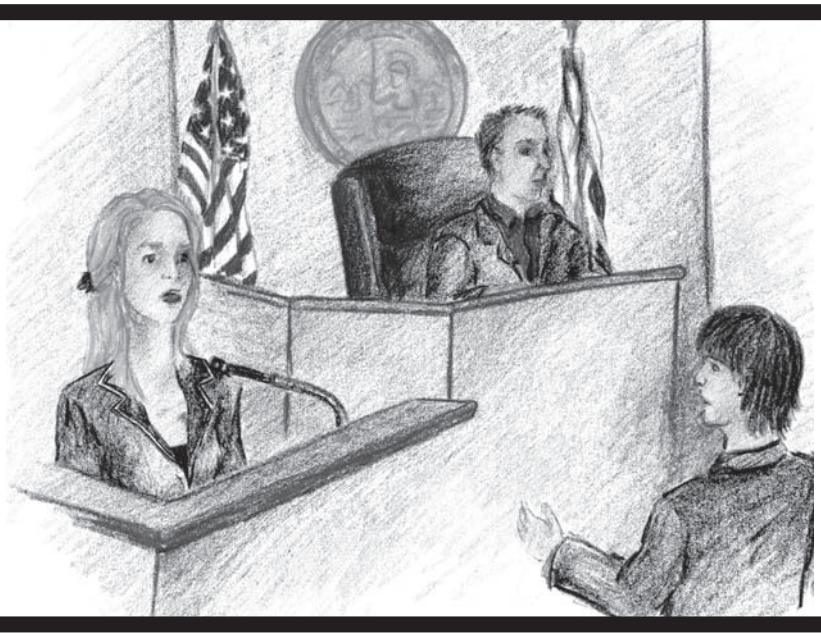
CONSTITUTIONAL RIGHTS FOUNDATION
Educating Tomorrow's Citizens

PEOPLE v. MARKSON

A Murder Trial

Featuring a pretrial argument on the Fourth Amendment to the U.S. Constitution



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OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM

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Kern	Orange	San Luis Obispo	Ventura
Kings	Placer	San Mateo	Yolo

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PROGRAM OBJECTIVES

For the students, the Mock Trial program will:

1. Increase proficiency in basic skills (reading and speaking), critical-thinking skills (analyzing and reasoning), and interpersonal skills (listening and cooperating).

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

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

For the school, the program will:

1. Provide an opportunity for students to study key legal concepts and issues.

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

3. Demonstrate the achievements of young people to the community.

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

5. Provide a challenging and rewarding experience for teachers.

CODE OF ETHICS

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

All participants in the Mock Trial competition must follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff. Failure of any member or affiliate of a team to adhere to the rules may result in disqualification of that team.

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

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

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

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

2005–2006 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation creates the Mock Trial case, which addresses serious matters facing young people today. By affording students an opportunity to wrestle with large societal problems within a structured forum, we strive to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches.

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

CLASSROOM MATERIALS

The following lesson highlights topics related to *People v. Markson*. In this lesson, students examine the role forensic science plays in the courtroom and how the media through their depictions of forensic evidence might influence jury decision making.

LESSON

The Media, Juries, and Forensic Evidence

Criminal investigations and trials captivate the imagination of the American public. Fictional crime fighters and courtroom dramas have played a prominent role in entertainment. In recent years, TV legal dramas have grown increasingly more popular. These representations of the criminal justice system attempt to mirror actual crime investigation and court proceedings.

Some critics have claimed that the media, and forensic science TV shows in particular, are affecting the criminal justice system. They argue that popular images of trials are changing the way juries make decisions. Most recently, some prosecutors have claimed that forensic shows are distorting jurors' perception of the burden of proof.

Broadly defined, forensic evidence is any scientific information that is useful in a public forum. The public forum is usually a criminal courthouse. The evidence often helps identify who has committed a crime.

Forensic Evidence on TV

There has been an explosion of forensic evidence on television. Currently five shows on CBS alone feature forensic science, *CSI: Crime Scene Investigation, CSI: Miami, CSI: NY, Cold Case,* and *Without a Trace*. Also, several reality shows follow detectives who use scientific methods to solve crimes. National Geographic Channel has *Crime Scene*, and the Discovery channel has aired several documentaries on forensic crime fighting.

The forensic shows depict familiar images. A scientist finds a partial print at the scene of a murder. She runs it through a national database. Within seconds a picture of the suspect appears on the screen. His name, address, and a blueprint of his DNA are provided. In another episode, caulk is injected into a wound to reveal that the victim had been stabbed by a knife. The forensic scientist is also able to create an accurate mold of the murder weapon, which is definitively matched to a knife found at the suspect's home.

The reality of forensic science is much different. No national databases yet exist. Finding a match for a fingerprint or blood sample is a time-consuming process, which may end with no match being found. It is also impossible to make a mold from a wound. Flesh is too soft and unstructured. These inaccuracies and embellishments can be common in fictional portrayals.

The CSI Effect

Many prosecutors believe that shows featuring forensic evidence are distorting juries' expectations. Since jurors see scientific evidence presented on television shows, they expect to see scientific evidence when they sit on real juries. A state attorney in Illinois says that TV "projects the image that all cases are solvable by highly technical science, and if you offer less than that, it is viewed as reasonable doubt. The burden it places on us is overwhelming."

Some believe this expectation of scientific evidence played a role in the recent murder trial of Robert Blake, a famous actor. Blake was accused of killing his wife with an old pistol. The prosecution established that Blake had a motive to kill her. It showed the jury circumstantial evidence that pointed to Blake, including evidence that Blake had contacted a hit man. The defense lawyer criticized the lack of ballistic evidence implicating Blake. The jury found Blake not guilty. After the verdict, one juror said that a big factor was that "not one particle" of evidence was found on the defendant. Outraged by the verdict, the frustrated Los Angeles District Attorney Steve Cooley, called the jurors "incredibly stupid."

Even in cases where some forensic evidence is presented, jurors sometimes expect more. In an Illinois rape trial, prosecutor Jodi Hoos presented evidence of the defendant's DNA that was found

on the victim. The defendant denied ever touching the victim. The prosecution also presented testimony from the victim, a nurse, and the responding officers. The jurors acquitted. Hoos was shocked, "We had his DNA. We had his denial. It's ridiculous." Hoos interviewed the jurors after the trial and found that they wanted the government to have tested debris found on the victim with debris from the rape site. Hoos said, "They knew from CSI that police could test for this sort of thing."

Prosecutors also feel that juries misunderstand the nature of forensic evidence. Barbara LaWall, a prosecutor in Arizona states, "Jurors expect it to be a lot more interesting and a lot more dynamic. It puzzles the heck out of them when it's not." The majority of work done at crime labs is drug testing and fingerprint comparison. These procedures are not as flashy or impressive as the forensic science depicted on television.

Prosecutors argue that forensic evidence is seldom presented at trial for many reasons, mainly that the evidence is either unavailable, too expensive, or unnecessary. Joseph Peterson of the Department of Criminal Justice at the University of Illinois-Chicago observes that DNA is rarely taken from crime scenes. Even though police officers frequently search for scientific evidence, it is usually not there. For example, Peterson estimates that blood is found only at 5 percent of all crime scenes.

Forensic science also taxes the resources of the state, and tests can take a long time to complete. In a Cape Cod murder case, a backlogged lab took over a year to run a DNA test. Dr. Max Huock, a teacher of forensic science at West Virginia University, estimated there are between 200,000 and 300,000 DNA samples waiting to be tested in the United States. A recent Bureau of Justice Statistics report makes a conservative estimate of about 50,000 cases (see chart below).

Finally, scientific evidence is unnecessary when there are other reliable forms of evidence. For example, if several credible witnesses saw the defendant fire a gun at the victim, ballistic tests are unnecessary to establish that he was the shooter.

Estimated Year-End Backlog at the Nation's Crime Labs, 2002

Type of Function	Backlog as of Jan. 1, 2002	New Requests during 2002	Requests completed in 2002	Estimated Backlog at year end
Controlled substances	95,404	1,291,488	1,154,221	232,671
Biology screening	18,456	88,857	76,332	30,981
Firearms/toolmarks	22,636	104,068	88,997	37,707
Crime scene	1,579	166,588	165,461	2,706
Latent prints	50,245	274,225	238,135	86,335
Trace	9,997	41,531	36,878	14,650
DNA analysis	29,516	60,887	41,592	48,811
Toxicology	17,523	467,752	455,624	29,651
Questioned documents	3,391	16,683	15,562	4,512
Computer crimes	952	2,839	2,757	1,034
Other functions	40,239	191,867	219,754	12,352
Total	289,938	2,706,785	2,495,313	501,410

Notes: (1) AControlled substances@ are illegal narcotics and prescription drugs. (2) ABiology screening@ looks for traces of bodily fluids (blood, saliva, semen, and urine). (3) "Trace" refers hairs, rope, and other tiny fibers. (4) "Toxicology" covers poisons, alcohol, and other harmful substances. (5) AOther functions@ includes fire debris, polygraph, shoe/tire print, digital imaging, etc. (6) All of these estimates are conservative: The actual backlog may be greater than estimated.

Source: ACensus of Publicly Funded Forensic Crime Laboratories, 2002,@ Bureau of Justice Statistics (2005)

Evidence other than forensic evidence is common at trials. Eyewitness testimony can be given if a crime has been observed. In some cases, people familiar with a defendant can also provide evidence of the defendant's character. Relevant documents can also be presented.

If a jury focuses solely on forensic evidence, then the jury may ignore other important evidence. Many pieces of evidence may be important in determining whether a defendant is guilty or not. Whatever the nature of the evidence, it falls in one of two categories: direct or circumstantial.

Direct Evidence

Direct evidence proves a factual matter without the need for inferences. Direct evidence is often testimony based on sensory perception, what has been seen, heard, or felt.

For example, an eyewitness who testifies that he saw the defendant strike a victim without provocation provides direct evidence that the defendant is guilty of assault. Likewise, a witness who hears loud music at night can provide direct evidence of a noise ordinance violation. Direct evidence does not have to be testimony. The introduction of a receipt from a store is direct evidence of a purchase from that store.

Forensic evidence can be direct evidence, although it is more likely to be circumstantial. A positive toxicology report provides direct evidence that a defendant is guilty of intoxication. Breathalyzer tests are one common form of direct forensic evidence.

Direct evidence is not available in every case. In the cases where it is presented, direct evidence is not always helpful as to whether or not a defendant is guilty. For example, if a jury does not believe an eyewitness, it will not be swayed by the testimony.

Circumstantial Evidence

Unlike direct evidence, circumstantial evidence requires an inference to establish a factual matter. It can help prove whether a defendant committed a crime.

Although defense attorneys often argue that there is "only" circumstantial evidence in a case, this evidence can be just as powerful as direct evidence. For example, imagine that a defendant is accused of a murder that occurred on a secluded mountain trail. He was spotted leaving the area shortly after the murder. Aside from the victim, no one else was seen in the area. That information would be circumstantial evidence as to whether he committed the murder. The fact that he was at the scene makes it much more likely that he is the perpetrator.

To take another example, imagine that a suspected bank robber is apprehended shortly after the crime with a large number of 20-dollar bills. The number of bills matches the number that was stolen from the bank. This could be a coincidence. The odds that it is a coincidence, however, are slim.

Most forensic evidence is circumstantial. A defendant's fingerprint on a murder weapon, DNA found at the scene of the crime, or an estimation of time of death are all common examples of circumstantial forensic evidence.

In many strong prosecution cases, most of the evidence is circumstantial. There is no rule that states convictions cannot be based entirely on circumstantial evidence. Even in trials that feature direct scientific evidence, circumstantial evidence is usually more prevalent.

Prosecutors are concerned jurors are disregarding traditional forms of evidence. They believe that jurors want to see forensic evidence, but do not understand that forensic evidence is just another piece of direct or circumstantial evidence.

What Should Be Done?

No one should expect the media to change their programming. The inaccuracies of forensic shows usually increase their entertainment value, so the shows have little incentive to change.

Some believe that the problem has been overstated, and other problems merit more attention. Reporter Joe Saltzman claims the jury system "may be many things, but it has never been pristine or unbiased." Saltzman sees the greatest problems in the criminal justice system stemming from differences in wealth between defendants.

