

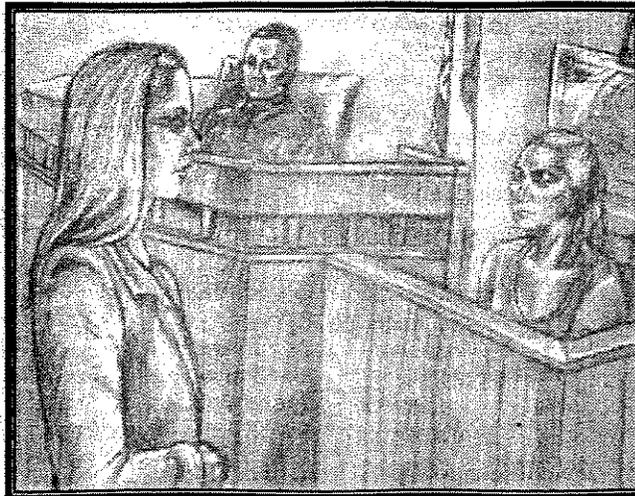


CONSTITUTIONAL RIGHTS FOUNDATION

**PEOPLE
V.
MARTIN**

A MURDER TRIAL

Featuring a pretrial argument on the
Fifth Amendment of the U.S. Constitution



Co-Sponsored by:

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

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Participating California Counties for 2002-2003

Alameda	Los Angeles	Riverside	Santa Barbara
Butte	Madera	Sacramento	Santa Clara
Contra Costa	Marin	San Benito	Santa Cruz
El Dorado	Mendocino	San Bernardino	Shasta
Fresno	Monterey	San Diego	Solano
Imperial	Napa	San Francisco	Stanislaus
Inyo	Nevada	San Joaquin	Tulare
Kern	Orange	San Luis Obispo	Ventura
Kings	Placer	San Mateo	Yolo

The California Mock Trial Competition is a program of 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.

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PROGRAM OBJECTIVES

For the students, the Mock Trial Program will:

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

For the school, the program will:

1. Provide an opportunity for students to study key concepts of law and the issues of poisoning, assault with a deadly weapon, and search and seizure.
2. Promote cooperation and healthy academic competition among students of varying abilities and interests.
3. Demonstrate the achievements of young people 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 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 follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff. Failure of any member or affiliate of a team to adhere the rules may result in disqualification of that team. All participants also must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* and scouting of any kind is unacceptable. Students' written and oral work must be their own.

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

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

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

2002-2003 CALIFORNIA MOCK TRIAL PROGRAM

The lessons and resources included in this packet offer schools and teachers additional methods to expand and deepen the educational value of the mock trial experience. We encourage all participants to share these resources with their colleagues for implementation in the classroom. We hope that through participation in the lessons and the Mock Trial Program, students will develop a greater capacity to deal with the many important issues identified in *People v Martin*.

CLASSROOM MATERIALS

The following two lessons concern topics related to the case of *People v Martin*.

In the first lesson, students examine the issue of cheating and discuss why people cheat, why the problem of cheating is on the rise, and what should be done to eliminate cheating. In small groups, students apply what they have learned to hypothetical scenarios where they decide whether cheating took place, how serious the cheating was, and what the consequences should be. They report and discuss their findings to the class.

In the second lesson, students explore the criminal-case process and how our legal system administers justice. First, in a reading, students examine the adversarial process and how it plays a role in finding truth. In the activity, students separate into small groups and play the role of attorneys summarizing the sequence of events as both the prosecution and defense might see them. Lastly students answer a series of questions to further explore the checks and balances within our legal system.

The second lesson is excerpted from *Criminal Justice in America* © 2000 Constitutional Rights Foundation.

LESSON 1 The Cheating Problem

Rather fail with honor than succeed by fraud.
—Sophocles (c. 496-406 BC), Greek playwright

Cheating has become a serious problem in American schools. In 1998, *The American School Board Journal* published a study on cheating. Of the 356 high school teachers surveyed, nine out of 10 said cheating is a problem at their schools. Half of those surveyed said that they had encountered students cheating in most of their classes.

Other statistics corroborate these findings. The Josephson Institute of Ethics conducted a 1998 survey of 20,829 students, which revealed some startling information. Seventy percent of the high school students and 54 percent of middle schoolers surveyed admitted to cheating on an exam during the previous 12 months.

More recent studies bolster these findings. A 2001 Princeton University study showed that 74 percent of high schoolers admitted to cheating or plagiarism sometime during the previous school year. A similar study of 4,500 high schoolers done at Rutgers University, and published in 2002, reinforced the Princeton study. Almost three-quarters of the students had cheated at least once during high school. The sting of these figures is made worse by the attitudes expressed by the students. Fifty percent of the students polled said they saw nothing wrong with copying questions and answers from a test. Fifty-seven percent of the students said that copying some sentences for a written assignment or getting answers from someone who had taken a test was not a problem.

Evidence indicates that it has not always been this way. Though most research seems to have been done in recent years, similar studies done in previous years reveal that cheating in school has increased over the decades. In 1941, a study published in the *Journal of Higher Education* reported that 23 percent of students cheated in school. Donald McCabe, a researcher at Rutgers University, found in 1993 that cheating at American colleges had doubled since the early 1960s.

The consequences of widespread cheating are hard to measure, but many think it can affect the moral and ethical fiber of society. Forty-six percent of students in a recent *Who's Who Among American High School Students* say that "declining social and moral values" are the biggest problem facing their generation. By contrast, only 15 percent of those students say that crime and violence are the main problems. Michael Josephson, founder of the Josephson Institute, concurs, saying "we're harvesting a generation of nuclear inspectors, auto mechanics, and politicians who will do what it takes to get what they want."

What Is Cheating?

Webster's New World Dictionary defines "cheat" as "the act of deceiving or swindling." In the school setting, cheating normally refers to a breach of academic integrity. According to Gary J. Niels, author of *Academic Practices, School Culture, and Cheating Behavior*, academic integrity means "respecting the value of words, thoughts, images and ideas . . . it includes an understanding of the principles of ownership with respect to words, thoughts and ideas."

The basic principles of academic integrity are fairly simple. Everyone's words and ideas deserve respect. No one has the right to take credit for someone else's words or ideas. We must "give credit where credit is due." This means, among other things, not copying someone else's essay or artwork, forging someone else's signature, or allowing someone else to copy our work.

Cheating takes numerous forms. In 1989, *The High School Journal* published a study on cheating. Students were asked to rank different behaviors in terms of dishonesty. From the examples given, students thought that the most serious breach of academic integrity was copying someone else's homework or term paper, while the least serious was studying someone else's notes. In between, they ranked many actions, including looking at notes during a test, writing a report for someone, arranging to give answers by signals, finding a test in the trash to memorize the answers, and getting answers from someone who had already taken a test.

A common cheating practice is plagiarism, copying another's writing without giving proper credit. In the Rutgers University study, 57 percent of the students felt that copying "a few sentences" from another source was no problem. Yet some students copy more than a few sentences, as a University of Virginia survey has shown. Faculty at the university say that the Internet is the "No. 1 societal force leading students to commit acts of plagiarism," according to *Wired* magazine news.

The Internet provides a rich source of information on virtually any topic. Students can easily copy this information without even typing, insert it in a school assignment, and pass it off as their own. For more advanced cheaters, the Internet has notorious "paper mills," databases with hundreds, and sometimes thousands, of prewritten and ready-made term papers and essays. With titles such as "The Cheat Factory," these databases offer papers for a fee. Cheaters also misuse academic databases, which are meant to help students generate ideas or gain clearer understandings of subjects. The Internet has made plagiarism easier and a temptation for many students.

Why Do People Cheat?

Access to the Internet provides a temptation, but what makes people give in to such a temptation? There are many reasons.

Donald McCabe, who conducted the Rutgers University surveys mentioned above, says that "[s]tudents sense a deterioration of general societal values, and incorporate that into their own lives." In other words, cheating does not have the stigma it once had in American society.

Studies reveal that students who cheat try to justify it. Cheaters might resent teachers who give them meaningless assignments or "busywork." Students might say that teachers do not seem to care about cheating. They might complain that cheating is necessary because the teacher's pace of instruction is too overwhelming.

Some students might do their own risk-benefit analysis. They might think that they will not get caught. Or they might believe that if they do get caught, the punishment will not be too severe.

Often high-achieving or more affluent students find themselves in an atmosphere ripe for cheating. Adolescents in wealthy families often endure intense pressures to succeed. According to Gary J. Niels, privileged young people "believe that they must choose occupations which befit their social status and they must earn an income which enables them to maintain a lifestyle equivalent to their parents'." Niels cites a study on adolescent alienation, published in 1990 in the *Journal of Research and Development in Education*. It states that private schools might unintentionally promote cheating because of the heightened expectation that students must perform well academically. The *Who's Who* survey, cited above, also showed that four out of five adolescents at the top of their classes cheated at some point during their academic career.

What Should Be Done?

Schools have implemented different methods to curb cheating. The spectrum runs from open discussion of cheating and plagiarism in the classroom to school-wide honor codes. A 1990 study in the *Journal of Educational Research* suggested that the impulse for students to cheat decreases when teachers explain the purpose and relevance of course assignments. Also, students feel more pressure when the grade depends on only a few heavily weighted tests. Increasing the number and variety of graded assignments lowers the pressure on students. According to the study, teachers and students agreed that clear and well-structured objectives and lessons, teacher communication with students who have academic difficulties, seating assignments, and close teacher supervision during tests would reduce the likelihood of cheating.

Other studies show that as the risk for students getting caught for cheating increases, the instances of cheating decrease. One way to increase the risk is implementing an honor code. A code lets students know that the school has core values. Many high schools and colleges already use codes to define cheating and clearly outline consequences. For example, Brandeis University's honor code states that "[e]very member of the University community is expected to maintain the highest standards of academic honesty" and that "a student shall not receive credit for work that is not the product of the student's own effort." It also states if a student "either knowingly or through negligence" provides "[his or her] own work to assist another student in satisfying a course requirement," then that shall constitute "an infringement of academic honesty." The code further states that "[o]bviously, possession or use of unauthorized materials during an examination constitutes an infringement of academic honesty."

Boston College High School requires that all students and faculty sign an "Integritas Pledge" ("in the spirit of honor"). Students are expected to write "Integritas" and their signature on the top of every assignment, quiz, test, and exam. An elected "Honor Council" of students, supervised by a faculty advisor, judges violations of the honor code. In general, the code defines cheating as "deliberately giving or receiving unauthorized information on any assignment or examination," and as "passing off or attempting to pass off another's work as your own."

Critics note that honor codes themselves cannot solve the problem, especially if they are not effectively enforced. Nonetheless, it is estimated that only one in 20 students cheat regularly at schools with them, while as many as one in four cheat regularly at schools without them.

For Discussion

1. What does the quotation at the beginning of the article mean? Do you agree with it? Explain.
2. Do you think cheating is more common in schools today than in the past? Why or why not?
3. How would you define cheating?
4. Why do you think people cheat?
5. What do you think should be done about cheating? Why?

Class Activity #1: Is This Cheating?

In this activity, students discuss and evaluate examples of cheating.

1. Divide the class into discussion groups of five students each. Assign each group several of the examples below. (If a group finishes early, the group can discuss other examples.)
2. Each group should select one person to lead the discussion, another to keep the group on task, and another to read aloud each hypothetical and take notes on each point discussed.
3. For each example, each group should determine (1) if it is an example of cheating, (2) how serious it is, and (3) what an appropriate consequence would be.
4. Have the groups report back to the class.

Examples

- A. During a multiple-choice test, one student discreetly holds up three fingers to another student, indicating "Question 3." The other student responds by tapping his pencil twice, indicating "Answer B."
- B. Before an exam, a student prints out notes using a tiny font onto a small slip of paper. During the exam, the student unzips her backpack pouch to get a good view of the sheet.
- C. A student uses a "mnemonic" device he has memorized to answer test questions. (Mnemonic devices are short phrases, words, or rhymes that help a person remember information. For example, to remember what happened to the six wives of King Henry

VIII, a person might memorize this short rhyme:

Divorced, beheaded, died.

Divorced, beheaded, survived.)

- D. Before a test, the teacher erases information written on the chalkboard, but the words remain faintly visible. A student looks at the board during the test to copy the information.
- E. Minutes before class begins, a student allows another student to copy her homework.
- F. Where the teacher allows students to use hand-held calculators, the teacher walks around the room to clear memory before the test begins. One student writes a "memory clearing simulation program" to fool the teacher, allowing the student to use formulas that other students cannot access during the test.
- G. One student does not take notes in class. On the night before the test, his friend loans him notes to study from.
- H. When the teacher passes back quizzes to one class, a student erases an incorrect answer and writes in the correct answer, demanding that her grade on the quiz be changed.
- I. In an English literature class, one student finds an Internet database and prints out an essay, writes his own name at the top, and turns it in as his own work.
- J. In the same situation as "I" above, the student does not print out the whole essay, but copies a few sentences.
- K. In the same situation as "I" above, the student does not print out the whole essay or copy any words directly, but instead uses the same topic organization as the Internet essay.
- L. During a test, two students use cell phones to send text messages about the test to each other.

Class Activity #2: What Should Be Done About Cheating?

In this activity, students discuss and create their own honor code.

1. Divide the class into groups of five. Each group should have a discussion leader, taskmaster, and a scribe.
2. Each group should discuss (1) what should be the purpose of the honor code, (2) what values should the honor code promote, (3) what definition of cheating should be included in the honor code, (4) what consequences there should be for cheating, and (5) how the code will be enforced.
3. Each group should then draft an honor code, being careful that the consequences and enforcement correspond to the purpose and values of the code.

LESSON 2 The Criminal Case Process

Every year, state and federal criminal justice systems handle thousands of criminal cases. Most cases are routine: A crime occurs, and a suspect is identified, arrested, and charged. If the defendant pleads guilty, which most do, a trial does not take place. Aside from realizing that police departments are overworked, courts are overburdened, and prisons are overcrowded, the general public knows little about the daily routine of criminal justice activity.

