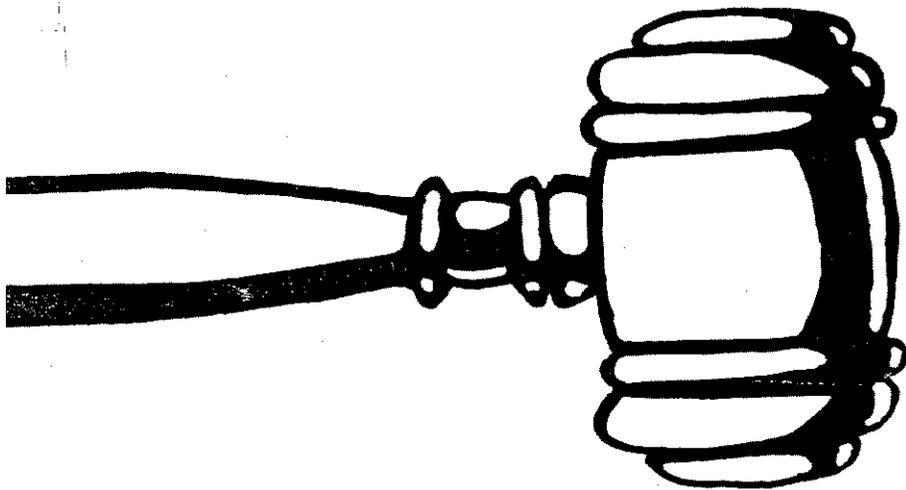


**PEOPLE  
V.  
MITCHELL**

**Issues of alcohol, responsible  
driving, and the exclusionary rule**



***Featuring a pretrial constitutional argument about  
the Fourth and Fourteenth Amendments of  
the United States Constitution.***

**Official Materials for the California State Mock Trial Competition**

**Co-Sponsored by the State Bar of California, the California Young  
Lawyers Association, *The Los Angeles Daily Journal*  
and *San Francisco Banner Daily Journal***



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### PROGRAM OBJECTIVES

For the students, the Mock Trial Competition will:

1. Increase proficiency in basic skills such as listening, speaking, reading, and reasoning.
2. Further understanding of the link between our Constitution and the substance of the law as applied by our courts and legal system throughout history.

For the school, the competition will:

1. Provide an opportunity for students to study key concepts of the Constitution (the Fourth and Fourteenth Amendments) and the issue of drinking and driving.
2. Promote cooperation and healthy competition among students of various abilities and interests.
3. Demonstrate the achievements of high school students to the community.
4. Provide a hands-on experience outside the classroom from which students can learn about law, society and themselves.
5. Provide a challenging and rewarding experience for participating teachers.

### CODE OF ETHICS

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

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

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

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

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

1990-91 MOCK TRIAL COMPETITION

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

Each participating county will sponsor a local competition and declare a winning team from among the competing high schools. The winning teams from each county will be invited to compete in the State Finals in Sacramento April 2-5, 1991. In May of 1991 the winning team from the State Competition will be eligible to represent California in 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. In the Mock Trial, students portray each of the principals in the cast of courtroom characters. As the student teams study a hypothetical case, conduct legal research and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system. Students participate as counsel, witnesses, court clerks and bailiffs.

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

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



## CLASSROOM DISCUSSION MATERIALS

### Personal Privacy versus Law Enforcement: The Perpetual Dilemma

Individuals who abuse drugs or alcohol demonstrate a dangerous disregard for the safe legal operation of motor vehicles. According to the National Highway Traffic Safety Administration, in 1988, 23,351 Americans died in alcohol-related car crashes. The number of people injured during 1976-1980 from alcohol-related traffic accidents was greater than the number of people injured in the entire Union Army during the Civil War and more were killed than in the bloodiest year of the Vietnam War. The risk is particularly high for individuals under the age of 21. Alcohol is the number one cause of death among teenagers.

Drinking can seem like a very grown-up thing to do, and young people are under considerable pressure from their friends to drink. But drinking is a privilege that requires that the individual act in a responsible and mature way. When people are irresponsible with liquor, the result can be deadly, as when an intoxicated person drives a car.

In response to the grave problem that driving under the influence presents, several states have developed drunk driving roadblocks programs. Through these programs, a roadblock is established on a major highway; stationed there are several police officers who stop a pre-determined number of drivers to check for signs of intoxication. The roadblock is usually indicated by warning signs, and the driver may be able to visibly detect the roadblock by the slowing of other vehicles. Many times, the county or state will publicize the roadblocks to increase their effectiveness in deterring drunk drivers. The publicity is intended to prevent people from driving while drunk, to encourage them to designate a driver for the evening or take a taxicab home rather than drive. However, there are concerns that the roadblocks and similar programs interfere with citizens' Fourth Amendment rights.

As we celebrate the Bicentennial of the United States Bill of Rights, there is no more powerful reminder of its inherent value and lasting nature than its very language. The Bill of Rights (along with the Fourteenth Amendment as it relates to the states) stands as a firm reminder that we, as citizens of the United States, have certain inalienable rights which must not be abridged. The Fourth Amendment is one such example. It guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures..."

People v. Mitchell is intended to show the seriousness, not only of drunk driving, but also the danger to citizens subject to violations of their Fourth Amendment rights. This is a perpetual dilemma of personal privacy versus law enforcement. The legal doctrine called the Exclusionary Rule is the method the courts use to exclude evidence that they determine violates personal privacy under the Fourth Amendment.

The Exclusionary Rule is based upon two theories:

- 1) "The fruit (incriminating evidence) of a poisonous tree (illegal

search, seizure or interrogation) is as poisonous as the tree itself." The rationale here is that the "rewards" of an activity marked by injustice are themselves tainted and unjust. How can citizens respect our judicial system if the system accepts unjust practices and is itself unjust?

2) The only effective way to enforce the provisions of the Constitution is to remove the incentive to disregard them. If illegally obtained evidence may not be introduced in court, there is less reason for the police to engage in activities that violate people's constitutional rights.

### QUESTIONS FOR DISCUSSION

1. What should you do if your brother or sister, or a close friend, becomes drunk and disruptive at a party? What if that person insists he or she can drive but you don't think it would be safe? Would it make a difference if the person were just an acquaintance and not someone you cared for a great deal? How would you handle the situation if the person were your mother or father?

2. A group known as Students Against Drunk Driving suggests that teenagers and their parents sign the following contract, which they call the "Contract for Life." Would you sign such a contract with your parents? Would they be willing to enter into the agreement with you?

For teenagers -- "I agree to call you for advice and/or transportation at any hour, from any place, if I am ever in a situation where I have had too much to drink or a friend or date who is driving me has had too much to drink." (Signed and dated.)

For parents -- "I agree to come and get you at any hour, any place, no questions asked, and no argument at that time, or I will pay for a taxi to bring you home safely. I would expect that we will discuss this issue at a later time. I also agree to seek safe, sober transportation home if I am ever in a situation where I have had too much to drink or a friend who is driving me has had too much to drink." (Signed and dated.)

3. Considering the seriousness of the problem of drinking and driving, do you think a citizen's Fourth Amendment rights should be allowed to be violated under the rationale "the end justifies the means?" Imagine for a moment that the roadblock were the only measure available to law enforcement officials to curb the drunk driving problem. Should the violations be allowed then? How far are you willing to say the rights of citizens may be violated to address serious problems that confront our nation?

4. Studies of the effectiveness of roadblocks, conducted in other countries, have found that, once people realize that the roadblock is ineffective (i.e., they have not been personally caught), the result is that people return to their normal behavior of drunk driving. Would you be deterred knowing that there might be a chance that you will encounter a roadblock on your way home one night? Would you be deterred if you knew that there would definitely be a roadblock (i.e., there is an established roadblock)? Which method do you think is more effective? Why? Do you think that one method more than another might increase the chance that people will create methods to get around and prevent

encountering such roadblocks?

Some of the testimony given in various roadblock cases has revealed that roving patrols (i.e., officers on their regular duty who see someone exhibit signs of intoxication) are more effective in arresting drunk drivers. With this information in mind, do you still think it is a good idea to have roadblocks?

Proponents of roadblocks argue that roadblocks are actually more effective in detecting drunk drivers than roving patrols. However, the statistics that have been provided in court cases show there is a higher arrest rate through roving patrols. Proponents argue that the arrests from roadblocks are less because the roadblocks are so effective. Do you agree with this rationale? Why or why not?

5. One of the concerns of opponents of the roadblock procedure is the level of discretion available to the officers at the roadblock or to higher level officials in charge of establishing the roadblock. Opponents are concerned that factors other than neutral criteria will be used to stop individuals in profile cases. For example, the Drug Enforcement Agency has developed a drug courier profile which indicates, among other things, people travelling only with carry-on luggage are possible drug couriers. Do you think this is right? What are some of the dangers you see that could develop with roadblock stops?

6. Proponents of changes in the Exclusionary Rule claim that they are necessary to prevent criminals from avoiding punishment and going back to the streets when police make "technical" violations of the law. Opponents, such as the American Civil Liberties Union, disagree that these are mere technical violations and argue that any changes would encourage large-scale police misconduct. With which of these positions are you in agreement? Explain your answer.

7. One recent proposal says that evidence seized illegally should be admitted in court, and the police who engage in such illegal conduct should be punished. Proponents of this view believe this will be a sufficient deterrent to police misconduct. Do you agree? Why or why not?

CALIFORNIA STATE MOCK TRIAL FACT SITUATION

The first rain of spring fell on the city of Winchester and glistened on its well-lit streets. Winchester, California is a medium sized city of 100,000 people. Winchester University and an adjoining residential community are located on the west side of town. In Winchester Canyon, about 12 miles to the east, there is another residential community. The 785 Highway runs through the middle of Winchester and connects these two areas. A few homes are situated on the highway, but much of it is open space. About halfway between the University and Winchester Canyon there is a business district, just off the 785 Highway. In addition to the business district, there are several clubs, bars, a theater complex and the Winchester Amphitheater. This area has been named "party alley," because high school and college students regularly converge on this area during the weekends.

On April 28, 1990, loud music came from a ranch-style house in the Timber Lake Estates, up in Winchester Canyon. Cars filled the gravel driveway and parking area next to the house. Shortly after 2:00 a.m., Cory Mitchell and Chris Hernandez left the party and entered a red convertible Mustang. The two seemed to be arguing. The red Mustang roared to life and its headlight beams pierced the night. The car rolled into the street and began swiftly making its way down the narrow, slippery curves leading to the 785 Highway.

At 2:20 a.m., the Mustang driven by Cory Mitchell pulled off the 785 Highway into the parking lot of the Stop n' Run market. Cory got out of the car and walked over to the passenger side, and motioned for Chris to roll down the window. Chris refused. Cory again motioned Chris to roll down the window. Finally, Chris did roll down the window. The two heatedly talked and then Cory grabbed the hat Chris had been wearing. Carrying the hat under one arm, Cory walked into the Stop n' Run. After a short while, Cory came back out of the store, carrying a large cup of coffee. Chris was leaning against the passenger side of the car. Cory and Chris exchanged words before the Mustang took off again down the highway.

Pat Wong, a delivery person for Cicero's All-Night Pizza Shoppe, got out of the car at 2:30 a.m. with a large pepperoni pizza in hand. Pat, dressed in a blue windbreaker and jeans, looked at the order book to double check the address of the house to which the pizza was to be delivered. Realizing that the house was only a few houses west of where the car was parked, Pat began to walk along the highway.

Before Pat reached the house, a fast-moving automobile swept down, hitting Pat with its right fender. Flying several feet, Pat landed on the lawn of a house along the highway. Pat was bleeding from the face and lay in a contorted position.

Riki Yazzie, a professor at Winchester University, had just walked out to meet Pat to pay for the order, and hearing a loud engine noise, looked toward the car racing down the highway. Riki saw that the car was swerving between the dividing line and the dirt shoulder. A big cloud of dust arose behind the car. Riki looked toward Pat, who was walking along the highway toward Riki's house. Riki saw the car approaching Pat, and screamed out to Pat, "Watch out!" Riki stood motionless as Pat flew in the air and landed on Riki's front yard with a loud thump. Riki ran to Pat and felt for a pulse. Relieved to find a pulse, Riki looked to the car which had screeched to a halt near the top of the hill. Riki made a mental note of the license number, but only saw five of the six license numbers. Then the car sped off.

Riki ran back into the house, dialed 911, and wrote down what could be remembered of the license number: RED12. The operator informed Riki that an ambulance would be out right away. Riki took a blanket out to Pat and waited for the ambulance.

