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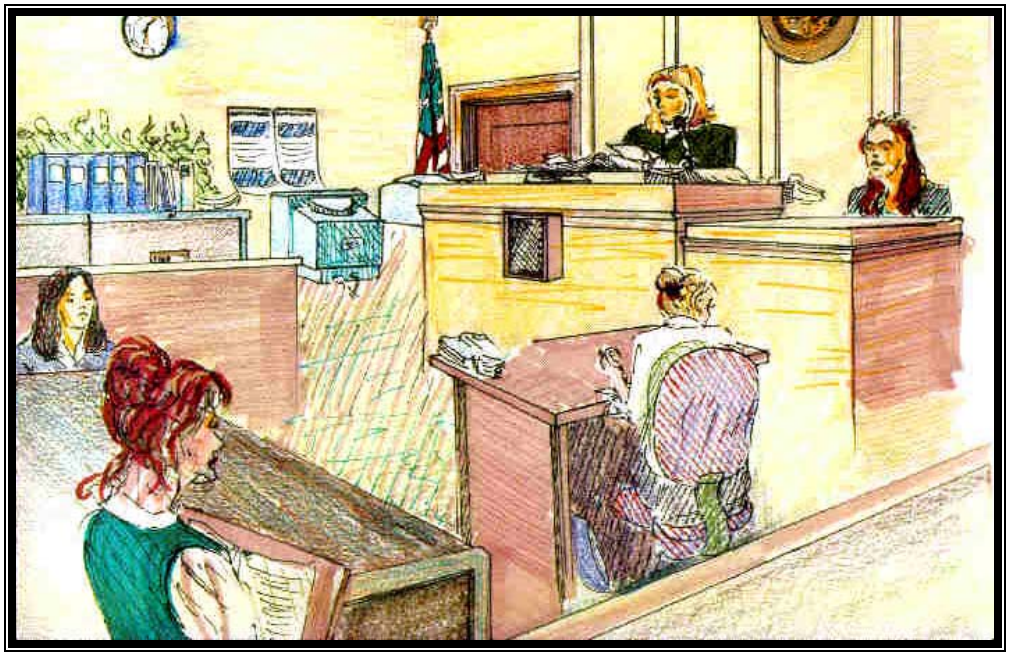
CONSTITUTIONAL RIGHTS FOUNDATION

PEOPLE
v.
Stover

ISSUES OF USE OF FORCE, FREE EXPRESSION AND HATE CRIMES

Featuring a pretrial constitutional argument about the First and Fourteenth Amendments of the U.S. Constitution



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OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM

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PROGRAM OBJECTIVES

For the students, the Mock Trial Competition will:

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.

2. Develop understanding of the link between our Constitution, our courts, and our legal system throughout history.

3. Provide the opportunity for interaction with positive adult role models in the legal community.

For the school, the competition will:

1. Provide an opportunity for students to study key concepts of the Constitution (the First and Fourteenth Amendments) and the issues of use of force, free expression and hate crimes.

2. Promote cooperation and healthy academic competition among students of various abilities and interests.

3. Demonstrate the achievements of high school students to the community.

4. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.

5. Provide a challenging and rewarding experience for participating teachers.

CODE OF ETHICS

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

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

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

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

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

– NOTES –

CLASSROOM DISCUSSION MATERIALS

The mock trial People v. Stover examines the First Amendment in a modern context and addresses some problems of today. It is not a history lesson, but an exercise in our present. Issues of freedom of speech are as controversial and important today as they ever have been.

The First Amendment of the U.S. Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." If you are somewhat confused after reading this, do not be alarmed. Law students after weeks of study often do not fully understand the complex concepts underlying the First Amendment. A general interpretation of the First Amendment's clause guaranteeing freedom of speech is this:

The First Amendment prohibits governmental bodies from passing laws denying free speech. Freedom of speech allows differing ideas to compete so individuals can judge them. Certain places like parks and college campuses have traditionally been open forums for free speech. In such open forums, governmental restrictions are typically unjustifiable. But freedom of speech is not absolute. The U.S. Supreme Court has allowed the government to limit speech to protect important public interests. Thus, for example, the court has upheld laws against slander (telling malicious lies about another person), against false advertising, and against copyright violations.

In recent years, many colleges and universities have witnessed a dramatic rise in anti-Semitic, racist, and other bias-motivated incidents. Paradoxically, these incidents are occurring as universities are achieving unprecedented racial diversity. Observers note that most students today are not old enough to remember the struggle and accomplishments of the civil-rights movement. Here are some reported incidents:

1. Rutgers University — Walls were defaced with swastikas and slogans saying "Die Jew."

2. Penn State — Committee for an AIDS-free America posted signs with skull and crossbones stating "Homo-cide has a definite place at Penn State."

3. University of Mississippi — First black fraternity house on campus was burned down before members moved in.

4. Northern Illinois — A black student walking home from a bar was jeered by students yelling racial epithets.

5. Many college campuses have offered platforms for racist speakers which are sometimes sponsored by student groups and paid for with student fees.

The dynamic of a campus environment is an important one. What happens on campus can either lead to a positive multi-cultural learning experience or can produce tension and polarization. Advocates of free speech argue that extremist speakers and racist speech cannot be legally suppressed on campus. They say suppressing speech does not eliminate racism: Open discussions must confront the problem. Others believe that a university environment should highlight the best the world has to offer, not the worst. University discussions should be a peaceful exchange of ideas.

Should the campus environment be a platform for any message whatsoever? Or should colleges and universities be the place to set the example for tolerance and diversity?

SMALL GROUP ACTIVITY

1. Divide the class into groups of four or five students each.

2. Students in each group will take on the role of a committee appointed by the university president to study and make recommendations on a proposed new rule of student conduct. The rule states:

   "No student shall engage in racist or discriminatory comments, epithets, or other expressive behavior directed at an individual that

   (1) intentionally demean that individual's gender, race, religion, sexual orientation, origin, ancestry, or age and

   (2) create an intimidating, hostile, or demeaning environment for education."

3. Each group should examine the proposed rule and report back to the university president the following:
   (1) What is the purpose of the rule?
   (2) Will the rule work?
   (3) Is the rule constitutional under the First Amendment?
   (4) Are there better ways to achieve the purpose of the rule? Why or why not? If there are better ways, be sure to list them.
4. The class should reassemble and each group should report and justify its findings.

Debriefing Questions

1. What is the purpose of the free speech clause of the First Amendment?

2. Do you think people should have the right to make racist remarks? Why or why not?

Other Classroom Materials Relevant to Issues Raised in People v. Stover:

The Constitutional Rights Foundation's **Police Patrol**—simulation for classroom use. Working with police officers in a classroom setting, students learn about police procedure, the constitutional dimensions of police work, and how it feels to handle realistic situations facing police officers every day. Through positive interaction, students and police develop a better understanding of one another. The simulation comes complete with classroom procedures, police calls, role cards, and classroom visuals. Revised 1991. For grades 7 – 12.

CALIFORNIA MOCK TRIAL FACT SITUATION

Known for its scientific and research communities, Lakerville is a mid-size city in California. A large percentage of Lakerville's population is employed by the laboratories and research firms headquartered there. Because of the sensitive and controversial nature of some of the research, many laboratories in the city have hired private security firms to protect their interests. These security firms supply a personal level of protection that local police cannot provide. The largest private security company in Lakerville is Kingtech Security. Each Kingtech guard wears a brown uniform of striped trousers, long-sleeve shirt with a Kingtech logo on the left arm, guard's cap, and an optional leather jacket with the Kingtech logo stitched on the left breast. They each carry a service revolver and a baton.

