

CONSTITUTIONAL RIGHTS FOUNDATION

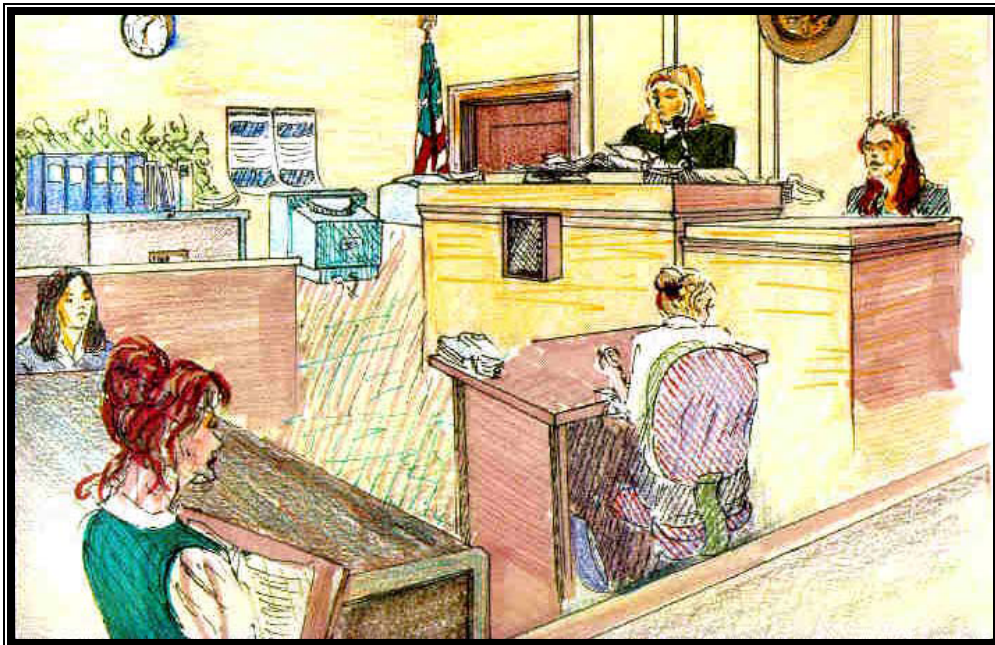
PEOPLE

V.

BELL

ISSUES OF FREE EXPRESSION, INTERGROUP CONFLICT AND ARSON

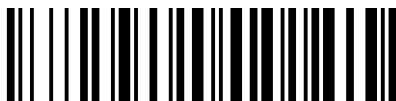
Featuring a pretrial constitutional argument about the First and Fourteenth Amendments of the United States Constitution



Co-Sponsored by:

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



CRF219



v1.0

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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 free expression, intergroup conflict, and arson.
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

CLEAR AND PRESENT DANGER: FREE SPEECH VERSUS THE PUBLIC WELFARE

The First Amendment states, "Congress should make no law. . .abridging the freedom of speech, or of the press. . ." Most Americans would say they believe in free speech, but since the First Amendment became part of the Constitution in 1791, some individuals in the United States have gotten into trouble for speaking out.

Should the First Amendment apply to everyone or only to those who voice opinions with whom most people agree? Does freedom of speech mean that someone can say whatever he or she wants at any time or place? Should it allow individuals to advocate violent or anti-social acts?

Sedition Act of 1798

Less than ten years after the Bill of Rights was added to the Constitution, the federal government passed a law restricting freedom of speech. When war seemed possible between the United States and France in 1798, members of Congress were convinced that people sympathetic to France would try to stir up trouble for the new nation, so Congress passed the Sedition Act. Congress and President John Adams believed that, by passing the Sedition Act forbidding any criticism of the federal government, pro-French troublemakers could be controlled. "Sedition" generally means the incitement of violent revolution against the government. The Sedition Act of 1798, however, went far beyond this definition, establishing criminal penalties for persons who said or published anything which was "false, scandalous, or malicious" against the federal government, Congress or the President.

Under the Sedition Act, officials arrested twenty-five American citizens, including a Congressman who was convicted and imprisoned for calling President Adams a man who had "a continual grasp for power." One citizen was convicted for painting a sign which read, "Downfall To The Tyrants of America," and another man was convicted for saying that he wished that the wadding of a cannon fired in a salute to President Adams would hit him in the seat of the pants.

Despite the arrests and convictions, many people spoke out against the Sedition Act. The state of Virginia even threatened to secede from the United States over this issue. The act expired in 1801, never legally challenged before the Supreme Court. Newly elected President Thomas Jefferson, a bitter political opponent of President Adams and the Sedition Act, pardoned all those convicted under this law.

"A Clear and Present Danger"

The next major attempt to regulate freedom of speech occurred during World War I, another period of crisis. In 1917, Congress passed the Federal Espionage Act, prohibiting all false statements intended to interfere with the military forces of the country or to promote the success of its enemies. This law established penalties of up to \$10,000 and/or 20 years in prison for anyone attempting to obstruct the recruitment of men into the military. In 1918, Congress passed another law forbidding any statements expressing disrespect for the U.S. government, the Constitution, the flag, or army and navy uniforms.

Almost immediately, Charles Schenck, General Secretary of the American Socialist Party, was

arrested and convicted for sending 15,000 anti-draft circulars through the mail to men scheduled to enter the military service. Calling the draft law a violation of the Thirteenth Amendment's prohibition of slavery, the circular urged draftees not to "submit to intimidation" but to "petition for repeal" of the draft law. The government charged Schenck under the Espionage Act with illegally interfering with military recruitment. Admitting that he had sent the circulars, Schenck argued that he was exercising his freedom of speech under the First Amendment.

In Schenck v. United States, 249 U.S. 47 (1919), the U.S. Supreme Court's first important decision on the issue of free speech, the Court held for the government. Writing the opinion for a unanimous court, Justice Oliver Wendell Holmes stated that Mr. Schenck was not covered by the First Amendment because freedom of speech was not an absolute right. You could not, for example, shout "fire" in a crowded theater. There were times, Holmes wrote, when the government could legally restrict speech. The test is "whether the words. . .are used in such circumstances as to create a **clear and present danger**." According to Justice Holmes, the government was justified in arresting Charles Schenck because "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort. . .that no Court could regard them as protected by any constitutional right."

In the Schenck case, the highest court in the nation ruled that freedom of speech could be limited by the government. However, Justice Holmes was careful to say that the government could only do this when there was a "clear and present danger" such as during wartime. Some legal issues, however, remain unsettled. What does "clear and present danger" specifically mean, and when should it justify stopping people from speaking?

The Angry Crowd

Only a few years after Adolf Hitler and the German Nazis were defeated in World War II, Arthur Terminiello spoke before an audience in Chicago saying that Hitler was right in what he did. He claimed that Democrats, Jews, and communists were all trying to destroy America. Outside the hall where Terminiello was speaking, an angry crowd gathered, throwing bricks and bottles through the windows as his oratory continued.

Arthur Terminiello was later arrested, tried, and convicted for disturbing the peace with his provocative harangue. Like Charles Schenck thirty years earlier, Terminiello appealed his case to the U.S. Supreme Court in Terminiello v. Chicago, 337 U.S. 1 (1949), claiming that he should not have been arrested because his speech was protected by the First Amendment. The city of Chicago responded that the things Terminiello raved about so angered people that his speech created "a clear and present danger" to the safety of the community.

In 1949, the Supreme Court reversed Terminiello's conviction. (Four of the nine justices dissented.) In the majority opinion, Justice William O. Douglas wrote that "It is only through debate and free exchange of ideas that government remains responsive to the will of the people. . ." and that, in a democracy, free speech must occur even if it causes disputes, unrest, or "stirs people to anger." According to Justice Douglas, "freedom of speech, though not absolute, is protected against censorship or punishment unless shown likely to produce **a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest**."

In the 1990s, major problems face the cities of the United States. Increased immigration,

booming populations, and an urgent need for economic redevelopment have elevated tensions in our inner cities. Gang violence and poor relations between police forces and the communities they serve have contributed to an urban condition that many people regard as the major domestic crisis of our times. Because the problem is so serious, some people believe that constitutional rights should be limited for the good of the community. This argument has been applied recently to clothing identified with gangs, movies that show youth engaged in violent activities, and music describing violent acts. Some people argue that these are constitutionally protected forms of expression. This debate poses the question whether these types of expression create a clear and present danger.

Questions for Discussion

1. Where can the line be drawn between protecting individual rights and protecting the welfare of the community?

Do the following activities with the class:

- a. List at least five examples of situations from which the question of free speech versus public welfare may result. Discuss the merits of each example by presenting both sides of the issue.
 - b. Vote to either uphold the First Amendment rights or invoke the "clear and present danger" doctrine. Make sure you discuss the reasons for the majority opinion of the class. Is the minority opinion of the class important? Why?
 - c. Both Justice Holmes and Justice Douglas mentioned that freedom of speech is not absolute and cited examples. By listening to the responses of class members to previous questions (a and b), can you say whether there are any absolutists (people who believe that there should be no limits on freedom of speech) in the group?
2. In 1992, Warner Brothers produced an album by rap-artist Ice-T including the single "Cop Killer." The artist maintained that this song is a valid commentary on the anger at abuses by the police. Others contended that this song advocates violence against law enforcement officers and that, because of the volatile condition of our cities, the song created a clear and present danger of violence. Police officer associations requested that the company stop producing the album or remove the single from the album. Some individuals picketed Warner Brothers, and other individuals and groups called for a boycott of Warner Brothers' products. Warner Brothers eventually announced that the company would produce the album without "Cop Killer," but Ice-T said that free copies of the single would be handed out at his concerts.