The red convertible Mustang travelled along the 785 Highway, just beyond "party alley." A number of recent accidents involving alcohol had caused people to term the part of the Highway leading to "party alley" as "blood alley." The number of deaths and accidents involving alcohol was so great that the Winchester Police Department established a profile drunk driving task force intended to deter and detect drunk drivers. The profile targeted persons between 16 and 25 years of age, driving late model or sports cars with either a university or high school insignia visible, and travelling from "party alley" toward the University and residential community, between the hours of 11 p.m. and 3 a.m. A driver was particularly vulnerable to the stop if the car was travelling five miles or more below the speed limit of 55 and/or driving in the slow lane. The profile was developed specifically based upon an 18 month county-wide study conducted by the Winchester Police Department. The study found that during this 18 month period, there were 32 arrests and convictions in the county and 85% of those people convicted were between the ages of 16-25, the majority of whom were in high school or college. Within the same period, there were 14 alcohol-related deaths on the highway, of which all but two occurred between the hours of 11 p.m. and 3 a.m. County-wide, in 58% of the driving under the influence cases, the driver had been driving five or more miles under the speed limit when stopped by police. In a great number of the cases, the vehicles stopped were late model cars or sports cars.

Since the 785 Highway is the only way to travel to and from "party alley," the police department concluded that the stops would detect drunk drivers far better than would regular patrols. On weekend evenings, two police cars, with one officer in each car, were dispatched to "party alley." If a car met the profile, an officer could pull the car over. The officers were instructed to first ask the driver if she or he had been drinking. Based on either the driver's answer or the officer's observations (i.e., smelling liquor on the driver's breath, observing alcohol containers in the car, or the driver talking in a slurred manner) the officer could conduct any or all of several field sobriety tests. The profile was publicized to the community through television news coverage and in the local papers. Additionally, the police distributed information about the profile stop to the local high school and university.

At 2:40 a.m., as the Mustang passed by a row of cypress trees along the 785, a patrol car pulled out and followed closely behind the car. Within a minute, the patrol car pulled alongside the Mustang and the officer looked in at the driver. The officer then pulled back behind the Mustang, turned on the flashing lights and slowed the car off to the side of the road. Officer Tony Sindell got out and walked over to the driver's side, leaning into the car. "May I see your driver's license and registration?" Cory Mitchell replied, "Sure," and provided the documents. Officer Sindell looked over the license and registration, then leaning further into the car, detected the odor of alcohol on Cory's breath. Officer Sindell asked: "Have you been drinking?" Cory said: "I had a drink but that was a while ago." The officer asked Cory to get out of the vehicle. When Cory had gotten out of the car, Officer Sindell said: "Take off your hat, spread your arms out like an eagle and touch your nose with your index finger." Cory did so, but missed. "Now, I'd like you to

walk an imaginary straight line, ten steps forward and ten steps backward." Cory stepped off the line but did not fall. The officer then had Cory recite the alphabet. Pausing several times, Cory finished reciting the alphabet completely. Since Cory had failed two of the three field sobriety tests, Officer Sindell arrested Cory for driving under the influence and read the standard Miranda rights to Cory. Then Officer Sindell placed Cory inside the police vehicle while calling for a tow truck.

With the information Riki Yazzie gave the police department, an investigation of the hit-and-run began. By connecting with a statewide computer system, the police dispatcher had traced the ten possible California license numbers matching the number given to the dispatcher: RED121, RED122, etc. Of the ten license numbers, only one was for a car registered in Winchester, at an address on Hickory Drive. The owner's name was Kelly Mitchell, the mother of Cory Mitchell, and the car was registered as a 1988 Mustang.

When they arrived at the station, Officer Sindell informed Cory that breathalyzer tests would be given to determine Cory's blood alcohol level. Cory said that the tests should not be administered unless and until Officer Sindell got Cory's consent. Officer Sindell informed Cory that, as a driver on the California roads, Cory had already voluntarily consented to testing for alcohol by an officer when stopped. Officer Sindell administered two breathalyzer tests. The results of each test were .11, well beyond the legal level of intoxication. Officer Sindell left Cory with the booking officer and returned to the squad car.

As Officer Sindell pulled out of the station, dispatch came over the radio: "There has been a hit-and-run accident on the 785 Highway. Be on the look out for a red Mustang, partial license plate number, RED12, possibly a 1987 or 1988 model." Upon hearing this, Officer Sindell stopped the patrol car and returned to the station. Sindell headed for the impound area located next to the station. Officer Sindell looked over Cory's vehicle and found nothing on the back of the vehicle. Officer Sindell then examined the right front fender of the car. There was a visible dent in the front right fender, and upon further examination, the officer found a small piece of denim cloth caught in the headlight housing. Officer Sindell made a note of the information.

Officer Sindell returned to the squad car and headed for the hospital after determining the location of the victim from dispatch. Pat Wong regained consciousness in the Winchester University Hospital emergency room at 3:15 a.m. Pat Wong had suffered a severe head injury and was not very alert. Once pain medication had been administered, Pat was able to talk with Officer Sindell for a few moments. Pat was somewhat disoriented, and before asking any questions, Officer Sindell let Pat know that it was early Saturday morning, April 28, 1990. Pat answered the officer's questions before going into a coma, from which Pat has not recovered. At the time of this trial, according to medical opinion, it is impossible to predict the future of Pat Wong's condition.

Officer Sindell returned to the station and retrieved Cory from one of the holding tanks. Cory asked, "When can I go home?" Officer Sindell reminded Cory of the Miranda rights which had previously been read. Cory replied, "What is this about?" Officer Sindell informed Cory, "There has been a hit-and-run and it seems that you were involved." Cory, visibly upset, blurted out that a friend, Chris Hernandez, was the one driving and that Chris must be the one who hit the victim. Officer Sindell said, "I need to inform you of your right to remain silent. Anything you say can be used against you in a court of law." Cory fell silent; however, it was clear that Cory was still very upset.

Officer Sindell drove to Chris Hernandez's house. At 4:05 a.m., Chris answered the door in a bathrobe, and asked the officer to come inside. Chris listened to the officer's explanation of the evening's events and nodded as Sindell asked if Chris would answer a few questions. Chris denied knowing anything about an accident. Chris confirmed attending the party, but denied Cory's version of the story. Chris claimed to have walked home, and showed the officer the damp jacket, shirt and jeans hanging in the shower. Officer Sindell informed Chris that further information might be needed at a later date and, before leaving, the officer thanked Chris for answering questions.

Officer Sindell returned to the station and dusted the steering wheel of Mitchell's car for fingerprints. Three sets of prints were found.

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

A map of the city of Winchester [only a faithful reproduction, no larger than 22x28 inches].

**Stipulations:** Both sides stipulate to the following facts:

- (1) The breathalyzer machines were recently calibrated and the readings are accurate;
- (2) At the time of trial, according to expert medical testimony, the victim has suffered a massive head injury and it is unclear how long the victim will be in a coma.
- (3) Officer Sindell is qualified to render an opinion regarding the identification of fingerprints. Of the three sets of fingerprints lifted from the Mustang steering wheel and matched by the police lab: one set matched the left and right hands of the defendant; one set could not be identified; and another set, on the top of the steering wheel in parked position, matched the right hand of Chris Hernandez.

### Charges

The prosecution is charging Cory Mitchell with five counts: Count 1 - driving under the influence of alcohol, Cal. Veh. Code SS 23152 (a). This charge only requires proof that the person charged was impaired based upon the behavior and actions of the defendant; Count 2 - driving under the influence of alcohol, Cal. Veh. Code SS 23152 (b). This charge is based upon tests (breathalyzer, urine sample) performed by police officers to determine the blood level content of alcohol. Count 3 - causing bodily injury while under the influence, Cal. Veh. Code SS 23153 (a). This charge requires proving the person caused bodily injury while impaired, based upon the behavior and actions of the defendant; Count 4 - causing bodily injury while under the influence, Cal. Veh. Code SS 23153 (b). This charge is based upon tests (breathalyzer, urine samples) performed by police officers to determine the blood level content of alcohol when the defendant caused harm to another; and Count 5 - felony hit-and-run, Cal. Veh. Code SS 20001. These charges require proof that the person charged is the person who hit the victim. Further, it must be shown that the person charged violated his/her duty to stop after the accident and provide the necessary information, i.e., driver's license and registration.

In the pretrial motion the defense will argue that there was a violation of Cory's Fourth Amendment rights which prevent Cory from being prosecuted on Counts 2 and 4. If the defense prevails on the pretrial motion, the evidence obtained as a result of the police profile stop will be suppressed as the result of an illegal search and seizure. Counts 1 and 3 may only be proved through introduction of testimony regarding observations of witnesses before the stop. The felony hit-and-run charge will also be tried. If the judge rules in favor of the prosecution, all five counts will be decided during the trial.

## MOCK PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the Mock Trial packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies and distinguish a variety of factual situations, debate constitutional issues and develop analytical skills. These materials can be used as a classroom activity and incorporated into a local Mock Trial Competition. The Judge's ruling on the pretrial motion will have a direct bearing on the charges and possible outcome of the mock trial.

**Note:** The only legal authorities permissible for citation are those included in this package.

### Introduction

The criminal system is torn between two conflicting goals: protecting society from those whose behavior is unlawful, and ensuring that those who are arrested, prosecuted or convicted of crimes receive every constitutional protection to which they are entitled. The police must pay close attention to the decisions of the courts and their interpretations of the Constitution. Otherwise, a case against a criminal defendant may be jeopardized by following investigation or arrest procedures which do not meet current judicial standards.

One of the most important and complex areas of criminal procedure is derived from the Fourth Amendment. The amendment has a great impact on how police officers investigate crimes and gather evidence. This is because the U.S. Supreme Court has ruled that evidence which is unreasonably seized may not be used at trial. The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures..." These few words may sound simple, but they are not. Through interpretation of the amendment in specific cases by the U.S. Supreme Court and lower federal and state courts, they have evolved into a full body of law known as the law of search and seizure.

The Fourth Amendment protects people from unreasonable searches and seizures by government officials and agents. The controlling term here is "unreasonable." Reasonableness is the standard which determines whether or not governmental intrusions into one's privacy violate the Constitution. Reasonableness is a broad standard and varies from one situation to another. It can be difficult to know beforehand what governmental conduct a court will deem reasonable or unreasonable. The Supreme Court has held that the Fourth Amendment protects only those things to which most of us believe we can lawfully prevent others from having access. Having such a right gives one a "reasonable expectation of privacy." A woman, for instance, has a "reasonable expectation of privacy" in her purse because most women believe they can prevent others from having access to its interior.

In general, the courts have held that a search or seizure is unreasonable unless it has been authorized by a valid warrant. A warrant is usually issued by a judge or magistrate and must be based upon evidence presented under oath--usually supplied by a police officer--that there is probable cause (good reason) to believe a crime has been or is about to be

committed. The courts have long recognized that the police can't be expected to obtain a warrant before every search and seizure (though probable cause is still required in all cases). A number of exceptions have thus been created over the years.

It is well settled in the courts of the United States that the home is a very private place and therefore receives even greater protection from government intrusion than in the case of a vehicle or business. However, because of the increased amount of time that people spend in their cars, there is a degree of privacy that is expected. The courts have placed the search and seizure of an automobile under the exception to the warrant requirement. The courts have allowed an exception to the requirement for a warrant when searching a vehicle because of the car's mobility and the possibility that the car might be moved out of the jurisdiction before a warrant could be obtained.

In determining the reasonableness of a warrantless search or seizure, the courts must balance the need for immediate action by the police against the invasion of individual privacy involved. A number of other kinds of searches have been held to be reasonable by the courts, for example, airline searches of passengers and carry-on baggage by means of metal detectors or physical pat-downs. Another example is border searches by immigration control officers reasonably close to U.S. international borders. The courts have reasoned that the airline industry is already heavily regulated, in the case of airport searches. In the case of border searches, they find that the search is the most effective means of meeting a grave concern of the government.

When a person's Fourth Amendment rights have been violated by an illegal search and seizure, an accused person may invoke the Exclusionary Rule. This is done by making, in court, a motion to suppress any illegally obtained evidence. The Exclusionary Rule is a court designed enforcement mechanism of the Fourth Amendment. This rule holds that where the government unlawfully gathers incriminating evidence, that evidence will not be admissible against the defendant at trial. Under the rule, no evidence can be admitted in a court of law if it was acquired as a result of illegal actions by law enforcement officers. This does not mean that the accused will automatically be set free. However, in many cases it becomes almost impossible for the government to prove guilt beyond a reasonable doubt without the evidence. Thus, the charges may be reduced or dropped altogether.

There are two reasons for this rule. The first is based on the belief that police will be deterred from violating citizens' constitutional rights if they know that by doing so they will not be able to use valuable evidence against them in trial. The other reason behind the Exclusionary Rule is that it is wrong for society to benefit from the illegal activity of its agents.

### Arguments

In the pretrial motion the defense will argue that Officer Sindell's stop of Cory Mitchell violated Cory's Fourth Amendment right to be free from an illegal stop and that the results of the breathalyzer test should not be admitted under the Exclusionary Rule.

The prosecution will argue that Officer Sindell's stop of Cory Mitchell was lawful because it was based on reasonable suspicion in light of the profile factors and the breathalyzer results should be admitted.

Sources

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

The language in the U.S. Constitution is the ultimate source of citizen's rights to be free from unreasonable searches and seizures. However, its language is subject to interpretation.