What does capture public attention is the big case. A sensational murder or a multi-million dollar fraud case can make headlines in our daily newspapers for months. Reporters clamor for interviews with the prosecution and defense teams, TV-news programs detail the day's courtroom events, and the defendant's name becomes a household word.

Although these big cases are not typical, they do give us a dramatic glimpse of the criminal justice process. These cases introduce us to a mind-boggling array of courthouse characters, legal terminology, procedural steps, and legal issues. At any point along the way, we might throw up our hands and mutter, "What's the point of all this? Did he do it or didn't he do it?" Since no one can read a suspect's mind and no one can peer back into the past to find out exactly what happened, we need some system to find the truth.

The Adversary System

Central to truth-finding in our criminal case process is the so-called adversarial process. In it, opposing attorneys introduce evidence to neutral fact finders—the judge or jury. Ultimately, the fact finder must decide the facts of a particular case and come to a verdict.

In this process, the attorneys are advocates and adversaries. They try to present facts in a light most favorable to their side and point out weaknesses in their opponents' case. Through well-planned strategies and legal arguments, they try to convince the court to see "truth" as they do. In a criminal case, the opposing sides are the prosecution and the defense.

The basic goal of the prosecution is to protect society from crime by making sure the guilty are tried, convicted, and punished. By filing charges against a particular defendant, the prosecutor is claiming that the individual has committed a crime. At trial, the prosecutor must prove the claim beyond a reasonable doubt.

The basic goal of the defense is to challenge the prosecutor's case by raising all reasonable doubts about the defendant's guilt. Defense attorneys must also make sure that the defendant gets every right and benefit guaranteed under the law and Constitution.

By pitting these two sides against one another, it is believed that the truth will come out. For example, if the prosecution's robbery case depends on an eyewitness's identification of the defendant, the defense might go to great lengths to question the memory or eyesight of the witness. The defense can be assured of a similar strict examination of any evidence it produces. Under the adversary system, the judge or jury must decide which version is true.

The fact finder must go through this process with all the evidence produced at trial. Before determining whether or not a defendant is guilty, the fact finder must weigh a lot of evidence and establish facts. Are the witnesses believable? Are the lab tests accurate? Are the connections between the various pieces of evidence logical and supportable? What other explanations for the alleged events are possible? Indeed, the quest for truth pervades a criminal trial.

Because the adversarial process involves humans, it is not foolproof. Memories fail, witnesses see the same event in different ways, reasonable people differ about what is true. Sometimes, biases and prejudices arise or lies are told. In extreme cases, truth can get lost when an advocate goes too far in trying to win. An emotional argument can sway a jury in spite of the facts. Important evidence can be concealed.

To protect against these problems, our criminal-case process has developed sophisticated checks and balances. Some protect the process itself, while others protect the defendant. Judges and jurors can be removed for bias or prejudice. Witnesses are sworn to tell the truth and can be punished if they lie. Lawyers are bound by ethical rules against knowingly presenting false testimony. Criminal defendants in serious cases can count on representation by an attorney, a trial by jury, the right to confront accusers, a speedy and public trial, and the right to appeal. They are also protected against having to post an excessive amount for bail or having to testify against themselves. These protections come from the U.S. Constitution and the constitutions and laws of the various states.

Facts, Facts, Facts

Basic to every criminal case are facts. When used to prove a point before a court, they are called **evidence**. Evidence comes from the testimony of witnesses or from physical items related to the crime. Woven together, evidence can tell a story of guilt or innocence.

As you will discover, facts are important at every stage and to every person in the criminal-case process. Consider just a few examples. A police officer must have sufficient facts to show probable cause to arrest a suspect or conduct a search. A judge examines these facts before issuing a warrant. A criminal trial judge may be called upon to decide whether facts offered in evidence are relevant to the case.

For Discussion

1. What is the main purpose of the criminal-case process?
2. What is the adversary system? How does it aid truth-finding in a criminal case? What might be some weaknesses in the system?
3. What are some checks and balances found in the criminal-case process?

Activity: Just the Facts

In this activity, students analyze the facts of a hypothetical criminal case in which a defendant (D) is charged with assault with a deadly weapon.

1. Each student should:
 - a. Read Prosecutor's Facts and Defendant's Facts.
 - b. Write a summary of the sequence of events as the prosecution might see them.
 - c. Do the same from the defense's point of view.
 - d. Write answers to the following questions:
 - To prove a case beyond a reasonable doubt, which facts must the prosecutor cast doubt upon? Why?
 - If the facts described in point b of Defendant's Facts are proved false, could the defense still win? Why or why not?
 - Why would the examination of witnesses under oath be very important to this case?

Prosecutor's Facts

- a. D owns a .38 caliber Smith & Wesson handgun registered in his name.
- b. D's pistol was found by the investigating officers at the scene of the shooting on August 1.
- c. A fingerprint expert testified that D's fingerprints were all over the handgun found at the scene. The gun had no other fingerprints on it.
- d. One witness testified that two hours before the assault, he heard D threaten to shoot the victim.
- e. The victim's neighbor, who reported the crime, testified that he heard shots fired at 7:35 p.m. on August 1.

Defendant's Facts

- a. D testified that his pistol was stolen from his house about July 29. No police report was made because D did not discover it missing until August 2.
- b. D's business partner testified that D was having dinner with her between 6:45 and 8:30 p.m. on August 1.

2002-2003 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 22nd Annual California Mock Trial Competition. In preparation for their trials, participants may refer to all information included in the *People v. Martin* case. The competition is sponsored and administered by Constitutional Rights Foundation. The co-sponsors of the competition are the California Department of Education, the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation.

Each participating county will sponsor a local competition and declare a winning team from the competing high schools. The winning team from each county will be invited to compete in the state finals in Riverside, March 28-March 30, 2003. In May 2003, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in New Orleans, Louisiana.

The Mock Trial is designed to clarify the workings of our legal institutions for young people. As student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they learn about our judicial system. During Mock Trials, students portray each of the principals in the cast of courtroom characters, including counsel, witnesses, court clerks, and bailiffs. Students also argue a pretrial motion. This year's motion has a direct bearing on the evidence allowed in the trial itself.

During all Mock Trials, students present their cases in courtrooms before actual judges and attorneys. As teams represent the prosecution and defense arguments over the course of the competition, the students must prepare a case for both sides, thereby gaining a comprehensive understanding of the pertinent legal and factual issues.

Because of the differences that exist in human perception, a subjective quality is present in the scoring of the Mock Trial, as with all legal proceedings. Even with rules and evaluation criteria for guidance, no judge or attorney scorer will evaluate the same performance in the same way. While we do everything possible to maintain consistency in scoring, every trial will be conducted differently, and we encourage all participants to be prepared to adjust their presentations accordingly. Please remember that the judging and scoring results in each trial are final.

1 CALIFORNIA MOCK TRIAL FACT SITUATION

2
3 Driftwood City High School is located on the California coast. At the school, honor students
4 vigorously compete with each other hoping to gain entry to the nation's top colleges. Every year,
5 the English department creates a final exam for all its honors literature classes. The department
6 administers the exam both as a grade in Honors English Literature and to determine the
7 recipients of three Distinguished Writers Foundation ("DWF") scholarships to college. The DWF
8 was established by graduates of Driftwood High to promote the school and the study of literature.
9 Dean Taylor Okita announces the recipients of the scholarships at graduation. In 2002, the exam
10 was given on May 30, two weeks before graduation.

11
12 In recent years, there have been problems at Driftwood City High with cheating. To crack down
13 on cheaters, the administration instituted an honor system in which students are required to
14 report incidents of cheating. Those who know about cheaters and who fail to report them are
15 treated the same as the cheaters themselves. For a first offense, Dean Okita orders a one-day
16 suspension and a failing grade on the assignment in question. A second offense results in an "F"
17 on the assignment and a permanent demerit in the student's school record. This rule is rigorously
18 enforced and allows for no exceptions. In 2001, students Beck Martin and Cody Ward had been
19 caught cheating. Both were first-time offenders.

20
21 In the spring of 2002, Beck, Cody, and Anne Marcus were seniors at Driftwood. They had known
22 each for years from participating together in academic programs, and all three had been on the
23 honor roll. Anne was a tall 17-year-old girl and an avid rock climber. Beck and Cody were both of
24 slight build, were slightly taller than Anne, and were athletes. Beck was a rower and captain on
25 the school's crew team, and Cody ran cross-country on the track team. All three were in Larry
26 Molina's Honors English Literature, and each had been accepted at Empire University for the fall.
27 They took the test on May 30 as scheduled.

28
29 On Friday, June 7, 2002, before the tests were returned to the students, Anne overheard Cody
30 and Beck whispering in the school hallway during passing period. At some point in the
31 conversation, Beck removed some photocopied papers stapled together from Beck's backpack
32 and handed them to Cody. Anne, however, reached out and intercepted the papers, looked at
33 them, and saw that they were a copy of the Honors English Literature exam with Beck and
34 Cody's handwritten answers on them.

35
36 Realizing that Beck and Cody had cheated on the exam, Anne told them that if they did not turn
37 themselves in by Monday morning, she would deliver these incriminating photocopies to the
38 Dean. Before either of them could grab the papers, Anne quickly turned and put the papers in her
39 locker. She immediately closed and locked the locker door. Unknown to either Beck or Cody,
40 Anne delivered the incriminating papers to Dean Okita later that same Friday afternoon. That
41 night, Beck left messages on Anne's answering machine, but Anne did not answer them. By
42 Sunday, Beck had left 10 messages.

43
44 Late in the afternoon on Sunday, June 9, Anne went rock climbing at Ballena Beach on the coast
45 highway just north of Driftwood City. Anne was known to practice throughout the year on
46 Sundays, often at Ballena Beach. The beach is a mile-long stretch of sand bordered on its
47 southern side by an enormous cliff, 75-feet high, which forms a promontory above the water.
48 There is also a narrow ridge of rocks that forms a gradually rising path that leads from the beach
49 around the promontory and then descends on the southern side of the promontory into a small
50 and somewhat hidden cove. The ridge reaches a height of about 40 feet before it leads around to
51 the cove. In the cove, there is a narrow strip of sand surrounded on three sides by rocky cliffs.
52 There are also large boulders in the surf, preventing anyone from swimming safely. Students
53 often went to the cove, despite its isolation.

1 That evening Cody and Beck drove to Ballena Beach in Cody's white sports car to talk to Anne.
2 They parked in the beach parking lot in the evening and saw Anne climbing the promontory. They
3 approached Anne, who was about 25 feet above them on the cliff.
4
5 Beck and Cody then went up the path to the 40-foot high ridge to wait for Anne to scale that far
6 up. When she reached the edge of the ridge, Beck reached out and grabbed her T-shirt collar.
7 Anne appeared startled, yelled, and leaned back over the edge of the cliff a few inches. Beck
8 then yanked Anne back up onto the ridge. They exchanged words and argued about the cheating
9 issue. Anne reaffirmed that she would give the exam papers to the dean, but wanted Beck and
10 Cody to have some dignity and turn themselves in.
11
12 The three of them walked along the ridge toward the cove and spoke more about the cheating.
13 Anne and Beck walked a few feet ahead of Cody. A little later they reached the place where the
14 promontory curved south toward the cove. Cody stopped and saw Beck and Anne shoving each
15 other while continuing to shout. Cody then turned around and walked back to the car. Cody
16 reached the car at 7:50 p.m. Anne and Beck continued to walk south where the path started to
17 descend into the cove, about 25 feet above the sand near a weathered "No Trespassing" sign.
18 As they climbed down into the cove, Beck and Anne continued to argue. When Beck returned to
19 the car at about 9:00 p.m., Cody drove them back to Driftwood City.
20
21 Early on the morning of June 10, Dean Okita arrived at school. At about 7:00 a.m., Okita walked
22 out of the office and saw Beck standing in front of the building. At about 8:15, Okita again walked
23 down the hall near the office, but this time saw that Anne Marcus's locker had been forced open.
24 Okita informed campus security of this.
25
26 At approximately 7:00 a.m. that same morning, police officer Loren Kripke responded to a call
27 from a local resident that a body had washed up on the shore at Ballena Beach. Officer Kripke
28 went to the scene and conducted a visual investigation of the cove, finding a small, palm-sized,
29 heavy rock with dried blood on it. There was some swelling around the body's left eye.
30
31 Subsequent forensics examination revealed that (1) the body was that of Anne Marcus; (2) the
32 cause of death was drowning; (3) there were marks on Anne's wrists; (4) Anne had a wound on
33 the left side of her head above the temple consistent with receiving a blunt force blow; (5) there was
34 swelling around the left eye; and (6) the blood on the small rock positively matched Anne's blood
35 type. Around 11:00 a.m., the medical examiner called Officer Kripke with this information, and
36 Kripke notified Anne's parents and the school administration that Anne had died at the cove.
37 Dean Okita told the students and faculty at a special assembly that Anne had died. Okita offered
38 no other details about the death. Cody Ward had a doctor's appointment and did not arrive at
39 school until 11:00.
40
41 At 1:00 p.m., Officer Kripke came to the school to interview the dean. After the interview, the
42 dean summoned Cody from class for questioning by Officer Kripke in the dean's office. Kripke
43 questioned Cody for a few minutes, and Cody returned to class. The dean then summoned Beck
44 to the office. Beck arrived at the office, and the dean introduced Beck to Kripke. The dean left the
45 office and closed the door, leaving Beck and Kripke alone. [Kripke directed Beck to sit in a chair
46 on one side of the desk, and Kripke sat in the dean's chair. Kripke read Beck's *Miranda* rights
47 aloud, and they had the following exchange:
48
49 Kripke (Q): Do you understand the rights I have just read to you?
50 Beck (A): Oh, yeah. I've heard them on TV a lot. Besides, they're the same we read about in
51 Government class.
52 Q: Are you willing to speak to me without an attorney present?
53 A: Sure.