When controversies over freedom of expression occur, different responses are possible. Some of these responses have constitutional implications, and other do not. If a federal or state law censors free expression, the law will be subject to constitutional analysis and a court will consider whether the government had sufficient reason for limiting speech. If an individual or a group of individuals decide not to support an idea, they may refuse to buy a product which expresses that idea. A *boycott*, or refusal to buy or use a product, usually does not present a constitutional issue because it is not government action. The First Amendment prohibits government action that abridge free speech; it does not prohibit private action. Some artists, of course, choose to avoid certain manners of expression believing that their individual restraint will benefit society or their own financial well-being. This type of individual action does not present a constitutional

issue because the artist is not censored by the government.

Do you think that producing and distributing the song "Cop Killer" constituted a clear and present danger? Why or why not? Do you think that it was appropriate for private citizens to demand that a company take a song off the market? Do you think that a government agency, such as the Police Commission, should be able to ban the sale of certain music?

3. Please read the fact situation of People v. Bell (pages 11-15 in this booklet) and respond to the following: Do you think that Terry Bell's song constituted a clear and present danger? Why or why not?
4. "Symbolic speech" is also a controversial topic. Gang violence causes thousands of deaths in our nation's cities each year. Gang members may wear "home" colors to signify their identity. Should the wearing of known colors in certain places, like schools, be considered sufficient clear and present danger to justify a restriction on free expression?
5. Can you think of any alternatives to any of the conflicts described above that would respect peoples' First Amendment rights and also preserve the public welfare? Try to provide specific examples of policies that would protect the individual and society.

CLASSROOM DISCUSSION MATERIALS

INTERGROUP CONFLICT AND CONFLICT RESOLUTION

Read the facts of People v. Bell. In the case, we see conflict arising between newcomers to a community and people who have lived in a community for a long time. This type of tension can occur in many different places, urban and rural. Los Angeles, for example, has experienced an increase in racial tension, in part due to an influx of immigrants. While a diverse community can offer a richer cultural experience for those who live within it, tensions are often generated by real or perceived differences in attitudes, beliefs, customs, and behaviors.

We may never be able to avoid intergroup conflict, however, we can learn to resolve conflict without resorting to violence. An important step in resolving conflict is to work together to find possible solutions.

Here are some basic steps in conflict management.

1. Each person tries not to respond to his/her flashpoints (any word, phrase, or action that causes a confrontation with someone else).
2. People in conflict use active listening skills. Each person tells the other person what happened.
3. The people focus on the issue that is causing the problem--not on the people involved. What is the underlying problem? Identify the facts and issues. Parties listen to each other very carefully.
4. Each person thinks of possible solutions to the problem. Both people should think of as many solutions as possible. Do not try to decide whether or not they are good solutions immediately. Try to understand all the options.
5. Identify solutions which both people can accept. What is acceptable to both people? Remember to concentrate on the reality of the situation. Do not agree to something that is totally unrealistic.
6. Before leaving the other person, be sure to repeat the main points of the agreement just to be sure that you both understand. Sometimes it is even a good idea to write down the agreement.
7. Remember to go back to the person and discuss the problem again if the agreement does not seem to be working.

Activity

Review the fact situation of People v. Bell. The class is going to use a technique called brainstorming. In brainstorming, participants come up with as many ideas as they can to resolve a problem.

1. Brainstorming
Brainstorm as many alternatives as possible for resolving the conflict between the

Believers and the USA members. Do not worry at this point about whether the ideas are good or bad: the objective is to come up with as many as possible. As suggestions are made, write them on the board.

2. Choosing the Best Solution

To find a solution to the conflict, an idea must not only solve the problem but be acceptable to both sides. For each of the proposed solutions ask: Will this idea end or lessen the conflict? How would USA members feel about the solution? How would the Believers feel about the solution?

Based on these questions, pick the best solution. If none are acceptable, suggest additional solutions until your criteria are met.

CALIFORNIA MOCK TRIAL FACT SITUATION

1 Southpoint is a town (population 9,500) located on the west side of Lake Angel. Most of
2 the residents earn their living from businesses catering to tourists attracted to the lake for
3 water sports and recreation.
4

5 In the spring of 1990, members of a religious group called the Believers started moving
6 into the area. The influx of Believers was steady over the next six months to a year, to
7 the point where they now comprise more than 10 percent of the town's population. The
8 Believers' main source of income is through agriculture and non-tourist-related industry.
9

10 The Believers purchased a large tract of land on the east side of Lake Angel. They call
11 this area "The Land of the Believers." On it they have cleared the land to build a school,
12 health care center, temple, office building, and several residential structures. They have
13 also cultivated large fields of vegetables and fruits. Although they continue to own and
14 operate businesses which serve the greater community, Believers only patronize other
15 Believer-owned businesses. They also earn additional income by selling trees that they
16 clear off "The Land."
17

18 Members are easily identifiable by their attire. They wear a white tunic-like top with
19 baggy white pants trimmed in red and tied around the waist with a red sash. On the
20 upper left chest area on both the men's and women's garments is an emblem depicting
21 flames coming out of water.
22

23 Some citizens of Southpoint have raised concerns about the Believers' presence,
24 ranging from economic and political to social and moral issues. Some complain that the
25 Believers are ruining the tourist industry, because the number of tourists has decreased
26 by 25 percent since the spring of 1991. This decline has resulted in financial difficulties
27 for many of the local businesses.
28

29 Others regard the Believers as a political threat. The Believers became an influence
30 shortly after their arrival, as they lobbied and overcame a locally imposed restriction on
31 the sale of undeveloped property which is now "The Land." Rumors persist that one of
32 the Believers is planning to run for a seat on the town council. Voter registration lists
33 show that nearly all Believers eligible to vote are registered.
34

35 Socially, the Believers interact almost exclusively among themselves. Believers'
36 members come from various racial and socio-economic backgrounds. However, most of
37 the people who have joined the Believers since January of 1992 have been people with
38 mental or physical illnesses, disabilities, drug and alcohol problems, or those who come
39 from impoverished backgrounds. Some complaints have been made that the Believers
40 are rude and overbearing to non-Believers who patronize their businesses or try to
41 inquire about their beliefs and practices.

1 In the summer of 1991, a local towns person, Terry Bell, began to vociferously oppose
2 the Believers. Terry's opposition to the Believers began after a confrontation Terry had
3 with some Believers. The confrontation arose when Terry and the others went on to "The
4 Land," unaware that it had recently been sold to the Believers.

5
6 In April 1992, at a town council meeting held to discuss local issues, Terry and several
7 others stated their belief that drastic action was necessary to prevent the Believers from
8 taking over their town. Although the concerns were acknowledged, the council opted to
9 wait and see if it would be necessary.

10
11 Frustrated by the council's inaction, Terry and some others formed a group to take a
12 more active stance against the Believers. They called themselves United Southpoint
13 Alliance (USA) and began holding private meetings to discuss their concerns. When
14 asked to share information discussed during the meetings, Terry and the others declined,
15 stating, "Our mission is to protect and promote a healthy Southpoint." USA's motto is
16 "We must fight fire with fire."

17
18 The 1992 tourist season started out very slowly, and concerns arose over the prospect of
19 even greater economic hardships. The local news media began reporting on the
20 dramatic increase in anti-Believer sentiment in the area. Stories spread by word of mouth
21 and through the media that Believer practices and ideology are immoral. The local media
22 headlines included allegations and rumors of animal sacrifice, satanic rituals, kidnapping,
23 brainwashing, and sexual immorality. The local news media reported on one incident
24 where anti-Believer graffiti was spray-painted on a Believer-owned business in town.
25 Two teenagers were identified and arrested as the perpetrators.

26
27 As a result of the rise in resentment against the Believers, the town council decided to
28 hold a town meeting on August 22nd to allow citizens to voice their concerns. The
29 meeting was held on the evening of August 22nd at town hall. Approximately 300 people
30 attended, but neither Terry nor any other USA member was present.

31
32 Instead, Terry and other USA members set up a protest demonstration in the park
33 directly across from town hall. Using a portable microphone and P.A. system, Terry
34 called to people as they walked to town hall for the meeting, "Come listen to me if you
35 really want to find out what can be done about the Believers."

36
37 A crowd of approximately 100 people gathered around Terry, who complained about the
38 town council's lack of action and urged the townspeople to take matters into their own
39 hands. Terry spoke emotionally about the hardships suffered by local townspeople since
40 the arrival of the Believers. Terry repeated many of the rumors that had been circulating
41 in the media and repeated the USA motto over and over.

42
43 While the majority of Terry's crowd left to go into the town meeting, approximately 35-40
44 remained, joining in as Terry chanted "Fight fire with fire." Terry then performed a song
45 written by Terry, entitled "Fight Fire With Fire." An excerpt of the lyrics follows:
46

1 The devils are here among us.
2 They call themselves Believers.
3 The only way to drive them out
4 is to fight fire with fire.

5
6 Pour on the gas, light up the match.
7 We must fight fire with fire.
8 The land will soon be ours again.
9 We must fight fire with fire.

10
11 Fire is the only way
12 To make the Believers go away.
13 Watch the flames burn higher and higher.
14 The time is now to fight fire with fire.

15
16 Terry repeated the song over and over. As the audience joined in, singing the song and
17 chanting, "Fight fire with fire," Terry moved over to a trash can filled with wood and
18 paper, held up a can of lighter fluid, and poured it in the trash can. Saying, "It's this
19 simple," Terry lit a match and set the trash on fire. Terry then began to shout, "Tonight's
20 the night! I know what I have to do and so do you!"

21
22 Suddenly, a police car pulled up near the demonstration. The crowd quickly dispersed,
23 and the protest ended. At the demonstration site, police officer Linden Daniels found one
24 can of gasoline hidden in nearby bushes, and some photocopied maps.