The U.S. Supreme Court's holdings are binding and must be followed by the California courts. However, in general, the Supreme Court makes very narrow decisions based on the specific facts of the case before it. In developing arguments, either side can make arguments comparing or distinguishing the factual patterns in the cited cases from one another and from the facts of People v. Mitchell.

Legal Authorities (U.S. Constitutional Amendments, California Constitution Article 1, California Statutes, and Court Opinions)1. U.S. Constitution Amendment IV

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

2. U.S. Constitution Amendment XIV

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

3. California Constitution Article 1

**SECTION 13.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures may not be violated; and a warrant may not be issued except on probable cause supported by oath or affirmation particularly describing the place to be searched and the persons or things to be seized.

4. California Vehicle Code Section 23152

(a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

5. California Vehicle Code Section 23153

(a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by

law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

6. United States v. Sokolow, 109 S.Ct 1581 (1989)

**Facts:** Sokolow was stopped by Drug Enforcement Agents at Honolulu Airport as a suspected drug dealer after the agents were alerted by a ticket agent at the airport, who sold airlines tickets to Sokolow. When the DEA agents stopped Sokolow, they knew that: (1) he paid \$2,100 for two-round trip plane tickets from a roll of \$20 bills; (2) he traveled under a name that did not match the name of his listed telephone number; (3) his original destination was Miami, a source city for illicit drugs; (4) he stayed in Miami for only 48 hours, even though a round-trip flight from Honolulu to Miami takes 20 hours; (5) he appeared nervous during his trip; and (6) he checked none of his luggage. The agents found 1,063 grams of cocaine in his carry-on luggage. Sokolow was indicted for possession of cocaine with intent to distribute.

**Holding:** The court upheld the conviction and denied the defendant's motion to suppress the evidence. The court determined that the officers only needed "reasonable suspicion" of criminal activity to conduct an investigatory stop. The court held that the DEA agents had a reasonable suspicion that respondent was transporting drugs when they stopped him based on the facts of this case. The court went on to say, "The fact that the agents believed that respondent's behavior was consistent with one of the DEA's 'drug courier profiles' does not alter this analysis, because the factors in question have evidentiary significance regardless of whether they are set forth in a 'profile'."

7. Terry v. Ohio, 392 U.S. 1 (1968)

**Facts:** Terry and another man were observed by an officer pacing back and forth in front of a store for quite some time. The officer's suspicions were aroused and he followed the two men. On questioning, the officer turned Terry around and patted him down. In doing so, the officer discovered a handgun. Terry sought to have the evidence excluded.

**Holding:** The court upheld the conviction, stating, "The police can stop and briefly detain a person for investigative purposes if they have a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if they lack probable cause under the Fourth Amendment. Reasonable suspicion entails some minimal level of objective justification for making a stop--that is, something more than an unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause."

8. United States v. Ceballos, 654 F.2d 177 (1981)

**Facts:** Ceballos was viewed by undercover officers leaving a suspected drug dealer's house with a brown paper bag. Afterwards, he got into his van and drove away. When Ceballos had stopped at a street light three police cars blocked his car and he was told to get out of the car. When Ceballos got out of the car, the paper bag dropped to the ground. Cocaine was found inside the bag and he was convicted for possession of cocaine. Ceballos sought to have the evidence suppressed.

**Holding:** The court reversed the conviction, holding that Ceballos was arrested at the moment that his vehicle was blocked. It further concluded that the officers lacked probable cause to arrest Ceballos.

"The Government's contention that Ceballos fit an alleged 'profile' of Zea's customers (Hispanic males) is an inappropriate attempt to broaden the limited acceptance which has been given to the DEA's drug courier profile in the context of airport Terry stops. (See case #7 for explanation of Terry stop) In the airport context, the profile, based on the DEA's institutional experience, has been recognized as a valid basis for further investigation, but it has been insufficient in and of itself to constitute either reasonable suspicion or probable cause."

9. Delaware v. Prouse, 99 S.Ct. 1391 (1979)

**Facts:** Prouse was stopped by a patrolman who checked Prouse's driver's license and registration. The patrolman observed neither traffic nor equipment violations nor any suspicious activity. The patrolman was not acting pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated by his department or the State Attorney General. Prouse was arrested for possession of marijuana, which the officer identified on the car floor when Prouse was stopped. He sought to have the evidence excluded.

**Holding:** The court suppressed the evidence holding that, except in those situations where there is reasonable suspicion that a motorist is unlicensed or a vehicle is not registered, stopping the automobile is unreasonable under the Fourth Amendment. "Stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of the Fourth Amendment. The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.... Thus the permissibility of a particular law enforcement practice is judged by balancing its intrusion against its promotion of legitimate governmental interests." However, the court went on to discuss possible reasonable stops by government officials: "This does not preclude states from developing methods for spot checks that involve less intrusion or that do not involve unconstrained exercise of discretion, such as questioning of all oncoming traffic at road-block-type stops."

10. State v. Johnson, 561 S.2d 1139 (1990)

**Facts:** Florida Patrol Trooper Vogel was assigned to a special drug detail working on Interstate 95. Vogel spotted a large luxury car driving north, bearing Maryland license plates and travelling at exactly 55 m.p.h. Vogel decided to make an "investigatory" stop because the following facts fit a personal drug courier profile Vogel developed: (1) the car was driving at 4:15 a.m.; (2) the driver was alone; (3) the driver was about thirty years of age; (4) the car had out-of-state tags; (5) the car was of a large model type; (6) the driver was male; (7) the driver was wearing casual clothes; (8) the driver was being "overly cautious" by driving at precisely the speed limit; (9) the car was driving on a known drug corridor, Interstate 95. Based solely on these factors, Vogel stopped and detained Johnson. After making the stop, Vogel discovered marijuana in the trunk of the vehicle, seized it, and arrested Johnson.

**Holding:** The court suppressed the evidence discovered as a result of Vogel's search. The court went on to discuss the permissible uses of a "profile": "A 'profile' thus is permissible precisely to the degree that it reasonably describes behavior likely to indicate crime. And in that regard, we cannot agree that the characteristics constituting Trooper Vogel's profile support a 'rational inference' of criminal wrongdoing. Men of a certain age who drive certain kinds of cars in the evening hours, traveling at or below the speed limit on interstate corridors, simply cannot be described as an inherently 'suspicious' bunch. This profile literally would permit police to stop tens of thousands of law-abiding tourists, businessmen or commuters. The resulting intrusion upon the privacy rights of the innocent is too great for a democratic society to bear. Were we to approve this profile, we might just as well approve a profile based on racial or ethnic characteristics, religious background, sex or any other completely innocent trait."

11. Cresswell v. State of Florida, 15 Fla. L. Week. 287 (1990)

**Facts:** Cresswell was travelling along a highway in Florida, a well-known drug corridor, when he was stopped by Trooper Vogel for "following too closely," a traffic law violation. At that time Vogel made the following observations: (1) Cresswell was nervous; (2) Cresswell was alone in the vehicle; (3) Cresswell had a Massachusetts driver's license but the car had Maine license plates and registration and also New York State insurance and inspection stickers; (4) the car was registered to someone else; (5) there were items on the back seat that were normally found in a trunk (i.e., an air pump, a tow rope, and tire cleaning material) as well as a suit bag; (6) the ignition key was separate from the other keys; (7) there was a CB radio in the car. Since some of these observations matched Vogel's personally developed drug courier profile, Vogel decided to detain Cresswell in order to further investigate. Trooper Vogel issued Cresswell a warning for the traffic infraction, but retained Cresswell's driver's license and requested that Cresswell open the trunk. Cresswell refused to do so and later refused to consent to a search of the vehicle. Forty-five minutes later a narcotics dog arrived and alerted on Cresswell's trunk. The trunk was opened, marijuana was found and Cresswell was arrested. He sought to have the evidence suppressed.

**Holding:** The court upheld the conviction, finding that "on the totality of the circumstances in this case, we find that the officer had reasonable suspicion justifying the continued detention of Cresswell."

The court discussed the behavior of Cresswell that fit the officer's profile: "Although these facts viewed individually could be consistent with legal behavior, when viewed together by a trained law enforcement officer such facts, meaningless to the untrained, can be combined with permissible deductions from such facts to form a legitimate basis for suspicion of a particular person and for action on that suspicion. Unlike the circumstances of Johnson, this combination of circumstances hardly would describe a large number of innocent travellers."

12. United States v. Martinez-Fuerte, 428 U.S. 543 (1976)

**Facts:** Martinez-Fuerte was convicted for illegally transporting aliens when stopped at a border checkpoint located in San Clemente, California. The border checkpoint was preceded by large, flashing signs indicating to drivers on the highway that they were approaching the stop. Martinez-Fuerte approached the stop driving a vehicle containing two female passengers. He produced documents showing himself to be a lawful resident alien, but his passengers admitted being present in the country unlawfully. He sought to have the evidence gathered during the stop excluded on the grounds that the stop violated the Fourth Amendment.

**Holding:** The court upheld the conviction, stating: "The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals. Routine checkpoint stops do not intrude similarly on the motoring public. First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists that the stops are duly authorized and believed to serve the public interest."

13. Brown v. Texas, 99 S.Ct 2637 (1979)

**Facts:** Brown was arrested by two police officers after they observed him and another man walking away from one another in an alley in an area with a high incidence of drug traffic. One officer testified that he stopped the defendant because the situation "looked suspicious and we had never seen that subject in that area before." The officers did not claim to suspect the defendant of any specific misconduct, nor did they have any reason to believe that he was armed. Defendant was convicted of violating a Texas statute making it a crime to refuse to identify one's self to a peace officer who has lawfully stopped one and requested such information.

**Holding:** The court overturned the conviction, holding that detaining and requesting him to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe that appellant was engaged or had engaged in criminal conduct. The court went on to say, "The Fourth Amendment requires that such a seizure be based on specific, objective facts indicating that society's legitimate interests require such action, or that the seizure be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."

"We have recognized that in some circumstances an officer may detain a suspect briefly for questioning although he does not have 'probable cause' to believe that the suspect is involved in criminal activity, as is required for a traditional arrest. However, we required the officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."

14. Michigan Department of State Police v. Rick Sitz, 1990 WL 78597 (1990)

**Facts:** Defendants, licensed Michigan drivers, filed suit seeking declaratory and injunctive relief from potential subjection to a highway sobriety checkpoint program established by the Michigan State Police Department. During the only night of operation of the checkpoint, 126 vehicles passed through the checkpoint, the average delay per vehicle was 25 seconds, and two drivers were arrested for driving under the influence. The Michigan Police Department established guidelines governing checkpoint operations, site selection, and publicity. All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer would check the motorist's driver's license and car registration and, if warranted, conduct further sobriety tests. Should the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately. Defendants argued the checkpoint was unconstitutional under the Fourth Amendment.

**Holding:** The court upheld the sobriety checkpoints as constitutional. The court discussed the balancing of the interests of state and individual rights: "No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Conversely, the weight bearing on the other scale -- the measure of the intrusion on motorists stopped briefly at sobriety checkpoints -- is slight. We reached a similar conclusion as to the intrusion on motorists subjected to a brief stop at a highway checkpoint for detecting illegal aliens."

The following dissenting opinion of Michigan Department of State Police v. Sitz is meant to be used for persuasive arguments:

Justice Brennan:

One searches the majority opinion in vain for any acknowledgment that the

REASON for employing the balancing test is that the seizure is minimally intrusive. Indeed, the opinion reads as if the minimal nature of the seizure ENDS rather than begins the inquiry into reasonableness. Once the Court establishes that the seizure is 'slight,' it asserts without explanation that the balance 'weights in favor of the state program.' The court ignores the fact that in this class of minimally intrusive searches, we have generally required the Government to prove that it had reasonable suspicion for a minimally intrusive seizure to be considered reasonable. By holding that no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police. That stopping every car MIGHT make it easier to prevent drunken driving is an insufficient justification for abandoning the requirement of individualized suspicion."

15. Carroll v. United States, 267 U.S. 132 (1924)

**Facts:** Carroll and another man were arrested and ultimately convicted for transporting in an automobile intoxicating liquor. Carroll was known to be a purchaser of alcohol by the county police and on this particular occasion, was followed by the officers. The officers found 68 quarts of whiskey and gin and the defendants sought to have the evidence suppressed.

**Holding:** The court upheld the conviction. The court discussed the basis upon which an officer can stop a vehicle: "Since an automobile may readily be moved from place to place, its search without a warrant is not unreasonable if the officer has reasonable cause to believe it is carrying contraband. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

16. United States v. Brignoni-Ponce, 422 U.S. 873 (1975)

**Facts:** As part of its regular traffic-checking operations in Southern California, the Border Patrol operates a fixed checkpoint on Interstate Highway 5. On the evening of March 11, 1973, the checkpoint was closed because of inclement weather, but two officers were observing northbound traffic from a patrol car parked at the side of the highway. They pursued Brignoni-Ponce's vehicle and stopped it, saying later that their only reason for doing so was that its three occupants appeared to be of Mexican descent. Brignoni-Ponce was charged with transporting illegal aliens. The defendant sought to have the evidence suppressed.