Rover Laboratories is a small, private research laboratory owned and operated by Dr. Ree Phelps. Phelps is a specialist in medical and space research. In the past two years, Rover Labs has received two large government grants. One grant funds cancer research, and the second funds the exploration of human adaptability to deep space. Both projects require extensive animal research, which includes experiments on rats, cats, dogs, rabbits, and monkeys. Because of the recent storm of controversy over animal rights, Dr. Phelps hired Kingtech Security to guard Rover Labs.

BORN FREE is a radical animal-rights group known for breaking into laboratories, liberating animals, and destroying research projects. The group either stages large "media event" rallies to protest the use of animals in scientific research or has small demonstrations outside laboratories that often lead to lab break-ins. On August 11, 1990, an angry group of BORN FREE activists converged on the front of Rover Labs.

A Kingtech security guard named Jan Stover was on patrol in the area. Stover is a member of a white-supremacist group known as the Aryan Union. This racist group holds rallies and distributes literature asserting the inferiority of anyone who is not white and Protestant. Individual members of the Aryan Union have been convicted of burning crosses on the lawns of members of racial and religious minority groups.

At 7:20 p.m., Kingtech Security received a silent alarm from Rover Labs. Kingtech dispatch relayed the call to Stover. Stover acknowledged the call and proceeded to the scene. At the front of the building, Stover sighted the demonstrators picketing and shouting. Stover drove around the building and down the alley to the rear exit and loading dock. As Stover pulled into the area behind Rover Labs, the back door of the facility flew open and an African American named Dale Colbert rushed out. Colbert, wearing a tool belt, carried in one arm a lunch pail in hand and a stack of papers tucked underarm. Colbert's other arm was free. Colbert started toward the far end of the loading dock. Stover jumped out of the patrol vehicle wearing the Kingtech uniform and leather jacket. Stitched onto the chest of the jacket, opposite the Kingtech logo, was a large black and red swastika patch. This was not part of the Kingtech uniform. Approaching Colbert, Stover yelled out. Colbert stopped running, whirled around, yelled back and dropped the papers and the lunch pail. A struggle ensued. More words were exchanged

and the struggle continued. One minute later Colbert was on the ground and Stover was standing upright with the baton in hand.

Just then, Lakerville police arrived at the scene. Officer Val Johansen yelled out "Stop, police!" But the struggle continued. Officer Johansen intervened by tackling Stover, then arrested and handcuffed both Stover and Colbert. Johansen arrested Stover for assault with a deadly weapon and Colbert was arrested on burglary charges but was later released for insufficient evidence. The papers Colbert was carrying had not been illegally obtained.

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

A map of the area around Rover Laboratories [only a faithful reproduction, no larger than 22x28 inches].

Stipulation: A swastika patch three inches in diameter was sewn to the upper left chest area of Jan Stover's leather jacket worn on the night of August 11.

Charges:

The prosecution is charging Stover with two counts:

COUNT ONE: Disorderly conduct, Lakerville has an ordinance stating that: "Any public or private police officer who displays upon his or her person any symbol, object, characterization, or graffiti, including swastikas or other objects, which one knows or has reasonable grounds to know arouses anger, fear, alarm, or resentment in others based on race, color, creed, religion, gender, or sexual orientation commits disorderly conduct and is guilty of a misdemeanor."

COUNT TWO: Assault with deadly weapon or by force likely to produce great bodily injury, Cal. Pen. Code Sec. 245.(a)(1) — Every person who commits an assault on the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

Elements for assault with a deadly weapon, citizen's arrest, and defenses:

1. Intent: Assault with a deadly weapon does not require a specific intent to commit a crime. It is a general intent crime. The act must be committed willfully, but knowledge that it is unlawful or a belief that it is wrong need not be proven.

2. Deadly Weapon: A "deadly weapon or instrument" within the meaning of Cal. Pen. Code Sec. 245 is one which is "likely to produce death or great bodily injury." Some instruments, e.g. firearms, are "inherently" deadly weapons. But the question is often one of fact, determined by the manner in which the instrument was used, e.g. a copper pipe is not by itself a dangerous weapon if it is used as part of a plumbing system but in the hands of an attacker it may be. Trial courts have found the following, among others, to be deadly weapons in particular cases: an iron pipe, a wooden club, a piece of timber, a beer bottle, a dog, and a walking cane.

3. Injuries: The crime, like other assaults, may be committed without the infliction of any physical injury. The issue was whether the force was likely to produce great bodily injury, not whether it was in fact produced.

4. Citizen's arrest: Cal. Pen. Code Sec. 837 states "a private person may arrest another: (1) For a public offense committed or attempted in his presence. (2) When the person arrested has committed a felony, although not in his presence. (3) When a felony has been, in fact, committed and he has reasonable cause for believing the person arrested to have committed it."

5. Authority of security guards: Private security guards are not police officers and have no special authority. The only difference between average citizens and security guards is that guards may have some special training. They are licensed by the state and may, like average citizens, make citizens' arrests.

6. Self-defense: The defendant may invoke the right of self-defense as a defense to the charge of assault with a deadly weapon. It is not essential that the victim had or attempted to use a weapon to enable a defendant to claim self-defense. Self-defense requires

(1) at the time of the confrontation, the defendant had a real fear of serious bodily injury and (2) this fear is reasonable under the circumstances. In other words, not only does the defendant have to believe he or she is in peril, but a reasonable person in the same circumstances would have had a similar belief.

> But if the defendant uses more force than is necessary to meet the perceived danger, or if the defendant resorts to self-defense to inflict vengeance rather than to repel violence, then the justification of self-defense will not stand.

MOCK PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

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

Introduction

In 1791, ten amendments were added to the United States Constitution. Written by James Madison and submitted to the states by President George Washington, these first ten amendments securing personal rights became known as the Bill of Rights. Before the Bill of Rights, opponents of ratification of the original Constitution saw that document as flawed, because it failed to include specific provisions for the protection of individual rights. Various states proposed different additions to the Constitution. Six states wanted religious freedom; five states wanted freedom of the press, the right to bear arms, trial by jury, and prohibitions against quartering troops and unreasonable searches and seizures. The proposed list of personal rights to be added to the Constitution consisted of seventeen amendments. Of these seventeen, ten were adopted to be part of the U.S. Constitution and thus became part of the "supreme law of the land."

Today, when most people think about the Bill of Rights, the First Amendment usually comes to mind. The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

But what does this mean? John Marshall, one of the most influential Chief Justices of the Supreme Court, said: "Most emphatically, it is the job of the judiciary to say what the law is." This has meant that, through judicial review, court decisions have established the force and meaning of the Constitution. The amendments and the Constitution itself are subject to the legal and historical interpretation of the nine members of the Supreme Court. Their interpretations determine "what the law is," and are subject to change depending on the makeup of the court.

The pretrial issue in this case revolves around First Amendment freedom of speech and expression. As Americans, one of the tenets we hold most dear is that the free expression of all ideas and viewpoints should be tolerated and not subject to government censorship. It is remarkable that the First Amendment protects both Girl Scouts of America meetings and meetings of the American Nazi Party. It is all protected speech.

