case.

5. Prosecution calls its witnesses and conducts direct examination.

6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense may cross-examine the witness.

7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.

8. Defense may deliver its opening statement (if it did not do so earlier).

9. Defense calls its witnesses and conducts direct examination.

10. After each defense witness is called to the stand and has been examined by the defense, the prosecution may cross-examine the witness.

11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.

12. Prosecution gives its closing argument.

13. Defense gives its closing argument.

14. Rebuttal arguments (both--optional)

15. Judge deliberates and reaches verdict.

16. Verdict is announced in court. (No scores/winners are announced at this time.)

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

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

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

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

2. Please score every box.

3. No fractions are allowed.

4. When filling out score sheets, **please make your decisions independently.** There should be no need for conferring.

5. The presiding judge is to fill out the bottom portion of the score sheet, indicating which team he/she feels should be the overall winner in the event of a tie.

6. It is very important to read the fact situation and witness statements carefully. Because this a **mock** trial, students will refer to specific 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 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from his/her witness statement or the fact situation (if he/she reasonably would have knowledge of those facts). Please keep in mind that witnesses can be impeached.

8. **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.

10. Please keep in mind that the Mock Trial competition involves timed presentations. One team's unreasonable running of the opposing team's time is inappropriate. Witnesses may be admonished, and poor sportsmanship may be reflected in the team performance score.

JUDGE'S ROLE

Pretrial Motion and Constitutional Issue

The pretrial motion section of this packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of fact situations, and analyze and debate constitutional issues. Although mandatory in the state finals, the pretrial motion is **optional on the local level**. The county coordinator will inform you whether this will be part of the local competition. If it is, then the judge will read the "Pretrial Motion Instructions" on page 61 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. Clevenger*

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

Please read the "Trial Instructions For Mock Trial Participants" on pages 61-62 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help to put the students at ease, and by **emphasizing the educational, rather than the competitive aspects** of the Mock Trial, you will help to bring the experience into proper perspective.

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

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

PRETRIAL MOTION INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS

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

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

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

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

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

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

"Is counsel for the defense ready to begin?"

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

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

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

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

"Attorneys must call four witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the1996-97 Mock Trial.'

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

1. A faithful reproduction of the map of Sierra City High School which appears in the packet. Map should be no larger than 22" x 28".
2. Flashlight stained with red paint, with CC on the base of the handle and a piece of paper with "htsfrd" typed on it taped to the handle.
3. Pair of latex gloves stained with red paint.

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

1. No fingerprints were able to be lifted from the latex gloves, flashlight or paper with "htsfrd."

2. In order to get a locker, each first year student must go to the main office during the first week of classes. There they are given a card with a locker number and combination and the printed words:

   > You may use this locker for as long as you are enrolled at Sierra City Public High School. You alone have use of this locker for storage. Do not share the combination with anyone.

3. No Fifth Amendment arguments will be presented at pretrial or during the 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 110 points by each scorer and/or judge if the pretrial motion is presented, and 95 points if it is not.

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

2. Opening Statement
- o 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 <u>not</u> 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.
- Effective rebuttal countered opponent's arguments.

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 or bailiff.
- As much as possible, <u>each</u> trial attorney displayed examination and argumentation skills, and when appropriate, displayed knowledge of Simplified Rules of Evidence in making objections.
- Witnesses performed in synchronization with attorneys in presenting their side of the case.

- The clerk or bailiff performed his/her role 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: 241 (team points)
divided by 488 (total for both teams) = .4939

Team B: 247 (team points)
divided by 488 (total for both teams) = .5061

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

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

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

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

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

2–0	1–1	0–2

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.

JUDGE/ATTORNEY SCORE SHEET

Date:_____ Judge:_____

Motion: Granted/ Denied

Verdict: Count #1: G/NG #2: G/NG Scorer: _____

Please refer to the "Guidelines and the "Evaluation Criteria" in the booklet to assist you in evaluating the performance. Scoring of the presentations should be independent of the legal decisions of the case. Do not announce any winners or scores at the end of the trial. FILL IN ALL SCORE BOXES. Please indicate the verdicts above. Return scoresheet to coordinator. Scoring should be independent, and we ask that there is no conferring on individuals' scores. 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 2 Below Average 3 Average 4 Above Average 5 Excellent