**Holding:** The court granted the defendant's motion to suppress the evidence stating that a roving patrol may not stop a vehicle and question its occupants when the only ground for suspicion is that the occupants appear to be of Mexican ancestry. The court went on to say: "Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country."

17. State of Florida v. Jones, 483 So.2d 433 (1986)

**Facts:** Jones was stopped at a temporary sobriety roadblock and given several field sobriety tests, which he failed. Jones was then arrested for driving under the influence. Jones sought to have the evidence suppressed based on a claim that the roadblock violated his Fourth Amendment rights.

**Holding:** The court held that, under the balancing test, roadblocks, even if temporary, were constitutional. The court discussed the balancing test approach: "As with all warrantless searches and seizures, courts determine the constitutionality of DUI roadblocks by balancing the legitimate government interests involved against the degree of intrusion on the individual's Fourth Amendment rights. This balancing test involves three considerations: (1) the gravity of the public concern that the seizure serves; (2) the degree to which the seizure advances the public interest; and (3) the severity of the interference with individual liberty."

However, the court overturned the conviction on the basis that the procedure to arrest the defendant in this particular case violated his Fourth Amendment rights. As to why the procedures failed to produce a proper arrest, the court cited the facts that the State failed to issue uniform guidelines before the roadblock was utilized, and that the police should have provided proper lighting.

18. In re Tony C, 21 Cal.3d 888 (1978)

**Facts:** Tony C and a companion were stopped at noon on a school day after Officer Thomas Joy observed the two walking along the street. The officer had received a report that several burglaries had occurred in the area and the suspects were "three male blacks." Further, Officer Joy noticed that Tony C's companion was standing alone on a corner for awhile before Tony C returned, leading the officer to believe that the companion was acting as a lookout. The officer testified that he stopped the two black youths for two reasons: (1) for possible truancy and (2) to investigate if the boys were connected to the reported burglaries. After the officer called for back-up, a report discovered that Tony C had an outstanding charge, and Tony C was arrested. At the station, a search of Tony C provided information leading to charges of burglary and rape. The defendant sought to have the evidence suppressed based on the fact that the detention that led to the recovery of the information was based on an illegal search and seizure.

**Holding:** The court allowed the evidence to be suppressed as it was obtained as a result of an illegal search and seizure, explaining, "The evidence against Tony C was the direct product of exploitation of the unlawful investigative stop, and should have been suppressed." The court went on further to discuss the stop: "The courts have concluded that in order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. The possibility of an innocent explanation does not deprive the officer of the

capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal. It is true that a number of decisions have given weight to the fact that the stop or detention took place in a 'high crime area.' But the justification is so easily subject to abuse that this fact alone should not be deemed sufficient to support the intrusion. Officer Joy had been informed only that the suspects in the prior burglaries were 'three male blacks' of unspecified ages. Such a vague description could not reasonably have led him to suspect these two black minors were the missing culprits. Further, much more is needed to reasonably suspect that a person merely standing on a street corner in broad daylight is acting as a 'lookout' for a partner in crime."

19. State of South Dakota v. Olgaard, 248 N.W.2d 392 (1976)

**Facts:** Defendants were charged with unlawful possession of an open container of an alcoholic beverage and unlawful possession of marijuana. Olgaard sought to suppress the evidence, contending that the evidence had been being seized illegally at a roadblock where Olgaard was stopped.

**Holding:** The court overturned the conviction on the basis that the sobriety checkpoint was a violation of the defendants' right to be free from unreasonable searches and seizures under the Fourth Amendment. It held that the fact that the roadblock was not permanent and that the decision to set up the roadblock was not made according to guidelines and procedures made the stop different than that approved in Martinez-Fuerte. The court said, "In the absence of record evidence that the decision to establish the roadblock was made by anyone other than the officer in the field, the roadblock in question had certain characteristics of a roving patrol, a type of intrusion into a motorist's privacy interest that was held unconstitutional in...United States v. Brignoni-Ponce."

## THE MOCK PRETRIAL MOTION HEARING

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

### **Specific Procedures for the Mock Pretrial Motion**

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

**Order of Pretrial Motion Events**

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

**WITNESS STATEMENT**

Prosecution Witness: Chris Hernandez

My name is Chris Hernandez and I am 18 years old. I am a student at Rolling Oaks High School. My family and I came to the United States from El Salvador two years ago. We are not citizens yet, but we expect to get our permanent residency papers soon. I am very happy at Rolling Oaks. I am on the Honor List, for maintaining a B+ average over the last two years.

Cory and I went to Lee Hesler's house for a party. Lee's parents were out of town and everybody got pretty rowdy. The music was loud and everyone was having a good time. Cory and I had talked about the party that day at school. I was still grounded from driving privileges, so Cory had to drive. I had come home after my curfew one night and my parents thought I had been drinking so they suspended my driving privileges. Besides, we both live near the University and it is easier to take one car. I wanted to make sure one of us would be able to drive, so Cory and I discussed who would be the designated driver. I had gotten in a situation once before with Cory and I had to drive because Cory drank too much. Luckily that previous night I did not drink. But this time was different, because I did drink.

Cory and I had a fight once we got in the car. It was obvious to me that Cory was really drunk and I got angry because the only reason I felt comfortable to drink at the party that night was because I thought Cory would be the designated driver. Cory told me not to worry about driving, that everything would be all right. I wasn't sure what to do, but I thought that if Cory had any problems driving, I would just tell Cory to pull over. So I got in the car. Cory and I left the party around 2:00 a.m.

We started to drive towards Highway 785. Once we were down from the hills, Cory pulled over at the Stop n' Run market. Cory got out of the car and walked over to my side. Cory motioned for me to roll down the window, which I did after awhile. Cory said that I would have to drive because Cory was too drunk. We started fighting again because I knew I couldn't drive. I told Cory that we would have to wait until one of us sobered up. Cory was really angry and said: "Never mind! I'll drive us home. I can make it." I tried to calmly explain that it was not worth it to drive while Cory or I were drunk. I said that I really did not mind waiting. Cory wouldn't listen and just blew up. Cory grabbed the hat I was wearing off my head and put it under one arm before going into the store. I got out of the car and walked around, trying to cool off. Cory came out of the store and offered me a cup of coffee. I refused to drink it because I knew I couldn't drive and I didn't think a little cup of coffee would change things much. I didn't want Cory to drive and I knew I couldn't take it anymore. I waited a minute and then I realized that my only option was to walk the rest of the way home. It was raining out so I wasn't happy about it, but I left anyway.

After leaving the Stop n' Run, I tried thumbing for a ride. I thought maybe someone from the party would drive by but I had no luck. I cut over to the bike path that leads to the University and walked most of the way home. I jogged a little too, because I just wanted to get home. After reaching the University, I started walking along the street to my house. Kim Ho, a friend of my parents, drove by me on the street, and I was afraid that Kim would telephone my parents. After spotting me, Kim honked a few times to get my attention. When I looked over and saw the old Pontiac, I was tempted to take a ride, but I knew that if I got in the car, Kim would smell alcohol on my

breath and tell my parents. I just didn't want my parents to know that I was drinking; besides, I just wanted to be left alone after the night I had. I jogged a little faster and prayed that Kim would just drive on. It took me a while and it was really cold, but I finally got home at 3:45.

**WITNESS STATEMENT**

Prosecution Witness: Tony Sindell

My name is Tony Sindell. I am 35 years old. I have been with the Winchester Police Department for over four years.

I was pleased to have been chosen for the new DUI Suppression Task Force. We get a lot of public nuisance calls about the bars on the "alley." During the summer, the problems multiply because the kids from the high school and University go to concerts at the Amphitheater. The 785 Highway can be extremely dangerous when it is raining, especially after the first rain of the season. The highway was built in 1936 and, although it was at the height of technology for that time, it is far below the standards of today's highways.

The task force was developed as the most effective means for dealing with the problem of drunk drivers. The problem has always been pretty bad, but in the last few years, it has increased as the popularity and size of Winchester and the University have increased. The task force was established specifically based on past statistics of drunk driving accidents and arrests on the 785 Highway. Since Highway 785 is the only means to get to "party alley," the police department concluded that the best location to detect drunk drivers leaving the bars and clubs would be along the highway leading from "party alley." If a car met the profile, an officer would pull the car off the side of the road. The officers were instructed to first ask the driver if she or he had been drinking. Based on either the driver's answer or the officer's observations, the officer could conduct any or all of several field sobriety tests. The police department publicized the stops in an effort to increase their effectiveness. Our hope was that people would hear about the task force and refrain from drinking or at least designate a driver. The police department is only trying to make the highways as safe as possible.

On April 28, 1990, at approximately 2:37 a.m., I saw the defendant driving westbound on the 785 Highway. The defendant looked pretty young and was driving a sports car at approximately 50 miles per hour. I noticed a Rolling Oaks decal on the back of the car. The defendant was within the profile and I decided to stop the defendant to check for signs of intoxication. I followed for about half a mile and then pulled alongside the Mustang. I recognized the driver as Cory Mitchell, who I know is from the general Winchester area. I then proceeded to move behind the defendant again, flashed my lights and slowed the defendant off to the dirt shoulder. When I walked up to the car, Mitchell claimed, "I've been driving under the speed limit ever since leaving the party this evening." I asked Mitchell for a driver's license and registration. All the necessary papers were in order. But when I looked over the documents, I smelled the odor of an alcoholic beverage on the defendant's breath. I asked if Mitchell had been drinking. The defendant confirmed consuming alcohol but claimed that had been several hours earlier. I had Mitchell get out of the car and remove the hat that Mitchell was wearing when I pulled the car over. I had the defendant perform the hand-eye coordination test, which requires a driver to touch his or her nose with the index finger. The defendant failed the hand-eye coordination test. Then I had the defendant walk an imaginary line ten steps forward, ten steps backwards. The defendant stepped off the line, but did not fall. I then asked the defendant to recite the alphabet. Although the defendant did pause several times, Mitchell finished reciting the alphabet. Since the defendant clearly failed two of the three tests, I arrested Cory Mitchell for driving under the

influence of alcohol. I read the defendant's Miranda rights and placed Cory Mitchell in the back seat of the police car while I called for a tow truck to take the defendant's car to the station.

Upon arriving at the station, I tested the defendant for intoxication with a breathalyzer machine. I performed two tests and the reading both times was .11. I then left Mitchell with another officer for booking. I returned to my vehicle to go back to the field. As I reached the driveway, dispatch came over the radio and announced that a hit-and-run had occurred on the 785 and that we should be on the lookout for a 1987 or 1988 red Mustang with the partial license, RED12. It occurred to me that the defendant's vehicle fit the description and I returned to the station. I walked over from the station to impound and examined the vehicle. Although I did not find anything on the back of the vehicle, I found a small piece of denim cloth and a large dent on the front right fender. I felt that the evidence I uncovered made the possibility that the defendant was involved in the hit-and-run more likely. I returned to my vehicle.

I called dispatch and was told that the victim was at Winchester University Hospital. Dispatch told me that the pedestrian who was hit was in very bad shape. I drove to the hospital. When I arrived, the nurse at the front desk directed me to the victim. Pat Wong was lying in the emergency room and was extremely pale. The nurse told me that there had been a head injury and there was a strong possibility that the victim could go into a coma. I was surprised to see how young the victim was. Before asking any questions I said, "Pat, can you hear me?" Pat nodded. I went on: "You have been hit by a car and have been gravely injured. I am going to ask you a few questions, okay?" Pat weakly said, "Okay, I feel better now; am I going to make it?" I asked, "Do you remember what the driver looked like?" Pat said something but I could not hear. I leaned close but could barely hear the words: "The kid...there was a hat." I asked Pat if there were any other details about the driver, height, hair color, or body type. But the victim did not answer and seemed rather dazed. I told Pat that we could talk at a later time. I returned to the station.

I took Cory out of the holding cell and repeated my earlier Miranda warning. Cory asked when it would be possible to go home. I replied that the car Cory was driving was implicated in a hit-and-run accident that had occurred earlier in the evening. Mitchell was visibly upset and nervously blurted out that Chris Hernandez had been driving the car. I advised the defendant of the new charge and administered the Miranda rights.

I then went to the house of Chris Hernandez to investigate what the defendant had told me. Hernandez claimed to have gone home on foot and that it must have been Mitchell driving. I inspected the clothing that Hernandez led me to, which was indeed damp. I had no further questions so I left and returned to the station.

As a qualified fingerprint expert, I dusted the steering wheel of Mitchell's car for fingerprints and lifted three sets. At the police lab, one set was identified as matching both hands of the defendant. One set could not be identified. The third set, which I lifted from the top of the steering wheel in parked position, matched the right hand of the fingerprint sample Chris Hernandez later provided to me.