1 Q: That's fine. Beck Martin, you know our conversation here is being recorded?
2 A: Yes. I can see your tape recorder right here.
3 Q: OK. I just need information about Anne Marcus. I understand you were at the beach with her
4 yesterday evening. Is that right?
5 A: Well, my parents are out of town. I think I'd like to speak with my aunt right now.
6 Q: Your aunt?
7 A: Yes.
8 Q: OK. Listen. You can have an attorney here, if you want, but I am not going to call your aunt
9 right now.
10 A: Oh.
11 (At this point, neither Beck nor Kripke spoke for approximately 15 seconds. Then the questioning
12 continued as follows.)
13 Q: You know Anne Marcus died last night. Tell me, were the two of you friends?
14 A: Yeah, she was a good climber. I still can't believe she hit her head like that.
15 Q: How long did you know her?
16 A: I don't know, three years or so. I kind of think I'd like to speak to my aunt now.
17 Q: I'll tell you what. You can go back to class now. Thank you.]
18
19 After the questioning ceased, Officer Kripke dismissed Beck to return to class and left the school
20 to get an arrest warrant. Later that day, Kripke arrested Beck Martin for the murder of Anne
21 Marcus. After a fitness hearing, the county prosecutors charged Beck as an adult.

1 **CHARGES**

2 The prosecution charges Beck Martin with two counts:

3 Count 1 – Murder (California Penal Code sections 187, 188, 189)

4 Count 2 – Manslaughter (California Penal Code section 192)

5

6 **EVIDENCE**

7 Only the following physical evidence may be introduced at trial. The prosecution is responsible for
8 bringing:

- 9 1. A faithful reproduction of the map of Ballena Beach, which appears in the packet. The
10 reproduction should be no larger than 22 in. X 28 in.
- 11 2. A faithful reproduction of the map of the cove, which appears in the packet. The
12 reproduction should be no larger than 22 in. X 28 in.
- 13 3. A faithful reproduction of the coroner's diagram of Anne Marcus' body, which appears in
14 the packet. The reproduction should be no larger than 22 in. X 28 in.

15

16 **STIPULATIONS**

17 Prosecution and defense stipulate to the following:

- 18 1. Officer Kripke's questioning of Beck Morton on June 10th was a custodial interrogation.
- 19
- 20 2. If the bracketed information is excluded from trial, it may not be used for impeachment
21 purposes.
- 22
- 23 3. The arrest warrant was issued properly and was based on sufficient probable cause.
- 24
- 25 4. The English exam photocopy had both Beck Morton's handwriting and Cody Ward's
26 handwriting on it.
- 27
- 28 5. The palm-sized rock found at the cove had Anne Marcus' blood on it.
- 29
- 30 6. Dr. Aidan Hobbes and Dr. Sage Gracian are qualified expert witnesses and can testify to
31 each other's statements.
- 32
- 33 7. Beck Morton waived all confidentiality with the Reverend Stacey Jimenez.
- 34
- 35 8. Larry Molina, Aunt Myra, Beck Martin's parents, and the individual who found the body
36 are unavailable to testify.
- 37
- 38 9. All witness statements were taken in a timely manner.
- 39
- 40 10. The vandalized locker belonged to Anne Marcus.
- 41
- 42 11. For purposes of this trial, on June 9, 2002, sunset was at 8:04 p.m. and high tide was at
43 8:48 p.m.

PROCEDURES FOR THE MOCK PRETRIAL MOTION HEARING

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The following procedures and recommendations provide a format for the presentation of a mock pretrial motion.

1. Ask your coordinator if your county will present pretrial arguments before every trial of each round. We urge coordinators to require a pretrial motion hearing in as many rounds as possible, both for its academic benefits and to prepare the winning team for state finals, where it will be a required part of the competition. Performances will be scored according to the criteria included in this packet.
2. Prior to the opening of the pretrial motion arguments, the judge will have read the pretrial materials provided in the case packet.
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 pretrial sources provided with the case materials and any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.
5. Use the facts of *People v. Martin* in your argument. Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from cases that contradict the conclusion you desire.
6. Review the legal arguments to assist you in formulating your own arguments.
7. Your conclusion should be a very short restatement of your strongest arguments.
8. NOTE: The only motion allowed for the purposes of the competition is the pretrial motion outlined in this case packet, pages 19–26.

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PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

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

The Fifth Amendment protects the due process rights of individuals subject to criminal investigations and proceedings. These rights are extended to the states by the due process clause of the 14th Amendment. The Fifth Amendment states that "[no] person...shall be compelled in any criminal case to be a witness against himself." This is also referred to as the privilege against self-incrimination and as the "right to remain silent" when questioned by authorities. In the landmark Supreme Court case of *Miranda v. Arizona*, law enforcement officers were subsequently required to advise persons in custody of these rights prior to interrogation. These rights are absolute, but must be clearly invoked by persons in custody in order to be effective. Once custodial interrogation has been established, as in this case, the issues for both the prosecution and defense are whether the suspect invoked the right to remain silent, and if the suspect speaks to interrogators, whether the suspect voluntarily and knowingly waived that right to remain silent. This is a crucial issue whenever a confession has been made.

For the special circumstance of juvenile interrogation, the Supreme Court established a totality of the circumstances test in the case of *Fare v. Michael C.* Under this test, as described below, whether a juvenile validly invoked the Fifth Amendment depends upon a number of factors. In *People v. Burton*, the California Supreme Court had held prior to *Fare* that a minor's request to see his parents during a police interrogation was a sufficient invocation of the right to remain silent. The key issue here is how to interpret *Burton* in light of *Fare* today in California.

The pretrial motion challenges the constitutionality of Officer Kripke's interrogation of Beck Martin. The outcome of the pretrial motion will directly affect the admissibility of any evidence used by the prosecution from that interrogation. If the presider excludes evidence from the interrogation, attorneys and witnesses may not refer to or discuss it during the subsequent trial.

The text affected by this motion can be found within brackets, e.g., [text], in the witness statements of Officer Kripke and Beck Martin as well as in the fact situation.

ARGUMENTS

The prosecution will argue that under the totality of the circumstances, Martin did not invoke the Fifth Amendment privilege in asking for Aunt Myra. Martin was intelligent, had indicated understanding the *Miranda* rights Officer Kripke recited, and did not indicate a desire to cease answering questions. Officer Kripke's continued interrogation was therefore constitutional. Moreover, if Martin did invoke the privilege, Martin subsequently waived the privilege in answering Kripke's question whether Martin and Marcus were friends.

The defense will argue that under the totality of the circumstances, Martin's request to see Aunt Myra was an invocation of the Fifth Amendment privilege. Like the suspect asking to see his parents in *Burton*, Martin's request for Aunt Myra was the "normal reaction of a youthful suspect." Martin had no prior experience with law enforcement authorities and had not heard *Miranda* rights read directly before this incident. Therefore, the request for Aunt Myra was an

1 indication that Martin wanted the questioning to cease, and Kripke's continued questions were
2 unconstitutional.

3
4 **SOURCES**

5
6 The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, the
7 California Constitution, the California Penal Code, edited court opinions and the Mock Trial Fact
8 Situation.

9
10 The U.S. Constitution, U.S. Supreme Court holdings and California Supreme Court and Appellate
11 Court holdings are all binding and must be followed by California trial courts. In developing
12 arguments for this mock trial, both sides should compare or distinguish the facts in the cited
13 cases from one another and from the facts in *People v. Martin*.

14
15 **LEGAL AUTHORITIES**

16
17 ***Constitutional***

18
19 **U.S. Constitution, Amendment V**

20 No person shall be held to answer for a capital, or otherwise infamous crime, unless on a
21 presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or
22 in the militia, when in actual service in time of war or public danger; nor shall any person be
23 subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in
24 any criminal case to be a witness against himself, nor be deprived of life, liberty, or property,
25 without due process of law; nor shall private property be taken for public use, without just
26 compensation.

27
28 **U.S. Constitution, Amendment VI**

29 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an
30 impartial jury of the state and district wherein the crime shall have been committed, which
31 district shall have been previously ascertained by law, and to be informed of the nature and
32 cause of the accusation; to be confronted with the witnesses against him; to have compulsory
33 process for obtaining witnesses in his favor, and to have the assistance of counsel for his
34 defense.

35
36 **U.S. Constitution, Amendment XIV**

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

42
43 **California Constitution, Article I, Section 15.**

44 The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of
45 witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's
46 defense, to be personally present with counsel, and to be confronted with the witnesses against
47 the defendant. The Legislature may provide for the deposition of a witness in the presence of the
48 defendant and the defendant's counsel.

49
50 Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause
51 to be a witness against themselves, or be deprived of life, liberty, or property without due process
52 of law.

53

1 **California Constitution, Article I, Section 28. (d)**
2 Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote
3 of the membership in each house of the Legislature, relevant evidence shall not be excluded in
4 any criminal proceeding, including pretrial and post conviction motions and
5 hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or
6 adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to
7 privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall
8 affect any existing statutory or constitutional right of the press. [Voters added this to the California
9 Constitution in 1982 by ratifying Proposition 8, the Victims' Bill of Rights.]

10
11 **Statutory**

12 **California Penal Code, Section 187**

13 (a) Murder is the unlawful killing of a human being...with malice aforethought.

14
15 **California Penal Code, Section 188**

16 Such malice may be express or implied. It is express when there is manifested a deliberate
17 intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable
18 provocation appears, or when the circumstances attending the killing show an abandoned and
19 malignant heart. When it is shown that the killing resulted from the intentional doing of an act with
20 express or implied malice as defined above, no other mental state need be shown to establish the
21 mental state of malice aforethought. Neither an awareness of the obligation to act within the
22 general body of laws regulating society nor acting despite such awareness is included within the
23 definition of malice.

24
25 **California Penal Code, Section 189**

26 **Degrees of murder**

27 All murder which is perpetrated by means of a destructive device or explosive, knowing use of
28 ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by
29 any other kind of willful, deliberate, and premeditated killing, or which is committed in the
30 perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem,
31 kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or
32 any murder which is perpetrated by means of discharging a firearm from a motor vehicle,
33 intentionally at another person outside of the vehicle with the intent to inflict death, is murder of
34 the first degree. All other kinds of murders are of the second degree.

35
36 To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the
37 defendant maturely and meaningfully reflected upon the gravity of his or her act

38
39 **California Penal Code, Section 192**

40 Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

41 (a) Voluntary-upon a sudden quarrel or heat of passion.

42 (b) Involuntary-in the commission of an unlawful act, not amounting to felony; or in the commission
43 of a lawful act which might produce death, in an unlawful manner, or without due caution and
44 circumspection...

45 (c) [omitted]

46
47 **Federal Cases**

48 **Miranda v. Arizona, 384 U.S. 436 (1966)**

49
50 **Facts:** *Miranda* represented four cases joined by similar facts in which a defendant was
51 questioned by police, detectives, or prosecutors while in their custody. Defendants were isolated
52 from the outside world and were not given effective warnings of their rights under the Fifth
53 Amendment at the beginning of interrogation. All four cases resulted in confessions, one of

1 which was a signed statement. The interrogators relied on procedures outlined in police training
2 manuals.

3
4 **Issue:** Must law enforcement officers provide warnings of suspects' rights before questioning
5 suspects who are in custody?

6
7 **Holding:** Yes. Law enforcement officers have a number of responsibilities to persons in custody.
8 They must use adequate measures to dispel the compulsion that is inherent in custodial
9 surroundings. They must also advise persons of their "right to remain silent," that anything they
10 say can and will be used against them in court, and that they have the right to consult with an
11 attorney or to have an attorney present during the interrogation. Police must also inform them
12 that if they are indigent, the State will provide an attorney to represent them. If at any time they
13 wish to remain silent, the interrogation must cease. The government has a heavy burden to
14 demonstrate that persons in custody "knowingly and intelligently" waived their rights, thereby
15 justifying continued interrogation. The warnings are prerequisites to the admissibility of any
16 statement the defendant makes while custody.

17
18 **In re Gault, 387 U.S. 1 (1967)**

19
20 **Facts:** A 15-year-old defendant was taken into custody subsequent to a complaint that he made
21 lewd telephone calls. After a hearing in which the defendant denied making the lewd calls and at
22 which the complainant was absent, he was committed as a juvenile delinquent to a State
23 Industrial School until he reached adulthood.

24
25 **Issue:** Do juveniles have due process rights similar to those of adults when the proceeding may
26 lead to incarceration or confinement?

27
28 **Holding:** Yes. When proceedings may lead to incarceration or confinement, Fifth Amendment
29 standards of due process must apply to juveniles. This applies to any criminal, civil, investigatory,
30 or adjudicatory proceeding. In such proceedings, the juvenile and his parents have the right (1) to
31 written notice of the proceeding, (2) to be advised of the charges against the juvenile, (3) to be
32 advised of the right to counsel, (4) to invoke the privilege against self-incrimination, (5) to cross-
33 examine the accuser and other witnesses. The privilege against self-incrimination is necessary to
34 assure that admissions or confessions are not the result of fear or coercion. "It would indeed be
35 surprising if the privilege against self-incrimination were available to hardened criminals but not
36 to children."

37
38 **Fare v. Michael C., 442 U.S. 707 (1979)**

39
40 **Facts:** Police arrested the 16-year-old defendant as a murder suspect. They gave him his
41 *Miranda* warnings, and the defendant asked to see his probation officer. The police refused this
42 request, but reminded the defendant that he could speak with an attorney. During the ensuing
43 interrogation, the defendant made incriminating statements.

44
45 **Issue:** Is a juvenile's request to speak with his probation officer an invocation of his Fifth
46 Amendment privilege against self-incrimination?