PROSECUTION		DEFENSE
Student's name ☐ x 3= ☐	**PRETRIAL MOTION** (Defense presents motion)	Student's name ☐ x 3= ☐
Student's name ☐ x 2= ☐	**OPENING STATEMENTS**	Student's name ☐ x 2= ☐
Students's name ☐	**PROSECUTION'S FIRST WITNESS** ← 1.Direct/Re Examination by attorney	
Character's name / Student Name ☐	← 2.Cross-examination by attorney → ← 3.Witness Performance	Student's name ☐
Student's name ☐	**PROSECUTION'S SECOND WITNESS** ← 1.Direct/Re Examination by attorney	
Character's name / Student Name ☐	2.Cross-examination by attorney → ← 3.Witness Performance	Student's name ☐
Student's name ☐	**PROSECUTION'S THIRD WITNESS** ← 1.Direct/Re Examination by attorney	
Character's name / Student Name ☐	2.Cross-examination by attorney → ← 3.Witness Performance	Student's name ☐
Student's name ☐	**PROSECUTION'S FOURTH WITNESS** ← 1.Direct/Re Examination by attorney	
Character's name / Student Name ☐	2.Cross-examination by attorney → ← 3.Witness Performance	Student's name ☐
	DEFENSE'S FIRST WITNESS 1.Direct/Re Examination by attorney →	Student's name ☐
Student's name ☐	← 2.Cross-examination by attorney	
	3.Witness Performance →	Character's name / Student Name ☐
	DEFENSE'S SECOND WITNESS 1.Direct/Re Examination by attorney →	Student's name ☐
Student's name ☐	← 2.Cross-examination by attorney	
	3.Witness Performance →	Character's name / Student Name ☐
	DEFENSE'S THIRD WITNESS 1.Direct/Re Examination by attorney →	Student's name ☐
Student's name ☐	← 2.Cross-examination by attorney	
	3.Witness Performance →	Character's name / Student Name ☐
	DEFENSE'S FOURTH WITNESS 1.Direct/Re Examination by attorney →	Student's name ☐
Student's name ☐	← 2.Cross-examination by attorney	
	3.Witness Performance →	Character's name / Student Name ☐
Student's name ☐ x 3= ☐	**CLOSING ARGUMENTS**	Student's name ☐ x 3= ☐
Prosecution ☐ x 2= ☐	**TEAM PERFORMANCE AND PARTICIPATION** (including Clerk & Bailiff)	Defense ☐ x 2= ☐
_____	**TOTAL SCORE**	_____

★ IN THE EVENT OF A TIE, WHICH TEAM WOULD YOU PICK AS THE WINNER? (Circle one) PROSECUTION / DEFENSE ★

TEAM ROSTER SHEET

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

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

PRETRIAL MOTION TIME SHEET

_____ V. _____

Defense - School Prosecution - School

Clerk_____

School_____

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

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

Do not round off times.

MOCK TRIAL TIME SHEET

Clerk_____ Judge_____ Date_____

_____ V. _____

Prosecution - School Defense - School

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

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

PROSECUTION:		**DEFENSE:**	
Opening Statement	_____	**Opening Statement**	_____
Direct/Re-Direct Exam (14 min.)		**Cross-Exam** (10 min.)	
Prosecution Witness 1	___/___	Prosecution Witness 1	_____
Prosecution Witness 2	___/___	Prosecution Witness 2	_____
Prosecution Witness 3	___/___	Prosecution Witness 3	_____
Prosecution Witness 4	___/___	Prosecution Witness 4	_____
TOTAL TIME	_____	TOTAL TIME	_____
Cross-Exam (10 min.)		**Direct/Re-Direct Exam** (14 min.)	
Defense Witness 1	_____	Defense Witness 1	___/___
Defense Witness 2	_____	Defense Witness 2	___/___
Defense Witness 3	_____	Defense Witness 3	___/___
Defense Witness 4	_____	Defense Witness 4	___/___
TOTAL TIME	_____	**TOTAL TIME**	_____
Statements (10 min. total) Opening (from above)	_____	Statements (10 min. total) Opening (from above)	_____
Closing	_____	Closing	_____
Rebuttal (1 min. max.)	_____	Rebuttal (1 min. max.)	_____
TOTAL TIME	_____	**TOTAL TIME**	_____

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