**WITNESS STATEMENT**

Prosecution Witness: Riki Yazzie

My name is Riki Yazzie. I am 38 years old. I am a professor of Native American Studies at Winchester University. I live in the community of Oak Ridge, a small, isolated community on the 785 Highway, about 4 miles from the University. Oak Ridge is a housing community that the University built for the faculty about four years ago. Since the faculty housing is off the highway, it is very convenient to commute to the University. My house is along the first row of houses and my front door faces the highway.

I had been working late that Friday on an article for the Southwest Journal of Archeology. I ordered a pizza from Cicero's, which is in the University Village. It was 2:15 a.m. I remember looking at the clock when I ordered, because I was not sure that Cicero's would deliver that late. I was told that it would take over half an hour so I was surprised when I heard the delivery person's car door slam at 2:45. I went outside to meet the delivery person. I saw Pat walking up the highway from the car, which was parked a few houses down, approaching my house. I heard a loud engine, and saw a red Mustang speeding down the highway. I noticed that the driver was swerving between the dividing line and the shoulder of the highway. The car was going really fast. Pat turned around and looked at the car but then turned back to the order book--checking the address, I supposed. Pat saw me standing outside and put the order book away in a pocket. I noticed that the car was approaching at a very high speed. The car started to swerve towards Pat and I yelled, "Watch out!" But it was too late. Pat was struck by the right side of the car and landed on my lawn with a thump.

I ran out to Pat, felt for a pulse and I was relieved when I did find one. I looked toward the top of the hill and saw that the car had stopped. I thought that the driver might get out of the car to check on the condition of the victim. There was only one person in the car, and when the driver turned around to look at the victim, I could see the driver was wearing a white hat. After a few seconds, I realized that the driver was not going to get out and I looked quickly to the license plate. My vision is not very good without my glasses at that distance, so I only caught five of the six numbers before the driver sped off over the crest.

I called 911 and explained what had happened. I knew that it would take the ambulance a while to get to my house from the University hospital so I took a blanket outside and covered the victim. Pat was unconscious and there was blood coming from the side of Pat's head. I knew things were very bad. I waited with Pat until the ambulance and police finally came. I gave all the details to the police as Pat was put on a stretcher and placed in the ambulance.

**WITNESS STATEMENT**

Prosecution Witness: Terry Thompson

My name is Terry Thompson. I am 21 years old. I am a student at Winchester University. I live in the Timber Lake Estates with my parents who moved here about seven months ago when I began attending the University. I have worked at the Stop n' Run market for the last six months to help pay for my tuition. The market is located on the 785 Highway and is close to my house. I usually work the afternoons during the week and one late shift on the weekends. I was working at the store on Saturday, April 28.

Cory Mitchell came into the store about 2:20 a.m. I remember, because Cory ran into one of the store's displays and it made a loud noise. I remember thinking that this customer was either drunk or very clumsy. Then Cory went over to the coffee machine and poured a large cup of coffee and walked over to the counter. Cory set down the coffee, a white hat and the keys to a car. I smelled a strong odor of alcohol on Cory's breath. Cory said, "This java should help me make it home. I can do it all by myself. You know what I mean? If you have to drive, you have to." Then Cory asked me if there was any sugar. I pointed to where the sugar was located and Cory went to get it. I noticed that Cory had a Mustang key chain holder. I asked what kind of car was Cory driving and Cory told me that it was a red 1988 convertible Mustang. I asked Cory if it wasn't dangerous to drive such a fast car in the rain. Cory said that the car drove well under any type of condition. I said, "Even when you've had a little too much to drink?" Cory nervously laughed and said, "Yeah, it's no problem." I gave Cory change and then Cory left.

I did not think anymore about Cory or that night until I was contacted by Officer Sindell. The officer showed me a picture of Cory Mitchell and I told the officer that I had seen Cory in the store that night. I told the officer everything I could remember.

**WITNESS STATEMENT****Defense Witness: Cory Mitchell**

My name is Cory Mitchell. I am 18 years old. I am a senior at Rolling Oaks High School. I have lived in Winchester all my life. I am a student senator at Rolling Oaks.

Lee Hesler had a party that Friday. I am in two classes with Chris Hernandez and since we live very close to each other, we decided to drive together to Lee's house. At about 2:00 a.m., Chris came up to me, said that it was getting late and asked if I was ready to leave yet. I was nervous about driving because I was a little tipsy. I had had a few beers that night. I told Chris that I was a little drunk and that maybe we should wait a while longer. But Chris became really angry. I know that I was supposed to be the driver that night and that I should not have drunk anything. I felt bad that I let Chris down. I thought maybe I could drive home alright. But I also told Chris that if I had any problems driving I was going to pull over. Chris was still angry when we left.

It was about 2:05 when we got into my car. In fact, we were almost the last to leave. We drove down Winchester Canyon toward the 785 Highway. That road has a lot of curves and I was having difficulty driving. I just did not feel safe driving. I pulled over at the Stop n' Run market when I reached the bottom of the hill. I got out of the car and walked over to the passenger side. I motioned to Chris to roll down the window. Chris refused but after a short while Chris finally did roll the window down. Chris asked me what I was doing. I told Chris either we would have to stop or Chris would have to drive. Chris got angry again. I could not believe Chris' reaction. I thought maybe we needed to cool off for a while. I said to Chris: "I'm going to get you some coffee and then maybe you can drive. I'm just too tired." I had taken the keys from the ignition because I did not want Chris to take off without me. I also grabbed the hat Chris had been wearing all night and carried it into the store underneath my arm. I figured if I had the keys and the hat, Chris would not make it very far. When I came out of the store Chris was standing next to the car on the passenger side. I handed the coffee to Chris. I was really tired so I did not have any coffee. After a few minutes, it seemed that Chris had settled down a little bit and I suggested that we hang around for awhile until one of us had sobered up. I even suggested we play video games until we were ready to leave. But Chris wouldn't hear of it. Chris grabbed the keys and hat from my hand. Chris opened the passenger door and slid over to the driver's side. Chris said: "Get in, and close the door. It's cold outside." Chris pulled the car out on the highway.

When we pulled out on the highway again, I was really nervous. I watched Chris pretty closely but, after a while, I could not keep my eyes open any longer. I just slid down, curled up and lay across the seat. I fell asleep almost immediately.

It seemed like I was asleep for awhile when I heard a loud screech and then I felt a thump. The car slowed down and sat motionless for a minute. I was startled. I asked Chris what happened and Chris shouted, "Shut up!" I was really frightened. I began to sit up, but Chris punched the gas to the floorboard and I was thrown back down. I felt the car speed up over the crest of the hill. The car stopped abruptly. Chris scrambled to open the door and jumped out. I finally got my balance and sat up. I screamed at Chris to come back. I had no idea what had just happened. I sat there for a minute. Chris

never even looked back, but just kept running. I slid over in the driver's seat and closed the door. I wasn't sure what to do. I figured that since I had not drunk for a while I would probably be okay to drive. Besides, I had slept for a little bit and I thought that the alcohol had worn off. I thought that I would be okay to drive the rest of the way home; I just thought I would chance it.

As I began to drive I noticed that Chris' baseball cap had fallen on the floor. I grabbed Chris' hat and put it on. After the way Chris acted that night, I debated giving it back. I decided that night would be the last time we ever went out again. I drove down the 785 Highway and as I drove, I watched the speedometer to make sure that I was within the speed limit of 55. I was relieved to know I was not far from my neighborhood. Then I saw a police car behind me. I just could not believe the night I was having and I prayed that I would not be stopped. I immediately looked at my speedometer, and saw that I was going 50 miles per hour. Then the police car came alongside me and I looked straight ahead. The officer pulled behind me again and turned on the flashing lights. I pulled over, and the officer asked me for my registration and license. I knew the officer was sniffing my breath when I handed over my license and registration. Then the officer asked me if I had been drinking. I told the officer that I had had a drink but that had been a while earlier.

The officer told me to get out of the car and I was told that I would have to perform some tests for intoxication. I had to touch my finger to my nose, walk a straight line and recite the alphabet. Then before I knew it I was being read my rights and put in the back seat of the officer's car. I was told that I was being arrested for driving under the influence of alcohol. I was taken to the station where tests were conducted to determine my blood alcohol level. I was placed in a holding cell for a while, without even having a chance to call my parents. Then Officer Sindell returned and explained that I was also in trouble for a hit-and-run, which I knew nothing about. I told the officer that it had to have been Chris driving, but I did not have a chance to explain myself. The officer told me to wait until my attorney could be present. It really turned out to be more of a night than I expected.

**WITNESS STATEMENT**

Defense Witness: Kim Ho

My name is Kim Ho. I am 46 years old. I am the manager at the Rolling Oaks Dairy. I have known the Hernandez' and Chris for about a year. Chris' father works at the dairy and our families have gotten together on several occasions over the last year.

I was coming back from the dairy, which is along the 785 Highway. We had an emergency there earlier in the evening and it took until about 2:30 a.m. to resolve the problem. As I was driving home, I saw an ambulance and police car on the side of the road. I could not see what was going on, so I drove on.

I had just driven past the University, when I saw a kid jogging. I thought it was rather strange that someone would be out for a jog at that time of the night, especially in the rain. I looked over at the jogger and I was shocked to see who I thought was Chris Hernandez. I really wasn't sure so I slowed and looked over. Sure enough, it was Chris. I honked my horn and rolled down the window. I shouted out Chris' name and Chris looked over. I couldn't believe this kid. When Chris looked over at me, I thought for sure Chris recognized who I was. I honked again, but Chris ran faster. I had no idea what was going on with this kid. I thought that perhaps Chris did not recognize me. I considered pulling over and getting out of the car to show Chris who I was and to let Chris know that I was just offering a ride. Then it occurred to me that maybe Chris was afraid I would tell the Hernandez' about what Chris was doing. We weren't far from the neighborhood and I figured Chris would get home all right, so I decided to go ahead.

The next day, I saw a news broadcast about a hit-and-run and they gave a number for anyone with information. I thought about seeing Chris out on the highway and Chris' strange behavior. I knew from my acquaintance with the family that Chris has had some drinking episodes that have upset Chris' parents. Well, I did not want to call, but after debating for a while I thought I should. If Chris did not do anything, then no harm would come of it.

**WITNESS STATEMENT**

Defense Witness: Lee Hesler

My name is Lee Hesler. I am 18 years old. I am a senior at Rolling Oaks High School. I have lived in Winchester all my life. Cory and I have been friends since we were young kids. Our parents met the first day we were dropped off at Rolling Oak Elementary School and our families have been close ever since. Cory has always been a pretty good person.

The party was at my house. My parents were out of town and I decided to get a few people together. Although Cory may have had a drink or two, there is no way that Cory would have been so drunk to have hit a person on the road. Further, I can't believe that Cory would ever let a person lie on the road without helping or calling the police. Last year there was an alcohol-related accident on the 785 Highway in which four people died. Cory and I knew the driver from high school. Cory was very depressed for a few weeks after the accident. Cory just couldn't understand why anyone would drink and drive, especially since the roads in Winchester are so hilly and windy. Cory and I talked about starting a chapter of Students Against Drunk Driving on our campus. Since Cory and I are involved in student government, we thought about planning an assembly to talk about the alternatives to drinking and driving. During the whole time we've known each other, I have seen nothing but an altruistic and caring person who surely could not do what Cory is being charged with.

Once I heard about the charges being brought against Cory, I volunteered to help in any way that I could.

**WITNESS STATEMENT**

Defense Witness: Chau Nguyen

My name is Chau Nguyen. I am 17 years old. My family and I live on the University campus. My mother is a professor of English Literature. I am a junior at Rolling Oaks High School and am in the honors program with Chris Hernandez.