Changes in the way trials are conducted may alleviate the "CSI effect." A few prosecutors have taken a proactive role with jurors. During voir dire, the process in which jurors are screened for bias, some prosecutors have begun asking if the jurors have seen CSI or similar shows and make sure they do not place too much importance on forensic evidence. Professor Stephen Bainbridge from UCLA Law School believes that voir dire is the easiest way to limit the effects of the media on jurors.

Los Angeles Deputy District Attorney Renee Korn believes that prosecutors should start to use their own expert witnesses to explain what techniques are available. Opening and closing statements also provide a time when prosecutors can explain why forensic evidence is unnecessary or unavailable.

Another way that critics see a possibility of reform is through jury instructions. At the end of a trial, the judge issues jury instructions. These instructions offer an opportunity for the judge to explain the role of different types of evidence.

For Discussion

1. Suppose you are on a jury. If the defense counsel made the following statement in her closing argument, how persuasive would you find it? "There has been not one piece of forensic evidence presented against my client." Explain your answer.
2. Think of as many movies or TV shows as you can that included forensic science. How often was the evidence inconclusive, e.g., the partial fingerprint could not be matched to the defendant or a blood sample could not prove conclusively whether the defendant had been under the influence? Do you think TV shows portray forensic evidence as more or less conclusive than what occurs in real life? Explain.
3. Courtroom dramas, such as *Law and Order*, have been popular for decades. They usually feature criminal lawyers in theatrical showdowns. How influential do you think these shows are at creating American's perceptions of the justice system? Do you think these shows create any misconceptions?
4. Think of a piece of forensic evidence that would be classified as direct evidence. Think of another piece of forensic evidence that would be circumstantial. You'll need to describe the facts of the case and the charge against the defendant. You're a mock trial superstar if you can think of a piece of forensic evidence that would be both direct and circumstantial in the same trial.

Activity: Forensics in Trials

Form groups of three or four. Each group will analyze one of the following sets of evidence. Based on the facts given, would you convict the defendant? Explain your answer. If you need to know more, what information would be helpful?

1. A mother is charged with murdering her daughter. The daughter is found in the family's back-yard and died of a knife wound in the stomach. The mother's skin cells are found underneath the fingernails of the daughter. The mother's fingerprints are also found on a steak knife, which could have caused the fatal wound. The police find rags in the family's pantry that contain trace amounts of dried blood belonging to the daughter.
2. A man is charged with dealing drugs. An undercover police officer testifies that the defendant sold him a small bag of white powder for $40 and promised him, "This stuff will get you buzzed." No analysis of the powder is ever done, and the defendant denies ever seeing the officer. There is no video or audio recording of the transaction.]
3. A defendant is charged with killing a man during a robbery in an alley. There are no witnesses. The defendant is found with a gun that has the same caliber bullet that killed the victim. The prosecution runs ballistics tests, but the results are inconclusive as to whether the defendant's gun caused the murder. After eight hours of police questioning, the defendant confesses, but shortly thereafter retracts. The defendant claims that he was pressured by the police to confess.
4. A defendant is accused of counterfeiting 20-dollar bills. The Secret Service found paper and ink on the defendant that are not commercially available. Fiber and acid tests reveal that the items definitively match several thousand dollars of fake money recently found in circulation.

Activity: Should the Evidence Be Allowed in Court?

Judges must decide when new types of scientific evidence will be allowed into evidence at trial. In theory, the judge permits reliable new methods while keeping out "junk science." This "gatekeeper" role is not an easy task. There are currently two competing tests that courts use.

The test in California is the Frye Test, named after the 1923 Federal Court case in which it was created. It requires the method to be accepted in the scientific community before it can be brought into evidence.

The federal courts (and many other state courts) use the Daubert test, named after a 1993 U.S. Supreme Court case. The Daubert test requires the court to consider the additional factors of whether the theory has been scientifically tested, the expected rate of error, and whether others in the scientific community have reviewed the method. Daubert jurisdictions usually allow new methods into evidence before Frye states.

Apply to each hypothetical the Daubert and Frye tests. Does the evidence get in? Why or why not?

1. Hair comparisons. An expert asserts that he can determine whether a hair found at a crime scene is the defendant's by looking at it next to a hair sample taken from defendant. The expert states he has gained this skill by looking at "millions" of hair samples and never makes mistakes. But the method has not attracted the attention of other scientists.
2. Polygraph, or lie detector, tests. A 1982 poll of psychophysiologists, scientists who study interrelationships between mind and body, found that 60 percent believed lie detector testing "was a useful tool when considered with other evidence for assessing truth or deception." Ten years later, the percentage had risen to 80 percent. Only 30 states have set up licensing boards for polygraph examiners, and no national licensing board exists.
3. A new DNA technique. A revolutionary new discovery has allowed scientists to take DNA from fingerprints by analyzing the oils in the print. The technology was just developed, and most scientists are unfamiliar with it. However, extensive testing has determined that the method is just as accurate as other DNA tests.
4. Voiceprints. The modern spectrograph, used to make voiceprints, was developed in the 1960s. An individual's voiceprint changes each time the person speaks, but each remains more similar to each other than to voiceprints from other people. In 1972, a study tested thousands of voiceprints and found that examiners made false identifications in only 6 percent of the cases. Four years later, however, the National Academy of Sciences concluded that there were great uncertainties in voiceprint identifications. Ten years later, the FBI examined hundreds of voiceprint cases and concluded there was only one false identification.

INTRODUCTION TO 2005–2006 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 25th Annual California Mock Trial Competition. In preparation for their trials, participants may refer to all information included in the *People v. Markson* case. The competition is sponsored and administered by Constitutional Rights Foundation. The co-sponsors of the competition are the California Department of Education, the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation.

Each participating county will sponsor a local competition and declare a winning team from the competing high schools. The winning team from each county will be invited to compete in the state finals in Riverside, March 17–March 20, 2006. In May 2005, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Oklahoma.

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

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

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

IMPORTANT

On a regular basis, please check the Mock Trial section of CRF's web site to see if there are errata for *People v. Markson* (www.crf-usa.org).

CALIFORNIA MOCK TRIAL FACT SITUTATION

Taylor Rodriguez is the star of the new hit television show *Newport Beach*. The show is about to start shooting its second season. Before the show, Taylor was one of many unknown good- looking people in Los Angeles seeking acting jobs. The show launched Taylor's career, and Taylor is now a well-known celebrity. *Newport Beach* is produced by Jes Markson, the creator of many hit TV shows. Jes met Taylor in a coffee shop and cast Taylor for the lead role on the spot.

Jes and Taylor also quickly developed a romantic relationship and were married within a few months of meeting each other. Taylor moved into Jes' mansion at 2349 Chandler Drive, in the Hollywood Hills. Jes' estate is kept presentable by a friend and live-in gardener named Alex Palmer.

While the relationship between Taylor and Jes started out wonderful and loving, it became strained. Due to all the publicity generated by *Newport Beach*, Taylor received many movie offers. Taylor's dream had always been to appear on the big screen. Taylor tentatively accepted a role in *Blood Froth*, a horror movie. Taylor's publicist leaked to the media that Taylor would not be back for the second season of *Newport Beach*. Jes disapproved, and then they started to spend most of their time apart and slept in different rooms. As the marriage neared one year, it looked like it would be over soon.

Prior to marrying Jes, Taylor had dated Brook. After moving out to Los Angeles together from Colorado, they had broken up. Through summer and early fall, Taylor began to have thoughts of resuming a relationship with Brook.

On Friday, October 12, Taylor was invited to a small party to celebrate Brook's getting a recurring role on a soap opera. Jes did not want Taylor to go. Tobie, a close friend and costar on *Newport Beach*, arrived to pick up Taylor for the party. Taylor insisted on going, and Jes became upset.

Jes remained at home and invited Alex and Stevie to the house. Stevie is an assistant producer on *Newport Beach* and an old friend of Jes. They came over, played pool in Jes' game room, and drank beer. At midnight, Alex and Stevie left.

At Brook's party, Taylor was visibly upset. Taylor spent most of the evening drinking vodka martinis. Taylor even broke from a strict diet by eating chocolate-covered strawberries at 12:30 a.m. Taylor was not having fun and wanted to leave the party. At 1:15 a.m., Tobie dropped off Taylor at Jes' mansion.

The next afternoon, Taylor was found dead in the garage from carbon-monoxide poisoning. Taylor was in the cherry-red 1963 Aston Martin X5 convertible that Jes had bought for Taylor's birthday. The car had its original engine, but had a recently refurbished lambskin interior. The custom steering wheel was made of smooth stainless steel. The key was in the ignition in the "on" position and the gas gauge was on empty.

The police were contacted and Detective Green arrived to conduct an investigation. Upon inspecting the body, Green noticed a dark bruise running diagonally across the center of Taylor's forehead. The bruise was rectangular in shape, about 1 inch wide by 1.5 inches long, and ran from above Taylor's right eyebrow down toward the left eye.

Detective Green interviewed Jes and Alex. Jes claimed not to have seen Taylor since 10 p.m. the night before. Jes claimed to have gone to bed by 12:30 a.m., shortly after the guests had left the mansion. Jes consented to a search of the mansion and the garage. Detective Green found a black ceremonial sword in Jes' living room. The decorative sword was in a scabbard made of hardwood. Later, Alex allowed Detective Green to search the pool house.

[Detective Green searched a storage room next to the pool house. The storage room contained mostly Hollywood memorabilia. There was a stack of scripts. The detective found a TV movie script titled *Murder by Monoxide*, which listed Jes as producer. In the story, the lead character is killed by carbon-monoxide poisoning.]

Based on the information Detective Green collected from interviews with Alex, Jes, Tobie, Stevie, and Brook and the evidence found at the scene, Jes was arrested and charged with first- degree murder.

CHARGES

The prosecution charges Jes Markson with First Degree Murder (California Penal Code §§ 187 and 189)

PHYSICAL EVIDENCE

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

1) A faithful reproduction of Exhibit A, a diagram of Jes Markson's Mansion Floor Plan, 2349 Chandler Drive, Hollywood Hills.
2) A faithful reproduction of Exhibit B, Page 42 of the Script Murder by Monoxide.
3) A faithful reproduction of Exhibit C, Sword and Scabbard.
4) A faithful reproduction of Exhibit D, Diagram of Taylor Rodriguez's Head Injury.

The reproductions should be no larger than 22 inches x 28 inches.

STIPULATIONS

Stipulations shall be considered part of the record. Prosecution and defense stipulate to the following:

1. Taylor Rodriguez died from carbon-monoxide poisoning.
2. Brook and Jes must be of the same sex and the victim (Taylor) must be the opposite sex.
3. If the defense's pretrial motion is granted, the bracketed information is excluded from trial, and it may not be used for impeachment purposes.
4. For the purposes of the Mock Trial and pretrial argument, Exhibit B is the only relevant page of the script, and the absence of the remainder of the script cannot be objected to. The handwriting on the script belongs to Jes Markson.
5. Exhibit A is the floor plan of Jes Markson's mansion; Exhibit C is a representation of the sword and scabbard found in Jes' mansion; and Exhibit D is a diagram of the Taylor Rodriguez's head injury.
6. The search of the mansion and garage was a valid search and may not be objected to.
7. The arrest warrant was based on sufficient probable cause and properly issued.
8. All statements of the victim fall within the "state of mind" exception to the hearsay rule.
9. Dr. Choi and Dr. Stone are qualified expert witnesses and can testify to each other's statements.
10. Dr. Choi properly reviewed the lab report, and its absence may not be questioned.
11. Taylor's Blood Alcohol Content (BAC) at time of death has been established as .15% and cannot be disputed.
12. All physical evidence and witnesses not provided for in the case packet are unavailable and their availability may not be questioned.
13. All witness statements were taken in a timely manner

PRETRIAL MOTION

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

1. Ask your coordinator if your county will present pretrial arguments before every trial of each round. We urge coordinators to require a pretrial motion hearing in as many rounds as possible, both for its academic benefits and to prepare the winning team for state finals, where it will be a required part of the competition. Performances will be scored according to the criteria included in this packet.

2. Prior to the opening of the pretrial motion arguments, the judge will have read the pretrial materials provided in the case packet.

3. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.

4. Arguments should be well substantiated with references to any of the pretrial sources provided with the case materials and any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.

5. Use the facts of *People v. Markson* in your argument. Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from cases that contradict the conclusion you desire.

6. Review the legal arguments to assist you in formulating your own arguments.

7. Your conclusion should be a short restatement of your strongest arguments.

8. NOTE: The only motion allowed for the purposes of the competition is the pretrial motion outlined in this case packet.

Pretrial Motion and Constitutional Issue

This section contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The **judge's ruling** on the pretrial motion will have a **direct bearing** on the charges in this trial and the possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues.

The pretrial issue involves the Fourth Amendment protection against unreasonable searches and seizures. There is a question of whether Detective Green's search of the storage room adjacent to Alex's pool house was constitutional. If the search was unconstitutional, the *An End to Passion* script cannot be used at trial. The script and the search of the storage room are the only Fourth Amendment issues in the case.

The Fourth Amendment protects individuals, their cars, and their homes from unreasonable police searches. Many police searches, however, are legal. For example, if a police officer has obtained a valid warrant, he or she is allowed to make a search within the bounds of that warrant.

In this case, the Fourth Amendment issue concerns who can give consent and the scope of consent once it has been given. If valid consent has been given to search the storage room, then the search is constitutional. If the search was outside the scope of consent, then the warrantless search was unconstitutional.

The sources cited below will help you determine if Detective Green's search of the storage room is unconstitutional. For trials in which there is no pretrial hearing, the search of the storage room is Constitutional, and all bracketed information can be used during the trial. This pretrial motion is the only allowable motion for the purposes of the competition.

Arguments

The prosecution asserts that the search was reasonable because both Alex and Jes consented to a search of the storage room. The prosecution contends that Jes consented to a search of the entire estate, which included the storage room. Even if Jes did not consent to a search of the storage room, the prosecution argues that Detective Green could have relied on Alex's consent.

The defense claims the search was unreasonable. The defense argues that Jes did not consent to a search of the storage room and that Alex could not have given consent for this room. While the defense admits that Jes consented to a search of the house and garage, the defense asserts that the scope of the consent did not encompass the storage room.

Sources

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

The U.S. Constitution protects individuals against unreasonable searches and seizures. Over the last 200 years, the Supreme Court and lower courts have interpreted exactly what is "unreasonable." Decisions from the U.S. Supreme Court, the California Supreme Court, and the California Court of Appeals are binding on California trial courts and must be followed.

Cases from all circuits, including the Ninth Circuit, and cases from federal district courts and from other state supreme courts, as well as legal commentary, can be used for persuasive purposes, but are not binding on a California judge. In developing arguments for this Mock Trial, both sides should compare or distinguish the facts in the cited cases from one another and from the facts in *People v. Markson*.

Legal Authorities

Constitutional

U.S. Constitution, Amendment IV

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

Statutory

California Penal Code § 187. Murder defined
(a) Murder is the unlawful killing of a human being with malice aforethought.

California Penal Code § 188. Malice defined
Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

California Penal Code § 189. Degrees of murder
All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing…is murder of the first degree. All other kinds of murders are of the second degree.

Jury Instructions

California Jury Instructions, Criminal (CALJIC 8.11)
Malice Defined
"Malice" may be express or implied. Malice is express when there is manifested an intention unlawfully to kill a human being. Malice is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

California Jury Instructions, Criminal (CALJIC 8.20)
Deliberate and Premeditated Murder All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree…

To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, [he] [she] decides to and does kill.

Federal Cases

***Von Eichelberger v. U.S.*, 252 F.2d 184 (9th Cir. 1958)**
Facts: Defendant was storing boxes at an acquaintance's garage for an indefinite period. The acquaintance summoned the police and had them search the boxes. The police found guns inside the boxes. The defendant moved to exclude the evidence of the guns because the search was without a warrant and he did not consent.

Issue: Could the acquaintance give consent to search the boxes or was the defendant's consent necessary?

Holding: The acquaintance's consent was enough. The garage was entirely under the acquaintance's control, and he alone had a key. The defendant was not a lessor, an owner, or an occupant of the premise and therefore his consent was not necessary.

***Stoner v. California,* 376 U.S. 483 (1962)**
Facts: Stoner was suspected of robbing a bank. Police learned that he was staying at a hotel. A clerk at the hotel consented to a search of his room. The police found a gun in the room. Stoner moved to exclude the evidence because it was obtained during an unreasonable search.

Issue: Could the clerk give consent to the search of the defendant's hotel room?

Holding: No. The hotel clerk had no authority to give consent to a police search, and the police had no reason to believe the clerk had such authority. Even though the clerk could enter the room to perform his duties, he could not consent to a police search. It did not matter that the police officer believed the clerk had authority if such a belief was not objectively reasonable.

***Katz v. U.S.*, 389 U.S. 347 (1967)**
Facts: The police, without getting a warrant, inserted a wiretap into a public phone booth in order to listen to defendant's calls. The defendant placed bets from the phone in violation of federal law. The defendant moved to have the recorded conversations excluded from the evidentiary record.

Issue: Was the police recording of defendant's calls a search?

Holding: Yes. The court defined a search as any governmental intrusion into something in which a person has a reasonable expectation of privacy. Here, the defendant had a reasonable expectation of privacy in the booth. The officer's recording of his conversation constituted a search and seizure under the Fourth Amendment. The police did not have a warrant, probable cause to arrest, consent, or any other justification for the search. Therefore, the search was unconstitutional.

***U.S. v. Matlock*, 415 U.S. 164 (1974)**
Facts: The police came to the defendant's house to investigate a bank robbery. Mrs. Graff, who shared the house and a bedroom with the defendant, answered the door. She consented to a search, and police found money in the bedroom closet. The defendant claimed the search was unconstitutional and the money was inadmissible.

Issue: Could Mrs. Graff consent to a search of defendant's house?

Holding: Yes. Mrs. Graff had joint access and control of the room and therefore could consent to a search. It did not matter that the house belonged to the defendant or that he did not give Mrs. Graff the authority to consent to a search. Co-occupants can consent to searches of common areas.

***Illinois v. Rodriguez*, 497 U.S. 177 (1990)**
Facts: Gail Fischer came to police and told them that the defendant had drugs in "our apartment." Gail brought the police to the apartment and opened the door with a key. There were drugs in plain view and the police arrested the defendant. Later, it was determined that Gail did not have joint access or control over the apartment, and the defendant moved to have the drugs taken out of the evidentiary record.

Issue: Is the search constitutional if based on consent by someone who did not have access or control over the apartment?

Holding: Yes, because the police reasonably believed Gail had joint access. The Fourth Amendment only protects against unreasonable searches. Gail had a key, had belongings in the apartment, and claimed to live there. The police had an objectively reasonable basis of believing that Gail could give consent to a search. It did not matter that the belief turned out to be wrong.

***Florida v. Jimeno*, 500 U.S. 248 (1991)**

Facts: A husband and wife were pulled over for a traffic infraction. The officer said he believed they were carrying narcotics and asked to search the car. The husband consented. During the course of the search, the officer found a paper bag in the car. After opening it, the officer found cocaine. The defendant moved to suppress the cocaine on the grounds that the defendant did not specifically consent to a search of the bag.

Issue: Did the defendant's general consent of the car include consent to search the bag?

Holding: Yes. It was objectively reasonable for the policeman to believe that the scope of defendant's consent included the paper bag. The officer told the defendant that he was looking for narcotics, so it was reasonable that the officer would want to look in small containers. The defendant needed to tell the officer if he did not want the officer to search the bag.

***U.S. v. Pena*, 143 F.3d 1363 (10th Cir. 1998)**

Facts: The defendant was staying in a hotel room when police arrived and asked to search the room. The defendant said, "Go ahead." The officers found a couple of marijuana cigarettes in the bathroom ceiling and arrested the defendant. The defendant claimed that he had not consented to the search of the bathroom and therefore the cigarettes were inadmissible.

Issue: Did defendant's consent to a search of the room allow the officers to search the bathroom?

Holding: Yes. An objectively reasonable person would have considered the bathroom as included in the officer's request to search the room. They were both part of the same accommodation, and the bathroom was implied in the officer's request. Also, the defendant did not object to the officer entering the bathroom.

***U.S. v. Davis*, 332 F.3d 1163 (9th Cir. 2003)**

Facts: One of two roommates in a two-bedroom apartment consented to a police search of the entire premises. The officers found a gun in a duffel bag, under the bed of the non-present roommate. The roommate moved to exclude the gun from evidence as he did not consent to the search.

Issue: Could the roommate give consent to search the duffel bag of her absent roommate?

Holding: No. The gun was in a bag and under the non-present roommate's bed. The consenting roommate did not have joint access over the duffel bag and did not have express authorization from the other roommate to make the search. Thus, the search was illegal and the gun could not be brought into evidence.

State Cases

***People v. Cruz*, 61 Cal.2d 861 (1964)**

Facts: A few temporary guests at an apartment were suspected of possession of marijuana. One of the transient guests, Ann, told the officer he could "look around." The officer conducted an extensive search lasting several hours. The officer found marijuana in a suitcase of another transient guest, the defendant.

Issue: Could Ann's consent allow the officer to search the defendant's suitcase?

Holding: No. The officer was aware that both Ann and the defendant were temporary guests. Ann could only give consent to items that were hers. Thus, the search of the suitcase was outside the scope of Ann's consent. The officer did not ask the defendant for permission to search the suitcase and such consent would have been necessary for a search. Thus, the marijuana was suppressed.

***People v. Murillo*, 241 Cal.App.2d 173 (1966)**

Facts: The defendant was staying in the home of a woman. He carried a case in which the woman had stored some personal items. The woman's items were removed, but she kept a key to the case. The police arrested the defendant near the house. When they arrived at the woman's home, she consented to a general search of the apartment and later told the officers that the drugs were in defendant's case. The case was locked, but the police found a key on the defendant, searched the case, and found heroin. The defendant was charged with possession of heroin

Issue: Did the woman give lawful consent to search the case?

Holding: No. The police were not aware that the woman had a key to the case. Therefore, the police could not have considered the woman's possession of the key when determining the scope of her consent. Her general consent of the house was not sufficient for the officers to open the container, even though the woman alerted the police of the container's contents. The defendant was in the room at the time and his specific consent was needed to remove the key from his pocket and open the case.

***People v. Harrington*, 2 Cal.3d 991 (1970)**

Facts: A police officer arrived at the defendant's house and asked about a missing teenager. After talking on the porch a couple of minutes, the officer asked to enter the house and continue the conversation. Without saying anything, the defendant moved to the side and raised his arm in the direction of the door. The two men went inside. The officer discovered marijuana in plain view and arrested the defendant.

Issue: Did the defendant's gesture amount to consent for the officer to enter the apartment?

Holding: Yes. The officer had an objectively reasonable basis for believing that the defendant had permitted him to enter the house. Even if the defendant did not intend for the officer to enter his house, a reasonable person would have thought he had given consent. The hand gesture amounted to an invitation to enter and had the same effect as saying, "Come on in." Thus, the officer had implied consent to enter the house.

***People v. Harwood,* 74 Ca.App.3d 460 (1977)**
Facts: The police wanted to search Judith's apartment to uncover cocaine and money. Judith consented to a search of the apartment. During the search, the phone rang. The police answered the phone and told the caller that they were friends of Judith. The caller offered to sell cocaine to the officer and was subsequently arrested.

Issue: Did Judith's consent allow the police to answer her telephone?

Holding: No. Judith consented to let the officers enter the apartment to look for cocaine and money. The general consent to search the apartment did not include the right to answer the phone. The limited search to look for cocaine and money did not imply the right to answer the phone. It also did not matter that the defendant was not the party who consented to the search. He could still have the evidence excluded.

***People v. Jacobs,* 43 Cal.3d 472 (1987)**
Facts: The police obtained an arrest warrant for the defendant who was suspected of stealing several television sets. The police went to the defendant's home and asked his 11-year-old stepdaughter if he was home. She said, "No." The officers did not have a search warrant, but asked the girl if they could look inside the house. She consented and the officer's found a stolen television set in the house.

Issue: Could the defendant's stepdaughter consent to a search of the defendant's home?