47
48 **Holding:** No. The defendant's request for his probation officer is not a "per se" invocation of his
49 Fifth Amendment privilege. The lawyer plays a unique role in the adversarial legal system, and
50 a suspect's request for a lawyer is a "per se" invocation of the Fifth Amendment privilege.
51 However, the probation officer is not in a position as an attorney to offer legal assistance
52 necessary to protect a juvenile's legal rights. Accordingly, the validity of a juvenile's waiver of
53 the Fifth Amendment privilege must be determined by a totality of the circumstances. To

1 determine if a juvenile's waiver is voluntary, courts must consider the juvenile's "age, experience,
2 education, background, intelligence, and...whether he has the capacity to understand the
3 warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving
4 those rights."
5

6 **Edwards v. Arizona, 451 U.S. 477 (1981)**
7

8 **Facts:** The defendant was arrested on a state criminal charge, informed of his *Miranda* rights by
9 police, and questioned. When the defendant asked to see an attorney, the questioning ceased.
10 The next day, police officers returned to the defendant's jail cell, informed him of his *Miranda*
11 rights again, and subsequently obtained a confession.
12

13 **Issue:** Did the defendant voluntarily waive his right to remain silent when he confessed after
14 being informed of his rights a second time?
15

16 **Holding:** No. "[W]hen an accused has invoked his right to have counsel present during custodial
17 interrogation, a valid waiver of that right cannot be established by showing only that he
18 responded to further police-initiated custodial interrogation even if he has been advised of his
19 rights." The defendant did not validly waive the right to remain silent during the second
20 interrogation. Waivers of rights must be voluntary, but "must also constitute a knowing and
21 intelligent relinquishment...of a known right or privilege." The accused may validly waive his
22 rights and respond to interrogation, but additional safeguards are required when that accused
23 asks for counsel. Had the defendant initiated the second interrogation, then it would have been a
24 voluntary waiver of his rights. The Fifth Amendment right in *Miranda* is the right of the accused to
25 have counsel at any custodial interrogation.
26

27 **State Cases**
28

29 **People v. Burton, 6 Cal.3d 375 (1971)**
30

31 **Facts:** The defendant was a 16 year old suspected of two counts of murder and a third count of
32 assault. On February 14, 1969, he was arrested, placed in a cell at the police station, and
33 booked. In the meantime, his father arrived at the station and requested to see the defendant,
34 but his request was denied. Before the police read the defendant his *Miranda* rights, the
35 defendant requested to see his father, but this was also denied even though his father was at the
36 station. During the subsequent interrogation, the defendant confessed to the charges.
37

38 **Issue:** Is a minor's request to see his parents an invocation of his Fifth Amendment privilege and
39 indicate a present unwillingness on the part of the minor to discuss his case freely with the
40 police?
41

42 **Holding:** Yes. When a minor is subjected to a custodial interrogation, without the presence of an
43 attorney, the minor's request to see one of his parents, made at any time prior to or during
44 questioning, must be construed as an invocation of his Fifth Amendment privilege, absent
45 evidence demanding a contrary conclusion. The prosecution has the burden to demonstrate that
46 a questioned confession meets the constitutional tests of admissibility. The court will not assume
47 that a request by a minor to see his parents at or near the beginning of interrogation is not an
48 indication of his unwillingness to continue talking to the police. According to *Miranda*, if a suspect
49 indicates at any time prior to questioning that he wishes to remain silent, the interrogation must
50 cease. It is "unrealistic to attribute no significance to [the minor's] call for help from the only
51 person to whom he normally looks—a parent or guardian." This is the "normal reaction" of minor
52 suspects.

1 **People v. Rivera, 41 Cal.3d 388 (1985)**

2

3 **Facts:** Defendant Rivera was 17 years old when he was arrested at his home for a burglary
4 and murder that had taken place three months before. The arresting officer advised him of his
5 *Miranda* rights. On the way to the police station, he asked the arresting officer to contact his
6 father. At the station, he was advised again of his *Miranda* rights. He subsequently made a
7 taped confession to the burglary and was eventually convicted of murder under a felony-murder
8 theory.

9

10 **Issue:** Was the defendant's request that the police officer contact his father an invocation of his
11 Fifth Amendment privilege against self-incrimination?

12

13 **Holding:** Yes. In accordance with *People v. Burton*, the police must cease custodial interrogation
14 upon the exercise of the Fifth Amendment privilege. *Burton* establishes a per se rule that a
15 juvenile's request to speak to his parents constitutes an invocation of his self-incrimination
16 privilege. Despite previous waivers, police must still cease questioning at that point. The *Burton*
17 reference to "evidence demanding a contrary conclusion" recognized the possibility that unusual
18 facts could establish that the juvenile was not requesting his parents for advice during police
19 questioning. No such unusual facts are present in this case. Finally, though *Fare v. Michael C.*
20 suggests that the *Burton* rule may not be compelled by the federal self-incrimination clause in the
21 Fifth Amendment, *Burton* is an established part of California jurisprudence. *Burton's* holding is a
22 component of the state constitutional privilege.

23

24 **People v. Hector, 99 Cal. Rptr.2d 469 (2000)**

25

26 **Facts:** Defendant Hector was 17 years old when he was taken into custody and brought to the
27 police station where he was interviewed by two detectives on suspicion of murder with a gun.
28 During the interrogation, Hector provided some biographical information before the detectives
29 advised him of his *Miranda* rights. Soon after, Hector asked the police to telephone his mother.
30 The police told him that they left a message for her with Hector's stepfather. The interview
31 continued and lasted three hours, during which Hector confessed to shooting and disposing of
32 the gun.

33

34 **Issue:** Did the defendant "knowingly and voluntarily" waive his *Miranda* rights and not invoke
35 them during questioning by requesting to speak with his mother?

36

37 **Holding:** Yes. Under the "totality of the circumstances" test of *Fare v. Michael C. (1979)*, Hector
38 did not invoke his Fifth Amendment privilege, and custodial questioning was allowed to continue.
39 The California Supreme Court's decision in *People v. Burton* is not irreconcilable with *Fare v.*
40 *Michael C.* The court held that since Hector was 17 years old and had substantial prior
41 experience with the criminal justice system, he had heard and understood his *Miranda* rights. He
42 did not indicate a desire to stop speaking to the detectives when they told him they left a
43 message for his mother, and he did not invoke his Fifth Amendment right to remain silent. Also,
44 nothing in the record shows that Hector was of insufficient intelligence to understand the *Miranda*
45 advisement. He had been placed in juvenile camp before when he was found to have committed
46 robbery, attempted robbery, and battery.

47

48 **People v. Lewis, 26 Cal. 4th 334 (2001)**

49

50 **Facts:** Defendant Lewis was convicted of first-degree murder and robbery in 1988 and had
51 previously confessed to murder in 1975 when he was 13 years old. In 1975, Lewis had not been
52 arrested, but had been brought to the sheriff's department for questioning about a murder.
53 Detectives advised him of his *Miranda* rights, and Lewis waived them. He gave inconsistent

1 versions of the facts, but under continued interrogation of a different investigator who called the
2 victim a "nice man" and the crime "horrible," he confessed to the murder. Lewis claimed in this
3 case that the 1975 confession was made involuntarily in violation of *Miranda* because his
4 request to speak to his mother was denied. He claimed therefore that the confession should not
5 be considered a factor of aggravation in his death sentence for the 1988 conviction.
6 **Issue:** Did the defendant make a voluntary confession or was his request to speak to his mother
7 an assertion of his Fifth Amendment rights?
8

9 **Holding:** The defendant's confession was voluntary, and his request was not an invocation of
10 his Fifth Amendment rights. First, a court must look to a totality of the circumstances to
11 determine if a minor's confession is voluntary. The factors of this test are the minor's age,
12 intelligence, education, experience, and capacity to understand the meaning of his statements
13 and whether a minor was exposed to any "coercion, threats, or promises of any kind, trickery or
14 intimidation..." If there is conflicting testimony about whether a defendant (not necessarily a
15 minor) waived his *Miranda* rights, then the court must accept the version of events in the record
16 that is most favorable to the People. Young age and low intelligence are not proper bases to
17 assume lack of understanding or inability to voluntarily waive the right to remain silent. Second,
18 Lewis's claim that he had told a detective that he wanted to speak to his mother, but that she
19 did not have a phone was not corroborated by the detectives' testimony nor was it raised
20 at trial. Therefore, Lewis waived his right to bring this claim on appeal. Moreover, the detective
21 testified that it was his custom to treat a juvenile's asking for a parent or blood relative "like
22 asking for an attorney..."
23

24 **People v. Castro, 462 N.Y.S.2d 369 (1983)**
25

26 **Facts:** Police brought a 14-year-old defendant to a questioning room at the police station during
27 an investigation of a robbery and assault. They made several phone calls to the defendant's
28 parents, but with no answer. No effort was made to reach any other relative. They read him his
29 *Miranda* rights, and after a brief pause in questioning, the defendant confessed.
30

31 **Issue:** Can a 14-year-old waive his constitutional rights without an attorney or parent present?
32

33 **Holding:** No. Some form of preinterrogation warning for juveniles, advising them of their right to
34 either consult their parents or remain silent, should be implemented. Juveniles need equal or
35 equivalent protection of the law afforded adults. Without such protection, juveniles are in an
36 "inferior position" to adults. In this case, the defendant had never been arrested before and was
37 therefore not a "career criminal" or a "hardened recidivist" aware of his constitutional rights. He
38 was also not mature enough, at age 14, to comprehend and appreciate his rights. Therefore,
39 "from a juvenile's point of view, the request to see a parent is the equivalent of a request to
40 consult an attorney [and] amounts to an invocation of the Fifth Amendment privilege."
41

42 **People v. Fuschino, 59 N.Y.2d 91 (1983)**
43

44 **Facts:** The 19-year-old defendant was arrested for aggravated harassment and was advised of
45 his *Miranda* rights. Though he did not request an attorney, he asked if he could call his mother.
46 After stating that he did not want an attorney, defendant was questioned for about 45 minutes
47 and subsequently signed a typed confession.
48

49 **Issue:** Was the defendant deprived of his right to counsel when police refused his request to call
50 his mother?
51

52 **Holding:** No. There was no violation of the defendant's right to counsel when the State Police
53 denied the defendant's request to call his mother. There is no infringement on the defendant's

1 right to counsel unless there is evidence that the police intentionally deprived the defendant of
2 such a right in an effort to obtain a confession. The defendant's request to speak with his mother
3 is not the legal equivalent of a constitutionally protected request to speak with an attorney.
4 Parents or family members may seek counsel on behalf of the defendant, but the defendant's
5 request for their presence is not sufficient notice to the police that questioning must cease. "This
6 is not to say that a pattern of isolation and trickery designed to keep the defendant from obtaining
7 counsel will be condoned by this court."

1 **WITNESS STATEMENTS — Prosecution witness: Cody Ward**

2
3 My name is Cody Ward and I live at 42 Chimel Road in Driftwood City. I am 17 years old, and I
4 graduated from Driftwood City High School in August of 2002, after completing summer school.
5

6 I took Larry Molina's Honors English Literature course in the spring of 2002. Both Anne Marcus
7 and Beck Martin were also in the class. I had studied hard all semester, because I had applied to
8 a number of schools and I awaited hearing about scholarship information. Among the colleges I
9 had been accepted to was Empire University, which honored scholarships from the Distinguished
10 Writers Foundation. I knew that in the past, the top three grades on the honors literature exam
11 received these scholarships and received honors at the graduation ceremony too. My older
12 brother had received the award two years ago, and my sister received the award last year. I
13 really felt like I had to follow in their footsteps. The whole atmosphere of the class was
14 competitive. The students compared their quiz and essay grades with each other. It was
15 intimidating. I know I am a good student, but I still felt the pressure.
16

17 Maybe that explains why I agreed with Beck to cheat on the exam. Beck had a school volunteer
18 service job working in the English department and snooped around to find the extra keys to
19 Molina's cabinets. One day, probably in early May, Beck came up to me after school and showed
20 me a copy of Molina's exam. There were multiple choice and essay questions. I could not believe
21 my eyes. Beck was angry that there were no answers written on it, but told me that the questions
22 gave us an opportunity to prepare in advance. At first, I told Beck to put the exam back. I had
23 already been caught the year before for plagiarism. I had learned my lesson, or so I thought, but
24 Beck was insistent, telling me that I had to go along with it because now I knew too much. I guess
25 I ought not blame Beck. It was my stupid decision to go ahead with Beck's plan.
26

27 So, we prepared our answers before the exam and did very well. I suppose we were pretty bold,
28 because on June 7, we started talking about it in the hall at school. Beck was handing me the
29 prepared exam and telling me to get rid of it. I said it was not my job to do that, when Anne
30 Marcus came over to us and grabbed the exam paper. She looked at it and then at us and said,
31 "I can't believe this! You guys cheated." We pleaded with her to keep it quiet and give us the
32 paper back, but she refused. She said she was going to tell Dean Okita about it on Monday if we
33 did not turn ourselves in by then. Then she stuffed the papers in her backpack and threw the
34 backpack into her locker right there. She locked it up and walked away. I felt like we were
35 doomed.
36

37 On Sunday, June 9, Beck asked me to drive us down to Ballena Beach to talk with Anne. I
38 thought that would be a complete waste of time, because I knew Anne would not change her
39 mind. But I had nothing else to do, and Beck insisted that we go. On the way there, Beck talked
40 about Anne and became more and more agitated. Beck called Anne a "backstabber" for
41 threatening to turn us in. I was afraid of getting in trouble, but I could see that Anne risked getting
42 in trouble for not turning us in. I asked Beck what good it would do to talk to Anne, but Beck
43 would not listen to me.
44

45 When we arrived, we hiked up the ridge of the rock face where Anne was climbing. We waited
46 for a couple of minutes, and when Anne reached the ridge, Beck just snapped. Anne was
47 standing there, gathering up the rope when Beck lunged forward and grabbed Anne's collar.
48 Beck muttered something and made a noise. Then I saw Anne swinging her arms, like she was
49 trying to keep her balance. She yelled and had this terrified look on her face. Before I could do
50 anything, Beck let go of her collar, and the two of them stood there for a few seconds. Anne did
51 not move. Beck dusted off her shoulder and said, "We don't want you to get hurt, do we?" Then
52 Anne coiled up her rope and said she wanted to leave.
53 Beck mentioned the exam to her. Beck said, "Let's go talk about this at the cove." Anne did not

1 say anything, but just stared at Beck. They started walking together in the direction of the cove,
2 and I followed. I had second thoughts at this point about trying to convince Anne. She seemed
3 determined to turn us in. But before I knew it, the two of them started screaming at each other. I
4 am not sure who screamed first, but it startled me. Beck's face turned red, and Beck grabbed
5 Anne's arm. Anne tried to get out of Beck's grip, but could not do it. So Anne just punched Beck
6 in the shoulder and screamed, "Let me go!" By this time, we were at the tip of the promontory
7 where the trail curved around toward the cove. The two of them would not stop screaming at
8 each other. Beck let go of her arm, but stood there on the ridge between her and me. Beck then
9 pushed her shoulder, and she pushed back. I said, "This is a total waste of time, Beck." I told
10 them I was going back to my car, rather than watch them beat each other up. They ignored me
11 and walked toward the cove. I turned and headed back to my car. I walked slowly, being careful
12 on the rocky trail.