In spite of what most Americans believe, not all speech is protected. One cannot falsely yell "fire" in a crowded theater; one is not protected for uttering "fighting words." "Fighting words" are words or expressions that are likely to produce an immediate violent reaction. The United States Supreme Court and various state court opinions cited below will help you decide if Stover's swastika constitutes "fighting words" or falls under the rubric of protected First Amendment expression.

Arguments

In the pretrial motion, the **defense** will argue that the Lakerville ordinance violates the U.S. Constitution and is therefore invalid. The defense will make two basic arguments:

(1) Stover's act of wearing a swastika is constitutionally protected freedom of expression and the statute is invalid because of this.

(2) Even if the wearing of a swastika is not constitutionally protected freedom of speech, the Lakerville ordinance prohibits other behavior that is constitutionally protected. The ordinance is therefore overbroad and invalid.

The **prosecution** will argue the Lakerville ordinance is constitutional. It will make the following counterarguments:

(1) Wearing a swastika patch constitutes "fighting words" and is not constitutionally protected by the First Amendment.

(2) The statute can be narrowly interpreted to punish only speech and expression not protected by the Constitution. It is not overbroad.

Sources

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

The U.S. Constitution is the ultimate source of citizens' rights to free speech. However, its language is subject to interpretation.

The U.S. Supreme Court's decisions are binding and must be followed by California courts. In general, however, the Supreme Court makes very narrow decisions based on the specific facts of the case before it. In developing arguments for this Mock Trial, both sides should compare or distinguish the factual patterns in the cited cases from one another and from the facts of People v. Stover.

Legal Authorities

Statutes:

1. U.S. Constitution, Amendment I
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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. Lakerville Hate Crime Ordinance (Hypothetical)
"Any public or private police officer who displays upon his or her person any symbol, object, characterization, or graffiti, including swastikas or other objects, which one knows or has reasonable grounds to know arouses anger, fear, alarm, or resentment in others based on race, color, creed, religion, gender, or sexual orientation commits disorderly conduct and is guilty of a misdemeanor."

4. California Penal Code Section 245
(a)(1)- Every person who commits an assault on the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

Cases:

1. Schenck v. United States, 249 U.S. 47 (1919)

Facts: Schenck allegedly sent documents to men who had been drafted, urging them to obstruct the draft. He was charged with conspiring to violate the Espionage Act of 1917, which prohibited acts obstructing the U.S. military effort. Schenck claimed the First Amendment protected him from conviction.

Holding: The court upheld Schenck's conviction because Schenck's actions presented a clear and present danger to the country that outweighed Schenck's First Amendment rights.

2. Terminiello v. Chicago, 337 U.S. 1 (1949)

Facts: Terminiello, a notorious racist agitator, was making a speech, which had attracted public attention, inside an auditorium. Outside the auditorium a crowd had gathered to protest Terminiello's speech. Terminiello vigorously criticized the conduct of the crowd outside and various political and racial groups associated with the crowd outside. Terminiello was charged with violating an ordinance forbidding any breach of the peace.

Holding: The court found the ordinance violated Terminiello's First Amendment rights and overturned the conviction. Terminiello's behavior did not present enough of a clear and present danger to warrant an infringement of his First Amendment rights. "The ordinance. . . permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand."

3. Chaplinsky v. State of New Hampshire, 315 U.S. 568 (1942)

Facts: Jehovah's Witness Walter Chaplinsky was convicted under a New Hampshire statute prohibiting the addressing of any offensive or derisive word or name to any other person who is lawfully in any street or other public place. Chaplinsky was handing out literature and called a city marshall a "damned racketeer" and a "damned fascist."

Holding: The Supreme Court upheld the conviction. They held the statute to apply only to fighting words which are epithets likely to provoke the average person to retaliation, and thereby cause a breach of the peace. Fighting words are not protected by the First Amendment.

4. Brandenburg v. Ohio, 395 U.S. 444 (1969)

Facts: Brandenburg, a Ku Klux Klan leader, was convicted for making a speech advocating crime and violence as a means of accomplishing political reform.

Holding: The court overruled the conviction because "the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite such action."

5. Masson v. Slaton, 320 F.Supp. 669 (1970)

Facts: After threatening in the presence of a third party to burn and damage 11 automobiles to terrorize their owner, Paul Masson was charged under a Georgia statute. The statute states that "a person commits a terrorist threat when he threatens . . . to burn or damage property, with the purpose of terrorizing another."
Holding: The conviction was upheld. The court said the "First Amendment right of free speech entitles people to advocate certain ideas regardless of their popularity but does not extend to threatening of terror, inciting riots, or placing another's life or property in

danger." The court also found that the Georgia statute was valid and "was not unconstitutionally vague or indefinite (overbroad) but adequately informed plaintiff of conduct prohibited."

6. Edwards v. South Carolina, 372 U.S. 229 (1963)

Facts: On March 2, 1961, high school and college students of African American descent peacefully walked to the Statehouse to protest discriminatory laws. After onlookers became unruly, the marchers themselves were arrested and convicted of breaching the peace.

Holding: The court reversed the convictions stating the "freedoms given by the First Amendment are protected by the Fourteenth Amendment from invasion by the states. . . . A state cannot make criminal the peaceful expression of unpopular views." Similar case: Gregory v. City of Chicago, 394 U.S. 111 (1968)(March from city hall to mayor's residence to press for desegregation of public schools would, if peaceful and orderly, fall within the sphere of conduct protected by First Amendment).

7. Lanthrip v. Georgia, 218 S.E.2d 771 (1975)

Facts: Defendant was charged under a Georgia statute outlawing terroristic threats after he threatened to kill his wife. Defendant claimed the statute violated his First Amendment rights and was overbroad.

Holding: Conviction upheld. The court held a statute providing that a person commits a terroristic threat when he or she threatens to commit any crime of violence to terrorize another person is not void for overbreadth since the proscribed threats clearly fall outside of those communications and expressions protected by the First Amendment.

8. Cohen v. California, 403 U.S. 15 (1971)

Facts: Cohen was convicted of disturbing the peace under a statute barring "offensive conduct" in certain places after he walked through a courthouse corridor wearing a jacket bearing the words "F--- the Draft" in a place where women and children were present.

Holding: Cohen's conviction was reversed. The court found that his jacket could not be banned under the fighting words exception to the First Amendment. Fighting words are words inherently likely to provoke violent reaction. No individual actually or likely to be present could reasonably have regarded the words on the jacket as a direct personal insult.

9. City of Little Falls v. Witucki, 295 N.W.2d 243 (1980)

Facts: At 11:00 p.m. on September 19, 1978, Edwin Witucki entered the West Side Bar with a cat he found outside and placed the cat on the bar. One bartender served the cat some beef jerky and a shot glass of cream. Witucki had a drink. A second bartender told Witucki to remove the cat. Witucki called her a "black-haired witch," an "S.O.B.," and other vulgar names. Witucki was charged with disorderly conduct under a city ordinance.

Holding: The court upheld the ordinance that prohibited "engaging in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others." The statute was found to be limited to "fighting words" and vulgar language directed at the bartender was found to fall within the "fighting words" category of unprotected speech.

10. Village of Skokie v. National Socialist Party of America, 373 N.E.2d 21 (1978).

Facts: The village of Skokie, Ill., home to 7,000 Holocaust survivors, sought to prohibit a planned march by the American Nazi Party. The Nazis wanted to wear full regalia, including swastikas. Nazi leader Frank Colin claimed blocking the march violated "white free speech" and "free speech for white America."