Holding: No. The stepdaughter did not have the authority to allow the officers to search the home, and the officers could not have reasonably believed she did. Even though children have joint access to the family house, they cannot waive the privacy rights of their parents. Parents retain control of the home as well as the power to rescind the authority they have given. Thus, the officers' search was unreasonable.

***People v. Jenkins,* 22 Cal.4th 900 (2000)**
Facts: In a murder investigation, the police asked Diane if they could search her apartment. Diane consented. The police asked if there were any items that belonged to her brother. Diane gave them her brother's unlocked briefcase. The police opened it and found the gun used in the murder. In a trial for murder, the defendant moved to have the briefcase removed from evidence.

Issue: Did Diane have the authority to consent to a search of the briefcase?

Holding: Yes. It was objectively reasonable to assume that Diane had not only joint, but exclusive access over the case at the time of the search. Diane was a family member of the defendant, and the briefcase was kept in her bedroom. When the defendant gave the case to Diane, he reasonably should have assumed the risk that she would consent to a search of it.

WITNESS STATEMENTS—Prosecution Witness: Dr. Frances Stone

My name is Dr. Frances Stone. I am 56 years old. I have an M.D. from Stanford University and have been involved with forensic science for the last 15 years. Two years ago, I published a book titled *The Forensic Fieldguide: Basic Crime Scene Protocol.* I have also published numerous articles on the subject of forensic science. Last year, I attended a two-week seminar on the forensic analysis of bruises and burns. Currently, I work for the state of California in the Crime Science Lab as a lab manager.

I was called to the scene of the crime to examine Taylor Rodriguez's body on October 13. I examined the body at the crime site and conducted a more extensive autopsy back at the government lab. I wrote my conclusions in a report that was made available to the defense.

It is my opinion that Taylor died sometime between 1:45 and 2:15 a.m. on October 13. I used two well-accepted scientific methods to come to this conclusion.

First, I took the temperature of Taylor's body at the crime scene. I made a slight incision in the small of Taylor's back and inserted a thermometer into the liver. Taylor's temperature at 2:04 p.m. on the 13th was 80.6 degrees Fahrenheit. A normal human body temperature is 98.6 degrees, and a dead body loses heat at a rate of about 1.5 degrees Fahrenheit per hour. Since Taylor's body temperature had fallen 18 degrees, the time of death could be placed at most 12 hours earlier. I told Detective Green of my preliminary conclusions as to time of death.

A number of outside factors can influence the body-temperature method. I believe, however, that these factors had little or no effect on the cooling of the body. One factor is the ambient temperature. If the outside weather is very cold, a body will become colder more quickly than normal. On the other hand, if the outside weather is very hot, the body will become colder at a slower rate. The Los Angeles temperature on the 13th was a constant 63 degrees Fahrenheit. The disparity between Taylor's original 98.6 degree body temperature and the 63 degree ambient temperature made the body lose heat at a constant rate over the 12 hours. I am convinced that the 1.5 degrees Fahrenheit per hour rate is an accurate reflection of the rate at which Taylor's body lost heat.

I also noticed that Taylor's body was quite stiff. Rigor mortis, or a hardening of the skeletal muscles, had begun. While not a precise method of determining the time of death, a stiff body is consistent with a time of death of between 4 and 30 hours earlier.

I did a second test, which confirmed the results of the body-temperature test. By taking a cross section of the human eye, one can determine the time of death. I removed part of Taylor's vitreous humor, a transparent jelly in the eye. A living vitreous humor contains little or no potassium, but with death, potassium accumulates at a known rate. The amount of potassium in Taylor's eye confirmed that the time of death was between 1:30 and 2 a.m. I believe this is the most accurate method of measuring the time of death. Also, there was no ethanol in the vitreous humor.

Other methods of determining the time of death, such as tracking digestion, are overly prone to individual variation based on stress, alcohol consumption, etc. Given this litany of factors, I believe that Taylor's stomach contents can reveal nothing about the time of death.

I also tested Taylor's blood to determine the blood alcohol content (BAC). The blood had .15 percent by weight of alcohol in the blood based on grams of alcohol per 100 milliliters of blood, which means that Taylor was in an intoxicated state at the time of death.

Taylor Rodriguez died from carbon-monoxide poisoning. I analyzed Taylor's blood and found that it contained a carboxyhemoglobin saturation level of 80 percent. This is a lethal amount. When carbon monoxide is inhaled, it combines with the hemoglobin to form carboxyhemoglobin, which displaces the oxygen the body needs to survive.

This is consistent with the circumstances in which the body was found. Taylor's skin was a cherry-pink color at the time of death, which is typical of carbon-monoxide deaths. Also, the fact that Taylor was found in a vehicle enclosed in a garage points to death by carbon-monoxide poisoning.

The Aston Martin X5 was an old car, and its six-cylinder twin-overhead-camshaft engine burns fuel inefficiently. It would have produced high amounts of toxic carbon monoxide especially when first turned on. The garage was also quite small, only 12 ft. by 20 ft. with a height of 10 ft. It would have filled to a lethal level quickly. I estimate that Taylor died within 15 to 20 minutes after the engine was started.

Taylor had a large discrete bruise on the center forehead. It was 1 inch wide by 1.5 inches long. Some people bruise more easily than others. A bruise of such a dark color, however, could only have been inflicted by a blow of great force. The bruise was located on the forehead. A blow landing in that spot with such force could have rendered Taylor unconscious.

Many bruises are splotchy and do not reveal much about their cause. Taylor's bruise, however, is distinctive and provides ample evidence of how it was inflicted. Running through the middle of the bruise was a narrow unbruised strip. This type of bruise is called a "tramline" bruise because it is caused by a blow from a rod-like instrument. The instrument squeezes blood from the vessels at the point of impact, thus emptying them and preventing them from changing color. The edges of the wound are stretched, and blood vessels are torn, causing blood to leak into the surrounding tissues and bruise. The unbruised tramline was exactly one-fourth of an inch wide.

Detective Green gave me the sword found in Jes Markson's house. The sword (including the scabbard) weighed three pounds. The scabbard was 3 ft. long and 1.25 inches wide. The scabbard had a depth of one-half inch, which tapered to two convex edges of exactly 19/80ths of an inch. When a person strikes another with a sword, the convex edge is usually the part that makes contact. This would likely be true if a person hit another with the scabbard.

The width of the convex edge of the scabbard and the width of the tramline are practically identical. There is less than 1/80th of an inch difference in width between the two. This small difference can be attributed to the indeterminateness associated with the outlines of all bruises. I believe that the bruise on Taylor's forehead was most likely caused by the scabbard in Jes' house.

I also analyzed the pool cues in the house and determined that a pool cue could not have inflicted the bruise. The pool stick could not have withstood the impact upon Taylor's forehead and would have broken. Also, a pool stick would have caused the dimensions of the bruise to be larger.

The bruise was also consistent with a blow from a left-handed individual. The bruise began on the upper right of Taylor's forehead and moved down and to the left. While it would be possible for a right-handed person to inflict the bruise, it is more likely that the perpetrator was left- handed.

It is my understanding that Jes is left-handed. Only 13 percent of the population is left-handed. Also, the angle of the bruise ran at a diagonal angle of about 40 degrees. A strike from a scabbard would be expected to come at about that angle.

There was another interesting thing about the sword. It had absolutely no fingerprints on it. This is highly suspicious for any item in a house, let alone an item like a sword, which people would want to touch and handle. In contrast, the Aston Martin key had partial prints of both Jes and Taylor. The sword handle was made of carved wood and would have most likely picked up fingerprints. It was likely thoroughly wiped down before the police inspected it.

I do not believe that Taylor committed suicide. Only a very small percentage of depressed people commit suicide. When they do, they usually exhibit certain behavior. Many people who attempt suicide put their lives in order. They write wills, make amends with old enemies, and say goodbye to friends. Taylor did none of these. On the contrary, Taylor made plans to leave Jes. People who commit suicide do not usually say they will do things that they will not be around to do. Moreover, Taylor's acting career was soaring, and shooting was about to start on a project that Taylor was excited about.

WITNESS STATEMENTS—Prosecution Witness: Alex Palmer

My name is Alex Palmer, and I am 44 years old. I have known Jes for a long time, and I consider us good friends. I worked for Jes as a stunt-person on the show *The Sparkling Badge* until the show was cancelled in the early 1990s. After the show was cancelled, I became a little unhinged. One day I lost my cool in a supermarket and assaulted a cashier. I served three months in jail. While in jail, I met some shady characters.

After I got out of jail, I could not find work anywhere. Jes gave me a job working at Jes' estate. The estate is large, and I had lots of gardening and odd jobs to do. I live in the pool house. While it is not spacious, it is large enough for one person. Attached to the pool house is a storage room that was designed to store pool supplies. There is a door going from my place to the storage room, but it has always been locked. Jes stores a lot of Hollywood memorabilia in there. Sometimes, I move stuff from the house into the storage room for Jes. I also go in the storage room to get chlorine for the pool. The exterior door is usually locked, and I need to get a key from Jes.

Jes has always been short-tempered. On the set of *The Sparkling Badge*, Jes would sometimes blow up at cast members if they did not know their lines or were not true to the script. Jes liked production to go a certain way. When it did not go as planned, there was always lots of yelling. I think Jes was concerned about public perception and what people thought. Jes' dignity would have been hurt by being associated with failure. I never mentioned in Jes' presence any failed show that Jes produced.

Taylor and Jes were married sometime in November of last year. I was in the wedding, but Taylor and I never became close. Taylor and Jes got along well at first, but things fell apart after a while. Jes can be very insecure. When Taylor became famous, all the tabloids and gossip TV shows would come around the mansion. That drove Jes crazy. Jes also hated all the attention Taylor was getting from other producers, who could offer bigger and better deals.

Sometime in July, Jes asked me about my time in jail. This was not that unusual as we talked about these kinds of things often, but then Jes said something strange. Jes asked me, "How much would you say it costs to have someone killed? Like by a hit-man." It was an odd question so it stuck in my mind. I told Jes that I did not know, but I could ask some friends who might have some information. Jes said, "I would appreciate that, but don't go to too much trouble for me."

The next couple days, I tried to think of someone who I had met in jail who would know about hit men. I could not think of anyone who would have that kind of information. Most contract killers end up in prison, not jail. I never got back to Jes, and the issue was never brought up again. Jes and Taylor's relationship got more hostile as summer ended. I remember during one fight in September, Jes screamed something like, "If you betray me and the show, I'll be ridiculed. And your career will be ruined. I'll see to that." The morning of October 11, the day before Brook's party, I heard Jess yell at Taylor. It was something like, "You think you'll be happy with Brook? I'd kill both of you before I'd let that happen. You have no idea of the power I have. Don't underestimate me."

On Friday, October 12, I spent the evening in Silverlake eating dinner and watching a movie. When I returned to the mansion around 10:15 p.m., Jes invited me into the house to have a drink. Stevie arrived shortly after that. We played pool, drank beer, and chatted. Jes was pretty angry and swore a lot. Jes called Taylor "ungrateful." The more beer that was consumed, the more angry Jes became. Shortly before midnight, Jes said, "Taylor is going to get what's coming to someone who betrays me." I decided to go back to the pool house and excused myself. Jes was not fun to be around that night. When I left, Jes' lip looked normal.

Before going to bed, I watched some TV. The Science channel was having a marathon of *Detroit Doctors* reruns, and I loved that show before it was cancelled. At 1:15 a.m., I heard yelling coming from the house. I know this was the exact time because the angry voices came right after the second commercial break. At first, I thought the noise was coming from the TV as the infamous arm-severing episode of *Detroit Doctors* was on. When I realized the noise was coming from outside, I put the TV on mute and listened to the commotion. My bedroom window was open, but it was a windy night, so I could not make out exactly what was said. I also couldn't see any lights on in the mansion. I believe I heard Jes and Taylor's voices. They both sounded angry. The argument ended relatively quickly, and I resumed watching TV. I figured Taylor and Jes were done fighting and had gone to bed. I fell asleep around 2 a.m.