25
26 Within one hour after the protest ended, from approximately 8:50 to 9:50 P.M., three
27 separate fires were set, first to the temple, then the clinic, and finally the school. All three
28 structures were located on "The Land." After the second fire was reported but before the
29 third, Terry was found by Officer Daniels on "The Land," running towards the house of
30 the leader of the Believers. At 9:35 P.M., Officer Daniels arrested Terry for incitement
31 and suspicion of arson. Terry was Mirandized and held overnight at the police station.

32
33 Officer Daniels, the certified arson investigator for Southpoint Police, determined
34 conclusively that three fires were arson-related.

35
36 The following day during police investigation, Frankie Reardon, a member of USA, stated
37 that Terry and others planned to destroy the Believers by burning them out, and that they
38 hoped to be able to influence others to participate. Frankie has been given transactional
39 immunity for any possible legal actions relating to this matter.

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

2
3 A map of Southpoint and the area around Lake Angel [only a faithful
4 reproduction, no larger than 22x28 inches].
5

6 **Stipulation:** Prosecution and defense stipulate to the following:
7

- 8 (1) If the pretrial motion of the defense is granted, Count 1, incitement of
9 others to commit an unlawful act, will be dropped in its entirety.
10
11 (2) The gold-plated lighter with initials "TB" engraved on it that was recovered
12 at the burn site is positively identified as belonging to the defendant.
13
14 (3) The three gasoline cans that were recovered were new cans. The place of
15 purchase of the cans could not be determined. No fingerprints or identifying
16 marks were found on the cans. One of the cans, half-empty, was found off
17 the north side of the road, halfway between the school and the place where
18 defendant was arrested.
19
20 (4) Neither "The Land" nor the buildings on it are currently insured.
21

22 * **NO ITEMS OTHER THAN THE MAP CAN BE USED AS PHYSICAL**
23 **EVIDENCE DURING TRIAL.**
24

25 **Charges:**
26

27 The prosecution is charging Terry Bell with two counts:
28

29 COUNT ONE: Incitement of others to commit an unlawful act. Cal. Penal Code Sec.
30 404.6: Urging Riot - Every person who with intent to cause a riot does an act or engages
31 in conduct which urges a riot, or urges others to commit acts of force or violence, or the
32 burning or destroying of property, and at a time and place and under circumstances
33 which produce a clear and present and immediate danger of acts of force or violence or
34 the burning or destroying of property, is guilty of a misdemeanor.
35

36 COUNT TWO: Arson. Cal. Penal Code Sec. 451: Arson - A person is guilty of arson
37 when he willfully and maliciously sets fire to or burns or causes to be burned or who aids,
38 counsels or procures the burning of any structure, forest land or property.

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.

The pretrial issue in this case revolves around the First Amendment freedom of speech and expression. In spite of what most Americans believe, not all speech is protected. One can be held responsible for making libelous remarks about another individual; one cannot falsely yell "fire" in a crowded theater; one is not protected for uttering "fighting words" that are likely to produce an immediate violent reaction. The United States Supreme Court opinions cited below will help you decide if Terry Bell's song and presentation at the rally are constitutionally protected speech.

Arguments

In the pretrial motion, the **defense** will argue that Terry had a First Amendment right to write the lyrics and perform the song advocating an anti-Believer position. The speech, song, and lighting of the fire did not present sufficient clear and present and immediate danger to outweigh the right to free speech.

In the pretrial motion, the **prosecution** will argue that the performance of Terry's song presented a clear and present danger to the public welfare. Terry's actions posed an immediate threat to the community of Southpoint, and particularly to the "Land of the Believers," and this threat outweighs Terry's right to free speech.

Sources

The sources for the pretrial motion arguments consist of excerpts from the United States Constitution, California statutes, 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. Bell.

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. California Penal Code Section 404.6: Urging Riot

Every person who with intent to cause a riot does an act or engages in conduct which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of a misdemeanor.

Cases:

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

Facts: Schenck, a Socialist, sent leaflets to draftees denouncing the draft as unconstitutional and urging them to "assert their rights," obstruct the draft, and refuse to serve the interests of Wall Street. He was charged with conspiring to violate the Espionage Act of 1917, which prohibited acts obstructing the U.S. military effort. Schenck was convicted without any evidence that he had in fact corrupted a single draftee. 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

1 outside and various political and racial groups associated with the crowd outside.
2 Terminiello was charged with violating an ordinance forbidding any breach of the peace.
3

4 **Holding:** The court found the ordinance violated Terminiello's First Amendment rights
5 and overturned the conviction. Terminiello's behavior did not present enough of a clear
6 and present danger to warrant an infringement of his First Amendment rights. "The
7 ordinance permitted conviction of petitioner if his speech stirred people to anger,
8 invited public dispute, or brought about a condition of unrest. A conviction resting on any
9 of those grounds may not stand."
10

11 3. Chaplinsky v. State of New Hampshire, 315 U.S. 568 (1942)
12

13 **Facts:** Walter Chaplinsky, a Jehovah's Witness, was convicted under a New Hampshire
14 statute prohibiting the addressing of any offensive or derisive word or name to any other
15 person who is lawfully in any street or other public place. Chaplinsky was handing out
16 literature and called a city marshall a "damned racketeer" and a "damned fascist."
17

18 **Holding:** The Supreme Court upheld the conviction. They held the statute to apply only
19 to fighting words which are epithets likely to provoke the average person to retaliation,
20 and thereby cause a breach of the peace. Fighting words are not protected by the First
21 Amendment.
22

23 4. Brandenburg v. Ohio, 395 U.S. 444 (1969)
24

25 **Facts:** Brandenburg, a Ku Klux Klan leader, was convicted for making a speech
26 advocating crime and violence as a means of accomplishing political reform.
27

28 **Holding:** The court overruled the conviction because "the constitutional guarantees of
29 free speech and free press do not permit a state to forbid or proscribe advocacy of the
30 use of force or of law violation except where such advocacy is directed to inciting or
31 producing imminent lawless action and is likely to incite such action."
32

33 5. Gitlow v. People of New York, 268 U.S. 652 (1925)
34

35 **Facts:** Defendant was charged with violating a statute that prohibited advocating the
36 overthrow of the government through writing, speaking, advising, or teaching. Defendant,
37 a member of the Socialist Party, participated in issuing a pamphlet calling for revolution.
38

39 **Holding:** The court upheld the defendant's conviction because "the freedom of speech
40 and of the press which is secured by the Constitution, does not confer an absolute right
41 to speak or publish, without responsibility, whatever one may choose." The court further
42 said that, "A state in the exercise of its police power may punish those who abuse this
43 freedom by utterances inimical to the public welfare, tending to corrupt public morals,
44 incite to crime or disturb the public peace."
45

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

1 **Facts:** During the 1984 Republican National Convention, Johnson participated in a
2 political demonstration to protest the Reagan administration. After a march through the
3 city streets, Johnson burned an American flag while protestors chanted. Johnson was
4 convicted of violating a Texas statute forbidding desecration of venerated objects.
5

6 **Holding:** Johnson's conviction for flag desecration is inconsistent with the First
7 Amendment. The court held that, in this case, the flag burning was expressive conduct
8 protected by the First Amendment. In deciding whether an act is subject to First
9 Amendment protection the court considers the "context in which conduct occurred." In
10 this case, the flag burning was symbolic political speech, which is protected under the
11 First Amendment. The court recognized the offensive nature of the act, but stated that
12 even offensive speech is protected.
13

14 7. Abrams v. United States, 250 U.S. 616 (1919)
15

16 **Facts:** Defendant participated in printing and distributing pamphlets designed to
17 undermine the war effort against Germany. Defendant was charged with distributing
18 language that was "intended to incite, provoke and encourage resistance to the United
19 States."
20

21 **Holding:** The court upheld Schenck and said that Abrams' actions presented a clear and
22 present danger to the United States which outweighed Abrams' First Amendment rights.
23

24 8. Bridges v. California, 314 U.S. 252 (1941)
25

26 **Facts:** Bridges, a labor leader, was convicted of contempt of a state court because he
27 published a telegram that he had sent to the Secretary of Labor which criticized a
28 decision of a judge in a case involving a labor dispute.
29

30 **Holding:** The court overturned the conviction on the grounds that the defendant's actions
31 did not present enough of a clear and present danger to outweigh the defendant's First
32 Amendment rights.
33

34 "What finally emerges from the 'clear and present danger' cases is a working principle
35 that the substantive evil must be extremely serious and the degree of imminence
36 extremely high before utterances can be punished."
37

38 "... even the expression of 'legislative preferences or beliefs' cannot transform minor
39 matters of public inconvenience or annoyance into substantive evils of sufficient weight
40 to warrant the curtailment of liberty of expression."

1 9. Feiner v. New York, 340 U.S. 315 (1950)

2
3 **Facts:** Feiner was making an inflammatory speech in which he made derogatory
4 remarks about President Truman and urged black people to rise up and fight for equal
5 rights. Defendant was arrested for inciting a breach of the peace.
6

7 **Holding:** The court upheld the defendant's conviction because Feiner was not arrested
8 or convicted for the content of his speech but for the reaction that he purposely elicited
9 from it. When a speaker intentionally provokes a hostile reaction and imminent disorder
10 is probable, his speech is not protected.
11

12 "The police cannot be used as an instrument of the suppression of unpopular views; but,
13 when a speaker passes the bounds of argument or persuasion and undertakes
14 incitement to riot the police are not powerless to prevent a breach of the peace."
15

16 10. United States v. O'Brien, 391 U.S. 367 (1968)

17
18 **Facts:** O'Brien was arrested and convicted of disturbing the peace while burning draft
19 cards during Vietnam War protest demonstrations.
20

21 **Holding:** The court overturned O'Brien's conviction, stating that the burning of the
22 draft cards was symbolic speech. The court explained that when speech and
23 nonspeech are combined in conduct, an incidental restriction of press resulting from
24 regulation of the nonspeech element could be justified only if the following conditions
25 are satisfied: (1) the regulation must further an important or substantial governmental
26 interest, (2) the government interest must be unrelated to the suppression of free
27 expression; and, (3) the incidental restriction on alleged freedom must be no greater
28 than is essential to the furtherance of that interest.
29

30 11. Hess v. Indiana, 414 U.S. 105 (1973)

31
32 **Facts:** Hess was arrested and convicted of disorderly conduct at an anti-war protest
33 when he used such words as "we'll take the f---ing streets later."
34

35 **Holding:** The court reversed the conviction, saying that the language was nothing more
36 than advocacy of illegal action at some future time. Since there was no incitement to
37 imminent disorder, or indeed any evidence of an intent to produce such imminent
38 disorder, the fact that the words might have a tendency to lead to violence was
39 inadequate to meet the requirements of the modern clear and present danger test as set
1 forth in Brandenburg.