Holding: The court allowed the march, which, incidentally, never took place. The court held that the use of a swastika is a symbolic form of free speech entitled to First Amendment protection, and it cannot be enjoined under the "fighting words" exception to free speech because the march was not directed at any specific individual. The court also held that a speaker who gives prior notice of his message has not compelled a confrontation with those who voluntarily listen. The court noted, however, "there is room under the First Amendment for the government to protect targeted listeners from offensive speech, but only when the speaker intrudes on the privacy of the home, or a captive audience cannot practically avoid exposure."

11. Gitlow v. People of New York, 268 U.S. 652 (1925)

Facts: Defendant was charged with violating a statute that prohibited advocating the overthrow of the government through writing, speaking, advising, or teaching. Defendant, a member of the Socialist Party, participated in issuing a pamphlet calling for revolution.

Holding: The court upheld the defendant's conviction because "the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose." The court further said that, "A state in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace."

12. Texas v. Johnson, 491 U.S. 397 (1989)

Facts: During the 1984 Republican National Convention, Johnson participated in a political demonstration to protest the Reagan administration. After a march through the city streets, Johnson burned an American flag while protesters chanted. Johnson was convicted of violating a Texas statute forbidding desecration of venerated objects.

Holding: Johnson's conviction for flag desecration is inconsistent with the First Amendment. The court held that, in this case, the flag burning was expressive conduct protected by the First Amendment. In deciding whether an act is subject to First Amendment protection the court considers the "context in which conduct occurred." In this case, the flag burning was symbolic political speech, which is protected under the First Amendment. The court recognized the offensive nature of the act, but stated that even offensive speech is protected.

13. Minneapolis v. Lynch, 392 N.W.2d 700 (1986)

Facts: On September 3, 1985, police arrested a young black man on a moped who had allegedly violated some traffic laws. His aunt, Ms. Lynch, came out of the house and began cursing at the officers. A crowd began to gather and Lynch continued to curse and scream. Officers were afraid Lynch was inciting the crowd and arrested her for disorderly conduct. Lynch claimed this violated her First Amendment right to free speech.

Holding: The conviction was upheld. The city's disorderly conduct ordinance providing that no person shall engage in "conduct which disturbs the peace and quiet of another" was not unconstitutionally vague or overbroad when construed narrowly to punish only "fighting words."

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. Stover 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—DALE COLBERT

My name is Dale Colbert, and I am 27 years old. I am an engineer employed by Rover Laboratories as a laboratory-maintenance technician. My job at the laboratory is to make sure all equipment is in working order. I do all kinds of work at the lab from maintenance of the sensitive medical machinery to keeping the environmental lab where the animals are kept in perfect operating condition. I started working at Rover because I am a member of the BORN FREE animal-rights group and I care about animals. I knew Rover Labs used animals in its experiments, so I figured I could use my expertise with the equipment to get the job and also make sure the animals were treated well. I'm not radical like some of the members of the group, and I don't keep up on the day-to-day demonstrations or activities. I've never done anything illegal.

As a maintenance person, sometimes the only time I can work on the machines or tend to the animals is after everyone else has left for the day. If I do need to work late, I let Dr. Phelps know so that Dr. Phelps can hang around and wait until I'm finished. On August 11, I was up working on one of the environmental lab's air-filtering units that I can only access from the upper attic. I conduct a routine check of all equipment on a rotating basis. On that day, I was checking the attic and noticed the air filter was broken. I became concerned because pure air is very important for the health of the animals. It is also important in maintaining sterile research conditions, so I began work on it right away. Well, I guess I lost track of time, because when I came down from the attic, the lab had already closed. That had never happened to me before. I know Dr. Phelps does not like anyone in the lab alone, so I decided to leave right away. I always exit out of the back door by the loading dock. I collected my tools and maintenance forms and started to leave. When I went out of the back door minding my own business, I saw this person all dressed in brown with a large swastika charging toward me with a stick in hand and yelling at me: "I got you now. Your kind don't belong here. Now you're going to pay." I was really scared. I thought this Nazi was going to kill me. I tried to run away. But I wasn't fast enough, because I had all these heavy tools on my belt. So I tried to drop them as I ran. But the Nazi was right on top of me, so I turned around and begged, "Please don't hurt me." But the Nazi raised that stick and hit me in the arm real hard. I dropped the tools and screamed, "Please stop!" I tried to protect myself by raising my hands. The next thing I knew my whole head was roaring in pain. I fell down on the ground and kept trying to get away. I got hit again and again until I was numb from the blows. I was beaten up so badly that I had to be hospitalized. This was the worst experience of my whole life.

WITNESS STATEMENT

PROSECUTION WITNESS—VAL JOHANSEN

My name is Val Johansen and I am 31 years old. I have been an officer with the Lakerville Police Department for the past two years. Before that I was with the New York Fire Department for six years. I moved to Lakerville because my spouse is a research engineer and had the opportunity for a great job in Lakerville. We moved here, and there were no jobs with the fire department so I got a job on the police force. I've grown to love it here in Lakerville, because we don't have some of the major problems here that we had in the city. Usually it's very quiet, because we've just got all of these intellectual types running around with their pocket calculators. Our main crimes are traffic violations, because all these scientists are thinking about formulas and stuff and not paying attention to the stop signs. The other thing that is kind of unique about Lakerville is we seem for some reason to attract radical fringe groups like the animal-rights freaks and those white-supremacist bozos.

Anyway, on August 11 at about 7:25 p.m., it was just getting dark when I received a radio call about a disturbance at Rover Labs. When I got the call, I was only about two blocks away so I put on the lights and high-tailed it over there. As I drove down the alley, I saw a Kingtech car and something happening on the loading dock. I drove up and jumped out of my vehicle. I saw a Kingtech guard standing with a baton and really laying into somebody on the ground. From my first impression, this seemed to be an unwarranted and excessive beating. I yelled, "Stop police!" Nothing happened, so I tackled the guard. I was then told the beating victim was a burglary suspect, so I arrested and cuffed both of them and read them their Miranda rights. I then called for an ambulance.

WITNESS STATEMENT

PROSECUTION WITNESS—MAH KIM LOO

My name is Mah Kim Loo. I am 18 years old, and I graduated last June from Lakerville High. I am taking a year off to work before I start the university next fall. I am also a very active member of the BORN FREE animal-rights group. Some people think we are a very radical group and go around demolishing labs and stuff. This is not true. We are a political-protest and lobby group that seeks through education and demonstration to liberate animals from the senseless brutality of so-called science and to stop people from wearing animal skins as jackets and clothing. On August 11, we had planned a march on Rover Labs, because we had information that they treated animals cruelly in their research there. I attended the August 11 march on Rover Labs, because I attend every BORN FREE event. At 7:00 p.m. on that evening, about 40 of us marched the five blocks from our office over on Ruby Street to Rover Labs. I went around the back because I know sometimes, once we start protesting in the front, any animal killers and torturers who haven't gone home yet try to run out of the back. I like to wait there behind the trash cans, so I can shout stuff at them when they come out. It makes them crazy. It serves them right after what they've done to those poor little animals.