At 12:30 p.m. the next afternoon, I needed to change the water in the koi pond. I opened the front garage door, where the car enters, because I needed to get the hose. This was typical on the second Saturday of the month. Jes' koi are sensitive and develop eye infections if they do not have their water replaced each month. When I entered the garage, I saw Taylor slumped over in the driver's seat of the silver Aston Martin. At first I thought Taylor was sleeping, but as I got closer I realized Taylor was dead. Taylor's skin was bright pink. I immediately called 911.

I ran inside and found Jes in the kitchen reading the paper. I said, "Taylor is dead in the garage." Jes looked shocked and said, "What?" Jes looked at the body, and then we went outside the house and waited for someone to come. Detective Green arrived within minutes.

Detective Green interviewed me because I found the body. I told the detective that I was a friend of Jes who lived on the property and did maintenance work. We discussed what happened the night before, and I told Detective Green about Jes' statements and the screams that I had heard. I also told the detective that I was right-handed. Green then interviewed Jes.

Later, Jes and I were in the kitchen making funeral arrangements and calling Taylor's friends. [Detective Green asked for my permission to look inside the pool house. I said, "It's fine to search my place, but I have not got a key for the storage room. You'll need to get that from Jes." Jes was talking to the funeral director and probably did not hear what I said.]

WITNESS STATEMENTS—Prosecution Witness: Tobie Keetan

My name is Tobie Keetan. I am 30 years old, and I have been acting on TV shows for the past five years. I had been friends with Taylor for over a year before the death occurred. On *Newport Beach*, I played Taylor's character's older sibling. We got along immediately, and I helped Taylor adjust to life in the spotlight.

I learned a lot about Jes and Taylor's relationship. It was passionate and intense. Even in the beginning when things were good, they still had a lot of issues. After they were married for a short while, their relationship started to deteriorate. I remember one time Taylor said, "Maybe we got married too fast. Jes can get moody. There is also this annoying gardener that Jes keeps around. It's really weird."

Jes became increasingly hostile toward Taylor. Jes has a fiery temper and is notorious for yelling on the sets of TV shows. That is probably why these days Jes mostly produces instead of directing. Jes was extremely jealous and would get upset even when Taylor talked with other people. When Taylor and I would go out to parties and get attention, Jes would get mad.

A few things happened in the early fall that made their marriage even more chaotic and hostile. Taylor decided to leave *Newport Beach* to act in a horror movie called *Blood Froth*. Jes was furious. I went over to the mansion shortly after the news was leaked. Jes was sulking and snapped at me, "Are you abandoning the show too?" Jes was obviously jealous of Taylor's soaring career. Even though the show would not be the same without Taylor and lots of shows lose fans when the star leaves, Jes should have been happy for Taylor.

Second, Taylor told me about possibly getting back together with an ex, Brook. They had both moved out together from Denver to act. When they got here, they decided to take a break from each other, and then Taylor became famous. Taylor had trouble adjusting to fame and often felt alone and isolated. I met Brook and Taylor for lunch one time. They got along well, and it seemed like they would inevitably get back together if Taylor divorced Jes. When Taylor and I would hang out, Taylor would sometimes get calls from Brook. Taylor would answer the call, as this was not possible around Jes. Taylor was always happy after getting off the phone with Brook.

I thought Jes was becoming suspicious that Taylor might be seeing someone else. At a fundraiser in Malibu, Taylor got a few cell phone calls. Taylor did not answer the calls, but Jes was furious. Jes kept grilling Taylor, "Who keeps calling you? Why would someone call you now?" It was embarrassing for everyone at the table. These kinds of jealous outbursts became common.

I was at the mansion shortly sometime in late September. Taylor was helping me prepare my lines for a TV movie audition. We were in Taylor's room when Jes stormed in and said to Taylor, "I can't believe you want to get back with Brook. Why would you want to be with someone so beneath you and me? I never should have married you." Taylor yelled back, "Because we get along and care about each other." Jes' ears turned red. They get that color when Jes is upset. Jes yelled back, "You're mine. You can't leave me." Jes threw a vase against a wall and left.

After that episode, I grew concerned about Taylor's safety. I told Taylor not to stay mar-

ried to someone who was so hostile. Despite my warning to Taylor, they continued to live together. I think Taylor was dependent on Jes and needed time to break away.

Around 9:30 p.m. on October 12, I arrived at Jes' house to pick up Taylor. We were going to a party at Brook's downtown Hollywood apartment. As soon as I arrived, Jes started yelling at Taylor. Jes yelled that Taylor "knew nothing about Hollywood" and had got "a big head from being famous." Jes also said, "You think Brook is better than me?" In all the times I had seen Jes upset, I had never seen this much aggression. Then Jes started saying some very scary things. Jes screamed, "You can't go to that party tonight and see Brook. You're mine!" Taylor tried to reassure Jes, but it was no use. Then Jes said something I'll never forget. Jes gave Taylor a crazed looked and said, "If you leave me, I'll kill you." Jes stormed off, and I persuaded Taylor that we should leave. It was about 10 p.m.

At the party, Taylor and I saw that Brook had a date. Taylor drank heavily, consuming many vodka martinis. I think Taylor started drinking at 11 p.m. Taylor also ate three large chocolate- covered strawberries at 12:30 a.m. that night, which was uncharacteristic. Taylor was on a strict diet because Taylor was going to play an emaciated runaway in *Blood Froth.* Taylor was understandably distressed throughout the party, and I tried to be comforting.

Taylor was drunk and not having fun at the party, so we decided to leave. Taylor wanted to be dropped off at Jes' house. I strongly advised against this, given that Taylor was emotional and Jes was irrational. I recommended that Taylor stay at my place that night. Taylor said, "It should be fine. I have a lot to think about. Jes has probably cooled off by now. Tomorrow, I am going to end our relationship, and I want to pack up tonight." I reluctantly agreed to drop off Taylor at Jes' house. It was not very out of the way as I also live in the Hollywood Hills. At 1:15 a.m., I dropped off Taylor on the front porch and drove off without seeing Taylor go in. I can't remember if any lights were on in the house.

The next afternoon, I got a call from Alex telling me that Taylor was dead. It was devastating to hear, and I felt guilty for not having taken Taylor home with me. A few minutes later, Detective Green called, and I told Detective Green that I dropped off Taylor at 1:15 that morning.

WITNESS STATEMENTS—Prosecution Witness: Detective Eliot Green

My name is Detective Eliot Green. I am 52 years old. For the last 20 years, I have worked for the Hollywood Police Department. Eleven years ago, I was promoted to detective. I was called to Jes' mansion on October 13 after a body was found in the garage. I arrived on the scene at 12:35 p.m. and found Alex and Jes standing outside the garage. The garage door was open.

When I entered the garage, I saw Taylor slumped over in the driver's seat of a silver Aston Martin. Taylor's head was leaning to the left. I checked Taylor's pulse, but there was none. At first it looked like suicide as the key was in the ignition. Taylor's skin was also bright pink, which suggested death by carbon-monoxide poisoning. I became suspicious when I saw a large bruise on Taylor's forehead. It looked like Taylor had received a blow to the head. I called in Dr. Stone to do a forensic analysis and began an investigation.

I asked who had found the body, and Alex said, "I did." I interviewed Alex by the garage and had Jes wait by the front of the house. I learned that Alex was a friend of Jes who lived on the property and did maintenance work. I asked about the night before, and Alex said, "Last night, after I spent the day in Silverlake, me and Jes and another friend just stayed home, playing pool and drinking until about midnight." Alex also told me that Jes had made disparaging remarks about Taylor that night. Perhaps most importantly, Alex heard an argument between Jes and Taylor at 1:15 a.m. At this point, I believed that there was a possible homicide.

Next, I interviewed Jes Markson, who claimed to be a producer and the owner of the house. Alex went inside the house to call Taylor's friends. Jes said that Taylor had been living there for almost a year after they had been married. Jes confessed that they had a fight the previous night. Jes said that such fights were common. After the fight, Jes said that Taylor went out to a party with Tobie, one of Taylor's friends. Jes said that Alex and a friend came over to the house and the three of them drank and played pool until about midnight. Jes claimed to have gone to bed shortly thereafter and did not see Taylor again. I asked Jes what happened when Taylor was not there in the morning. Jes assumed that Taylor must have spent the night at a friend's house. I noticed Jes' lip was swollen so I asked what happened. Jes claimed to have slipped in the bathroom that morning.

[I asked Jes if I could look around the estate. Jes waved an arm around and said, "Feel free to search the house and the garage." The way Jes answered was casual, and I assumed that I was free to look wherever I wanted.] I conducted a cursory examination of the mansion. I noticed that it looked like no one had slept in Taylor's bed and nothing looked out of place. In the living room, atop the mantle above the fireplace, I found a large ceremonial sword in a black scabbard. It looked like a possible murder weapon, so I put it in a plastic bag.

Jes was in the kitchen with Alex making phone calls. I asked Jes, "Are you left-handed?" I remembered that the bruise on Taylor's head was positioned in such a way that if it were caused by a person, that person would likely have been left-handed. Jes replied, "Yes." I also noted that Jes and Taylor were approximately the same size. While it would not have been easy, it would have been possible for Jes to move Taylor's body from the house to the garage. It would have been easy for someone to load the body into the car as the Aston Martin's frame is close to the ground.

I saw a structure near the pool from the kitchen window. I pointed to the pool house and asked Alex, “Is that where you live?” Alex nodded and I asked, “Mind if I search inside your place?” Alex agreed. [There was a storage room next to the pool house. I asked Alex if I could also search that. Alex consented, but said Jes had the key. I am pretty sure Jes did not hear this conversation.

I went out to the pool house. I checked the door to see if it was locked. It was not, and I walked inside. The room was small, much like a studio. After looking around and not finding anything of interest, I tried to open a door on the right side of the room. It was the door to the storage room and it was locked. I walked outside and noticed that the room had an exterior door. I assumed Alex had access to the storage room. If not, I thought that Jes had consented to a search of the entire estate.

The door was unlocked and I entered the storage room. It was cluttered and seemed to be used primarily for storage. The first thing I saw was a stack of pictures of Jes with celebrities. There was also a fold-up director’s chair that had “Jes Markson” printed on the backrest. I also saw a treadmill covered with dust, a large file cabinet, and an antique grandfather clock. There were some maintenance items, a pool net and containers of chlorine for the pool. I assumed that Alex went into the room often to keep the pool clean. I began a search of the room.

At the back of the room, I found a small desk. On it was a stack of scripts wrapped with a rubber band on top. Nearby was a black and gold placard with the words “Director Markson” engraved on it. I thumbed through the stack of scripts, and towards the middle one script caught my eye. It was a TV movie titled *Murder by Monoxide*. Jes was listed as the producer. In the script, a husband kills his young wife, a singer, by carbon-monoxide poisoning. The murderer tries to make the death look like a suicide by placing the victim in a car with the motor running. On one page of the script, notes were handwritten outlining the amount of time someone would have to stay in a garage with a car motor running in order to die.]

I later interviewed Taylor’s friend Tobie and was told that Taylor was dropped off “sometime around 1:15 a.m.” Tobie also said that Taylor was going to pack that night. I remembered that Taylor’s room had no evidence of packing. I also interviewed Brook and Stevie. Brook mentioned that Taylor had been drinking heavily the night before and that Taylor made a scene at Brook’s party. Brook also mentioned that Taylor was becoming increasingly afraid of Jes because of Jes’ temper. Stevie confirmed that Stevie left Jes’ mansion around midnight.

After Dr. Stone gave me an initial time of death between 1:45 and 2:15 a.m., I felt I had enough evidence for probable cause and arrested Jes. Later that day, I measured the distance from the kitchen window to Alex’s pool house. The distance was 35 feet.

WITNESS STATEMENTS—Defense Witness: Dr. Pat Choi

My name is Dr. Pat Choi. I am 45 years old and have been a forensic scientist for about 15 years. I got my Ph.D. in psychology from UCLA and later got a Certification in Advanced Forensics from the University of Northern California. I am currently a lead technician at Southern California Forensic Solutions, a private forensics firm. In my career as a forensic scientist, I have examined countless bodies and medical reports. I examined Dr. Stone's lab report and reached the following conclusions.

I agree fully with Dr. Stone's finding that Taylor died within 20 minutes by a lethal dose of carbon monoxide emitted from the Aston Martin. Unlike Dr. Stone, however, I believe that Taylor died sometime between 3 and 4 a.m. on Saturday. To determine the time of death, I examined the report's analysis of Taylor's stomach and digestive system.