13

14 When I got back, the clock on my dashboard said it was 7:50. I sat in the car and turned on the
15 radio. I only got out of the car to go to the restroom once or twice over the next hour or so while I
16 waited for Beck. It was very dark when Beck finally showed up at the car at 9:00 p.m. I asked
17 where Anne was. Beck said, "At least I got one more day out of her." I assumed this meant that
18 Anne was not going to tell on us. That seemed odd because the two of them had been fighting so
19 fiercely. Beck seemed angry, and we argued. Beck accused me of ditching them on the ridge,
20 and I accused Beck of keeping me waiting for so long. We got in the car, and I drove us back to
21 the city. On the way back, I turned on my car's interior lights to look for something and I noticed a
22 small spot on inside of Beck's right wrist. It looked like dried blood. I did not think anything of it at
23 the time. We did not talk at all during the ride home. Beck still seemed angry and ignored me. I
24 was also fed up with Beck. That kid was always getting me in trouble.

25

26 I arrived at school the next day at 11:00 after my doctor's appointment. A little later, the dean
27 announced Anne's death. I was shocked and I almost fainted. Just after lunch, around 1:15, I got
28 a note to come to Dean Okita's office. There I saw Officer Kripke and Okita, and then Okita left
29 the room. The officer talked with me for a few minutes and told me that Anne had turned us in for
30 cheating. I thought I had my college plans all wrapped up, but at that moment I realized my plans
31 were destroyed. I explained that Beck and I had been with Anne at the beach the night before. I
32 told the officer about Beck and Anne's fight, and that Beck was with her for a long time alone. I
33 remembered the strange stain on Beck's wrist, and I told the officer about it and that it looked like
34 dried blood. Then the officer thanked me and let me go back to class.

1 **WITNESS STATEMENTS — Prosecution witness: Officer Loren Kripke**

2
3 My name is Loren Kripke. I am 32 years old and I have been an officer in the Driftwood City
4 Police Department for five years. I investigated Anne Marcus' death.

5
6 On the morning of Monday, June 10, at approximately 7:00 a.m., I received a call from dispatch
7 that someone had found a body washed up on the shore at Ballena Beach. When I arrived on
8 the scene a few minutes later, I found out that the body was not on the main beach, where I
9 had assumed it would be, but was in a little cove just south of the main beach. When I saw the
10 body, I knew it was just a kid, a girl maybe 16 or 17 years old. There was a small crowd of
11 onlookers that had gathered in the cove, and I had to clear them out of there up to the ridge
12 until the coroners arrived.

13
14 I conducted a search of the cove and visually examined the body. One of the first things I
15 noticed were some reddish marks on her wrists. The first thought I had was that she had been
16 bound. She was wearing climbers' clothes and still had her belt on with utility pouches and some
17 small metal rings, which I think are called carabiners. I noticed that there was a ledge of
18 rock a few inches above the sand at the foot of the southern cliff face in the cove. The ledge
19 was about four feet wide, and sparsely covered with sand. It had no tide pools or moisture on it,
20 so it was above the level of high tide that had covered a large portion of the sand early that
21 morning. On this ledge, I also found a small rock that was just big enough to fit into my hand,
22 and it had dried blood on it.

23
24 At about 11:00 a.m., the medical examiner ("M.E.") called me to give a report. The M.E. told me
25 that the deceased was Anne Marcus and that the cause of death was drowning. The M.E. also
26 told me that a forensics test showed that the blood on the rock I had found positively matched the
27 blood of the victim, and that there was a laceration on the side of her head that was consistent
28 with receiving a blunt force blow to the head.

29
30 I was officially assigned to investigate the case and called Dean Okita at the high school around
31 11:30 a.m. I told the dean that Anne Marcus' body had been found that morning at the cove. I
32 told Okita that the matter was being investigated, but that I had no other facts at that time. I
33 made an appointment to talk to the dean at 1:00 p.m. in order to get more information about
34 Anne Marcus.

35
36 I arrived at the high school and interviewed Dean Okita. I asked about Anne's school friends and
37 possible enemies. These are routine questions. Okita told me that Anne was a studious and
38 popular girl. Okita also told me that Anne had confidentially reported an incident of cheating the
39 previous Friday. Okita told me the cheaters were Beck Martin and Cody Ward and that they both
40 believed that Anne was going to report them on Monday. Okita further explained the
41 consequences of cheating at Driftwood City High and also mentioned that Anne's locker had
42 been vandalized that morning. I decided it was a good idea to talk to these two students about
43 what they knew. Okita sent a note to summon Ward from class, and Ward came to Okita's office
44 a few minutes later. Okita left us alone in the office.

45
46 I asked Ward a few questions. I told Ward that I knew about the cheating and asked if Ward
47 could tell me anything special about Anne. Ward told me that Ward and Martin had talked to
48 Anne at Ballena Beach the previous evening. Ward also mentioned that Martin and Anne had
49 been fighting there, that Ward had left them alone on the trail to the cove, and that Martin did not
50 return until around 9:00 p.m. Ward also mentioned that Martin had a stain on the inside of
51 Martin's right wrist that looked like blood. When Ward left the room I asked Okita to summon
52 Martin. I also said that I wanted to talk to Martin alone. Okita sent a note to summon Martin
53 from class. Okita introduced me to Martin, and I told Martin that I needed to ask a few

1 questions. The dean left us alone.

2

3 [I told Martin to sit down and I read the *Miranda* rights just in case. I started to ask the questions
4 that are in the factual record. Early on, Martin expressed a wish to speak with Martin's Aunt Myra,
5 but I said I would not do that, and I advised Martin again of the right to an attorney.

6 Martin did not indicate a desire that I stop questioning and continued to respond to my questions.

7 I used a conversational tone and sat in the dean's chair so that I would not be standing over

8 Martin. I asked if Martin and Anne Marcus were friends. Almost immediately, Martin said how sad
9 it was that Anne hit her head and died. I knew that no one else beside myself and the M.E. knew

10 anything about Anne's head wound. I had not told Dean Okita or

11 even Anne's parents. After another question, Martin asked to speak with Aunt Myra again, and I

12 stopped the interrogation.]

13

14 Based on the information I had from the M.E. and my conversations with Dean Okita, Cody

15 Ward, and Beck Martin, I had enough evidence to present to a magistrate for an arrest warrant. I

16 knew that Martin had been alone with the Anne Marcus for a substantial time and was the last

17 known person to see her alive. With the warrant, I arrested Beck Marcus later that day.

1 **WITNESS STATEMENTS — Prosecution witness: Dean Taylor Okita**

2
3 My name is Taylor Okita. I am the dean at Driftwood City High School. I am 44 years old and I
4 live at 567 Appian Way in Driftwood City. Driftwood City High School is known as one of the most
5 prestigious high schools in the county. Most of our graduates go on to attend college, and our
6 honor students in advanced classes tend to be accepted at some of the country's top schools.
7 Our PTA and other community organizations are heavily involved with maintaining the school's
8 public image. Due to all this, students in the advanced classes are very competitive. Sometimes
9 students taunt each other and even sabotage each other's work to get good grades. As Dean, I
10 try to keep an eye on that.

11
12 I also try to keep a lid on cheating, which has become rampant over the past couple of years.
13 Perhaps it's the advent of the Internet. I do not know exactly. Nonetheless, the other
14 administrators and I developed an honor system two years ago to educate students about the
15 pitfalls, discourage would-be cheaters, and require students to report incidents of cheating. In the
16 spring of 2001, we caught Cody Ward and Beck Martin cheating. Cody had plagiarized some
17 other author's writing off a web site, while Beck had a hidden "cheat sheet" in a pocket during an
18 algebra exam. Both of them received the punishment for a first offense, knowing full well that a
19 second offense would get them in serious trouble.

20
21 Beck and Cody stood out among the students in their class, though not just for academic
22 honors. Beck is athletic and could be quite an aggressive member of the crew team. Beck
23 trained hard and lifted weights. Beck has leadership qualities, too, but often used them
24 negatively to garner support from other students, such as when Beck was snide with a teacher
25 or with me. Beck tended to be sarcastic and was often unpleasant to talk with, which I find odd
26 because Beck is so successful and active in a church. But I have found that no child is one-
27 dimensional.

28
29 Cody has a similar personality, though I saw Cody's hostility go beyond sarcasm at times with
30 other students. At the beginning of last year, I had to stop Cody from incessantly taunting a
31 transfer student. Cody was uncooperative with me. When Cody then thought my back was
32 turned, Cody punched the other student in the chest. I suspended Cody for a day from school,
33 and we had a parent conference. That year, I had to discipline Cody one other time for a similar
34 incident.

35
36 That is why it was so disheartening to learn from Anne Marcus that these two students had
37 cheated again. On Friday afternoon, June 7, Anne came into my office at about 4:00 p.m. and
38 handed me a photocopy of Molina's English exam. She explained that she had gotten it from
39 Beck and Cody, and I recognized both of their handwriting on it. She gave me the test, but
40 explained that she had promised that she would keep it until Monday. She explained that she did
41 not want to get in trouble herself for keeping the test. Likewise, she did not want me to say
42 anything to Beck or Cody before Monday because she was breaking a promise to them. I thought
43 it showed a lot of maturity on her part. I kept the photocopy locked in my desk and told her I
44 would let them turn themselves in on Monday.

45
46 It was clear to me that Beck and Cody would be in a lot of trouble. Not only would they get an
47 "F" in Honors English Literature, but they would also have to repeat the course over the
48 summer. They would not walk across the stage at graduation, and they would lose their chance
49 of receiving the DWF scholarship. All of these factors would severely jeopardize their chances
50 to go to Empire University or any other prestigious college, even if they had been accepted
51 already.

52
53 On June 10, I arrived at school around 6:30 a.m. I did not notice anything unusual about the

1 conditions of the halls or the lockers, and I passed by what I later learned was Anne Marcus'
2 locker on my way to the office. At about 7:00, I went to the front of the building to monitor the
3 students coming in for the early "zero period." Standing near the entrance to the school was
4 Beck Martin. I had never seen Beck at school that early. I assumed that Beck was going to
5 confess to me about the cheating, but Beck looked at me and then quickly turned away.
6

7 During the first period class, I was walking in a school hallway when I noticed a locker wide
8 open. The door was bent in the middle, as if it had been pried-open with a crowbar. The
9 combination lock was cracked. There were papers strewn on the floor of the locker, and an
10 upturned backpack inside the locker was unzipped. I checked the number of the locker with the
11 records in the office and discovered it belonged to Anne Marcus. I then informed campus
12 security. Anne was absent that day. I immediately wondered if Cody or Beck had broken into
13 the locker.
14

15 It was not until 11:30 a.m., when the police officer called me, that I found out that Anne was
16 dead. Shocked and deeply saddened, I announced her death at a special assembly. I knew she
17 was a popular honor student, so the school populace deserved to hear it from me sooner than
18 later.
19

20 When Officer Kripke arrived at 1:00 p.m. to ask me a few questions, I told the officer about
21 Anne's exemplary school records. The officer asked about Anne's friends and enemies. I said
22 that Anne had many friends but no enemies, except that she had had a run-in with Beck and
23 Cody about the cheating. I told Kripke that Anne had already turned them in, but that they
24 believed that she was going to report the cheating on Monday. I explained the seriousness of
25 cheating at our school, and also told the Officer about Anne's locker. Then the officer asked to
26 talk to the two of them privately. I offered the use of my office for that purpose. I sent a monitor
27 with a note to summon Cody first, who came to the office a few minutes later to talk with the
28 officer. Cody went back to class and Kripke told me that Kripke would like to speak with Beck
29 Martin privately. I summoned Beck to the office, and introduced Beck to the officer. I told them to
30 take their time and left them alone, closing the door behind me.

1 **WITNESS STATEMENTS — Prosecution witness: Dr. Aidan Hobbes**

2
3 My name is Aidan Hobbes. I earned a bachelor's degree in chemistry from Middle State
4 University and then went on to Bear Flag University Medical School. I graduated from Bear Flag
5 with distinction in 1990 and did my residency training at Driftwood City Hospital's pathology lab
6 before taking a position as an Assistant Coroner for Ocean County. During my first year as a
7 coroner, I was assigned to be director of the forensic serology lab. I am now assistant chief
8 coroner and have been appointed chairperson to the California Committee for Professional
9 Standards in Forensic Pathology for the last three years. I am also the medical examiner in the
10 death of Anne Marcus.

11
12 As part of my initial examination of the body on the beach, I observed several things. Marcus was
13 wearing climber's garb, a short-sleeved T-shirt, shorts, and shoes. There were ligature marks on
14 her wrists. There was also an injury on her head, just above the left temple, which looked like a
15 laceration. The area around her left eye was swollen, which appeared to me to be the result of
16 some kind of trauma, like getting punched in the eye. At 7:30 a.m. when I examined the body,
17 she was in an advanced state of rigor mortis. Her whole body was stiffened, except for the large
18 muscles in her lower legs. There were some small cuts and bruises, consistent with her being
19 bumped around in the rocky surf.