Anyway, on that night, I immediately went around the back and hid behind the dumpsters next to the far end of the loading dock. Soon, one of those Kingtech cars raced up and this guard got out. Right on the lapel of the guard's jacket was this huge swastika patch for all the world to see. At the same time, Dale Colbert came out of the back of the lab. That confused me, because I had seen Dale at a couple of BORN FREE meetings, and good members of BORN FREE do not work for the enemy. As Dale came out of the back door, I saw fear in Dale's face as the Nazi rushed in. Both of us could see that swastika, and I could see Dale was terrified. The Nazi rushed up to Dale and said something like "Stop! I'm going to get you. You don't belong here." The Nazi took a club and hit Dale so hard you could hear the "thwack" a mile away. Dale had some tools in hand but reached up a hand as protection, not as a threat. The "wanna be" fascist cop just took the club and struck Dale in the face. Dale fell to the ground, and the Nazi monster kept beating on Dale with the club. It was terrible. Finally, the real cop came to save the day. The cop tackled that fool Nazi pig into the ground. You should have seen that Nazi bite the ground. It was great.

WITNESS STATEMENT

PROSECUTION WITNESS—CHRIS HETLOCK

My name is Chris Hetlock, and I am a site supervisor for Lakerville Water and Power. Basically, I am an inspector. Before a job, I assess the situation and decide exactly what needs to be done and in what order of priority. I then delegate work crews and afterward inspect and certify that the job has been done properly. On August 11, one of my crews had been working late in the alley behind Rover Labs replacing a faulty transformer. The crew had finished, and sometime around seven p.m. I went to the site to test the transformer. It was getting kind of dark, but I needed to clear this job. So I climbed up the pole into the crow's-nest and began to work. From up there, I could see the street in front as well as the alley.

A little while later, I saw protesters march up to the front of the building and begin making a big racket. Soon after that, I heard a car racing down the alley. So I looked down. From where I was working, even though it was getting dark, I had a pretty clear shot of the whole area. It was one of those Kingtech cars driving like there was a fire or something. With all of this hoopla going on, I got worried and got on my utility phone and called the cops on 911. I told them there was a dilly of a row going on at the Rover Labs across the street and they better come check it out.

While I was talking to the cops, the back door of the place opened up and an employee came out and was startled by the guard. There was no question in my mind it was an employee, I mean, who else wears work clothes and a tool belt and carries a lunch pail like that? Without asking any questions, the guard took out a billy club and charged. There was some yelling going on, but I was up in the crow's-nest, so I couldn't make out the words. It looked like the employee was in a completely defensive position and had one hand raised up. I couldn't see if the employee had anything in hand or not, but the next thing I knew the poor employee was on the ground getting brutalized. The guard would not let up. I mean the guard was really laying it on. Finally, the cops got there and took down the guard like a rodeo clown. The worker had to be taken away by an ambulance.

WITNESS STATEMENT

DEFENSE WITNESS—JAN STOVER

My name is Jan Stover, and I am 26 years old. I have been with the Lakerville division of Kingtech Security for three and one-half years. My job is to drive scheduled patrols past our customers' homes and businesses and to respond to silent alarms. Our company protects many private homes and businesses here in Lakerville from thefts, burglaries, and other kinds of threats. As a private guard, I do not have the same power as a police officer, but I do have the same authority as home or business owners have in defending their property against intruders. I can also make a citizen's arrest, and I have had extensive training in arrest procedure, baton use, and self-defense.

I am a member of the Aryan Union, but that is just a group I belong to and has no effect on my performance as a private security guard. I wear the swastika patch, because I am Swedish, and the swastika was a symbol of the Swedish king long before any other groups used it. It makes me feel good to wear it. It has nothing to do with anybody else. I wear it for me. I always follow the law and Kingtech procedures to the letter.

On August 11, I was on routine patrol in the Lakerville business district when I received a radio call from my dispatcher that a silent alarm had gone off at Rover Labs. They have been a client of ours for about three years, and I know they do very important research. After I received the radio call, I sped to Rover Labs, which was only a few blocks from my location. As I approached the front of the building, I saw the BORN FREE group was having a rally out in front. I was familiar with this group. They are a very radical group of people who burglarize laboratories, steal laboratory animals, and vandalize equipment. What usually happens is they have a rally, and then, while this is going on, some of their members break into the lab and open the door for the others. They then steal animals and destroy equipment. I know this, because this is exactly what happened to another Kingtech client, the Raytex Labs, about three months ago. Nobody was caught, but both the police and the lab suspected a radical animal-rights group was responsible. The company was very upset, because we were supposed to protect the place, and instead they lost years of valuable research. After that incident, all the guards were briefed on the methods of these animal-rights groups, so we could better protect our clients.

Out in front of the lab, I immediately made the connection between this group and the silent alarm, and I concluded a burglary was in progress. I radioed for backup and drove around to the rear. Just as I pulled into the loading area behind the lab, I saw the back door fly open. A black person rushed out carrying files and burglary tools. I had no way of knowing I was observing an employee. It did not look like an employee leaving late but instead looked like a guilty person attempting to flee the crime scene. Then I saw another activist standing at the edge of the loading dock ready to rush in when the first one opened the door. I got out of the car and shouted, "Halt, you are under arrest. Stay right where you are." Instead of stopping, the suspect ran away. I went up the stairs onto the loading dock in pursuit. As I closed in, the suspect turned on me, pulled a hammer from the belt, swung at me, and glaring at my leather jacket, called me an animal killer and a fascist carnivore.

I attempted to disarm the suspect by striking the suspect's arm with my baton, but this only enraged the suspect. The suspect shouted, "I'm going to kill you," and at the same time reached for the tool belt. I took this as a serious threat. The suspect was enraged. I realized an accomplice, the other activist, was out of my field of vision and could easily attack me from behind as I was being threatened from my front. I was being threatened, and I was outnumbered. The suspect continued to resist arrest even after being struck several times with my baton. I was trying to disarm the suspect. I had no choice and was now acting in self-defense. So I continued to subdue the suspect with my baton. I had a service revolver and did not even draw that, so I was not overreacting. I acted completely reasonably under the circumstances.

I was relieved when the police arrived. When officer Johansen came up behind me and yelled "Stop police," I was grateful, and, of course, thought the yell was directed at the suspect and not at me. I thought that now with the police on the scene the suspect would stop fighting and surrender. I can't believe the officer totally misread the situation. I was still engaged in a scuffle with an armed suspect and could not safely retreat, and I was expecting police assistance. I guess the officer came up behind me, and my body was between the officer and the suspect, so the officer could not clearly see that Colbert was still fighting. Instead of being helped, I was tackled and arrested and am now being unjustly tried for assault with a deadly weapon.

WITNESS STATEMENT

DEFENSE WITNESS—DR. REE PHELPS

My name is Dr. Ree Phelps, and I have been a research scientist for over 20 years. My specialties are cancer and space research. I am very good at what I do. In the past I have been involved in projects with NASA and have done extensive cancer research at the university. About eight years ago, I opened up Rover Laboratories, so I could conduct projects and research in a private setting free from some of the red tape I had encountered working at large agencies and educational institutions. Most of my projects use animal research. The cancer studies we conduct are geared towards finding a cure for cancer, and it is our firm hope that one day this important work will save lives. All our projects are entirely humane and follow established American Medical Association guidelines.

In recent years, I have become concerned about the wave of vandalism and burglaries taking place in research laboratories, so I hired Kingtech Security to help prevent break-ins. I am completely satisfied with the professional service they have provided for the lab. About six months ago, I hired Dale Colbert as my laboratory-maintenance technician. Dale seemed very enthusiastic and eager to get the job, and I was very impressed with Dale's engineering credentials. I wondered why someone with so much skill and expertise would settle for doing lab maintenance. Dale told me of a strong personal interest in the importance of medical research and a desire to one day open up and manage a research facility. What could I say when someone so qualified appealed to something so close to my own heart? I hired Dale the next day. Had I known Dale Colbert was a member of the BORN FREE group, I never would have hired Dale or even given Dale permission to set foot inside the lab.