Through years of experimentation, scientists know at what rates certain foods move through the gastrointestinal tract. Digestion ceases with death. It is known that Taylor ingested several chocolate-covered strawberries at 12:30 a.m. Chocolate strawberries are a medium-density food.

Inside of Taylor's stomach, there were fully broken-down strawberries. Taylor's small intestine also included a small amount of digested strawberries. At the earliest, a medium-density food will leave the stomach and enter the small intestine at 2.5 hours after consumption. Therefore, at the earliest, Taylor died about 3 a.m.

Several factors lead me to believe that Taylor's time of death was later than 3 a.m. There was alcohol in Taylor's blood, and alcohol slows the digestion process. Stress can do the same. It is my expert opinion that looking at digestion provides the most precise time of death. While measuring potassium accumulation in the eye involves newer technology, it has not been proven any more accurate than traditional methods of determining the time of death.

I also scrutinized the medical examiner's analysis of Taylor's blood alcohol content (BAC). Taylor's blood had a BAC of .15 percent. Sometimes, blood alcohol levels can increase after death. This is due to microbial ethanol production in the blood's glucose. The medical examiner's analysis of the vitreous humor, however, revealed no ethanol. Since there was no ethanol in other body fluids, there was no ethanol in the blood on account of internal decay. Thus, Taylor's BAC of .15 was entirely the result of alcohol ingested before death and reflects Taylor's level of intoxication at death.

The evidence suggests that Taylor committed suicide on October 13. The strongest evidence is Taylor's high level of intoxication. Despite popular misconceptions, a BAC of .15 is consistent with a night of heavy drinking. Numerous studies have proven the consumption of alcohol leads directly to depression. This is because alcohol lowers serotonin and norepinephrine levels in the brain. These chemicals relate to a person's happiness and sense of satisfaction.

It is also well-established that depressed people are more likely to commit suicide when under the influence of alcohol. Alcohol is a depressant, so it leaves an emotionally unstable person feeling particularly unhappy. Large amounts of alcohol also lead to risky

behavior. One such risky behavior is suicide. More suicides are attempted and more are successful when a person is under the influence of alcohol. Accidents are also more likely to occur when someone is intoxicated. It is possible that Taylor inadvertently passed out due to the alcohol while the car was running.

I interviewed several witnesses familiar with Taylor, including Jes, Brook, and Stevie. I discovered Taylor exhibited other suicidal behavior besides increasing depression. Suicidal people often make statements to the effect that "life is not worth living" or "my family would be better off without me." Taylor was heard to have made statements like these.

Suicides often follow a "precipitating event." Common precipitating events are death of family members or loss of a job. In this case, Taylor had several possible "precipitating events": Taylor had begun a career change, fought with the spouse, and discovered a possible love-interest was dating someone else. When combined, these events could lead a depressed person to attempt suicide. Explosions of rage are another sign of impending suicide. Yelling at someone for no reason at a social engagement is the kind of impulsive behavior often exhibited by the suicidal.

Past suicide attempts also signal that someone may attempt suicide. Of all people who successfully commit suicide, almost 50 percent have attempted suicide in the past.

There is no way to know for certain what kind of object inflicted the bruise on Taylor's head. The foremost expert of forensic science, Steve Rochonstein, said in his seminal book *Crime Physiology* that "analyzing bruises is more art than science." People differ in how much they bruise, how fast they bruise, and what their bruises look like.

There are alternative explanations of how Taylor got a bruise on the forehead. The long narrow bruise could have come from the steering wheel of Taylor's Aston Martin. People dying of carbon-monoxide poisoning often have body convulsions, and it is possible that Taylor's head came in contact with the wheel during such an episode. The steering wheel was large loop, but the wheel itself was thin, less than 1 inch in diameter. With such a narrow width, it is my opinion that the wheel could have inflicted the bruise on Taylor's head. Taylor was also drunk and could have suffered a blow to the head elsewhere prior to death.

WITNESS STATEMENTS—Defense Witness: Jes Markson

My name is Jes Markson. I live at 2349 Chandler Drive in Hollywood Hills. I am a producer, a screenwriter, and sometimes a director. My credits include many hit TV shows such as *Detroit Doctors*, *The Sparkling Badge*, and most recently *Newport Beach*. I started off acting at a young age on the wholesome comedy *Family Connections*. As I got older, I moved into directing and producing. I am now 40 years old.

I met Taylor by chance in Bill's Coffee in Santa Monica. I had spent the whole day in casting calls trying to find the lead in my new show, but no one fit the part. After talking with Taylor for a minute, I knew who to put in the lead role. We started to see each other romantically soon after. The relationship developed rapidly, and Taylor and I got married within a few months. I had never fallen in love like that before.

After the show became a hit, Taylor became depressed. Many new stars have trouble adjusting to fame. For Taylor, it was a difficult transition. Even though Taylor's career was successful, Taylor would often complain that being a star did not bring happiness. In early September, Taylor said, "Everything in my life has gotten so difficult lately. Sometimes I think it might be better if I just gave it all up." Comments like that became more frequent in September and October. I recommended Taylor see a psychologist, and Taylor thought that was a good idea.

Our marriage had some rough patches, and we would quarrel sometimes, but nothing that most couples do not do. Sometimes I would lose my cool, but it was only because I wanted what was best for Taylor. In Hollywood, you have to make smart decisions, and Taylor was not doing that. Things never got violent. I would never hurt anyone, let alone my spouse. Eventually our marriage cooled down as we were both busy with our own careers.

The night of October 12, Taylor wanted to go out, but I did not. I just did not feel like schmoozing, and Taylor was in an unpleasant mood. I asked Taylor not to go, but Taylor insisted. After Tobie came by to pick up Taylor, I said some things that were mean. I was pretty angry so I do not remember exactly what was said.

After Tobie and Taylor left at 10 p.m., I invited Alex and Stevie over to the house. Alex had just gotten home, and Stevie lives one house down. We had a few beers. Stevie wanted to play pool, so we went to the game room and shot a couple rounds of eight ball.

It was a pretty low key Friday, but I was supposed to have an important fondue lunch meeting the next day. Around midnight, Alex and Stevie decided to go home. I was tired and was in bed by 12:30 a.m. I immediately fell asleep and did not wake up until the next morning.

At 11 a.m. the next morning, I woke up to the sound of the television in my bedroom. It had been turned on all night. The noises that Alex heard the night before must have come from the television. The bedroom window was cracked open that night, and the sound from the TV could have been mistaken as something else. I don't think any other windows were open that night.

As I was getting out of the shower, I slipped on the wet bathroom floor and hit my mouth against the medicine cabinet. The accident made my lip swell up. I walked by Taylor's room and saw that the bed was empty and had not been slept in the previous night. I assumed that Taylor had decided to spend the night at Tobie's house on account of our fight.

Later, at about 12:30 p.m. that Saturday, Alex came running into the kitchen while I was reading the newspaper. Alex said that Taylor was dead in the garage. I was shocked that Taylor had committed suicide. Had I known the depression had risen to suicidal levels, I would have made sure that Taylor had sought psychiatric help. It also tears me up inside that Taylor did not talk with me in the hours before the suicide.

I ran to the garage and saw that Taylor was dead. Alex had called 911, and we went outside to wait for somebody. Within a few minutes, Detective Green arrived. Detective Green interviewed Alex while I called Taylor's family. After interviewing Alex, Detective Green interviewed me. I told about how Taylor and I had been living together for almost a year and that we were married. I told Green that we had fought the night before and how we had fought in the past. I told Green that Taylor had gone to a party with Tobie and that was the last time I saw Taylor alive. I also told Detective Green about how I spent the evening with Alex and Stevie before going to bed around 12:30 a.m. Green asked what happened when Taylor was not around that morning. I answered that I assumed Taylor had spent the night at Tobie's house. I also explained how I fell in the bathroom that morning.

[The detective asked to search the property. I told Detective Green, "You can search the house and the garage." I even pointed to both of them so the detective would know which buildings I was talking about. I never said it was OK to search the storage room next to the pool house. I store things that have a lot of sentimental value to me and would not want anyone rummaging around in there.]

I was in the kitchen calling the funeral director when Detective Green was searching the house. The detective put my sword in a plastic bag. It was a prop from the set of a reality TV show I produced last fall. I believe the sword was from Indonesia. The show was a martial-arts competition with all different styles of fighting, Kung Fu, Karate, Tae Kwon Do, etc. It was called *Masters of the Do-Jo*. I took the sword after we were done shooting and kept it on my living room mantle as a decorative item. The detective asked if I was left-handed. I said, "Yes." I don't know why the sword did not have any fingerprints on it. I have a maid that cleans my house once a week and is very thorough.

[The detective should have known that the storage room was not part of Alex's residence. Alex sometimes goes in the room, but only upon my request. I keep a lot of pictures of myself in the room, and there is even a chair with my name on it in there. It should have been obvious that the storage room was mine.

I helped develop the script, *Murder by Monoxide*, about five years ago. I develop scripts all the time. The *Monoxide* script was not that great and nothing ever came of it. In my storage room by the pool, I have a whole file cabinet filled with scripts. The handwriting on the script is mine.] As for asking Alex about hit-men, I was doing research for a possible cop drama.

WITNESS STATEMENTS—Defense Witness: Brook DeMartini

My name is Brook DeMartini. I am 30 years old and have been acting in Los Angeles for a little over a year. I am just starting to be recognized in public for my recurring role as Professor Leone on the soap opera *The Day After Yesterday*. I used to date Taylor. We moved to Los Angeles together from Denver to try to become movie stars.

About two years ago in Colorado, Taylor attempted suicide. Taylor had been feeling restless in Denver and felt like the city had nothing to offer. Taylor wanted to become a star, but was stuck working in a restaurant. Each week, Taylor would get more and more depressed. Taylor would often make statements like, "Life is just so hopeless. Why go through so much pain?" I would try to cheer Taylor up, but it never seemed to work. I think Taylor was just an inherently depressed person.

When I came home from a jog that day, I found Taylor lying on the couch. Taylor was unconscious, but vomiting a chunky white liquid. I noticed an empty bottle of Vicodin on the side table near the couch. It had been prescribed to Taylor after a nasty ski accident the year before. The bottle had been nearly full, and I knew that consuming that many opiates could be fatal. I called an ambulance, and fortunately the medics were able to pump Taylor's stomach in time. After the suicide attempt, both Taylor and I agreed that a change of scenery would be beneficial for Taylor. We moved to Los Angeles so that we could both pursue acting careers.

Finding acting jobs was more difficult than we thought. When neither of us got much work, it strained our relationship, and we decided to take a break. Shortly after we broke up, Taylor landed the starring role on *Newport Beach* and became famous. At first, I wanted to get back together, but then Taylor met Jes and got married. After Taylor was married, I moved on with my life and focused on my acting career. There was no point in trying to love someone who was married to someone else.

Although we did not speak for a while, we resumed talking sometime in the spring. I saw Taylor on several occasions, one time with Taylor's friend Tobie. Taylor often complained about being alone and depressed. This did not surprise me because of Taylor's past issues with depression. I wanted to make Taylor feel better. We had gone through so much together.

Taylor complained that Jes was overprotective and mean. Jes did not allow Taylor to talk with me. Whenever Taylor and I met, it always had to be secret. Toward the end of summer, Taylor mentioned that Jes was getting "scary" and "kinda violent." It did not seem like a healthy relationship, and Jes sounded like a nasty individual. I don't know why Taylor would marry someone who was not compassionate. I was concerned about Taylor, but did not think it was my place to get involved with their marriage.

Taylor also mentioned a couple times that we should get back together. I said I did not think that was the best idea at the time. My career was beginning to take off, and I did not have time to be in an all-consuming relationship. Also, I had an interest in seeing someone new.

On October 12, I hosted a gathering at my apartment to celebrate getting a recurring role on *The Day After Yesterday*. It was a big break for me. I invited about 15 friends over. For the most part, the night was a success. Taylor and Tobie attended, and we chatted for a couple minutes. Taylor seemed drunk. At one point, Taylor started yelling at one of my friends. It was over something meaningless. My friend had left his cell phone on loud at the party. Taylor thought this was rude and made a scene. I felt embarrassed for Taylor. I think that Taylor and Tobie left at 1 a.m.