20
21 Back at the medical examination lab, I discovered saltwater in Marcus' lungs. I surmised that
22 Anne had drowned. By the state of rigor mortis of the body, I estimated that she had died
23 sometime between 8:00 p.m. and midnight on June 9. Rigor mortis is a process by which the
24 compounds in the body's muscles that provide muscular energy are lost. As the heart stops
25 beating and respiration ceases, these compounds lose a necessary supply of oxygen and
26 nutrients, and the muscles stiffen. The process starts with the small muscles in the head and
27 neck, and progresses downward to the toes over the course of 8–12 hours for a body of average
28 weight and musculature like that of Anne Marcus. Also, it can take longer in cold temperatures.
29 Marcus died in the ocean and at night when the air temperature drops significantly. Assuming
30 she died at about 8:30 p.m., then she would be in full rigor by 8:30 a.m. the following day. Yet
31 probably because of the cold, her legs generally remained flaccid at the time of my laboratory
32 examination. If she had died only eight hours before her body was found, far fewer of her
33 muscles would be in a state of rigor.

34
35 While conducting the autopsy at my lab, I looked more closely at the ligature marks on Marcus'
36 wrists. In the course of rock climbing, it would be highly unusual for a climber to sustain virtually
37 congruent injuries to both wrists. It would mean the climber would have to hold on to the rope
38 with both hands and then to fall, sustaining almost identical rope burns on both wrists. The
39 chances for this happening are very small, as there is no reason for an experienced climber to
40 make such a gesture. I have seen congruent marks like these in only nine or 10 other cases I
41 have dealt with, both as a pathologist and as a student intern. In each of those cases, the victim
42 was tied up by someone else.

43
44 I also examined the wound above Marcus' left temple. I believe the only way she could have
45 sustained this wound would be from some blunt force instrument or object. There is a five
46 centimeter laceration, which tapers at one end. Directly underneath, her skull has a hairline
47 fracture. This is consistent with someone else holding out an object and hitting Marcus directly on
48 the side of the head. It is not consistent with Marcus' falling onto the rocks. To sustain a falling
49 injury to the head like this, she would have had to tilt her head dramatically toward her right
50 shoulder in order to connect her temple squarely against the rocks. No one in a falling motion,
51 even from the 25-five foot height of the particular cliff in the cove, would have the time or the
52 presence of mind to do so. Moreover, the small rock on which Officer Kripke found the
53 dried blood itself could not have caused the injury if Marcus fell on it unless it was tightly

1 wedged into a larger rock, which from the officer's report was not the case.
2
3 As for the blood on the rock, early testing revealed that it was type A, the same as Marcus'.
4 Medical records show that Beck Martin also has type A blood. In a murder investigation of a
5 brutal crime, this can pose a problem for a forensic investigator, but we have a different situation
6 here. First, Martin has not claimed to have sustained any injury on June 10, so there is no reason
7 to believe that the blood could belong to Martin. Second, blood is identifiable by more than just
8 type. Everyone's blood contains enzymes and proteins with a myriad of potential chemical
9 makeups. Scientists have identified 12 such "genetic markers," each of which has between three
10 and 10 separate types. I found in the sample of dried blood on the rock two of the six identifiable
11 genetic markers that were present in a blood sample taken from Marcus' body. Moreover, these
12 two genetic markers were of the same type as those markers from Marcus' body. The chances
13 for this being a coincidence are, again, very small.
14
15 Therefore, it is in my professional opinion that Anne Marcus was struck on the side of the head
16 and perhaps knocked unconscious as a result, before or after being bound with rope. Her body
17 was thrown or pushed into the surf where she subsequently drowned.

1 **WITNESS STATEMENTS — Defense witness: Beck Martin**

2
3 My name is Beck Martin. I am 17 years old. I live at 789 Fortuna Road in Driftwood City. During
4 the 2001–2002 school year, I was a co-captain on Driftwood's crew team. Throughout high
5 school, I had won many awards for academic decathlons, debate society competitions, and
6 fiction writing.

7
8 I will admit up front that I cheated on the Honors English Literature exam in Mr. Molina's class. I
9 am deeply ashamed that I did this. The irony is that I think I would have done well on the exam
10 anyway. I had an "A" in that class already. But my parents were really counting on me to earn a
11 scholarship to enable me to go to Empire University. It is a family tradition to excel in school. That
12 DWF scholarship was very important to me. I was afraid of getting anything less than an "A" in
13 Mr. Molina's class. That is also why I cheated in algebra that other time.

14
15 In early May, I took the spare key to Molina's cabinet from the office of the English department. I
16 was an intern in the English department as part of the school volunteer community service
17 program. In Molina's cabinet, I found a blank exam, photocopied it, and returned the blank exam
18 and the key. No one was the wiser, until Cody Ward noticed me taking the key from my pocket as
19 I walked into the English department's empty office. Cody asked what I was doing, but I did not
20 want to say. Cody threatened to tell the dean that I was nosing around without permission, so I
21 showed Cody the exam photocopy. Cody asked to get a copy of that, too. I said, "OK." After that,
22 we worked together over the next couple of weeks preparing all the answers in advance. We
23 aced the exam, of course.

24
25 At school on June 7, I asked Cody to get rid of the exam copy we had used. I took it out of my
26 backpack and handed it to Cody. That is when Anne Marcus approached us and grabbed the
27 exam from Cody's hands. She looked at it, and I could tell she knew right away what it was. She
28 accused us of cheating. Of course, she was right. We begged her to keep her mouth shut about
29 it. She was angry, though. She accused us of destroying her chances for getting the scholarship.
30 Then she put the exam in her backpack and locker. She said it would stay there either until we
31 turned ourselves in or until she told on us sometime Monday.

32
33 I was afraid, so I tried calling Anne's phone number many times over the weekend. When Anne
34 did not return any of my calls, I decided to talk to my minister that Sunday morning. Just before
35 church began, I told the Rev. Jimenez that I cheated and that I wanted to turn myself in. The
36 reverend agreed that was the best thing to do. I just wanted a little more time to do it. I wanted
37 Anne not to turn us in until Tuesday so I could think about how to explain it to my parents. I felt
38 like my life was ruined, so I needed courage. I wanted to tell them when they called Monday
39 night. They called me every Monday night while they were away in Europe.

40
41 I called Cody in the afternoon. Cody insisted that I find out where Anne was. I knew Anne was an
42 avid rock climber and that she loved to climb the rock face at Ballena Beach. Cody offered to
43 drive us down there so that we could talk to her. I did not tell Cody about my plan to get Anne just
44 to postpone telling on us.

45
46 When we got there, we saw Anne. She was the only climber on the rock face. We walked along
47 the ridge and waited for her. When Anne reached the ridge I had the fright of my life. A piece of
48 rock gave way under her foot when she turned to gather up her rope. I grabbed her quickly to
49 keep her from falling. She seemed startled. It all happened within a few seconds. Cody laughed
50 and did not even attempt to help, which I thought was a bizarre reaction.

51
52 Anne started to walk toward that cove, and we went with her. Cody lagged behind a bit, and Anne
53 and I talked. I asked Anne to wait until Tuesday, because I wanted to explain it to my

1 parents before Dean Okita told them. Anne refused. Still, I begged Anne, though she said she
2 would not change her mind. We argued about it. Anne was annoyed that we had come down to
3 see her and that Cody kept laughing. When we were almost at the cove, I turned around and saw
4 that Cody was gone. Anne and I climbed down into the cove. There we talked for a while, and
5 she finally said she would not turn us in until Tuesday morning. She still seemed annoyed with
6 me, and said, "Whatever. You have until Tuesday." She started climbing up the southern cliff. I
7 watched her climb for a little while and then I left.

8
9 It took me a while to walk back to Cody's car as it got darker. It was 8:30 p.m. according to my
10 watch when I arrived at the car, but Cody was not there. I was upset because Cody stranded us
11 on the trail and now was gone. I decided to take a walk to cool off, so I headed north up the
12 beach. It was about 9:00 p.m. and totally dark when I came back.

13
14 Back at the car, I saw Cody was waiting for me this time, sitting on the hood of the car. I was mad
15 at Cody for ditching me. I told Cody that Anne would wait one more day. I also said, "I thought we
16 were in this together." Cody laughed again, which I thought was a weird response to what I said.
17 We shouted a little at each other, but then Cody drove me home. We were both silent all the way
18 home. I do not know where Cody got this idea about a spot on my wrist. I never saw anything on
19 my wrists that day.

20
21 On June 10, I arrived at school at 7:00 a.m. Sometimes I come early to work out on the rowing
22 machine in the gym. I also thought I might confess the cheating to Dean Okita, but I chickened
23 out. I was scared, because Dean Okita and I never got along. I never felt that Okita liked me very
24 much. A couple of hours later, Okita announced that Anne died. I was shocked. I realized that I
25 might have been the last person to ever see Anne. That cove can be a dangerous place.

26
27 Just after 1:30 or so, an office monitor came to my class to tell me to go to the dean's office. I
28 went there, and I saw a police officer. The dean introduced this person as Officer Kripke, who
29 wanted to talk with me alone. The dean left the office and told us to take our time.

30
31 [The officer told me to sit down. The officer read me the rights they say on the cop shows. I
32 thought I was under arrest and I was nervous because I had never been questioned by the
33 police before. The officer said my statements were being tape-recorded, which to me sounded
34 serious. Then the officer asked me about Anne at the beach. This did not sound right to me. I
35 had no idea what this was about, so I asked to see my Aunt Myra, who lived down the street
36 from us. Since my parents were gone, I wanted to talk to her before talking to the officer. The
37 officer said that my aunt was not going to be called, but that I could have an attorney. This
38 frightened me, but I felt I needed permission to get up, so I did not move. The whole situation
39 was intimidating. Then the officer asked me if Anne and I were friends. I was still so horrified
40 that she was dead, the officer's question just jolted me. I mentioned that I assumed she had
41 fallen from the cliff where I last saw her and possibly hit her head. She was an experienced
42 climber, but she had had minor accidents before. The whole questioning had me confused. The
43 officer's tone of voice was very stern.]

44
45 When the questioning ended I was sent back to class. I was totally shocked when I was arrested
46 later. I cannot believe that anyone would think that I killed Anne.

1 **WITNESS STATEMENTS — Defense witness: Reverend Stacy Jimenez**

2
3 My name is Stacy Jimenez. I am the minister at the church that the Martin family attends. I have
4 been the minister there for 10 years, but the Martins have attended that church for longer than
5 that. I have known Beck Martin since Beck was 7 years old. At the church, many of our teenage
6 and young adult congregants are in the youth ministry program in which they sponsor charitable
7 and social events.

8
9 I have always known Beck to be an honest young person of good character. For the last two
10 years Beck has helped organize monthly food drives for a local homeless shelter. The local
11 chamber of commerce awarded Beck a community service medal last year for this work. Even
12 when others in our youth ministry have not followed through on all their responsibilities, which is
13 forgivable, Beck always manages to do so. It is very impressive to see a teenager as mature as
14 Beck Martin. The other congregants at the church also noticed this. Beck has a good
15 reputation.

16
17 We had a program in conflict resolution at the church not too long ago, and Beck participated.
18 Beck must have taken the messages to heart, because I have seen Beck settle arguments
19 among others. Once there was a disagreement between two members about where some
20 records of donations were kept. It was a trivial argument about some clutter that had built up in
21 the youth ministry office. However, these two young people blamed each other for losing the
22 donations records and were ready to fight over it. Beck stepped in and talked to each of them
23 individually and then together. Within a couple of minutes, they were shaking hands. It was
24 amazing. Perhaps Beck will make a good minister or counselor one day.

25
26 Beck also confided in me on the morning of Sunday, June 9, that Beck had cheated on an exam.
27 Beck really seemed distraught by it. I understood because I know Beck's parents. Beck's parents
28 are professional people and very well educated. Beck wanted nothing more than to follow in their
29 footsteps. They had attended prestigious universities and assumed that Beck would do the
30 same. Beck seemed worried that Mr. and Mrs. Martin would be severely disappointed about the
31 cheating. I reassured Beck that they could also be forgiving. Beck was shaking during our
32 conversation. Beck seemed remorseful about the cheating and told me that Beck would probably
33 confess to the dean sometime on Tuesday.

1 **WITNESS STATEMENTS — Defense witness: Dr. Sage Gracian**

2

3 My name is Sage Gracian. I retired in 2000 from the Ocean County Coroner's Office after
4 working for 18 years as an assistant coroner. I earned my bachelor's degree in biology from
5 Northern California College in 1965. I worked in the Peace Corps in West Africa for two years
6 before returning to California to earn my medical degree from Bear Flag University Medical
7 School in 1971. I entered private practice and in 1980 began teaching a clinical course at Bear
8 Flag Medical School. In 1981, I changed the emphasis of my career and became certified in
9 forensic pathology. In 1982 I was hired by the Ocean County Coroner's Office. I have since
10 worked as a coroner, taught seminar courses, and have published nine articles in professional
11 journals on the practice of forensic pathology. My book, *Traumatic Anatomy and Physiology*, has
12 become a standard introductory text in forensic medicine programs nationwide. Since retirement,
13 I have continued teaching at Bear Flag University. I am also a past president of Rock Climbers of
14 California.

15

16 At the request of the defendant, I have reviewed the records of the Ocean County Coroner's
17 Office and have been able to examine the physical evidence, morgue photographs, and tissue
18 samples. With all due respect to Dr. Hobbes, I have some problems with the conclusions
19 reached regarding the death of Anne Marcus.

20

21 First, I will begin with the so-called ligature marks on her wrists. Ligature marks indicate binding
22 of some kind, as in a person being tied-up. The photos I saw of Marcus wrists certainly showed
23 reddish marks. They looked like marks from a rope. However, I disagree with the examining
24 coroner's analysis. First of all, the marks are not even all the way around the wrist. On the left
25 wrist, in fact, the marks did not appear on the underside, indicating that the rope, which caused
26 the mark, was not wrapped around the entire wrist. Also, Anne Marcus was a rock climber, and
27 so am I. I have seen numerous climbers give themselves similar rope marks on their arms and
28 legs during moments of carelessness or when a sudden gust of wind causes them to slip. I
29 believe there is not enough evidence to call the marks on Marcus' wrists "ligature marks."