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. Bell 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.

1 **WITNESS STATEMENT**

2 PROSECUTION WITNESS: FRANKIE REARDON

3
4 My name is Frankie Reardon, I'm 26 years old, and I've lived in Southpoint for about 15 years.
5 I've known Terry Bell for about three years or so. Terry got me involved in USA from the very
6 beginning. At the time, I agreed with Terry that the Believers' presence hasn't been very healthy
7 for Southpoint's economy and morale, so I became an active member of USA.

8
9 Terry's work for USA started out with speeches, editorials, council appearances, and the like,
10 but because Terry thought these methods ineffective, more drastic action was planned. The first
11 change was adopting USA's motto, "Fight fire with fire." From that point on, Terry seemed to
12 become obsessed with the idea of fire. Every time we got together, Terry would make jokes
13 about "having a barbecue and serving Believer-burgers over an open flame," or about hoping
14 that "the Believers' robes were made of flame resistant materials."

15
16 I recall that, at a meeting held a few weeks before the demonstration, Terry was smoking a
17 cigarette and pulled out the gold-plated lighter that I had given Terry as a birthday gift. Terry
18 began fidgeting with some papers on the table and built a little stick figure. Then, Terry starting
19 laughing and said, "This is what we should do" and set the figure on fire. Terry continued on,
20 "But of course we can't, can we?" Terry smiled and winked when saying that. We all just
21 laughed it off.

22
23 The day of the protest, we were all supposed to meet at 6:00 to set things up. The rally was
24 scheduled to start around 7:00, thirty minutes before the town council meeting. I arrived at
25 Terry's a little early, around 5:40. When I got there, the apartment door was unlocked but
26 chained so I was not able to enter. I thought it was strange that Terry used the chain lock on the
27 door, because on meeting days Terry usually left the door unlocked so that we could walk right
28 in.

29
30 I was about to call to Terry to open the door when I heard Terry speaking to someone on the
31 telephone. I heard Terry say, "Yeah, I hope that everything goes according to plan tonight. If we
32 can get the people hyped up enough, they will do all the work themselves, and we won't have to
33 do a thing. But I will be prepared, just in case. Whether I do it, or I can get someone else to,
34 things are going to get hot tonight." Just then Mickey arrived, Terry came out, and we all
35 proceeded to the park to set up for the protest.

36
37 I was very concerned about what I had overheard. I told myself I must be mistaken, but then
38 Terry came up to me and asked if I would go buy two or three cans of gasoline. When I asked
39 what they were for, Terry said, "I need them for later." I refused to buy the cans and confronted
40 Terry about the phone conversation I heard earlier. Terry told me that I was disloyal and a
41 coward, and said, "You know the old saying, 'If you can't stand the heat, get out of the kitchen?'
42 Well, it's going to get very hot tonight, so you better stay away."

43
44 I knew that Terry's plans had gone beyond USA's purpose, so I left. I was greatly concerned
45 about the entire situation, but I could not go to the police without proof of anything. I was
46 thinking about what to do when I saw Kelly Parker, the leader of the Believers, walking into town
47 hall for the meeting. I went to Kelly and expressed my concerns. Since I was not sure what
48 Terry was going to do, I could not tell Kelly anything other than that Terry seemed to have gone
49 over the edge and that Kelly and the Believers should be on the lookout for trouble tonight. Kelly

1 didn't seem sure whether to believe me or not. I tried to explain that I was sincere, but I figured
2 that at least I tried to warn them.

3
4 After that, I left and went to the diner. Some people came in after the protest was over, and I sat
5 and talked with Chris Perez for a while. A while later we got news about all the commotion on
6 "The Land." I can't say that I am surprised that it all happened, but I'm sorry it did. I wish I had
7 realized the truth earlier.

1 **WITNESS STATEMENT**

2 PROSECUTION WITNESS: LINDEN DANIELS

3
4 My name is Linden Daniels, and I am a police officer for the Southpoint Police Department. I
5 have been with the department for nine years. Prior to that I was a firefighter in Los Angeles for
6 five years. I have been trained and certified in arson investigation. In addition to my normal
7 duties as a police officer, four years ago I became the arson investigator for the department. In
8 the course of my duties, I have investigated upwards of 250 fires. Many of them are minor fires
9 set by tourists whose campfires get out of control, especially in the late summer when
10 everything gets dry, but my job requires me to investigate every fire for possible arson.

11
12 On August 22, 1992, at approximately 8:27 P.M., I was dispatched to check out a disturbance in
13 the park across from town hall. I arrived at 8:30 P.M. and saw that a crowd of approximately 40
14 people were gathered. They were loud and unruly. A fire had been set in a garbage can placed
15 on a small stage area. Upon my arrival, the crowd quickly dispersed. As I searched the area, I
16 recovered a can of gasoline hidden in bushes approximately 20-25 yards behind the stage area.
17 I also picked up several photocopies of a map depicting Southpoint and "The Land of the
18 Believers." I recognized the map as one that the Believers distributed to the police, fire
19 department, and other governmental bodies.

20
21 According to official records, at 8:52 P.M., a blaze was reported at the temple building located
22 on the private property known as "The Land of the Believers." Firefighters arrived, via the south
23 road, at the burn site at 9:00 P.M. At approximately 9:23 P.M., firefighters noticed through the
24 trees another blaze breaking out at the health clinic, also located on "The Land." At 9:28,
25 firefighters proceeded to the second fire. At that time, they notified me of the fires.

26
27 At approximately 9:30 P.M., I proceeded to the fire scenes via the north road to begin my
28 investigation. As I entered "The Land," several cars passed me, going in the opposite direction.
29 This amount of traffic was normal for that time of day. As I approached the dirt driveway leading
30 towards the homes of the leaders, I witnessed the defendant running towards us and making a
31 right turn from the main road into the driveway. The driveway is chained off, and the defendant
32 was observed going over the chain. The defendant was then stopped and taken into custody for
33 suspicion of arson. The defendant was not carrying any weapons or incendiary devices when
34 arrested; however, I proceeded to search the surrounding area and the defendant's car which
35 was parked nearby. Near the side of the road a few yards behind the defendant's car, I
36 recovered a map similar to the ones found at the protest site. This map differed, however, in
37 that five areas on "The Land" were circled in heavy red marker. Three of the five areas circled
38 were burn sites. No evidence was recovered in the defendant's car. At 9:47 P.M., I noticed a
39 flash to the east over the trees. I investigated the flash and found that the school was totally
40 engulfed in flames.

41
42 My investigations of the fires revealed that the blazes at the temple and health clinic were both
43 set with gasoline and a torch. The burn patterns indicate that the gasoline was splashed around
44 the perimeter and on the walls. Ash remains indicate that some sort of wooden torch was used
45 to ignite the flames.

46
47 The temple suffered fairly severe damage, but it was not completely destroyed. Unfortunately,
48 some chemicals and flammable materials were housed at the clinic, and when they ignited, the
49 whole building went up in flames. The clinic is a total loss. Because of the similarity of the first
50 two fires, I would conclude that both were set by the same person or persons.

1 The third fire differed, however, in that along with the gasoline, a basic fusing device was
2 employed to start the fire. A fusing device is something which delays the actual ignition of a
3 blaze, thereby allowing the arsonist time to get away from the structure. Tobacco ashes at the
4 flashpoint site indicate that a cigarette fusing device was used. This device usually delays
5 ignition by 10 to 15 minutes. A fire set in this manner also takes longer to develop than a torch
6 fire, since the igniting flame is relatively smaller.

7
8 Other physical evidence was recovered at the burn sites, along with the map mentioned earlier.
9 At the school building remains, I found a gold-plated cigarette lighter with the initials "TB"
10 engraved on it, and an empty gasoline can was recovered at the temple remains. Another
11 gasoline can, half-empty, was found off the north side of the road, approximately halfway
12 between the school and the driveway leading to the houses.

13
14 I am not certain whether the third blaze was set by the same person or persons as the first two.
15 However, in my experience, the proximity of location and time lead me to believe that it was.

1 **WITNESS STATEMENT**

2 PROSECUTION WITNESS: YOUNG LEE

3
4 My name is Young Lee. Terry and I have been friends for a long time. We met and became
5 friends when I was a sophomore in college. Terry was a senior at the time. Terry was always
6 supporting or arguing some cause or another. I worked with Terry on a project to prevent trees
7 from being cleared around Lake Angel. I should have known then that Terry's approaches tend
8 to be a little too radical.

9
10 At that time, Terry wanted to spike the trees so that if the lumber companies tried to cut the
11 trees down, their machines would be damaged. I've heard it could be dangerous, and I
12 managed to talk Terry out of it. Instead, we petitioned the town council and convinced them to
13 stop the clearings.