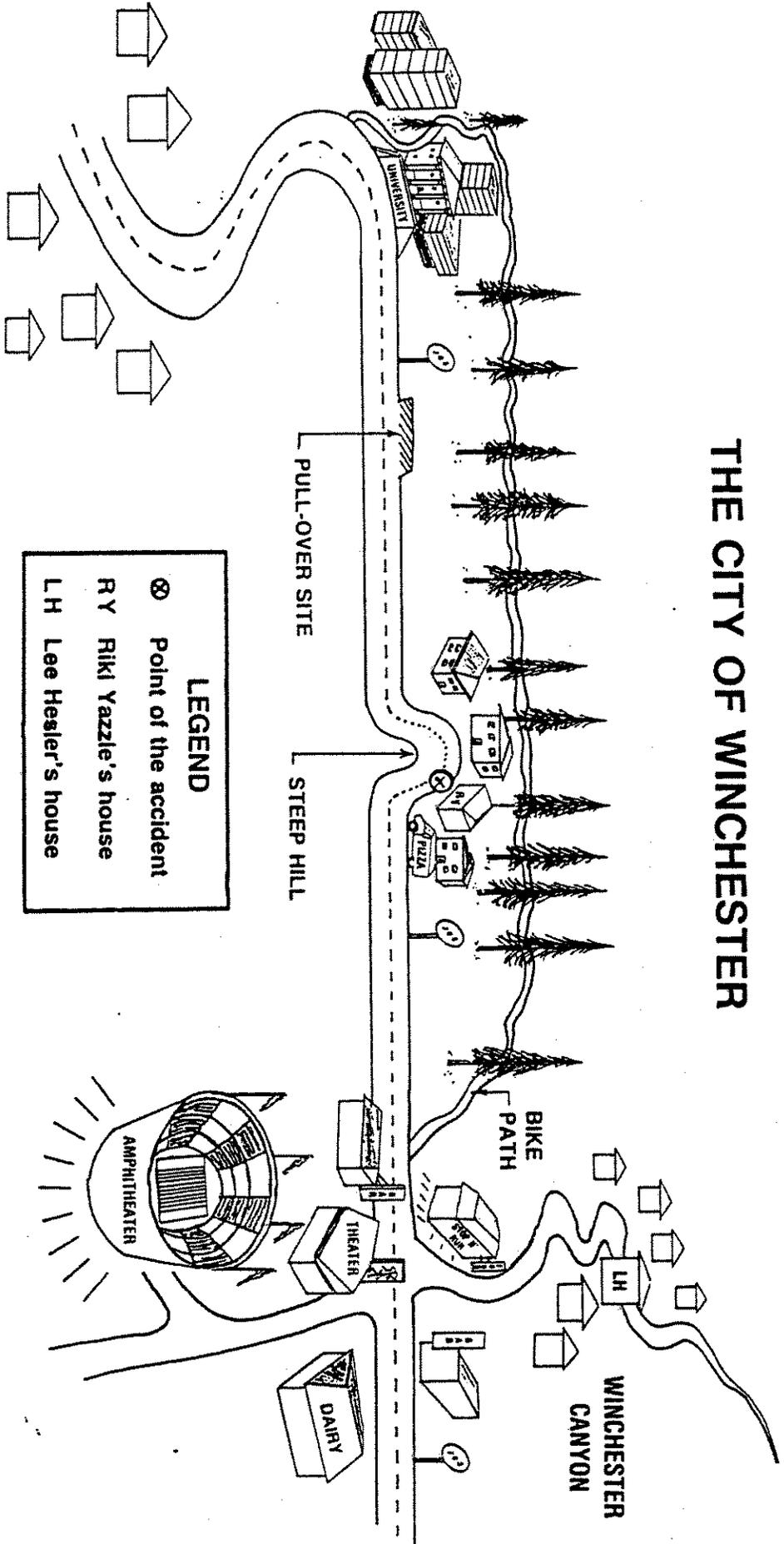
Chris, Cory and I were talking at school the day of the party. Cory and Chris had been invited to Lee's house for a party and they asked me if I wanted to go. I told Cory I wasn't sure because I had a lot of homework that weekend and I didn't want to drink or stay out late. Cory told me not to worry, that I didn't have to drink if I didn't want to. I told Cory that I wouldn't mind going for a little while and asked for directions to Lee's House. Chris then asked Cory which one of them should drive. But before Cory could answer, Chris said that Cory would have to drive since Chris' parents had taken away Chris' driving privileges. Chris also mentioned that if Cory was going to drive, that would mean that Cory couldn't drink. Chris said "Cory, you're going to be the designated driver for the evening. No drinking. Okay?" Cory said that it would be no problem, that Chris shouldn't worry. I was really impressed. Lots of people think it isn't a big deal to drink and drive. Since I live at the University, I saw the pain the people at the University felt last year when four of their students were killed driving drunk. One of those students was in my mother's class, so I remembered the incident very well. I guess I am more aware than other students.

I saw Chris and Cory at the party that night. I wanted to leave about 2:00 a.m. but the person I came with wanted to stay longer. I went up to Cory to see if I could get a ride. Cory and I were standing around and talking when Chris came up. Chris looked real funny because the baseball cap Chris had been wearing was on sideways. We all started laughing. Chris asked Cory if they could leave. Cory said "Sure, but could you drive because I'm a little tipsy." Chris got really upset and told Cory that there was no way Chris could drive since Chris was drunk also. Cory told Chris that they would have to hang out at Lee's house until one of them could drive. Cory suggested that they drink some coffee. Chris became really upset and told Cory that there was no way Chris was going to get home late and get in trouble. Chris told Cory that they had to leave then. Cory was reluctant but after seeing how upset Chris was, Cory agreed to drive. Before leaving Cory also said, "If I drive and see that I'm too drunk to drive, I'm pulling over." Chris told Cory to stop being a such a baby and, if absolutely necessary, Chris could "take over." Then they left.

I just can't believe that Cory hurt someone. When Cory's lawyer called me to ask if I had any information about that night, I told the attorney everything I could remember. But I can't believe Cory would do something like that.

OFFICIAL DIAGRAM

# THE CITY OF WINCHESTER



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

## THE FORM AND SUBSTANCE OF A TRIAL

### **The Elements of a Criminal Offense**

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

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

### **The Presumption of Innocence**

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

### **The Concept of Reasonable Doubt**

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. Reasonable doubt exists unless the trier of fact can say that he or she has an abiding conviction, to a moral certainty, of the truth of the charge.

A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime.

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

## ROLE DESCRIPTIONS

### **ATTORNEYS**

The Pretrial Motion Attorney (if your county coordinator has established this as part of the competition) presents the oral argument for (or against) the motion brought by the defense. You will present your position and answer questions by the judge as well as try to refute the opposing attorney's arguments in your rebuttal.

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

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

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

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note rule #13, appearing on page 61. "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Do the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

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

### **WITNESSES**

You will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from the Witness Statements or Fact Situation. Suppose that your Witness Sheet states that you left the Ajax Store and walked to your car. On cross examination, you are asked whether you left the store through the Washington or California Avenue exit. Without any additional facts upon which to base your answer, you could reasonably name either exit in your reply--probably the one closer to your car. Practicing your testimony with your team's attorney coach and your team attorneys will help you to fill in any gaps in the official materials. Imagine, on the other hand, that your Witness Sheet included the statement that someone fired a shot through your

closed curtains into your living room. If asked whether you saw who shot the gun, you would have to answer, "No." You could not reasonably claim to have a periscope on the roof or have glimpsed the person through a tear in the curtains. Neither fact could be found in or reasonably implied from the case materials.

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

Witnesses can be impeached if they contradict the material contained in their witness statements using the procedures as outlined on page 45.

#### **COURT CLERK, COURT BAILIFF**

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

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

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

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

## Duties of the Court Clerk and Bailiff

### Court Clerk

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

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

**AN EXPERIENCED TIMER (CLERK) IS CRITICAL TO SUCCESS OF A TRIAL AND POINTS WILL BE GIVEN ON HIS/HER PERFORMANCE.**

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

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

When a team has two minutes remaining in a category, call out "Two"; when one minute remains, call out "One," so that everyone can hear you. When time for a category has run out, announce "Time!" and insist the students stop. There is to be no allowance for overtime under any circumstance. This will be the procedure adhered to at the State Finals in Sacramento. After each witness has completed his/her testimony, mark down on the time sheet the time to the nearest one-half minute.

### Bailiff

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

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

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

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

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

"You do solemnly affirm that the testimony you may give in the cause now

pending before this court shall be the truth, the whole truth, and nothing but the truth."

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

## PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

### **Introduction of Physical Evidence**

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

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

### **Moving the Item Into Evidence**

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

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

### **The Opening Statement**

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

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

Begin your statement with a formal address to the judge:

"Your Honor, my name is \_\_\_\_\_ (full name), the prosecutor representing the People of the State of California in this action;" or

"Your Honor, my name is \_\_\_\_\_ (full name), counsel for \_\_\_\_\_ (defendant) in this action."

Proper phrasing includes:

"The evidence will indicate that ..."

"The facts will show ..."

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

"The defendant will testify that ..."

### Direct Examination

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

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination. See "Simplified Rules of Evidence" page 49.)
- 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' name.
- Length of residence or present employment, if this information helps to establish the witness' credibility.
- Further questions about professional qualifications are necessary if you wish to qualify the witness as an expert.

Examples of proper questions on direct examination:

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

"What happened after the defendant slapped you?"

"How long did you see . . . ?"

"Did anyone do anything while you waited?"

"How long did you remain in that spot?"

Conclude your direct examination with:

"Thank you, Mr./Ms. \_\_\_\_\_ (name of witness). That will be all, Your Honor." (The witness remains on the stand for cross-examination.)

### Cross-Examination

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

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

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

Examples of proper questions on cross-examinations:

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

Cross-examination should conclude with:

"Thank you, Mr./Ms. \_\_\_\_\_ (name of witness). That will be all, Your Honor."

### Impeachment During Cross-Examination

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

Impeachment may also be done by introducing the witness' statement, and asking the witness whether she or he has contradicted something which was articulated in the statement (i.e., identify the specific contradiction from the witness statement and oral testimony).

Example: (Prior conduct)

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

Example: (Past conviction)

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

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

Example: (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 it for a particular witness. The attorneys will have to pay close attention to what is said during the cross-examination of their witnesses, so that they may decide whether it is necessary to conduct re-direct examination.

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

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

#### Closing Arguments

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

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

- Attempt to reconcile inconsistencies that might hurt your side.
- Be well organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- The prosecution: should emphasize that the State has proven guilt beyond a reasonable doubt.
- The defense: should raise questions which suggest the continued existence of a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that . . . ."

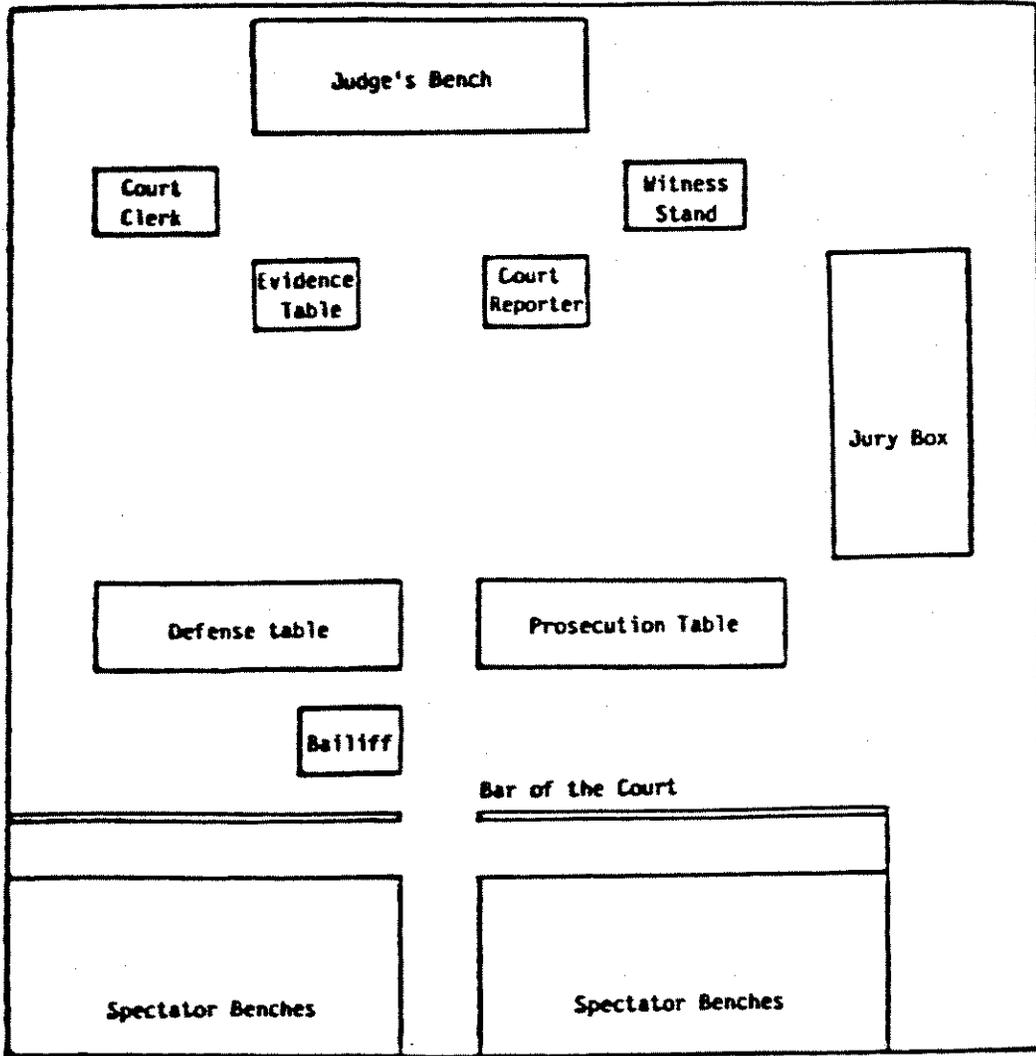
"Based on this testimony, there can be no doubt that . . . ."

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

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

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

### A TYPICAL COURTROOM



### MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you will need to know a little about the role that evidence plays in trial procedure.

Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble those of an actual trial.