30

31 Second, the wound on Marcus' head may have come from a variety of causes. The records show
32 that the wound opening was 5 centimeters long. It is also slightly triangular in shape,
33 which to me indicates a kind of scraping motion. This could easily be the result of Marcus'
34 falling from the cliff. If her head had turned in a certain way, her striking the bottom could have
35 caused this type of injury. The force of the fall on even a small rock, like the palm-sized one in
36 question here, would have resulted in a nasty headwound. Even if Marcus fell from a low
37 elevation, maybe 10 feet, she could have received an injury such as the one we see on her
38 temple. Such a wound could also have easily disoriented her and led her to stumble into the
39 deadly surf.

40

41 Third, the swelling of her left eye is consistent with one of two causes. The first is a blunt force
42 blow, such as a blow from a fist to the eye. The second, and far more likely cause, is swelling
43 related to the head injury and fall from the cliff. This collateral swelling of the capillaries around
44 the eye frequently comes from suffering a blow to the temple, as I have seen in numerous
45 cadavers. The cuts and bruises on her body, including the eye, appear to have come from her
46 falling on the rocks and from thrashing in the surf onto the boulders.

47

48 Fourth, we cannot easily approximate the time of Marcus' death. The certificate of death
49 indicates that Marcus was pronounced legally dead at 7:30 a.m. on June 10 when Dr. Hobbes
50 arrived at Ballena Beach. Of course, physiologic death is much harder to pinpoint. Rigor mortis is
51 generally unreliable as a means to determine time of death, when compared to other
52 methods such as body temperature or stomach contents, because of all the variables. Though
53 the water and weather was cold, which can slow the process of rigor, Anne was also slender,

1 which can speed up the process. Judging from the records, I believe there is not enough
2 evidence to say she died as early as 8:00 or 8:30 on June 9.

3
4 Finally, the blood analysis is not conclusive. Usually, it takes three or four matching genetic
5 markers shared between two blood samples in order for scientists to have a fairly definite claim
6 that the samples are from the same source. With each unmatched marker, the chance of
7 their being from the same person decreases exponentially. All of us share genetic markers in
8 many of the same combinations. Identification through exact matches are more uncanny than is
9 usually thought. Even so, once blood leaves the body, the enzymes that make up these genetic
10 markers begin to deteriorate. Dried blood on a rock out in the open air is probably the worst
11 sample from which to draw any conclusions without DNA evidence. No DNA testing was done
12 here.

13
14 In my professional opinion, Anne Marcus died an accidental death in the Ballena Beach cove.
15 She fell from the cliff and scraped her wrists on the climbing rope in the process. She hit her
16 head and tragically stumbled into the crashing waves that swept her under the water's surface
17 where she drowned. The boulders in the water prevented her body from drifting away.

1 **WITNESS STATEMENTS — Defense witness: Ranger Dale Plotnik**

2
3 My name is Dale Plotnik. I have been a ranger with the California State Parks for 14 years. I have
4 worked at the Ballena Beach Station for the last three years. Working at Ballena Beach has
5 numerous responsibilities. I have to patrol the beach itself and outlying areas nearby, including
6 camping areas up the coast from the beach and over 20 miles of hiking trails in the hills on the
7 eastern side of the highway. I have to perform many duties such as park maintenance and
8 enforcing park rules governed by state law.

9
10 At other times, I monitor the day use parking lot for Ballena Beach. This requires me to be on
11 duty in a kiosk, greet visitors, collect the day use fee, and to see everyone is out by sunset when
12 the beach closes. Any car in the parking lot after sunset will also receive a citation. I warn all
13 visitors of this when they arrive because the rule is intended to dissuade vagrants from sleeping
14 there overnight.

15
16 The Ballena Beach State Park has a distinctive geography. The beach itself is about a mile long
17 and is popular with sunbathers and with surfers who like the legendary big waves. At the
18 southern end of the beach is the promontory, quite popular for rock climbers. The cove itself is
19 surrounded by cliffs, and at the top of these cliffs are a few private residences.

20
21 The residences are set back from the edges of the cliffs. Once in a while, I patrol around the
22 promontory to make sure that no one is trespassing in this private area. Sometimes I have seen
23 the residents climbing down to the cove, though I would advise them against it because the area
24 can be dangerous when the tide comes in.

25
26 There are two routes to the cove from the beach, the ridge trail around the promontory and a dirt-
27 hiking trail behind the eastern side of the promontory. The hiking trail is not much used, probably
28 because it is very steep in places.

29
30 On June 9 at about 6:15 p.m., I greeted a young woman in her car at the gate to the parking
31 area. She appeared about 17 or 18 years old. I later learned that she was Anne Marcus when I
32 saw her picture in the newspaper.

33
34 Later at around 7:00 p.m., I greeted two other teenagers who arrived together in a white two-door
35 sportscar. I warned them that the beach closed at sunset, but that they still had to pay the day
36 use fee. They seemed comfortable with that. No other visitors arrived after them. There were a
37 few other cars in the parking area at that time.

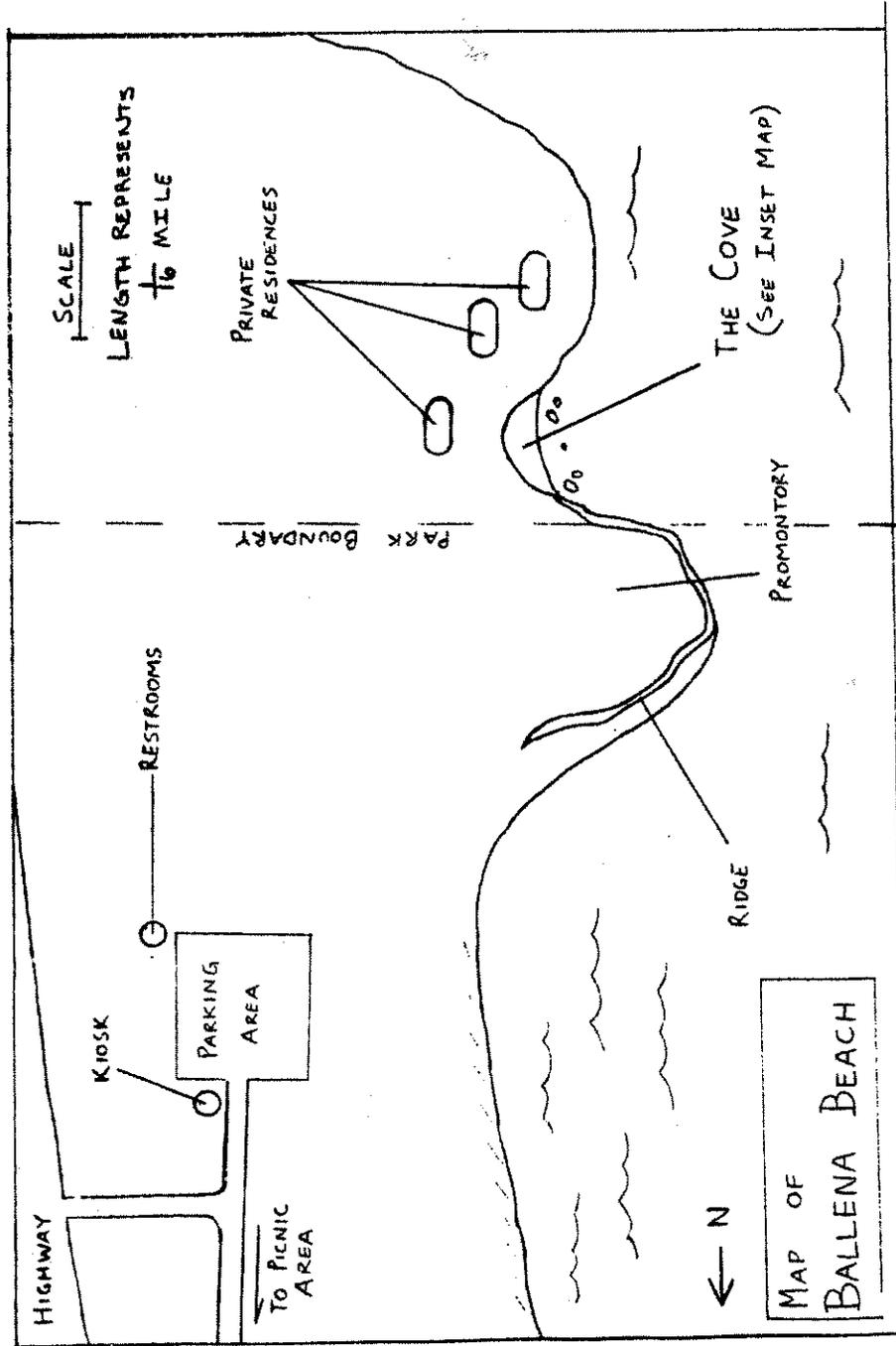
38
39 I closed the kiosk at sunset, about 8:05 p.m., and walked up the road north to make my
40 inspection of the picnic area. When I returned to the parking lot at 8:40 p.m., I saw there were still
41 two cars in the parking lot. One was the white sportscar, and the other was the car that arrived at
42 6:15. I approached both cars and saw that they were empty. I decided to check around the beach
43 area just to see if the owners of the cars were nearby.

44
45 I walked down the sand to the bottom of the north face of the promontory. It was almost dark, but
46 there was still some twilight left. It must have been about 8:50 p.m. when I saw someone walking
47 along the ridge on the promontory. The person was walking toward me and away from cove. I
48 would say this person was about 75 or 80 feet away from me, which made it hard for me to get a
49 good description. I called up to the person that the beach was closed. I wondered if it was one of
50 the teenagers or the young woman, though the local residents above the cove sometimes use
51 the promontory trail as beach access. It looked like the person waved at me, and I turned to walk
52 north up the beach.

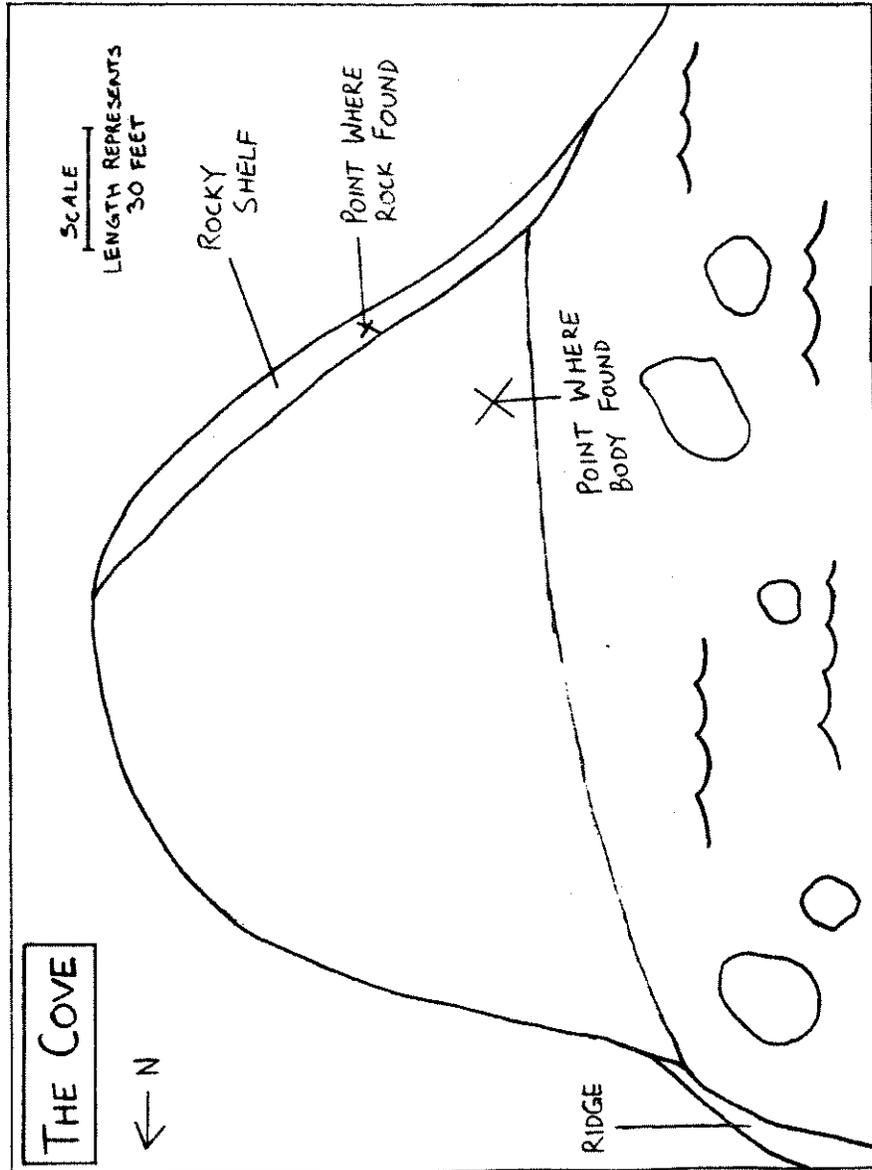
53

1 As I walked I saw someone cross my path about thirty feet ahead of me, moving toward the
2 parking lot. I waved and called out that the beach was closed. The person was wearing a white
3 baseball hat and looked like the passenger in the sportscar that arrived at 7:00 p.m. After
4 scouring the beach for a few more minutes, I returned to the parking lot and the white sportscar
5 was gone. I wrote up a citation for the one car left in the parking lot. I drove back to the Ranger
6 Station, and my workday was done.