14
15 Terry and I have been neighbors for about three years. I live in the apartment a few doors away
16 from Terry, but lately I wished that we didn't live so close. It seems that the only topic Terry has
17 talked about in the last year is the Believers. At first, Terry talked about them once in a while,
18 and the discussions were very interesting. We debated the issues a lot, but then Terry started
19 getting angry at me for defending them. It got to the point where whenever we talked, we ended
20 up arguing over the Believers. I got so annoyed with it that about a month or two ago, I told
21 Terry, "I'm sick of hearing about the Believers. You may have a problem with them, but they've
22 never done anything to me." Terry got very angry at this point and said, "Maybe you should go
23 join them if you like defending them so much. You fit right in with that bunch of idiots." I replied,
24 "They're probably safer to live with than you are. You're crazy!" As I left, Terry slammed the
25 door behind me. We have not spoken to each other since, except once.

26
27 One evening a few days before the protest, I saw Terry and a friend standing outside the
28 building as I returned home from work. They were both smoking and talking. Terry was saying
29 something like, "I think I can get them to do it and save us all the trouble." I tried to just walk
30 past, but Terry stopped me and said, "Hey Young, I know we haven't talked much lately, but I
31 want to let you know that I'm going to be speaking at a protest rally against the Believers
32 Saturday night at 7:30 in front of town hall. I would really like it if you could be there." I was
33 surprised that Terry said that, considering all the arguments we have had over the Believers in
34 the past. I told Terry that I would try to stop by and left.

35
36 The night of the protest, I decided to see what Terry had to say. When I got there, Terry was
37 addressing the crowd and telling them that they needed to take action and "fight fire with fire."
38 That phrase will forever be ingrained in my memory -- it was repeated so many times that night.
39 At first, just a few people were saying it, but Terry kept going until everyone joined in. Terry is
40 very good at playing on people's emotions. Terry would say things like, "Aren't you angry that
41 they drove the tourists away? Fight fire with fire!", and, "Do you want your children to be
42 kidnapped, brainwashed, or molested? Protect yourselves and the ones you love! Fight fire with
43 fire!" Terry made it sound like every problem that everyone had could be traced back to the
44 Believers somehow. People got very emotional and angry.

45
46 When Terry started singing that song, I realized that Terry was asking people to do more than
47 just complain to the town council. I think Terry meant "fight fire with fire" literally. That phrase of
48 the song really stuck in my mind. The scariest thing was that some of the people seemed
49 worked up enough to do it. By the end of the song, a few people standing next to me were
50 shouting things like "Burn them out!" and "Torch them all!"

1 At one point, Terry came down off the stage and circulated through the crowd, stopping and
2 talking to various people. Terry stopped at the group next to me -- the same group that was
3 shouting -- and showed them a piece of paper. I was able to see that it was a map of Southpoint
4 and the surrounding areas. The map had a bunch of red circles drawn on it, maybe six or
5 seven. Most of the circles were in areas on the east side of Lake Angel. I couldn't tell exactly
6 what was circled, although I did hear Terry say something like, "The kids will be happy. No
7 school tomorrow." They all starting laughing. I didn't know what they were talking about, but now
8 I think I do. If you ask me, Terry's gone off the deep end.

1 **WITNESS STATEMENT**

2 PROSECUTION WITNESS: KELLY PARKER

3
4 My name is Kelly Parker, and I am one of the leaders of the group known as the Believers. For
5 the last 15 years, this group has been through a lot of persecution and hard times. Most places
6 we go, people do not understand us, do not accept us, and try to destroy us. I know that people
7 say we're isolationists, satanic, immoral, and many other things. All these perceptions come
8 from misunderstanding of our beliefs. Basically, we believe that before purification and healing
9 can take place a person must be completely harmonized, thus, everything we do is with the goal
10 of fostering harmonization. That is why we keep to ourselves.

11
12 I strongly believe in this group, and feel that nothing or no one shall hinder us from our mission
13 of healing and purification of the mind, body, and soul to a state of perfect harmony using the
14 powers of water and fire.

15
16 I met Terry Bell in rather unpleasant circumstances shortly after our arrival two years ago. We
17 had just purchased our land and were holding a group harmonization session when we heard
18 loud voices, shouting and laughing nearby. A few followers and I went to see what was going
19 on. As we approached, I heard Terry make insulting remarks like, "Check out the weirdos in the
20 robes. Don't look them straight in the eyes or you'll be blinded." Right away I knew I was dealing
21 with yet another person who did not understand or accept us. In my experience, I have found
22 that the only way to deal with these types is to be calm, firm, and direct.

23
24 I clearly explained that we recently bought the land and that they would have to find another
25 location for their gathering. Terry insisted that, "This is our town," and demanded that we let
26 them stay. I told Terry that in other circumstances I would have allowed them to, but we were
27 already in the middle of a group meditation nearby. To break the meditation to move the group
28 would have totally disrupted the group's harmony.

29
30 Terry's reply was, "Your phony rituals don't mean anything to us." I realized that it was useless
31 to discuss the matter further, so I instructed the followers to escort Terry and the others off the
32 property. As I turned to walk back to the group, I heard Terry say, "You can't get away with this.
33 This is our land." I turned in time to see Terry lunge toward me, but Terry must have tripped on
34 something and fell to the ground. One of my followers tried to help Terry stand, but instead of
35 being thankful, Terry complained that the follower sprained Terry's wrist. I said to Terry, "I am
36 sorry, but legally this is our land, and you will have to leave now."

37
38 Ever since that incident, Terry has actively opposed our group, especially when we cleared
39 trees off while we were developing "The Land" -- our land. It was very apparent at the protest
40 rally that Terry's animosity had reached an extreme. When I arrived at town hall, a fairly large
41 crowd was gathered. It looked as though the protest had just started. Inside town hall I was
42 approached by Frankie Reardon. I recognized Frankie as an ally of Terry's and expected to
43 hear more negative anti-Believer verbiage. Instead, Frankie told me that Terry was planning to
44 do something to me and the Believers tonight, and that we should be careful. I didn't know
45 whether to believe Frankie or not and asked what was going to happen. Frankie said, "I can't
46 say for sure, but I know it is serious. Just be very careful tonight."

1 Frankie left, and I went into the town meeting, but my attention was diverted by the protesters. I
2 went outside and stood on the town hall steps, across the street from the protesters. Terry was
3 speaking and singing to the crowd. I could not believe the amount of hostility in Terry's words
4 and especially in the song. What was even more disturbing was the crowd's reaction. Terry is
5 very charismatic and very influential. Terry knew what to say to evoke the desired reaction from
6 the crowd. From a leader's perspective, I was impressed. From the perspective of a Believer, I
7 was terribly frightened that Frankie's warning was true.

8
9 Then, Terry must have spotted me from the stage. Terry pointed at me and yelled to the crowd,
10 "Hey look! There's one of them now! The big leader, no less. Hey Kelly, it's after 8:00. Aren't you
11 supposed to be out doing some phony healing rituals right now?" Someone in the crowd picked
12 up a rock and tossed it at me. At that point I left to go back to "The Land" and warn the others.

13
14 Terry was right about one thing -- every night from 8:00 until 10:00, all the followers gather
15 together to meditate on harmonization and healing. I went as quickly as I could to go warn them,
16 but that area is isolated in the southwest corner of "The Land." I took the south road, but by the
17 time I got there and we started heading back towards the campus area of "The Land," it was too
18 late. As we were running back, we smelled smoke in the air and saw the glow from the building
19 fires over the trees.

20
21 Of all the animosity we have faced over the years, none has ever been this cruel and
22 devastating.

1 **WITNESS STATEMENT**

2 DEFENSE WITNESS: TERRY BELL

3
4 My name is Terry Bell, and I'm 29 years old. I've lived in Southpoint all my life. It has always
5 been a very peaceful, safe, and congenial place to live for people of all races, economic
6 backgrounds, and religions. At least that was the way it was before the Believers arrived. They
7 have disrupted life in Southpoint from the very beginning. The land that they own includes a
8 beach where, for over 20 years, many Southpoint families held an annual picnic. Last year, I
9 was in charge of organizing the picnic. Some friends and I went to the area early to set up,
10 when a group of Believers came up to us and told us that we had to get off of "their" land. I
11 explained our situation and asked if they would let us use the beach just one last time, but the
12 leader, Kelly Parker, was very rude and insulting and said, "Your traditions are worthless and
13 don't mean anything to us." They literally pushed and shoved us off the property. They were so
14 rough, I ended up with a sprained wrist and some scrapes and bruises. They kept saying things
15 like, "This is our land! Get off it now!"

16
17 Things like that make it obvious that they really don't care anything about this town or its people.
18 They are driving the tourists away. Once word got out that they were "healing" people in Lake
19 Angel, tourists got scared that the water was contaminated. I heard that people with all kinds of
20 diseases and illnesses from chicken pox to AIDS were being "cleansed" in the lake. I'm scared
21 to go in the water, too. I know a lot of people whose businesses are really suffering now.

22
23 I started USA because I am very concerned about the welfare of this town. I tried to go through
24 the proper political channels, but the council's reactions are usually too slow to prevent harm. I
25 know that organized social pressures can be a very powerful tool in expressing opinions and
26 making change -- that's what USA is all about. I thought that if the council knew that there were
27 many others out there who felt as strongly as I did, they would take more immediate action.
28 That's why the protest was planned right across from the town meeting. We wanted to get the
29 council's attention.

30
31 That's what the motto "fight fire with fire" is supposed to do -- get people's attention. That's also
32 what the song and bonfire were meant for. The use of fire is purely symbolic. It seemed fitting
33 since the Believers' symbol includes flames. The members of the Believers are very committed
34 to their organization. Maybe they are brainwashed. But the kind of passion and zeal they exhibit
35 for their group is what I wanted to inspire in people of this town. I wanted them to get excited
36 about saving Southpoint; I never intended for anyone to literally burn the Believers down.