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

**REASONABLE INFERENCE** - Due to the nature of the competition, testimony often comes into question as to whether it can be reasonably inferred given facts A, B, C, etc. Consider the following:

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

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

The above hypothetical is an example of an accurate use of reasonable inference. It is ultimately the responsibility of the trier of fact to decide what can be reasonably inferred. However, it is the students' responsibility to work as closely within the fact situation and witness statements as possible.

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

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 56. Other more complex rules may not be raised at trial. As with all objections, the trier of fact will decide whether to allow the testimony, strike it or simply note the objection for later consideration. Judges' rulings are final. You must continue the presentation even if you disagree.

A proper objection includes the following elements:

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

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

### Allowable Evidentiary Objections

#### 1. Facts in the Record

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

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

"Objection, Your Honor. The question seeks testimony which goes beyond the scope of the record."

#### 2. Relevance

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

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

- Examples:
1. A witness may say that she saw a man jump from a train. This is direct evidence that the man had been on the train. It is indirect evidence that the man had just held up the passengers.
  2. Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault, while testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun is circumstantial evidence of the defendant's assault.

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

"Objection, Your Honor. Counsel's question calls for irrelevant testimony."

### 3. Laying a Proper Foundation

To establish the relevance of circumstantial evidence, you may need to lay a foundation. Laying a proper foundation is showing that the evidence comes from a source which is legally competent to demonstrate necessary underlying facts. If the opposing attorney objects to your offer of proof on the ground of relevance, the judge may ask you to explain how the offered proof makes guilt more or less probable. Your reply would lay a foundation.

- Examples:
1. The defendant is charged with stealing a diamond ring. Evidence that the defendant owns a dog is probably not relevant, and if the prosecution objected to this evidence, it would not be admitted.
  2. In an assault and battery case, evidence that the victim had a limp is probably not relevant to the guilt of the defendant. Laying a foundation by suggesting that the victim fell rather than having been pushed might make the evidence admissible.

Form of Objection: "Objection, Your Honor. There is a lack of foundation."

### 4. Personal Knowledge

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it.

Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

- Examples:
1. The witness knew the victim and saw her on March 1st. The witness heard on the radio that the victim had been shot on the night of March 3, 1981. The witness lacks personal knowledge of the shooting and cannot testify about it.
  2. From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

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

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

revealed the lack of a basis for a previous statement.)

### 5. Character Evidence

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

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

Form of Objection: "Objection, Your Honor. Character is not an issue here,"  
or

"Objection, Your Honor. The question calls for inadmissible character evidence."

### 6. Opinion/Speculation

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

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

Form of Objection: "Objection, Your Honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."

### 7. Hearsay

If a witness offers an out-of-court statement to prove a matter asserted in that statement, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth of the witness'

testimony. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced. Work with your attorney coach on the exceptions which may arise in this case.

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

Form of Objection: "Objection, Your Honor. Counsel's question calls for hearsay." or

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

#### Allowable Objections for Inappropriately Phrased Questions

##### 8. Leading Questions

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

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

On the other hand, counsel could rephrase her/his question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

Form of Objection: "Objection, Your Honor. Counsel is leading the witness."

##### 9. Argumentative Questions

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

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

The cross-examiner may legitimately attempt to force the witness to concede

the historical fact of the prior inconsistent statement.

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

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

"Objection, Your Honor. Counsel is badgering the witness."

#### 10. Asked and Answered

Asked and answered is just as it states, that a question which had previously been asked and answered is asked again. This can seriously inhibit the effectiveness of a trial.

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

Counsel for X correctly objects and should be sustained.

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

Counsel A makes an asked and answered objection. The objection should be overruled. Why? It is sound policy to permit cross-examining attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.

Form of Objection: "Objection, Your Honor. This question has been asked and answered."

#### 11. Compound Question

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

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

2. (Using "And") "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Form of Objection: "Objection, Your Honor, on the ground that this is a compound question."

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

### **12. Narrative**

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

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

The question is objectionable and the objections should be sustained.

Form of Objection: "Objection, Your Honor. Counsel's question calls for a narrative."

### **13. Non-Responsive Witness**

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

Form of Objection: "Objection, Your Honor. The witness is being non-responsive."

### **14. Outside the Scope of Cross-Examination**

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

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

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS  
FOR THE 1990-91 MOCK TRIAL

1. "Objection, Your Honor. The answer is creating a material fact which is not in the record," or  
"Objection, Your Honor. The question seeks testimony which goes beyond the scope of the record."
2. "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. "Objection, Your Honor. There is a lack of foundation."
4. "Objection, Your Honor. The witness has no personal knowledge to answer that question," or  
"Your Honor, I move that the witness' testimony about \_\_\_\_\_ be stricken from the case because the witness has been shown not to have personal knowledge of the matter."
5. "Objection, Your Honor. Character is not an issue here," or  
"Objection, Your Honor. The question calls for inadmissible character evidence."
6. "Objection, Your Honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."
7. "Objection, Your Honor. Counsel's question calls for hearsay," or  
"Objection, Your Honor. This testimony is hearsay. I move that it be stricken from the record."
8. "Objection, Your Honor. Counsel is leading the witness."
9. "Objection, Your Honor. Counsel is being argumentative," or  
"Objection, Your Honor. Counsel is badgering the witness."
10. "Objection, Your Honor. This question has been asked and answered."
11. "Objection, Your Honor, on the ground that this is a compound question."
12. "Objection, Your Honor. Counsel's question calls for a narrative."
13. "Objection, Your Honor. The witness is being non-responsive."
14. "Objection, Your Honor. Counsel is asking the witness about \_\_\_\_\_ that did not come up in cross examination."

OFFICIAL JUDGE AND SCORER INFORMATION PACKET

PEOPLE  
V.  
MITCHELL

Issues of alcohol, responsible driving and the exclusionary rule

Featuring a pretrial constitutional argument about the 4th and 14th Amendments



Constitutional Rights  
Foundation

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DEAR VALUED PARTICIPANTS:

The Constitutional Rights Foundation, your county's coordinators, teachers and Mock Trial students appreciate the contribution of your time and expertise to these trials. We are always aware that without your unique assistance, we would have no program.

In the interest of clarity, this year we have appended your specialized information packet with our case materials. While we encourage your reading of the COMPLETE case packet, we ask you specifically to prepare for your trials by reading:

THE 1990-91 FACT SITUATION	<u>8</u> to <u>12</u>
PRETRIAL MOTION AND CONSTITUTIONAL ISSUE	<u>13</u> to <u>23</u>
WITNESS STATEMENTS AND OFFICIAL DIAGRAM	<u>26</u> to <u>37</u>

THE RULES OF THE COMPETITION (pps. 59 to 62) are also very important, because we have had to adjust the typical courtroom proceedings slightly in order to make this a competition. Remember that the students prepare their cases according to these special rules, and our rules are NOT necessarily identical to those of the legal system with which you are most familiar. Your knowledge of the Mock Trial rules and the material listed above will make everyone's experience in your courtroom more valuable.

Of further assistance to you, your county coordinator should have available a cassette tape to supplement and overview this case information.

Once again, thank you for your valuable time and contribution towards the legal education of California's youth.

Sincerely,

Harry L. Usher  
President  
Constitutional Rights Foundation

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RULES OF COMPETITION

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

**I. ELIGIBILITY**

In order to participate in the State Finals in Sacramento (April 2-5, 1991), each county must implement the following procedures:

1. A county Mock Trial Coordinator must be identified (usually through the County Office of Education).
2. Working in conjunction with CRF, the coordinator must plan and carry out a formal competition which must involve teams from at least two separate senior high schools in the county. These schools must be identified to CRF no later than Friday, December 7, 1990.
3. All local county competitions must be completed by March 13, 1991.
4. A teacher/sponsor and attorney coach volunteer must be identified for each team by the coordinator.
5. All team members must be eligible under school district and any state rules applicable to involvement in extracurricular activities. All team members must be registered in the school on whose team they are competing, at the time of their county and the state competition.

**The Mock Trial Team**

6. A Mock Trial team must consist of a minimum of 9 students and may include up to a maximum of 18 students. At the local level, more students may be involved as jurors, but juries will not be used at the State Finals.
7. Team Structure - We encourage you to use the maximum number of students allowable, and remind you that the involvement of all team members in the presentation of the case is reflected in the Team Performance/Participation score.

2 Pretrial Motion Attorneys - one for the motion, and one against the motion. You are required to use students that are different from those serving as trial attorneys.

3 Trial Attorneys for Prosecution (maximum)

3 Trial Attorneys for Defense (maximum)

4 Witnesses for Prosecution

4 Witnesses for Defense

1 Clerk

1 Bailiff

We encourage you to involve as many students as possible in other support roles such as researchers, understudies and photographers.

## II. CONDUCT OF THE PRETRIAL MOTION

**NOTE:** The pretrial motion (oral arguments only) is a mandatory part of the Mock Trial Competition at the state level and is strongly recommended as part of local competitions as well.

1. Only the fact situation (pages 8 - 12) and the materials on pages 13 - 23 can be used for the purposes of the pretrial motion.
2. Each student arguing a pretrial motion has four minutes to present his/her statement and two minutes for rebuttal. During these proceedings, students must be prepared to answer questions from the judge clarifying their position.
3. Each attorney is expected to display proper courtroom decorum and courtesy.
4. In order to present a side/position in the most persuasive manner, students should carefully review and become familiar with materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.
5. No written pretrial motion memoranda will be allowed at local or state level.

## III. CONDUCT OF THE TRIAL

1. All participants are expected to display proper courtroom decorum and courtesy.
2. Teachers and attorney coaches must identify themselves to the judge prior to the trial presentation. Teachers are required to submit team rosters, (page 76) to presiding judges and scoring attorneys at all rounds of the state finals in Sacramento.
3. The gender neutral names allow students of either gender to play the role of any witness.
4. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams will have to begin without their other members or with alternates.
5. After the judge has delivered his or her introductory remarks, witnesses participating in the trial (other than the defendant) are to leave the courtroom until called to testify. After testifying, witnesses must

remain in the courtroom for the remainder of the proceedings.

6. Teacher sponsors and attorney coaches are to remain in the seating area throughout the trial. There must be no spectator contact with student team members once the trial has begun. The sponsors and coaches, other team members and spectators may not talk to, signal, and/or otherwise communicate with or coach the students. There will be an automatic deduction of five points from a team's total score if the teacher or attorney coach, other team members or spectators are found in violation of this rule either by the judge or by the Mock Trial staff.
7. Recesses will not be allowed in local or state competitions for any reason.
8. The fact situation starting on page 8 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Witnesses may testify to any matter directly stated or reasonably implied in the official case materials.
9. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified. Witnesses can be impeached if they contradict the material contained in their witness statements using the procedures as outlined on page 45.
10. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called. No other witnesses may be called.
11. Prosecuting attorneys must provide the physical evidence as described in the case materials. No other physical evidence, if any, will be allowed. Whether a team introduces, uses and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 11.)
12. Attorneys may conduct re-direct examination when appropriate. (See "Procedures," pages 43 - 47.) Total time for direct/re-direct is 14 minutes.
13. Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.
14. Attorneys may use notes while presenting their cases. Witnesses are not allowed to use notes when testifying.
15. The Mock Trial Competition proceedings are governed by the "Mock Trial Simplified Rules of Evidence" on pages 49 - 55. Only specified types of objections will be recognized in the competition (see page 56). Other

more complex rules may not be used at the trial.

16. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any "legally inappropriate" statements made in the closing, while scorers will also keep in mind the closing argument criteria.)
17. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention, vocally in front of all present. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated and her/his word is final. (The bailiff will be provided with a copy of the rules of competition for easy reference.)
18. No video/audiotaping of a trial competition outside of your own county is permitted. Please check with your local Mock Trial Coordinator regarding guidelines for video/audiotaping your competition.
19. The Official Diagram establishes only relative positions. Because the scale is approximate, the diagram cannot be used to definitively establish distances. The issue of distances should be based on the witnesses' testimony and is a matter of fact for the triers of fact.

#### IV. TIMING

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

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

The clock will be stopped for witnesses coming into the courtroom, attorneys making objections, and when judges are questioning attorneys and witnesses or offering their observations.

Teams may divide the 10 minutes for opening statement and closing arguments, the 14 minutes for direct and re-direct examination, and the 10 minutes for cross-examination as desired (e.g. 3 minutes opening, 7 minutes closing). The time may be utilized however they choose, but the maximum allowable totals for each category must be observed.