On August 11, I locked up the lab at six p.m., as I always do, and turned on the alarm. The policy at Rover Labs is if someone needs to stay late I must be notified, so I can remain at the lab until everyone has left, and then I turn on the alarm. On that night, I walked through the lab, saw everyone had left, and locked up. I did not know Dale Colbert was hiding up in the attic. It is unheard of for an employee not to notify me when they are staying late. I believe Dale Colbert was a plant for the BORN FREE group and deliberately attempted to sabotage my lab and was, thank goodness, caught in the act. I am very glad that Kingtech was on top of things. If those BORN FREE people had gotten inside my lab, years of research and hard work would have been destroyed.

WITNESS STATEMENT

DEFENSE WITNESS—ZOEY SAPPERSTEIN

My name is Zoey Sapperstein, and I am a guard for Kingtech Security. I have been with Kingtech for over five years, and before that I was with the Las Vegas Police Department for 16 years. Because of my seniority, I help train new guards and brief the others on anything they need to know. I am also the chief guard on the evening shift. If one of the other guards needs assistance and I am in the area, I act as primary backup for the other guards. All Kingtech guards are professionals and are highly trained in advanced baton, self-defense, citizen's arrest, and basic law enforcement. As private security guards, we have the same rights as private citizens have in protecting themselves, their families, and their property. One of the dangers of being an armed guard is that in responding to a silent alarm it is likely a homeowner or business owner in civilian clothes will be at the scene and be armed. It is up to the individual guard to make a judgment call. That's why we always shout a warning and tell a suspect to halt for arrest.

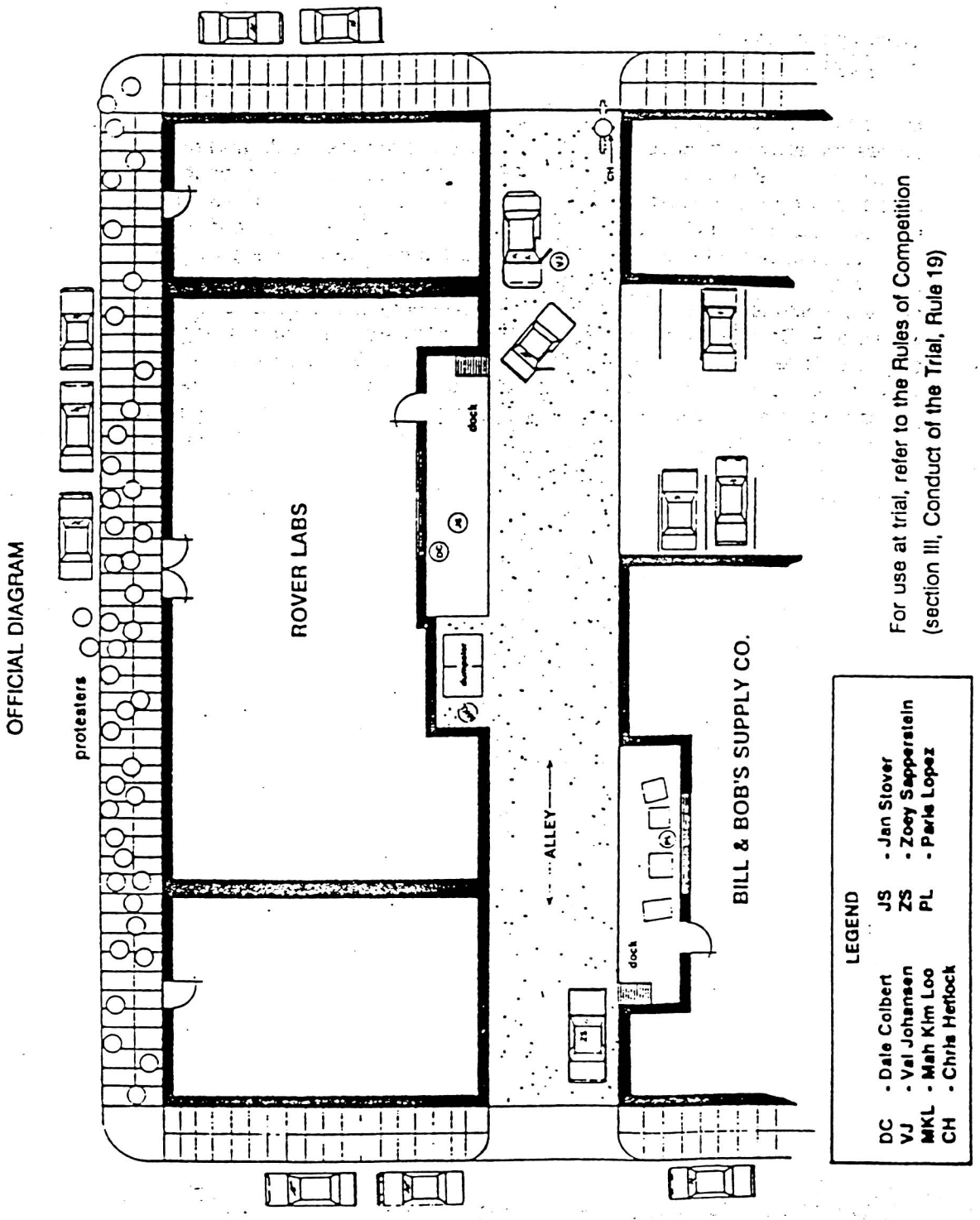
About three months ago, another client of ours, Raytex Laboratories, was broken into and vandalized. All their research animals were stolen. Although nobody was ever caught, the local police informed our client that the method of operation was consistent with break-ins staged by animal-rights activist groups. I personally informed all the evening guards of this situation, as I inform them on all substantive security problems in the area. I told them, including Jan Stover, about how these groups stage protests and commit break-ins and then attribute the crimes to radical individuals over which they have no control. This appears to be what happened here. On August 11, we received a call from a silent alarm indicating a prowler was inside of Rover Labs. At 7:20 p.m., Stover was dispatched to the scene. Stover radioed for backup. I immediately drove to the lab. As I was driving down the alley, I saw Stover chasing a suspect across the loading dock. As I got closer I saw the suspect turn around, raise a hammer, and threaten Stover. I would have driven down to assist Jan, but by this time I saw the police car coming from the opposite end of the alley, and procedure dictates that if police are on the scene we must let them handle it. So I watched. Stover was already engaged, and it was obvious to me this suspect did not want to give up and was not going to stop without a fight. The suspect raised a hammer in the air and made threatening statements and gestures to our guard. At this point Stover, using excellent judgment, did not "clear leather" and bring out the service revolver but instead relied on baton training and attempted to disarm the suspect. Stover acted properly. It was 100 percent Kingtech policy in accordance with reasonable force, self-defense, and the wishes of Dr. Phelps to protect the lab from intruders. I was very surprised when the cop tackled Jan. I thought the cop had missed the gist of what was going on.