37
38 I thought the protest would be a way of making it known that we were serious about saving
39 Southpoint, and I think in that respect it was successful. After the protest, Mickey and I went and
40 sat in my car, talking about all the things that happened at the rally. I told Mickey that I thought
41 things went really well and we got our message across, but when Mickey started telling me
42 about a confrontation at the rally involving a small group of out-of-towners, I got worried.
43 Apparently, this group was part of the crowd at the protest, and was very vocal and advocated
44 violence. Shortly before the protest ended, Mickey heard these people saying that they were
45 going to go and literally set fire to the Believers' land. Mickey had a heated discussion with
46 them, after which they took off. From what Mickey told me, I thought that group might get out of
47 hand and decided to go to "The Land" to prevent that group from doing anything illegal and
48 negating the positive aspects of the protest. I also wanted to warn Kelly to be on the lookout.

1 I'm not sure what time it was by then, but I think that Mickey and I talked for a good hour or so. I
2 sent Mickey to the diner to keep an ear out for news about that troublesome group, and I took
3 the north road to "The Land." I thought it would be the fastest way to Kelly's house, according to
4 the map I had of "The Land." I drove onto "The Land" and accidentally drove past the driveway
5 to Kelly's house. It was pretty dark out and the driveway was just a dirt road surrounded by
6 trees. I quickly made a U-turn and parked my car on the side of the road. I got out of my car
7 and, just as I turned up the driveway, I saw a car's lights approaching. I stopped, thinking that it
8 might be Kelly coming home, but it was the police. They told me I was under suspicion for
9 starting some fires elsewhere on "The Land." I had no idea that anything like that was going on.

10
11 I was sitting in the back of the police car when my map was found. It must have fallen out and
12 blown away a little when I got out of my car. I had the map at the protest in the first place to
13 show the extent to which the Believers have already taken over land and destroyed its value by
14 clearing the trees away. On my copy of the map, I circled the areas where the trees had already
15 been cleared and used it to show people the environmental damage that has been done. I had
16 the map with me because I didn't know my way around "The Land" and needed it to find Kelly's
17 house.

18
19 This whole situation is crazy. The last thing I wanted was for there to be major trouble. After the
20 protest was over, Mickey and I were planning to go up to the mountains for a few days of rest
21 and relaxation. Things have been very hard on me lately, between dealing with the Believers,
22 organizing the protest, trying to quit smoking, and other things. I was very stressed out and
23 needed to get away. It seemed like everyone was on edge. Right before the protest, I told
24 Frankie that I was really sorry but I couldn't find my lighter, the one Frankie gave me for my
25 birthday. Frankie seemed okay about it, but when I asked Frankie to do me a favor and fill up
26 the extra gas cans for me and Mickey's trip, Frankie flipped out. I don't know if Frankie was mad
27 for not being included in the trip or what, but Frankie started accusing me of plotting to kill
28 people or something, and asked me about some phone call I received earlier that day. Frankie's
29 crazy. I didn't get any phone calls all day. I don't know where Frankie got all these crazy ideas
30 about me, but I think Frankie must be very confused.

31
32 I know the police also found my lighter at one of the burned out buildings. I really have no idea
33 how the lighter got there. As I said, I quit smoking about two weeks ago and must have
34 misplaced the lighter. I lost track of it since I wasn't using it so I'm not quite sure when I lost it. It
35 is a very distinctive lighter, gold-plated with my initials. If I really set those fires, I would have
36 been smart enough not to leave something like that behind.

37
38 I just wanted to help Southpoint. I care about this town and its people. I'm very disturbed that
39 people would go to such extremes when we had begun making progress with the council. What
40 hurts most, though, is that people would believe and accuse me of doing such terrible things,
41 especially Frankie. I thought we were friends, but Frankie doesn't know me at all.

42
43 I didn't have anything to do with those fires being set. It's crazy -- I went there to warn them and
44 I'm the one who gets picked up and arrested.

1 **WITNESS STATEMENT**

2 DEFENSE WITNESS: MICKEY FRANKLIN

3
4 My name is Mickey Franklin. I have lived in Southpoint for 20 years. Terry Bell and I have been
5 good friends since elementary school. I have completely supported Terry from the moment USA
6 was started. I also see the negative impact that the Believers are having on this town, and I
7 want to stop it before it's too late. Terry asked several other people to become part of USA. One
8 of them was Frankie Reardon. I did not really agree with Terry that Frankie would be a
9 supportive part of the group. It looks like I was right. Frankie just did not fit in.

10
11 For instance, everyone knew that Terry was very stressed out, and that we were going on this
12 trip right after the protest. Terry and I discussed getting extra gas for when we go off-roading up
13 in the mountains, but neither of us had time to go get it, so Terry decided to ask Frankie to do it
14 for us. I saw Terry ask Frankie, but then Frankie flew off the handle and left. I don't understand
15 why that would make Frankie so angry. I asked Terry what happened between them, but Terry
16 wasn't sure either. Terry just looked at me and said, "You know how Frankie can get
17 sometimes." Terry was referring to Frankie's inconsistent behavior. You never know how
18 Frankie will react to things. I remember at one of our first USA meetings, Terry made a joke
19 about the Believers' sacrificial rites, and Frankie got angry and said, "I don't like talking about all
20 this violence." A little later when we were talking about ways to get our point across to the town
21 council, Frankie suggested that we should burn a Believer in effigy. Terry vetoed the idea
22 saying, "It may give people the wrong idea." But Terry did like the symbolic usage of fire. That's
23 when our motto was adopted. I thought it was very inconsistent of Frankie who claimed to be
24 anti-violent to want to burn something in effigy.

25
26 It doesn't surprise me that Frankie is accusing Terry of taking part in the fires. But Frankie does
27 not know Terry very well. Terry has always said that violence and illegal acts are
28 counterproductive. Terry has always appeared to be very committed to inducing change and
29 has said on many occasions, "I won't do anything that will get me thrown in jail. What good
30 could I possibly do from there?" I think that there are a lot of people in this town and many
31 others who do not like the Believers. I don't know who caused those fires, but I know it was not
32 Terry.

33
34 In fact, Terry actually tried to stop any trouble from happening. During the protest, I overheard
35 some people saying that they were going to burn down the Believers' land and houses. I got into
36 an argument with them because I told them that they were misunderstanding what Terry was
37 saying. They replied, "It doesn't matter what anyone says. The Believers have had this coming
38 for a long time!"

39
40 Terry and I sat in Terry's car after the protest and were discussing the events, when I told Terry
41 what happened with that group of out-of-towners. Terry seemed surprised. After a while, Terry
42 told me to stay in town and keep an ear open for any other trouble-makers. Meanwhile, Terry
43 said, "I'm going over there to try to make sure things are all right." Terry also mentioned the
44 idea of warning Kelly and the Believers. By the time Terry dropped me off at the diner, it was
45 probably about 9:30.

46
47 I sat at the diner and talked with a bunch of people who attended the rally. Most seemed to
48 have positive reactions to the speech, song, and Terry. Next thing I know, I heard that Terry
49 was arrested.

1 **WITNESS STATEMENT**

2 DEFENSE WITNESS: JORDAN DALY

3
4 My name is Jordan Daly. I used to be a part of the Believers, but I left the group a little more
5 than a year ago. I left because I think the Believers are hypocrites, especially the leader, Kelly.
6 They prey on people who are down on their luck and down on themselves and promise them a
7 better way of life. What you get is an environment that discourages independent thinking and
8 demands obedience. I had enough of that at home with my parents when I ran away from them.
9 I went from being under their control to being under the control of the Believers. And that is what
10 they try to do, control your life.

11
12 I knew who Terry Bell was before we met because I was at the beach the day that Kelly and
13 Terry had that argument. Actually, it was more Kelly's fault. Kelly was very rude and impolite to
14 Terry and the others. I thought Terry's request was reasonable. But Kelly lied and said that we
15 couldn't move the group harmonization after it started. The truth is we have interrupted and
16 moved the group harmonization many times before for various reasons. Supposedly, if you are
17 truly harmonized and focused, it doesn't matter where you are.

18
19 I always thought it very strange that after that incident, Kelly showed Terry's picture to all new
20 Believers and warned us to avoid Terry at all costs. Kelly said that Terry is the embodiment of
21 an anti-Believer and filled with evil. It seemed like Kelly would speak negatively of Terry at every
22 possible opportunity. Now that I think back on all those negative things that Kelly has said about
23 Terry, I would not be surprised if Kelly set those fires and purposely made it appear that Terry
24 did.

25
26 I was really surprised when I finally met Terry, after I left the Believers, to find that Terry was a
27 very nice person. Actually, I didn't leave the Believers completely voluntarily. I had to leave or
28 face punishment. I used to work in the administrative offices, and Kelly got very angry at me
29 when I accidentally opened some mail addressed to Kelly. It was an application for an insurance
30 policy on "The Land" that was addressed to Kelly. Kelly has always talked of one day having
31 enough money to buy more land so that all Believers can live together and someday even build
32 their own town for the sake of harmonization.

33
34 Terry asked me for information about the Believers' teachings and lifestyle, and I gladly gave it. I
35 told Terry about the schedules we kept, and what we did in our rituals, and what
36 "harmonization" was all about. I also told Terry to be careful because it seemed that Kelly
37 disliked Terry very much and could be a source of trouble for Terry.

38
39 My fears were confirmed on the day of the protest when I ran into Kelly in front of town hall.
40 Kelly said that I had been completely overtaken by evil forces and that these evils were
41 disguised. Kelly said, "I do not blame you. I want to heal you, but in order to do that, the evil
42 must be revealed for what it is. You must be rid of the evil presence that is disrupting your
43 harmony. You must remove Terry Bell from your life. The healing water is not powerful enough;
44 it must be done by the healing flame." I was surprised that Kelly said that. According to the
45 Believers, the healing water can heal almost anything. The flames are used only in the most
46 extreme cases. In my year as a Believer, I had never seen a healing by fire, although I heard
47 stories that people have died because of it.