OFFICIAL DIAGRAM
BALLENA BEACH



OFFICIAL DIAGRAM
COVE AT BALLENA BEACH



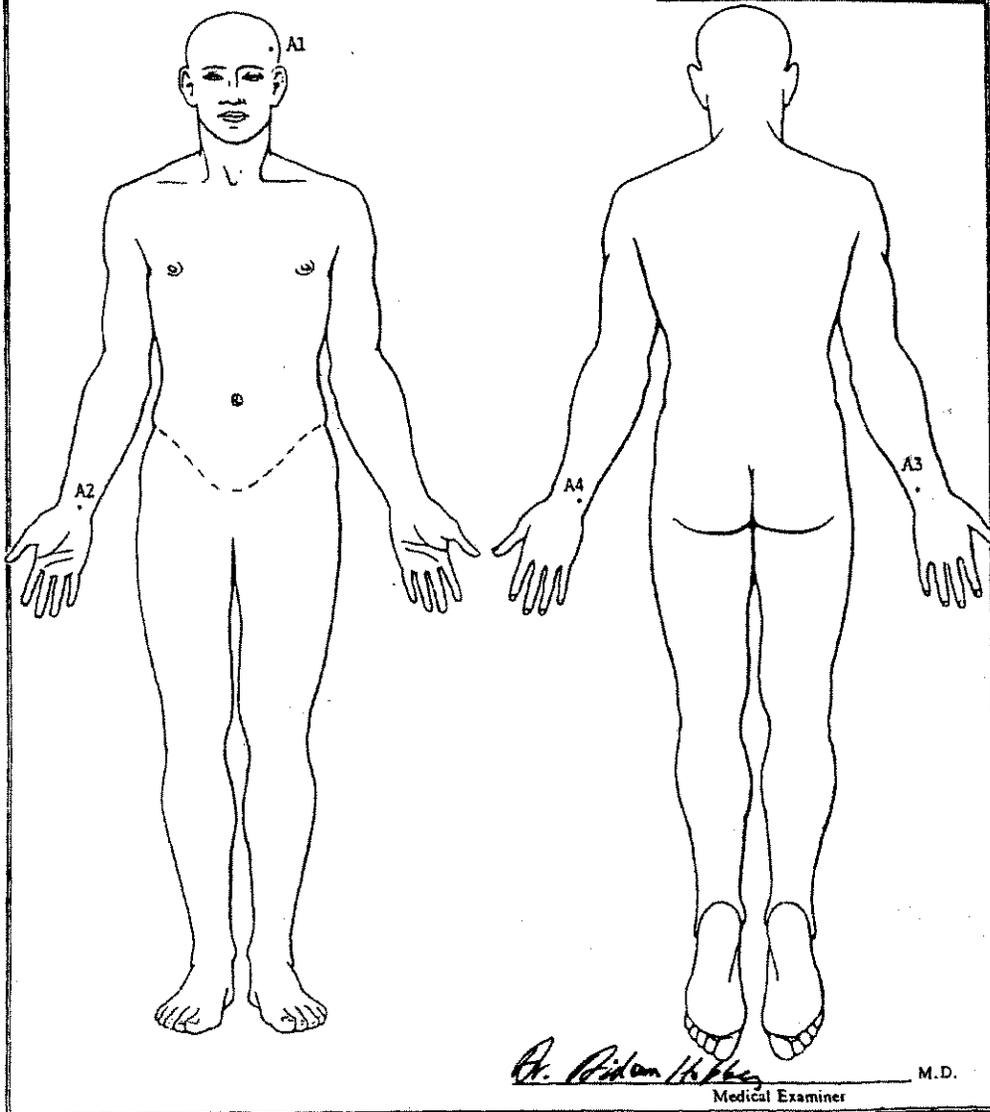
**OFFICIAL DIAGRAM
CORONER'S DIAGRAM OF ANNE MARCUS' BODY**

COUNTY OF OCEAN

DEPARTMENT OF CORONER

A1 - Wound
A2 - Mark
A3 - Mark
A4 - Mark

DIAGRAM OF ANNE MARCUS'
BODY



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: the physical aspect and the mental aspect. 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 examples of a culpable mental state. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirement prevents 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 or her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) entering a dwelling or structure (2) with the intent to steal or commit a felony. 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, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof; the prosecution must convince the judge or jury of guilt beyond a **reasonable doubt**.

The Concept of Reasonable Doubt

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

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

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

ROLE DESCRIPTIONS

ATTORNEYS

The **pretrial motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position, answer questions by the judge, and 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's witnesses are not dependable 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 Section IV, #10:
"Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Conduct 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. As a witness, the official source of your testimony, or Record, is comprised of your witness statement, all stipulations and exhibits, and any portion of the Fact Situation of which you reasonably would have knowledge. The Fact Situation is a set of indisputable facts that all witnesses and attorneys may refer to and draw reasonable inferences from. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses.

You may testify to facts stated in or reasonably inferred from your Record. If an attorney asks you a question, and there is no answer to it in your official testimony, you can choose how to answer it. You can either reply, "I don't know" or "I can't remember," or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable* (see Rule Section V). Your inference cannot contradict your official testimony, or else **you can be impeached** using the procedures outlined in this packet. Practicing your testimony with your attorney coach and your team will help you to fill in any gaps in the official materials.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the fact situation or a signed witness statement.

COURT CLERK, COURT BAILIFF, UNOFFICIAL TIMER

We recommend that you provide two separate people for the roles of clerk and bailiff, but if you assign only one, then that person **must** be prepared to perform as clerk or bailiff in any given trial. As outlined in the rules, the unofficial timer may also be a defense attorney, the bailiff, or the defense team's clerk.

The clerk and bailiff have individual scores to reflect their contributions to the trial proceedings. This does NOT mean that clerks and bailiffs should try to attract attention to themselves; rather, scoring will be based on how professionally and responsibly they perform their respective duties as officers of the court.

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 roles of clerk and bailiff.

Before each round of competition, the court clerks, bailiffs, and unofficial timers may meet with a competition staff person at the courthouse about 15 minutes before the trial begins. At this time, any questions about their duties will be answered and time sheets will be available for distribution. **Prosecution teams will be expected to provide the clerk for the trial; defense teams are to provide the bailiff.**

Duties of the 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 the 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 called to the stand.
- 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," and when 30 seconds remains, call out "Thirty." Always speak loud enough for everyone to 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. After each witness has completed his or her testimony, mark down the exact time on the time sheet. **Do not round off the time.**

Duties of the 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. When the judge has announced that the trial is beginning, say:

"All rise, Superior Court of the State of California, County of _____, Department _____, 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.

Duties of the Unofficial Timer

One defense attorney at the counsel table, the bailiff, or the defense team's clerk 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 pretrial (once during the defense argument and once during the prosecution argument) and 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. Only official team members in the above-stated roles may serve as unofficial timers.

To conduct a time check, request one from the presider and ask the official timekeeper how much time he or she has recorded in every completed category for both teams. Compare the times with your records. If the times differ significantly, notify the presider and ask for a ruling as to the time remaining. If the presider approves your request, consult with the attorneys and determine if you want to add or subtract time in any category. If the judge does not allow a consultation, you may make any requests for adjustments. You may use the following sample questions and statements:

"Your honor, before bringing the next witness, may I compare time records with the official timekeeper?"

"Your honor, there is a discrepancy between my records and those of the official timekeeper. May I consult with the attorneys on my team before requesting a ruling from the court?"

"Your honor, we respectfully request that ___ minutes/seconds be subtracted from the prosecution's (direct examination/cross examination/etc.)."

"Your honor, we respectfully request that ___ minutes/seconds be added to the defense (direct examination/cross-examination/etc.)."

Be sure not to interrupt the trial for small time differences; your team should determine in advance a minimum time discrepancy to justify interrupting the trial. Be prepared to show your records and defend your requests.

TEAM MANAGER

Your team may also select a member to serve as **team manager**. Any team member, regardless of his or her official Mock Trial role, may serve as team manager. The manager is 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.

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 (maps, diagrams, etc.). All items are presented prior to trial.

1. Present the item to an attorney for the opposing team 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 he or she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)
4. When you finish using the item, give it to the judge to examine and hold until needed again by you or another attorney.

Moving the Item Into Evidence

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

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit #___ and request that the court so admit it."
2. At this point, opposing counsel may make any proper objections.
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 prove 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 58.)
- 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, 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 the witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness's

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 in this way.

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

During 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.

A witness also may be impeached by introducing the witness's statement and asking the witness whether he or she 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 6 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 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 re-direct for a particular witness. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

If the credibility or reputation for truthfulness of a witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to "save" the witness through re-direct. 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." **NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- **The prosecution** should emphasize that the state has proven guilt beyond a reasonable doubt.
- **The defense** should raise questions that suggest the continued existence of a reasonable doubt.

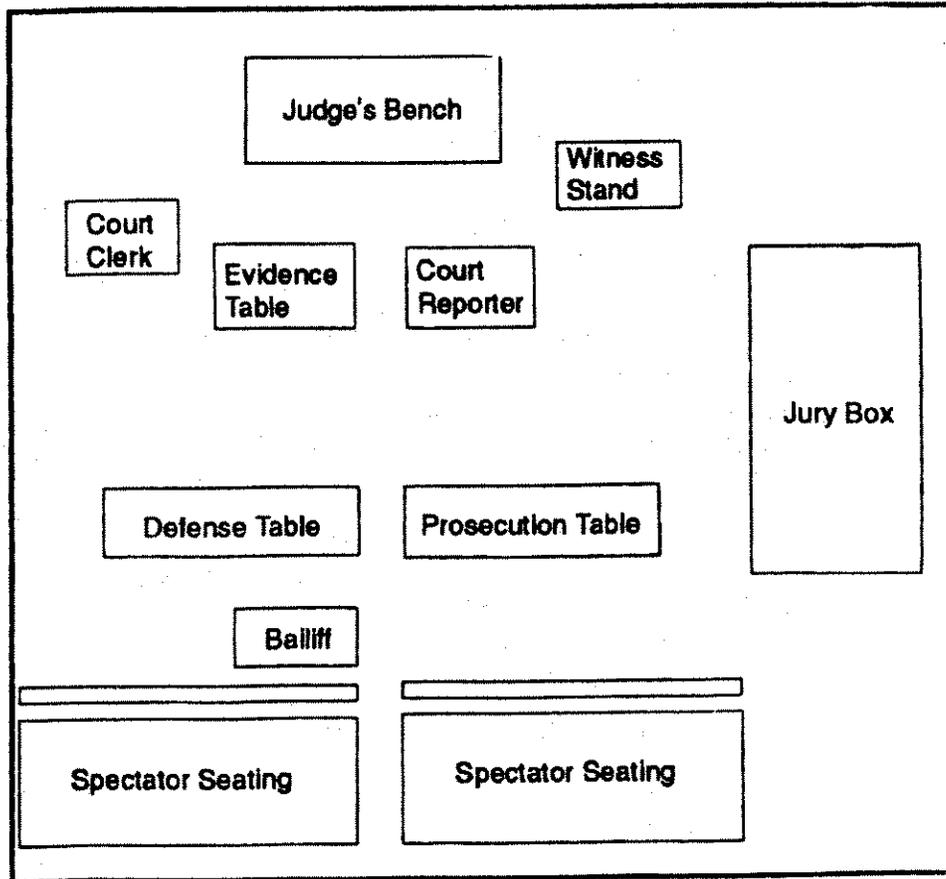
Proper phrasing includes:

- "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 additional time for rebuttal. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal.

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

Objections

It is the responsibility of the party opposing the 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 that 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 61. **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 or she is raising an objection,
- (3) attorney specifies what he or 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) because it is a compound question."

Allowable Evidentiary Objections

1. Facts Outside the Record (FOR)

This objection is specific to the competition and is not an ordinary rule of evidence. The FOR objection applies if a witness creates new facts not included in and which cannot be reasonably inferred from his or her official Record. See Rule Section V for a more detailed explanation.

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

2. Relevance

Relevant evidence makes a fact that is 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. The court may exclude relevant evidence 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 (indirect) evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e., if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Example: Eyewitness testimony that the defendant shot the victim is **direct evidence** of the defendant's assault. 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.

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.

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.

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

4. Personal Knowledge

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

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

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

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

5. Character Evidence

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

Examples:

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

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

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

6. Opinion of Lay Witness (non-expert)

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

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

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

7. Expert Witness and Opinion Testimony

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

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

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

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

8. Hearsay

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

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.

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.

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."

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

- a. **Admission against interest by a party opponent**—a statement made by a party to the legal action of the existence of a fact that helps the cause of the other side. (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**—a statement that puts declarant at risk of civil or criminal liability.
- e. **Records made in the regular course of business**
- f. **Official records 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 the 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**
- j. **Dying declaration**—a statement made by a dying person respecting the cause and circumstances of his or her death, which was made upon that person's personal knowledge and under a sense of immediately impending death.
- k. **Co-conspirator's statements**—(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) the statement was made prior to or during the time that the party was participating in that conspiracy; and (c) the evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of this evidence.

Allowable Objections for Inappropriately Phrased Questions

9. Leading Questions

Attorneys may not ask witnesses leading questions during **direct examination**. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

Example:

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

Counsel could rephrase the question, "What, if anything, did the defendant say during this conversation about delivering the merchandise?"

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

10. Compound Question

A compound question joins two alternatives with "and" or "or," 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 that there may be another way to make your point.

11. Narrative

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

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

The question is objectionable, and the objections should be sustained.

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

Other Objections

12. Argumentative Question

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

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

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

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

13. Asked and Answered

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

Examples:

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

Counsel for X correctly objects and should be sustained.

BUT:

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

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

**SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS
FOR THE 2002–2003 CALIFORNIA MOCK TRIAL**

1. **Facts in Record:** "Objection, your honor. The answer is creating a material fact that is not in the record," or "Objection, your honor. The question seeks testimony that goes beyond the scope of the record."
2. **Relevance:** "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."
7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."
8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."
9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."
10. **Compound Question:** "Objection, your honor. This is a compound question."
11. **Narrative:** "Objection, your honor. Counsel's question calls for a narrative."
12. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."
13. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."
14. **Vague and Ambiguous:** "Objection, your honor. This question is vague and ambiguous as to _____."
15. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."
16. **Outside Scope of Cross:** "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."

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