WITNESS STATEMENT

DEFENSE WITNESS—PARIS LOPEZ

My name is Paris Lopez, and I am a shipping clerk at the Bill and Bob Supply Co. across the alley from Rover Labs. We operate around the clock, and my shift is usually from five p.m. to midnight. On August 11, I was working a double day/evening shift and filling the thousandth order on the loading dock when I saw Dr. Phelps lock up Rover Labs. I knew it was about six. I tell time by Dr. Phelps. About an hour later, I was standing behind some boxes, and I heard a car race up the alley. I peeked around the boxes toward Rover Labs and saw the door open up, and Dale Colbert came out with all these files and stuff. That was very strange because nobody ever leaves after Dr. Phelps. Suddenly, this Kingtech guard was there yelling at Dale to stop, but Dale tried to run away. Then Dale turned and lunged at the guard. Dale looked really angry and called the guard a name or something. I couldn't hear if the guard said anything before that. Anyway, the guard used a club to try to stop Dale, but that wasn't enough. Dale went for the tool belt so the guard started using self-defense and finally got Dale on the ground. Then the cops arrived and, as usual, read the situation completely wrong and jumped the wrong person.

OFFICIAL DIAGRAM



THE FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

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

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

The Presumption of Innocence

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

The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. 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) is guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and will try to refute any defense alibis.

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

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note rule #13, appearing on page 54: "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Do the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

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

WITNESSES

You will supply the facts in the case. 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 37.

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

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

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

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

Duties of the Court Clerk and Bailiff

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

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

AN EXPERIENCED TIMER (CLERK) IS CRITICAL TO SUCCESS OF A TRIAL 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, you are responsible for bringing the witnesses from the hallway into the courtroom. Sometimes, in the interest of time and if your trial is in a very large courtroom, it will be necessary to ask someone sitting in the courtroom close to the door to get the witnesses from the hallway for you when they are called to the stand.

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

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

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

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

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

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

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

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

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

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

4. When finished using the item, give it to the judge to examine and hold until needed again by you or another attorney.

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

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit #___, and request that the court so admit it."

2. At this point opposing counsel may make any proper objections she/he may have.

3. The judge will then rule on whether the item may be admitted into evidence.

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

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

Begin your statement with a formal address to the judge:

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

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

Proper phrasing includes:
"The evidence will indicate that ..."
"The facts will show . . ."
"Witness _____ (full name) will be called to tell . . ."
"The defendant will testify that . . ."

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

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination. See "Leading Questions" page 45.)
- 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's credibility.
- Further questions about professional qualifications are necessary if you wish to qualify the witness as an expert.

Examples of proper questions on direct examination:

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

Conclude your direct examination with:

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

Cross-Examination
Cross-examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the

witness' credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:
- Call for answers based on information given in Witness Sheets or Fact Situation.
- Use leading questions which are designed to get "yes" and "no" answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

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

Examples of proper questions on cross-examinations:

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

Cross-examination should conclude with:

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

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

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

Example: (Prior conduct)

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

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

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

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.

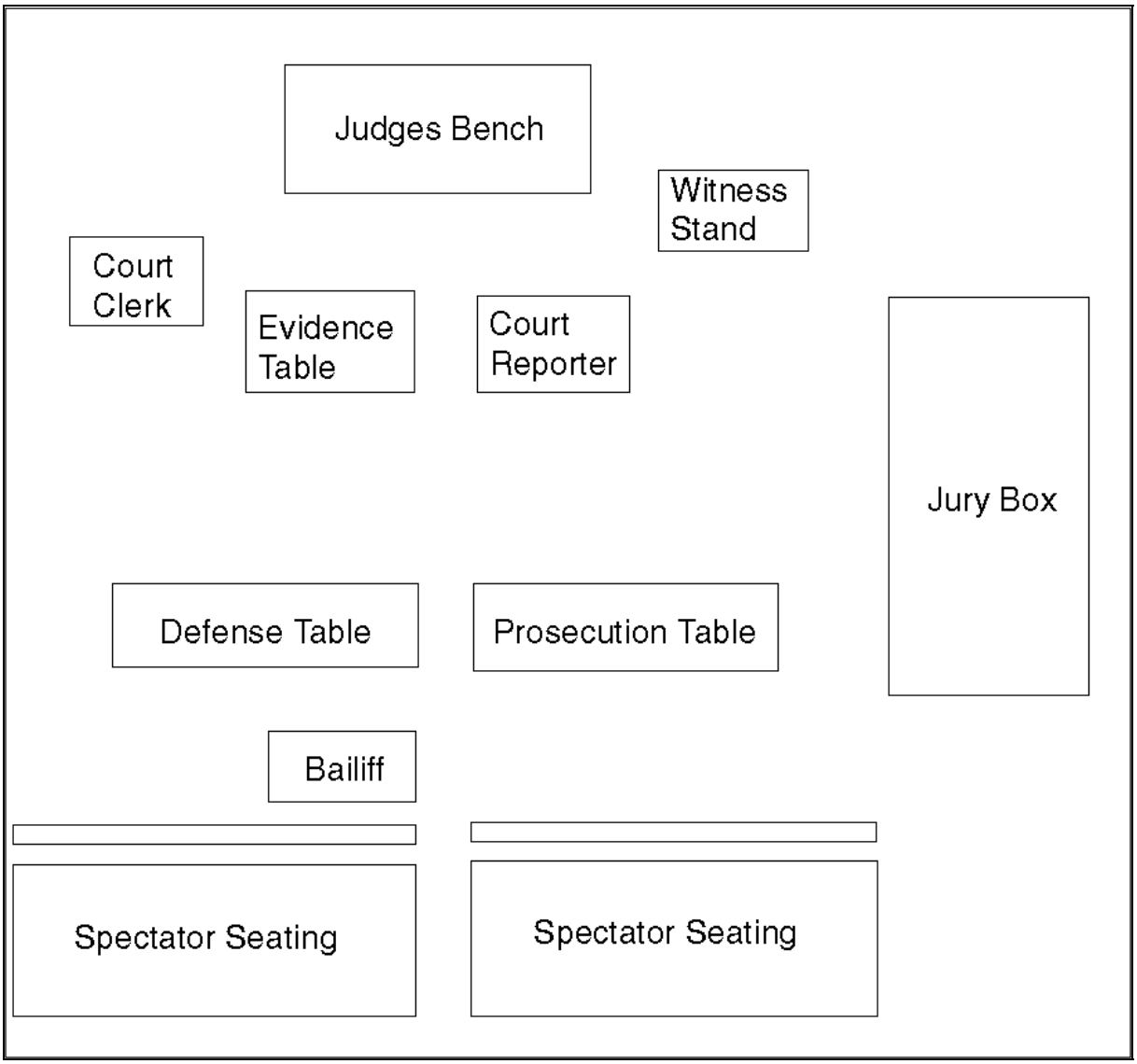
- The defense: should raise questions which suggest the continued existence of a reasonable doubt.

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.

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

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

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

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

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

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

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

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

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 48. **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 l) 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 1, 1991. The witness heard on the radio that the victim had been shot on the night of March 3, 1991. The witness lacks personal knowledge of the shooting and cannot testify about it.

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

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

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

5. Character Evidence

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

Examples:

1. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

2. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the evidence and the prejudicial nature of the testimony would probably outweigh its probative value making it inadmissible.

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

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

6. Opinion/Speculation

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

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

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

7. Hearsay

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

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.