48
49 Terry was right all along. The people of Southpoint better watch out for the Believers.

1 **WITNESS STATEMENT**

2 DEFENSE WITNESS: CHRIS PEREZ

3
4 My name is Chris Perez. I live in Southpoint and used to own two gift shops. Most of my
5 customers are tourists and, like many other people, I have suffered financially due to the drop in
6 tourism. I closed one of my stores and am just managing to stay afloat with the other one.
7 I had never met Terry Bell before the day of the town council meeting, although I have known
8 about USA for a while through some friends of mine who are a part of USA, Mickey Franklin and
9 Frankie Reardon.

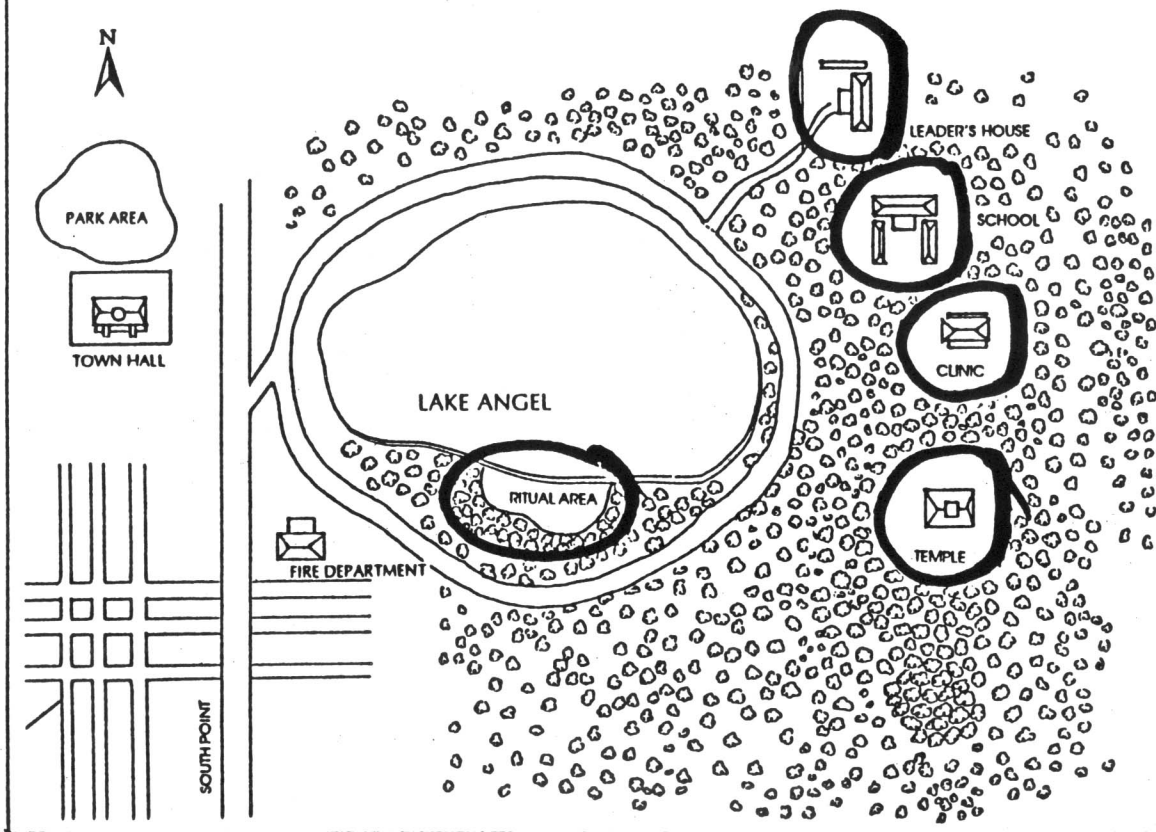
10
11 Because I felt frustrated and desperate, I planned to go to the town council meeting to see what
12 was going to be done. I got there early, and as I approached town hall, I saw Terry and the
13 others setting up across the street. Terry approached me and asked me if I was going to the
14 meeting and why. We had a brief discussion, and I told Terry of my situation, and then Terry
15 invited me to stay for the protest. Terry was very friendly. I pulled out a cigarette and offered
16 Terry one. Terry refused the cigarette saying, "Thanks but no thanks. I just quit recently."

17
18 Terry encouraged me to stay for the protest, and said, "Chris, you are not alone. There are
19 many people out there who do not like the Believers. Some are very radical, and some, like the
20 town council, are too passive. We are somewhere in the middle. We know forceful action is
21 necessary but, to be effective, it must be within the limits of the law. My words may seem strong
22 to some, but in the end, we all want the same thing -- change." Terry also mentioned that USA
23 was thinking of instigating a lawsuit against the Believers and asked if I would be willing to
24 testify.

25
26 I thought Terry's speech and song were very effective. They definitely got the attention of the
27 town council and many people. I saw them looking out the windows and coming outside to see
28 what was going on. The people at the rally seemed very receptive to what Terry was saying,
29 except for this one rowdy, obnoxious group. I have never seen any of them in Southpoint
30 before. They were talking about burning and torturing the Believers. If you ask me, they were
31 the ones that started the fires, not Terry. I don't think they got the idea from Terry or the protest
32 either. Terry's words were strong, but the message was clear. Anyone who got the impression
33 that Terry meant anything other than united citizen action came with those ideas in their heads
34 already.

35
36 After the protest I went to the diner. A lot of the people from the protest were there as well, and
37 we were all discussing the issues and a plan of action. When we got there, Frankie was already
38 there. I sat and talked with Frankie for a while when Mickey showed up. It was around 9:10 or
39 9:15, I think. Mickey came in and looked over at us, and I expected Mickey to come sit with us,
40 but instead Mickey sat with some other people. I went to say hello to Mickey, and we talked for
41 a little while about the protest and the things that happened there. Mickey kept saying, "I hope
42 Terry gets there in time to stop things from getting out of hand." I don't know Terry very well, but
43 from what I know, I don't think Terry had anything to do with those fires.

SOUTH POINT & THE LAND OF THE BELIEVERS



THE FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

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

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

The Presumption of Innocence

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

The Concept of Reasonable Doubt

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

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

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

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

ROLE DESCRIPTIONS

ATTORNEYS

The **pretrial motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position and answer questions by the judge as well as try to refute the opposing attorney's arguments in your rebuttal.

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

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

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

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note rule #13, appearing on page 60: "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Do the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

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

WITNESSES

You will supply the facts in the case. A witnesses may testify only to facts stated in or reasonably inferred from his/her Witness Statement or the 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 43.

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 51.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

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

The witness will then be sworn in before testifying.

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

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

Examples of proper questions on direct examination:

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

"What happened after the defendant slapped you?"

"How long did you see . . . ?"

"Did anyone do anything while you waited?"

"How long did you remain in that spot?"

Conclude your direct examination with:

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

Cross-Examination

Cross-examination follows the opposing attorney's direct examination of his/her witness.

Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the

witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

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

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

Examples of proper questions on cross-examinations:

"Isn't it a fact that . . . ?"

"Wouldn't you agree that . . . ?"

"Don't you think that . . . ?"

"When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

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

Impeachment During Cross-Examination

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

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

Example: (Prior conduct)

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

Example: (Past conviction)

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

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

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

"Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"

"Would you read the third paragraph aloud to the court?"

"Does this not directly contradict what you said on direct examination?"

Re-Direct Examination

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

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

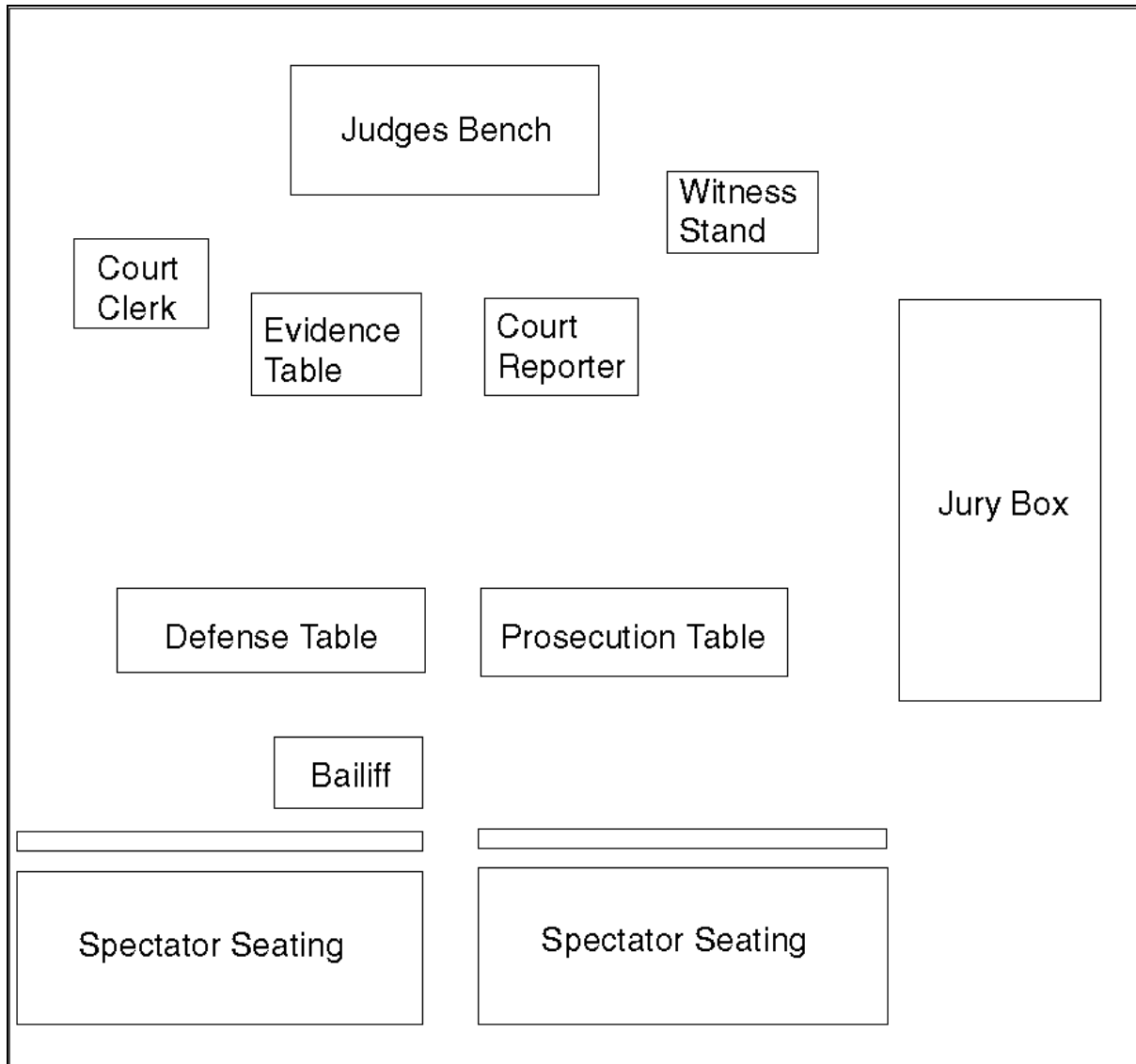
"Based on this testimony, there can be no doubt that . . ."