I think Taylor was upset because I had invited my agent's assistant to the party. We spent most of the evening talking and flirting. We had been dating for some time. Taylor was angered that I was paying attention to someone else.

On the 13th of October, I received a call from Detective Green investigating Taylor's death. I was shocked to learn that Taylor had died. I told the detective about Taylor's heavy drinking the night before and about Taylor's causing a scene at the party.

WITNESS STATEMENTS—Defense Witness: Stevie Ricco

My name is Stevie Ricco, and I am 37 years old. For the last 18 years, I have worked in the entertainment industry in various capacities. I started out as a production assistant. Later, I did some location scouting and have also done some screenwriting. Last year, I was one of five assistant producers on *Newport Beach*.

Jes is kind of like my mentor, I guess. We have worked together a lot over the years, and I get almost all my jobs because Jes recommends me. We get along really well. I know how Jes likes a project to be run, and Jes trusts me to make sure there are no mistakes. Jes is truly a genius. Jes has produced a string of the most successful TV series over the past couple decades. Jes' contribution to television, and popular culture generally, has been underappreciated.

Jes is not a violent or vindictive person. When we wrote some of the bloody scenes for *Detroit Doctors*, Jes would get squeamish, and all the writers found that highly amusing. Jes also made a point of not coming on the set when violent scenes were filmed unless it was absolutely necessary. Given how uncomfortable Jes was around bloodshed, I do not believe that Jes could ever kill someone.

Some people believe Jes is mean. This is inaccurate. Jes just demands a lot from co-workers. Jes puts in a lot of hours at work and expects others to do the same. Anything with the name "Jes Markson" on it, Jes expects to be the best. While Jes can be demanding, Jes is one of the nicest people I know.

As an assistant producer on *Newport Beach*, I was in charge of alerting actors when their scenes were about to be filmed. Sometime in summer, I remember when I went to Taylor's trailer to give notice that there were only five minutes before shooting began on the big season finale. Taylor was not in costume. I asked what was wrong. Taylor sighed and said, "Being famous is just not what I expected. The people are so fake, and there is no one I can relate to. I thought this would make me happy, but I have never been more miserable." I tried to comfort Taylor, but it did not seem to work. Taylor told me, "I'm not sure life is worth living like this." I had seen Taylor looking depressed on the set, but this sounded especially bad.

On October 12 at about 10:15 p.m., I was invited to Jes' mansion. I was not planning on going out that night because I had gone to a movie premier the night before and the after-party dragged into the early morning. I decided to go over for a little while. I arrived at Jes' within 10 minutes as it was just up the hill. I did not intend to stay long. I just wanted to play a little pool. Another one of Jes' friends, Alex, was also there. We all drank some beers and played pool.

Jes and I talked a bit about *Newport Beach* and how production was going on the new season. Jes may have made a sarcastic comment about Taylor's leaving the show. That's just Jes' dry sense of humor. Jes was only concerned about Taylor's career. It is risky to leave a popular show. Many promising acting careers have been ruined when TV actors made the leap to movies too soon.

At midnight, Alex went to bed. I decided to leave as well. I was tired and had to be up early the next day. As I walked down the hill to my condo, I remember hearing the wind howling. It would have been hard to hear anything that night. I went to bed around 1:30 a.m. The next afternoon, I received a call from Alex saying that Taylor had died. I was still in shock when Detective Green called me later that afternoon. I told Detective Green that I had played pool with Taylor and Alex and walked home around 12:00 a.m.

EXHIBIT A

Official Diagram
Floor Plan of Jes Markson's Mansion
2349 Chandler Drive, Hollywood Hills

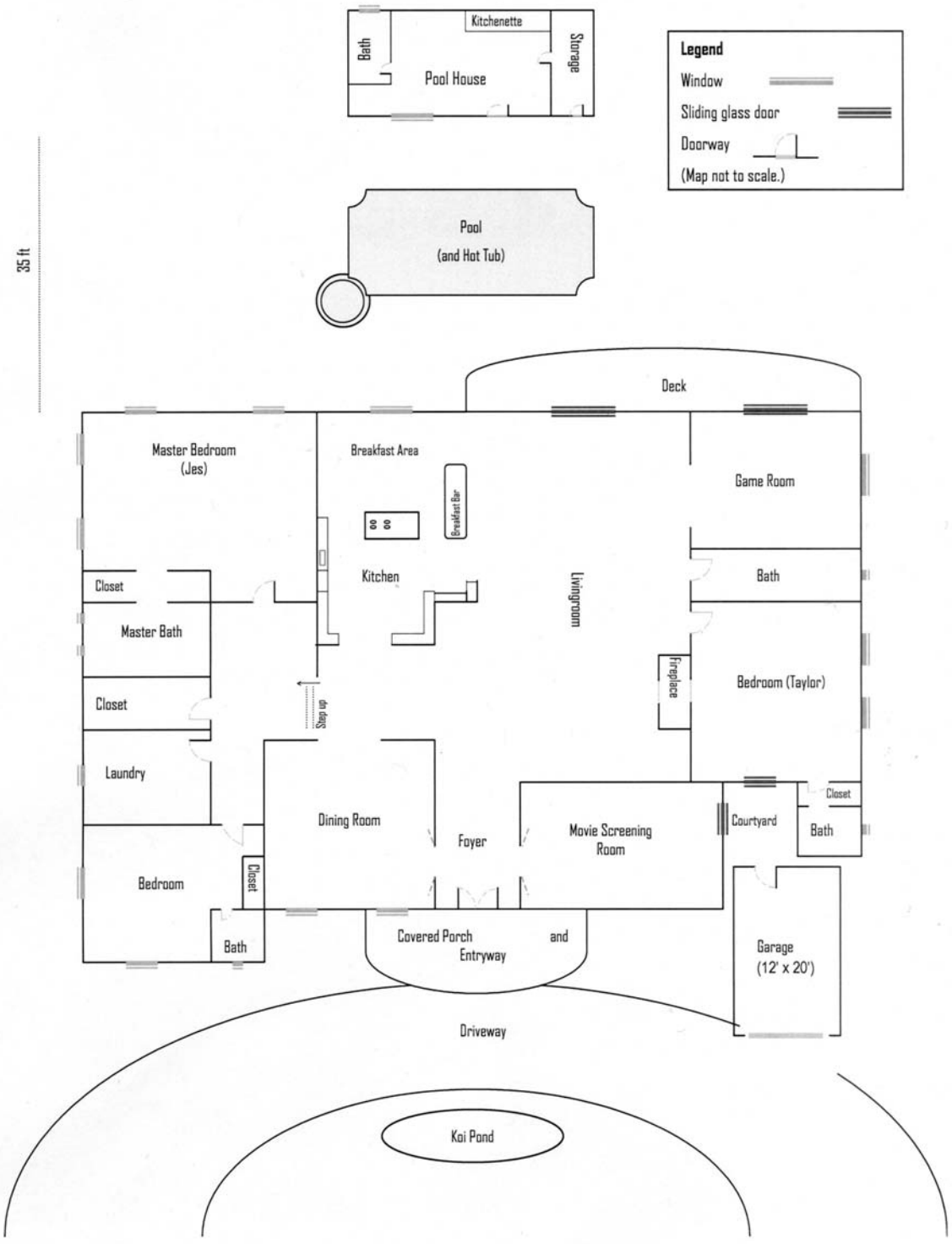


EXHIBIT B

Script

Murder by Monoxide
draft 4/4/2001 - writer: Joey Valderino, producer: Jes Markson

Brian
"Bob has nothing to do with this!"

Marcy
"You know Bob has everything to do with this"

Marcy then gets light-headed and passes out as the sleeping pills that Brian slipped in her drink have finally kicked in. Brian quickly drags Marcy to the garage and starts the car. He leaves and makes a call from the bedroom.

Brian
"We can at last be together. That odious woman will soon be gone. The police are sure to think it's a suicide"

Jane
"Oh, thank goodness. I thought we would never be together."

Fade out. Commercial

Cut to grizzled cop looking over Jane.

Cop #1
"Who knows why she did it. We'll probably never know"

PRODUCER NOTE:
CO DEATH USUALLY OCCURS W/IN 20 MINUTES VARY W/TYPE OF A CAR, SIZE OF GARAGE, ETC.

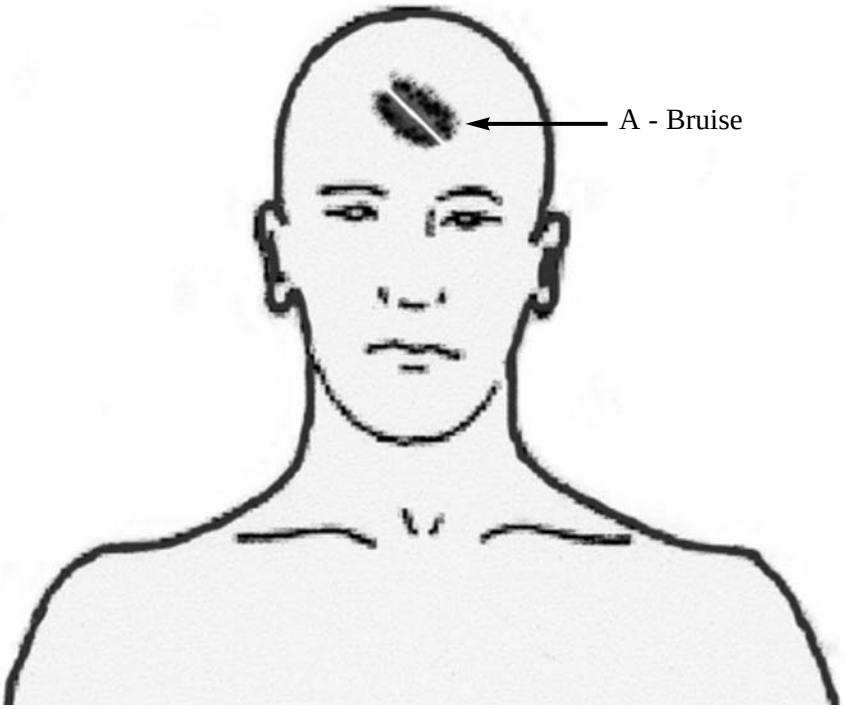
pg. 42

7EXHIBIT C

Sword and Scabbard

EXHIBIT D

Diagram of Taylor Rodriguez's Head Injury



THE FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

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

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

The Presumption of Innocence

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

The Concept of Reasonable Doubt

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

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

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

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendants guilt.

TEAM ROLE DESCRIPTIONS

ATTORNEYS

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

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

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

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

Trial attorneys will:

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

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

WITNESSES

You will supply the facts in the case. As a witness, the official source of your testimony, or record, is composed of your witness statement, all stipulations and exhibits, and any portion of the Fact Situation of which you reasonably would have knowledge. The Fact Situation is a set of indisputable facts that all witnesses and attorneys may refer to and draw reasonable inferences from. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses.

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

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the Fact Situation or a Witness Statement.

COURT CLERK, COURT BAILIFF, UNOFFICIAL TIMER

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

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

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

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

Duties of the Court Clerk

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

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

An experienced timer (clerk) is critical to the success of a trial.

Interruptions in the presentations do not count as time. For direct, cross, and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Do not include time when:

- witnesses are called to the stand.
- attorneys are making objections.
- judges are questioning attorneys or witnesses or offering their observations.

When a team has two minutes remaining in a category, call out "Two"; when one minute remains, call out "One," and when 30 seconds remains, call out "30." Always speak loud enough for everyone to hear you. When time for a category has run out, announce "Time!" and **insist the students stop**. There is to be **no allowance for overtime under any circumstance**. This will be the procedure adhered to at the state finals. After each witness has completed his or her testimony, mark down the exact time on the time sheet. **Do not round off the time.**

Duties of the Bailiff

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

In the Mock Trial competition, the bailiff's major duties are to call the court to order and to swear in witnesses. Please use the language below. When the judge has announced that the trial is beginning, say:

> "All rise, Superior Court of the State of California, County of _____ , Department __ , is now in session. Judge_____ presiding, please be seated and come to order."

When a witness is called to testify, you must swear in the witness as follows:

> "Do you solemnly affirm that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the Mock Trial competition?"