2. However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. Hearsay is a very tricky subject.

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

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

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 1991-92 MOCK TRIAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRETRIAL MOTION TIME SHEET

_____ V. _____
Defense - School Prosecution - School

Clerk_____

School _____

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

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

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

OFFICIAL JUDGE AND SCORER INFORMATION PACKET

PEOPLE
V.
STOVER

Issues of Use of Force, Free Expression and Hate Crimes

Featuring a pretrial constitutional argument about the 1st and 14th Amendments

RULES OF COMPETITION

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

I. ELIGIBILITY

To participate in the state finals in Sacramento (April 9-11, l992), each county must implement the following procedures:

1. A county Mock Trial coordinator must be identified (usually through the county office of education).

2. Working in conjunction with CRF, the coordinator must plan and carry out a formal competition involving teams from at least two separate senior high schools in the county. These schools must be identified to CRF no later than **Friday, December 6, 1991**.

3. All local county competitions must be completed by **March 17, 1992**.

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 **all from the same school**. At the local level, more students may be involved as jurors, but juries will not be used at the state finals. We encourage you to use the maximum number of students allowable, **especially at schools with large student populations.**

7. Team Structure - Involvement of all team members in the presentation of the case is reflected in the team performance/participation score. The team consists of the following members:

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

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

II. CONDUCT OF THE PRETRIAL MOTION

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

1. Only the fact situation (pages 7-10) and the materials on pages 11-19 can be used for the purposes of the pretrial motion.

2. Each student arguing a pretrial motion has four minutes to present his/her statement and two minutes for rebuttal. During these proceedings, students must be prepared to answer questions from the judge clarifying their position.

3. Each attorney is expected to display proper courtroom decorum and courtesy.

4. In order to present a side/position in the most persuasive manner, students should carefully review and become familiar with materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.

5. No written pretrial motion memoranda may be submitted to judges at local or state level.

III. CONDUCT OF THE TRIAL

1. All participants are expected to display proper courtroom decorum and courtesy.

2. Teachers and attorney coaches must identify themselves to the judge prior to the trial presentation. Teachers are required to submit team rosters (page 68) to presiding judges and scoring attorneys at all rounds of the state finals in Sacramento. **No other materials can be furnished to the presiding judges or scoring attorneys by student team members, teachers, or attorney coaches.**

3. The gender neutral names allow students of either gender to play the role of any witness.

4. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams will have to begin without their other members or with alternates.

5. After the judge has delivered his or her introductory remarks, witnesses participating in the trial (other than the defendant) are to leave the courtroom until called to testify. After testifying, witnesses must remain in the courtroom for the remainder of the proceedings.

6. Teacher sponsors and attorney coaches are to remain in the seating area throughout the trial. There must be no spectator contact with student team members once the trial has begun. The sponsors and coaches, other team members and spectators may not talk, signal, and/or otherwise communicate with the students. There will be an automatic deduction of five points from a team's total score if the teacher or attorney coach, other team members, or spectators are found in violation of this rule either by the judge or by the Mock Trial staff.

7. Recesses will not be allowed in local or state competitions for any reason.

8. The fact situation starting on page 7 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Witnesses may testify to any matter directly stated or reasonably implied in the official case materials.

9. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. Witnesses **can be impeached** if they contradict the material contained in their witness statements using the procedures as outlined on page 37.

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

11. Prosecuting attorneys must provide the physical evidence as described in the case materials. No other physical evidence, if any, will be allowed. Whether a team introduces, uses, and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 8.) **If the prosecution team fails to bring physical evidence to court, it may be reflected in the team performance/participation score.**

12. Attorneys may conduct re-direct examination when appropriate. (See "Procedures," pages 35-39.) 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 41-48. Only specified types of objections will be

recognized in the competition (see page 42). Other more complex rules may not be used at the trial.

16. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.)

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

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

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

IV. TIMING

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

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

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

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

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

– NOTES –

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

1. Court is called to order.

2. Defense (moving party) presents pretrial motion arguments.

3. Prosecution (opposing party) presents pretrial motion arguments.

4. Rebuttal arguments (both).

5. Judge rules on motion and thus determines which charges will be in contention during the trial.

6. Attorneys present physical evidence for inspection.

7. Judge states charges against defendant.

8. Prosecution delivers its opening statement.

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

10. Prosecution calls its witnesses and conducts direct examination.

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

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

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

14. Defense calls its witnesses and conducts direct examination.

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

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

17. Prosecution gives its closing statement.

18. Defense gives its closing statement.

19. Judge deliberates and reaches verdict.

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

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

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

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

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 7 and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Witnesses may testify to any matter directly stated or reasonably implied in the official case materials.

8. **VERY IMPORTANT!** The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. **Witnesses can be impeached if they contradict the material contained in their witness statements.** This rule is designed to limit, not eliminate, the need for reasonable inference by providing a familiar courtroom procedure.

9. Costuming is not a factor in the Mock Trial competition. Therefore, costuming is not to be taken into account when scoring presentations.

Order of Pretrial Motion Events

1. The hearing is called to order.

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

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

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

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

6. At the end of the oral arguments, the judge will rule on the motion 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 arguments. Defense will go first. I may interrupt to ask clarifying questions. Time spent answering my questions is not part of the four minute time limit.

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

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

"At the end of your presentations, I will rule on the motion 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, distinguish a variety of fact situations, and analyze and debate constitutional issues. Although mandatory in the state finals, the pretrial motion is optional on the local level. The county coordinator will inform you whether this will be part of the local competition. If it is, then the judge will read the "Pretrial Motion Instructions" on page 58 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. Stover

To the fullest extent possible, please conduct the case as you would under normal circumstances, familiarizing yourself with the case materials of People v. Stover 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 60 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help to put the students at ease, and by **emphasizing the educational, rather than the competitive aspects** of the Mock Trial, you will help to bring the experience into proper perspective.

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 1991-92 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 Lakerville [only a faithful reproduction, no larger than 22x28 inches].

Stipulation: Both sides stipulate to the following fact:

> A swastika patch three inches in diameter was sewn to the upper left chest area of Jan Stover's leather jacket worn on the night of August 11.

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

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

EVALUATION CRITERIA

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

1. Pretrial Motion

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

2. Opening Statement

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

3. Direct/Re-Direct Examination

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

4. Cross-Examination

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

5. Witnesses

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

6. Closing Argument

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

7. Team

-Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.

-All team members were involved in the presentation of the case and actively participated in fulfilling their respective roles, including the clerk and bailiff.

-The clerk and bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial.

-Team members demonstrated cooperation and teamwork.

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

MOCK TRIAL SCORING CALCULATIONS

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

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

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

Trial 1
Team A: 241 (team points)
divided by 488 (total for both teams) = .4939

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

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

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

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

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

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

2–0	1–1	0–2

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

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

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

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

Presider's Tie Breaker _____

Scorer's Name _____ Presider's Name _____

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

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

PROSECUTION _____ DEFENSE _____

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

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

MOCK TRIAL TIME SHEET

Clerk _____ Judge _____ Date _____

_____ V. _____
Prosecution School Defense School

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

Stop the clock (do not time) when:
- **witnesses enter the courtroom;**
- **attorneys make objections;**
- **judges question attorneys or make observations from the bench.**

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

ERRATUM

People v. Stover

On page 15, the case of Edwards v. South Carolina, 372 U.S. 229 (1963), is cited. The facts should read:

Facts: On March 2, 1961, high school and college students of African American descent peacefully walked to the Statehouse to protest discriminatory laws. After police authorities advised the marchers that they would be arrested if they did not disperse within 15 minutes, the marchers engaged in feet stamping, hand clapping, and loud singing of patriotic and religious songs. The marchers were arrested after 15 minutes had passed and convicted of breaching the peace.

The holding is cited correctly. (NOTE: Onlookers became unruly in the facts of Grenorv case.)