"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 47. **Other more complex rules may not be raised at trial.** As with all objections, the trier of fact will decide whether to allow the testimony, strike it or simply note the objection for later consideration. Judges' rulings are final. You must continue the presentation even if you disagree.

A proper objection includes the following elements:

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

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

Allowable Evidentiary Objections

1. Facts in the Record

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

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

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

2. Relevance

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

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

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

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

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

3. Laying a Proper Foundation

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

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

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

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

4. Personal Knowledge

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it. Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

- Examples:
1. The witness knew the victim and saw her on March 1, 1991. The witness heard on the radio that the victim had been shot on the night of March 3, 1991. The witness lacks personal knowledge of the shooting and cannot testify about it.
 2. From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

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

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

5. Character Evidence

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

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

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

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

6. Opinion/Speculation

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

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

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

7. Hearsay

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

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

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

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

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

Courts have recognized certain general categories of hearsay which may be admissible. The following exceptions (and others not listed) have been made because of the practical necessity of including the information and circumstances that offer greater reliability to certain types of out of court statements:

- a. Admission by a party opponent--any statement made by an opposing party.
- b. Excited utterance--a statement made shortly after an event, while the declarant is still excited.
- c. State of mind--a statement that shows the declarant's mental, emotional, or physical condition.
- d. Declaration against interest--statement that puts declarant at risk of civil or criminal liability.
- e. Records made in the regular course of business
- f. Official record and writings by public employees
- g. Past recollection recorded--something written by a witness when events were fresh in that witness's memory, used by witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)
- h. Prior inconsistent statements--generally admissible only as impeachment but not for the truth of the fact asserted.

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

Allowable Objections for Inappropriately Phrased Questions

8. Leading Questions

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

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

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

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

9. Argumentative Questions

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

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

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

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

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

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

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

10. Asked and Answered

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

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

Counsel for X correctly objects and should be sustained.

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

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

Form of Objection: **"Objection, your honor. This question has been asked and answered."**

11. Compound Question

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

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

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

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

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

12. Narrative

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

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

The question is objectionable and the objections should be sustained.

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

13. Non-Responsive Witness

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

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

14. Outside the Scope of Cross-Examination

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

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

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS
FOR THE 1992-93 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."

OFFICIAL JUDGE AND SCORER INFORMATION PACKET

**PEOPLE
V.
BELL**

Issues of free expression, intergroup conflict, and arson

Featuring a pretrial constitutional argument about the First and Fourteenth 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 2-4, 1993) 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 18, 1992**.
3. All local county competitions must be completed by **March 5, 1993**.
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 **during the same round**.

3 Trial Attorneys for Prosecution (maximum)

3 Trial Attorneys for Defense (maximum)

4 Witnesses for Prosecution

4 Witnesses for Defense

1 Clerk

1 Bailiff

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

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

II. CONDUCT OF THE PRETRIAL MOTION

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

1. Only the fact situation (pages 11-15) and the materials on pages 16-19 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 74) to presiding judges and scoring attorneys at all rounds of the state finals in Sacramento. No other materials can be furnished to the presiding judges or scoring attorneys by student team members, teachers, or attorney coaches.
3. The gender neutral names allow students of either gender to play the role of any witness.

4. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams will have to begin without their other members or with alternates.
5. After the judge has delivered his or her introductory remarks, witnesses participating in the trial (other than the defendant) are to leave the courtroom until called to testify. After testifying, witnesses must remain in the courtroom for the remainder of the proceedings.
6. Teacher sponsors and attorney coaches are to remain in the seating area throughout the trial. There must be no spectator contact with student team members once the trial has begun. The sponsors and coaches, other team members and spectators may not talk, signal, and/or otherwise communicate with the students. There will be an automatic deduction of five points from a team's total score if the teacher or attorney coach, other team members, or spectators are found in violation of this rule either by the judge or by the Mock Trial staff.
7. Recesses will not be allowed in local or state competitions for any reason.
8. The fact situation starting on page 11 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 43.
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 14.) 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 41-44.) 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 46-53. Only specified types of objections will be recognized in the competition (see page 54). Other more complex rules may not be used at the trial.
16. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.)
17. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention, vocally in front of all present. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated and her/his word is final. (The bailiff will be provided with a copy of the rules of competition for easy reference.) Unless a specific point deduction for a particular infraction is provided in these rules, it will be the individual decision of each scorer as to the amount of a deduction for a rule infraction.
18. No video/audiotaping of a trial competition outside of your own county is permitted. Please check with your local Mock Trial coordinator regarding guidelines for video/audiotaping your competition.
19. The official diagram establishes only relative positions. Because the scale is approximate, the diagram **cannot** be used to definitively establish distances. The issue of distances should be based on the witnesses's testimony and is a matter of fact for the triers of fact.

IV. TIMING

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

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

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

Teams may divide the 10 minutes for opening statement and closing arguments, the 14 minutes for direct and re-direct examination, and the 10 minutes for cross-examination as desired (e.g. 3 minutes opening, 7 minutes closing). The time may be utilized

however they choose, but the maximum allowable totals for each category must be observed.

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

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

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

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

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

Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.
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 11 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 64 to the participants and the pretrial motion will be presented prior to the Mock Trial.

The judge's ruling on the pretrial motion will have a direct bearing on the 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. Bell

To the fullest extent possible, please conduct the case as you would under normal circumstances, familiarizing yourself with the case materials of People v. Bell 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 66 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 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 Southpoint and the area around Lake Angel [only a faithful reproduction, no larger than 22x28 inches.]

Stipulations: Prosecution and defense stipulate to the following:

- (1) If the pretrial motion of the defense is granted, Count 1, incitement of others to commit an unlawful act, will be dropped in its entirety.
- (2) The gold-plated lighter with initials "TB" engraved on it that was recovered at the burn site is positively identified as belonging to the defendant.
- (3) The three gasoline cans that were recovered were new cans. The place of purchase of the cans could not be determined. No fingerprints or identifying marks were found on the cans. One of the cans, half-empty, was found off the north side of the road, halfway between the school and the place where defendant was arrested.
- (4) Neither "The Land" nor the buildings on it are currently insured.

"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

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

2. Opening Statement

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

3. Direct/Re-Direct Examination

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

4. Cross-Examination

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

5. Witnesses

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

6. Closing Argument

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

7. Team

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

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

MOCK TRIAL SCORING CALCULATIONS

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

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

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

Trial 1

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

Team B: $\frac{247}{488}$ (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

President's Tie Breaker _____

Scorer's Name _____ President's Name _____

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

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

PROSECUTION _____ DEFENSE _____

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

AWARD NOMINATION SHEET

PROSECUTION NAME

DEFENSE NAME

Please list 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:

PRETRIAL MOTION TIME SHEET

Defense - School

V. _____
Prosecution - School

Clerk _____

School _____

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

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

Round off times to the nearest one-half minute.

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

MOCK TRIAL TIME SHEET

Clerk _____ Judge _____ Date _____

Prosecution School V. _____
Defense School

INSTRUCTIONS:

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

Stop the clock (do not time) when:

- witnesses enter the courtroom;
- attorneys make objections;
- judges question attorneys or make observations from the bench.

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

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ERRATUM

People v. Bell

The-case summary for United States v. O'Brien on page 19 of the mock trial case packet should read as follows:

10. United States v. O'Brien, 391 U.S 367 (1968)

Facts: O'Brien was arrested and convicted of knowingly destroying his draft card during a Vietnam War protest demonstration in which several people burned their draft cards.

Holding: The court upheld O'Brien's conviction. While burning the draft cards may have been symbolic speech, the court held that the government could outlaw destroying draft cards. The court explained that when speech and nonspeech are combined in conduct, an incidental restriction of speech resulting from regulation of the nonspeech element could be justified only if the following conditions are satisfied: (1) the regulation must further an important or substantial governmental interest; (2) the government interest must be unrelated to the suppression of free expression; and (3) the incidental restriction on alleged freedom must be no greater than is essential to the futherance of that interest.