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

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

1. Court is called to order.
2. Defense (moving party) presents Pretrial Motion arguments.
3. Prosecution (opposing party) presents Pretrial Motion arguments.
4. Rebuttal arguments (both).
5. Judge rules on motion and thus determines which charges will be in contention during the trial.
6. Attorneys present physical evidence for inspection.
7. Judge states charges against Defendant.
8. Prosecution delivers its opening statement.
9. Defense may choose to deliver its opening statement at this point or may wait to open after the Prosecution has delivered its case.
10. Prosecution calls its witnesses and conducts direct examination.
11. After each Prosecution witness is called to the stand and has been examined by the Prosecution, the Defense may cross-examine the witness.
12. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.
13. Defense may deliver its opening statement (if it did not do so earlier).
14. Defense calls its witnesses and conducts direct examination.
15. After each Defense witness is called to the stand and has been examined by the Defense, the Prosecution may cross-examine the witness.
16. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.
17. Prosecution gives its closing statement.
18. Defense gives its closing statement.
19. Judge deliberates and reaches verdict.
20. Verdict is announced in court. (No scores/winners are announced at this time.)

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

1. A student from each school will present a team roster before the trial to the judge and scoring attorney(s). This form will have names and designated trial assignments (attorneys and witnesses). Please keep in mind rule 13:  
  
Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.
2. Please score every box.
3. No fractions are allowed.
4. When filling out score sheets, please make your decisions independently. There should be no need for conferring.
5. The presiding judge is to fill out the bottom portion of the score sheet, indicating which team he/she feels should be the overall winner in the event of a tie.
6. It is very important to read the fact situation and witness statements carefully. Because this a mock trial, students will refer to specific points/facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.
7. The fact situation starting on page 8 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Witnesses may testify to any matter directly stated or reasonably implied in the official case materials.
8. **VERY IMPORTANT!** The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified. Witnesses can be impeached if they contradict the material contained in their witness statements. This rule is designed to limit, not eliminate, the need for reasonable inference by providing a familiar courtroom procedure.
9. Costuming is not a factor in the Mock Trial competition. Therefore, costuming is not to be taken into account when scoring presentations.

### Order of Pretrial Motion Events

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

### PRETRIAL MOTION INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS

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

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

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

"At the end of your presentations, I will rule on the motion and announce the charges to be brought into contention in the Mock Trial immediately following.

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

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

"Is counsel for the defense ready to begin?"

## JUDGE'S ROLE

### Pretrial Motion and Constitutional Issue

The pretrial motion section of this packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies and distinguish a variety of fact situations, debate constitutional issues and develop analytical skills. Although mandatory in the State Finals, the pretrial motion is optional on the local level. The county coordinator will inform you whether this will be part of the competition in which you are participating. If it is, then the judge will read the "Pretrial Motion Instructions" on page 65 to the participants and the pretrial motion will be presented prior to the Mock Trial.

The Judge's ruling on the pretrial motion will have a direct bearing on the charges and possible outcome of the trial. Also note that when the pretrial motion is included, the score is added to the Mock Trial score when determining the winner.

### Trial Proceedings: People v. Mitchell

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

Please read the "Trial Instructions For Mock Trial Participants" on page 67 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help to put the students at ease, and by emphasizing the educational, rather than the competitive aspects of the Mock Trial, you will help to bring the experience into proper perspective.

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

"To help the attorneys and me check the team rosters, would each of you please state your name and what role you are taking?"

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

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

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

"Attorneys must call each of their four witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the 1990-91 Mock Trial.'"

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

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

A map of the city of Winchester [only a faithful reproduction, no larger than 22x28 inches].

Stipulations: Both sides stipulate to the following facts:

- (1) The breathalyzer machines were recently calibrated and the readings are accurate;
- (2) At the time of trial, according to expert medical testimony, the victim has suffered a massive head injury and it is unclear how long the victim will be in a coma.
- (3) Officer Sindell is qualified to render an opinion regarding the identification of fingerprints. Of the three sets of fingerprints lifted from the Mustang steering wheel and matched by the police lab: one set matched the left and right hands of the defendant; one set could not be identified; and another set, on the top of the steering wheel in parked position, matched the right hand of Chris Hernandez.

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

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

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

**SCORING MATERIALS FOR JUDGES AND ATTORNEYS****GUIDELINES FOR 1-5 SCORING METHOD**

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

- |                                |   |
|--------------------------------|---|
| <b>1 FAR BELOW<br/>AVERAGE</b> | Unacceptable performance<br>Disorganized<br>Shows lack of preparation and poor understanding of task and rationale behind legal procedure.  |
| <b>2 BELOW<br/>AVERAGE</b>     | Fair, weak performance<br>Inadequate preparation and understanding of task<br>Stilted presentation  |
| <b>3 AVERAGE</b>               | Meets required standards<br>Fundamental understanding of task and adequate preparation<br>Acceptable but uninspired performance   |
| <b>4 ABOVE<br/>AVERAGE</b>     | Good, solid performance<br>Demonstrated a more fully developed understanding of task and rationale behind legal procedure.  |
| <b>5 EXCELLENT</b>             | Exceptional performance<br>Demonstrated superior ability to think on her/his feet<br>Resourceful, original & innovative approaches<br>Portrayal was both extraordinary and unique |

### EVALUATION CRITERIA

Students are to be rated on the five point scale for each category according to the following criteria appropriate to each presentation. Points should be deducted if criteria are not met or are violated. Each team may be awarded a maximum of 115 points by each scorer and/or judge if the pretrial motion is presented, and 95 points if it is not.

**1. Pretrial Motion**

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

**2. Opening Statement**

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

**3. Direct/Re-Direct Examination**

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

**4. Cross-Examination**

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

**5. Witnesses**

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

**6. Closing Argument**

- Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.

- Attorney incorporated examples from the actual trial, while also being careful not to introduce statements and evidence that were not brought out in her/his particular trial.
- Attorney made an organized and well-reasoned presentation summarizing the most important points for his/her team's side of the case.
- If and when questioned by the judge, attorney gave well-reasoned, coherent answers.

#### 7. Team

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- All team members were involved in the presentation of the case and actively participated in fulfilling their respective roles, including the clerk and bailiff.
- The clerk and bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial.
- Team members demonstrated cooperation and teamwork.

The behavior of teachers and attorney coaches may also impact Team Performance score.

MOCK TRIAL SCORING CALCULATIONS

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

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

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

Trial 1

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

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

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

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

NOTE: The percentage Team scores for A & B and for C & D are within one percent, which reflects the relative closeness of the judging. Team B, having won, will not be penalized unreasonably for having a much lower score than

**Team D.** Teams B & D will then be ranked by their percentage scores in the 1-0 bracket. This additional step de-emphasizes disproportionately high or low scores without disrupting the scoring relationship between any two schools in a single round. (In other words, who won or lost.)

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

Team A	.4939	(Round 1)(lost)	2-0	1-1	0-2
	.5143	(Round 2)(won)			
	<u>1.0082</u>				

Team A would be ranked somewhere in the (1-1) bracket.

If this method is used after each round, the additional calculation does not have to be a part of cumulative point totals given out to teams.

JUDGE/ATTORNEY SCORE SHEET

Scorer: \_\_\_\_\_ MOTION: Granted/Denied

**VERDICT** (circle)

Count 1: Guilty/NG #2: Guilty/NG #3: Guilty/NG #4: Guilty/NG #5: Guilty/NG

Please refer to the "Guidelines" and the "Evaluation Criteria" attached to assist you in evaluating the performances. Scoring of the presentations should be independent of the legal decision of the case. Do not announce any winners or scores at the end of the trial. **DO NOT USE FRACTIONS WHEN SCORING AND FILL IN ALL BOXES!** Please indicate the verdicts above.

Scoring should be independent, and we ask that there is no conferring which directly impacts the individual scores. It is strongly recommended that scorers use "3" as an indication of an average performance, and adjust higher or lower for stronger or weaker performances.

1 Far Below    2 Below Average    3 Average    4 Above Average    5 Excellent  
Average

PROSECUTION \_\_\_\_\_ DEFENSE \_\_\_\_\_

		PROSECUTION	DEFENSE
PRETRIAL MOTION	In scoring the pretrial motion, please note placement of box for DEFENSE, who presents arguments first.	<input type="checkbox"/> x 3=	<input type="checkbox"/> x 3=
OPENING STATEMENTS		<input type="checkbox"/> x 2=	<input type="checkbox"/> x 2=
PROSECUTION'S FIRST WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
PROSECUTION'S SECOND WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
PROSECUTION'S THIRD WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
PROSECUTION'S FOURTH WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
DEFENSE'S FIRST WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
DEFENSE'S SECOND WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
DEFENSE'S THIRD WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
DEFENSE'S FOURTH WITNESS	Direct/Re examination by attorney Cross-examination by attorney Witness' performance (Name)	<input type="checkbox"/>	<input type="checkbox"/>
CLOSING ARGUMENTS		<input type="checkbox"/> x 3=	<input type="checkbox"/> x 3=
TEAM PERFORMANCE/PARTICIPATION		<input type="checkbox"/> x 3=	<input type="checkbox"/> x 3=
TOTAL		_____	_____

If the event of a tie, which team would you pick as the winner? (Circle One) PROS / DEF

AWARD NOMINATION SHEET

PROSECUTION NAME

DEFENSE NAME

\_\_\_\_\_

\_\_\_\_\_

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

Best Defense Pretrial Motion Attorney \_\_\_\_\_

Comments \_\_\_\_\_

Best Prosecution Pretrial Motion Attorney \_\_\_\_\_

Comments \_\_\_\_\_

Best Prosecution Attorney \_\_\_\_\_

Comments \_\_\_\_\_

Best Prosecution Witness \_\_\_\_\_

Comments \_\_\_\_\_

Best Defense Attorney \_\_\_\_\_

Comments \_\_\_\_\_

Best Defense Witness \_\_\_\_\_

Comments \_\_\_\_\_

Scoring should be independent.

Workspace:

TEAM ROSTER SHEET

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

Prosecution

Pretrial Motion Atty:

---

Case Attorneys:

---

---

Witness #1

Role:

Name of Student:

---

Witness #2

Role:

Name of Student:

---

Witness #3

Role:

Name of Student:

---

Witness #4

Role:

Name of Student:

---

Clerk

---

Defense

Pretrial Motion Atty:

---

Case Attorneys:

---

---

Witness #1

Role:

Name of Student:

---

Witness #2

Role:

Name of Student:

---

Witness #3

Role:

Name of Student:

---

Witness #4

Role:

Name of Student:

---

Bailiff

---

PRETRIAL MOTION TIME SHEET

\_\_\_\_\_  
Defense - School

v.

\_\_\_\_\_  
Prosecution - School

Clerk \_\_\_\_\_

School \_\_\_\_\_

DEFENSE:

PROSECUTION:

Statement \_\_\_\_\_

(four minutes, excluding  
time judge asks questions  
and attorney answers them.)

Statement \_\_\_\_\_

(four minutes, excluding  
time judge asks questions  
and attorney answers  
them.)

Rebuttal \_\_\_\_\_

(two minutes, excluding  
time judge asks questions  
and attorney answers them.)

Rebuttal \_\_\_\_\_

(two minutes, excluding  
time judge asks questions  
and attorney answers  
them.)

TOTAL TIME \_\_\_\_\_

TOTAL TIME \_\_\_\_\_

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

Round off times to the nearest one-half minute.

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

MOCK TRIAL TIME SHEET

Clerk \_\_\_\_\_ Judge \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Prosecution - School

V.

\_\_\_\_\_  
Defense - School**INSTRUCTIONS:**

Mark down on the time sheet the time to the nearest one-half minute. For direct, cross and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Stop clock (do not time) when:

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

**PROSECUTION:**

Opening Statement \_\_\_\_\_

Direct/Re-Direct Exam (14 min.)

Chris Hernandez \_\_\_/\_\_\_

Tony Sindell \_\_\_/\_\_\_

Riki Yazzie \_\_\_/\_\_\_

Terry Thompson \_\_\_/\_\_\_

TOTAL TIME \_\_\_\_\_

Cross-Exam (10 min.)

Cory Mitchell \_\_\_\_\_

Kim Ho \_\_\_\_\_

Lee Hesler \_\_\_\_\_

Chau Nguyen \_\_\_\_\_

TOTAL TIME \_\_\_\_\_

Statements (10 min. total)

Opening  
(from above) \_\_\_\_\_

Closing \_\_\_\_\_

TOTAL TIME \_\_\_\_\_

**DEFENSE:**

Opening Statement \_\_\_\_\_

Cross-Exam (10 min.)

Chris Hernandez \_\_\_\_\_

Tony Sindell \_\_\_\_\_

Riki Yazzie \_\_\_\_\_

Terry Thompson \_\_\_\_\_

TOTAL TIME \_\_\_\_\_

Direct/Re-Direct Exam (14 min.)

Cory Mitchell \_\_\_/\_\_\_

Kim Ho \_\_\_/\_\_\_

Lee Hesler \_\_\_/\_\_\_

Chau Nguyen \_\_\_/\_\_\_

TOTAL TIME \_\_\_\_\_

Statements (10 min. total)

Opening  
(from above) \_\_\_\_\_

Closing \_\_\_\_\_

TOTAL TIME \_\_\_\_\_



**CONSTITUTIONAL RIGHTS FOUNDATION**

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[www.crf-usa.org](http://www.crf-usa.org)

*Constitutional Rights  
Foundation*

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