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

Duties of the Unofficial Timer

One defense attorney at the counsel table, the bailiff, or the defense team's clerk may serve as an unofficial timer. This unofficial timer must be identified before the trial begins and may check time with the clerk twice during the pretrial (once during the defense argument and once during the prosecution argument) and twice during the trial (once during the prosecution's case-in-chief and once during the presentation of the defense's case).

Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine if there has been a rule violation and whether to accept the clerk's time or make a time adjustment. Only official team members in the above-stated roles may serve as unofficial timers.

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

> "Your honor, before bringing the next witness, may I compare time records with the official timekeeper?"
>
> "Your honor, there is a discrepancy between my records and those of the official timekeeper. May I consult with the attorneys on my team before requesting a ruling from the court?"
>
> "Your honor, we respectfully request that ___ minutes/seconds be subtracted from the prosecution's (direct examination/cross-examination/etc.)."
>
> "Your honor, we respectfully request that ___ minutes/seconds be added to the defense (direct examination/cross-examination/etc.)."

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

TEAM MANAGER

Your team may also select a member to serve as **team manager**. Any team member, regardless of his or her official Mock Trial role, may serve as team manager. The manager is responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager should also keep a record of all witness testimony and a copy of all attorney notes so that another team member may fill in if necessary.

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

Introduction of Physical Evidence

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

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to use of the item, the judge will rule whether the evidence is appropriate or not.
2. Before beginning the trial, mark all exhibits for identification. Address the judge as follows: "Before we proceed, your honor, Id like from the judge: "Your honor, I ask that this item be marked for identification as Exhibit #___."
3. When a witness is on the stand testifying about the exhibit, show the item to the witness and ask the witness if he/she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. This shows how the exhibit is relevant to the trial.

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 or before they finish presenting their case.

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

The Opening Statement

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

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

Begin your statement with a formal address to the judge:

> "Your honor, my name is_____ (full name), the prosecutor representing the people of the state of California in this action," or
>
> "Your honor, my name is _____ (full name), counsel for _____, the 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)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

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

The witness will then be sworn in before testifying.

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

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

Examples of proper questions on direct examination:

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

Conclude your direct examination with:

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

Cross-Examination

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

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

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

Examples of proper questions on cross-examinations:

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

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

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

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

Cross-examination should conclude with:

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

Impeachment During Cross-Examination

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

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

Example: (Prior conduct)

"Is it true that you beat your nephew when he was 6 years old and broke his arm?"

Example: (Past conviction)

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

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

Examples: (Using signed witness statement to impeach)

"Mr. Jones, do you recognize the statement on page ____, line ____ of the case packet?"

Read the statement aloud to the court and ask the witness:

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

Re-Direct Examination

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

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

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

Closing Arguments

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

- Be **spontaneous**, synthesizing what **actually happened in court** rather than being "pre-packaged." **NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well-organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- **The prosecution** should emphasize that the state has proven guilt beyond a reasonable doubt.
- **The defense** should raise questions that suggest the continued existence of a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that . . . "

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

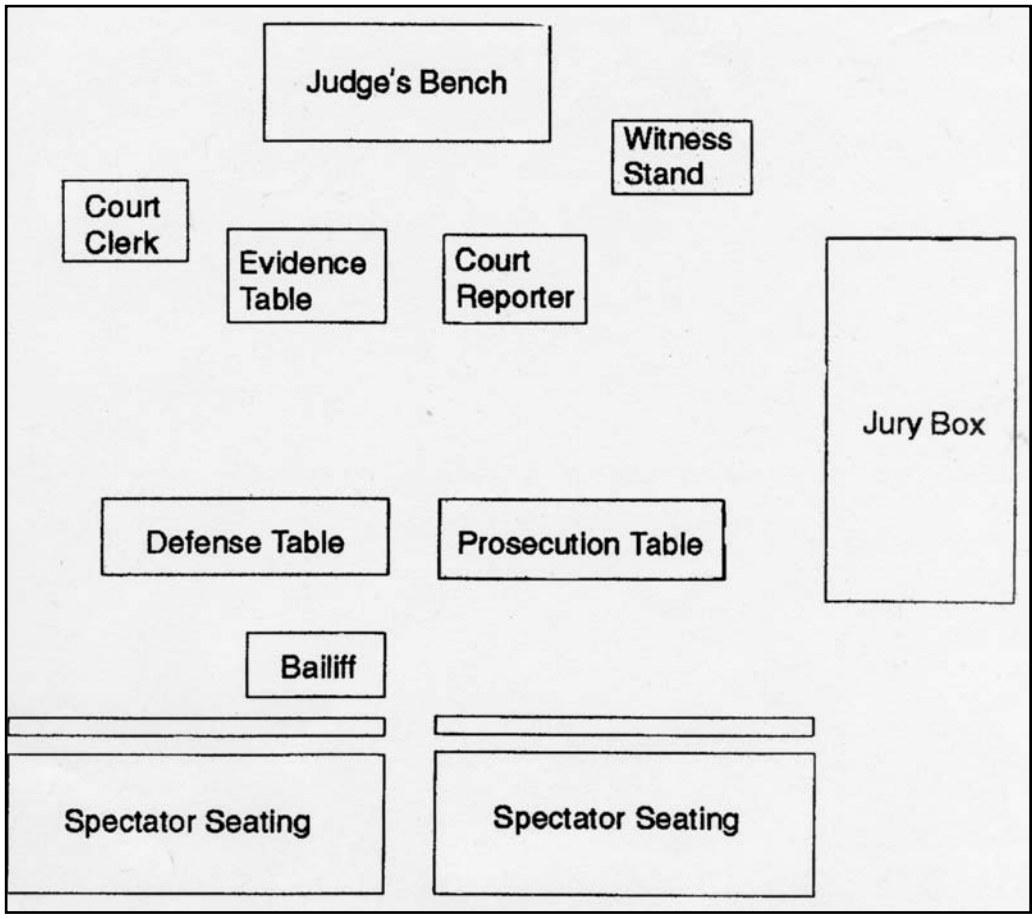
"The prosecution has failed to prove that . . . "

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

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

An attorney has one minute for rebuttal. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal.

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Objections

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

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

(1) addresses the judge,

(2) indicates that he or she is raising an objection,

(3) specifies what he or she is objecting to, i.e., the particular word, phrase, or question, and

(4) attorney specifies the legal grounds for the objection.

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

Allowable Evidentiary Objections

1. Creating a Material Fact (CMF)

This objection is specific to the competition and is not an ordinary rule of evidence. The CMF objection applies if a witness creates a material fact not included in his or her official record. When making an objection to CMF, students should be able to explain to the court what material fact is being created and why it is material to the case.

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

2. Relevance

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

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

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

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

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

3. Laying a Proper Foundation

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

Sometimes when laying a foundation, the opposing attorney may object on the ground of relevance, and the judge may ask you to explain how the proposed evidence relates to the case. You can then make an "offer of proof" (Explain what the witness will testify to and how it is relevant.) The judge will then decide whether or not to let you question the witness on the subject.

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

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

4. Personal Knowledge

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

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

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

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

5. Character Evidence

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

Examples:

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

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

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

6. Opinion of Lay Witness (non-expert)

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

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

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

7. Expert Witness and Opinion Testimony

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

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

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

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

8. Hearsay

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

However, 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 subsequent actions of a listener is admissible.

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.
2. However, if the witness testifies, "I went looking for Eric because Sally told me that Eric did not come home last night," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents (that Eric did not come home). Instead, it is being introduced to show why the witness looked for Eric.

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

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

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

a. **Admission against interest by a party opponent**—a statement made by a party to the legal action of the existence of a fact that helps the cause of the other side. (An admission is not limited to words, but may also include the demeanor, conduct, and acts of a person charged with a crime.)

b. **Excited utterance**—a statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.

c. **State of mind**—a statement that shows the declarant's mental, emotional, or physical condition.

d. **Declaration against interest**—a statement that puts declarant at risk of civil or criminal liability.

e. **Records made in the regular course of business**

f. **Official records and writings by public employees**

g. **Past recollection recorded**—something written by a witness when events were fresh in that witness's memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

h. **Statements for the purpose of medical diagnosis or treatment**

i. **Reputation of a person's character in the community**

j. **Dying declaration**—a statement made by a dying person respecting the cause and circumstances of his or her death, which was made upon that person's personal knowledge and under a sense of immediately impending death.

k. **Co-conspirator's statements**—(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) the statement was made prior to or during the time that the party was participating in that conspiracy; and (c) the evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of this evidence.

Allowable Objections for Inappropriately Phrased Questions

9. Leading Questions

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

Example:

> Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"
>
> Counsel could rephrase the question, "What, if anything, did the defendant say during this conversation about delivering the merchandise?"

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

10. Compound Question

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

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

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

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

11. Narrative

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

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

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

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

Other Objections

12. Argumentative Question

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

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

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

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

13. Asked and Answered

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

Examples:

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

   Counsel for X correctly objects and should be sustained.

BUT:

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

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

14. Vague and Ambiguous Questions

Questions should be clear, understandable, and as concise as possible. The objection is based on the notion that witnesses cannot answer questions properly if they do not understand the questions.

Example: "Does it all happen at once?"

Form of Objection: **"Objection, your honor. This question is vague and ambiguous as to what 'it' refers to."**

15. Non-Responsive Witness

Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or the witness "forgets" the event in question. This is often purposefully used by the witness as a tactic to prevent some particular evidence from being brought forth.

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

16. 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, opposing counsel may object to them.

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 CALIFORNIA MOCK TRIAL

1. Creating a Material Fact: "Objection, your honor. The answer is creating a material fact that is not in the record," or "Objection, your honor. The question seeks testimony that goes beyond the scope of the record."
2. **Relevance:** "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant testimony."
3. **Foundation:** "Objection, your honor. There is a lack of foundation."
4. **Personal Knowledge:** "Objection, your honor. The witness has no personal knowledge to answer that question," or "Your honor, I move that the witness's testimony about be stricken from the case because the witness has been shown not to have personal knowledge of the matter."
5. **Character Evidence:** "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."
6. **Lay Witness Opinion:** "Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness."
7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."
8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."
9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."
10. **Compound Question:** "Objection, your honor. This is a compound question."
11. **Narrative:** "Objection, your honor. Counsel's question calls for a narrative."
12. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."
13. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."
14. **Vague and Ambiguous:** "Objection, your honor. This question is vague and ambiguous as to _____."
15. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."
16. **Outside Scope of Cross-examination:** "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."

Law-Related Material From Constitutional Rights Foundation

To order a publication, go to www.crf-usa.org and click on publications.

Criminal Justice in America (New 2005 Edition)

Grades: 9-12

Criminal Justice in America, CRF's most popular publication, is the most comprehensive secondary text available on the subjects of criminal law, procedure, and criminology. It can serve as a text for an entire law-related education course or as a supplement for civics, government, or contemporary-issues courses.

Its extensive readings are supported by:

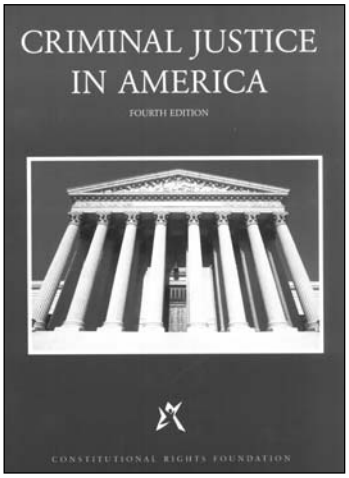
- Directed Discussions
- Role Plays
- Mock Trials
- Cooperative and Interactive Exercises
- Activities to Involve Outside Resource Experts
- Research Activities for Students to Use the Library or Internet

The Student Edition is divided into six units:

Crime includes sections on victim rights, history of crime, methods for measuring crime, white-collar crime, cybercrime, violent crime, property crime, youth gangs, elements of crimes, and legal defenses to crime.

Police includes sections on history of law enforcement, criminal investigations, crime labs, search and seizure, interrogations and confessions, the exclusionary rule, the use of force, racial profiling, corruption, and police-community relations.

The Criminal Case explores a hypothetical criminal case from arrest through trial. It includes all the key steps of the criminal trial process. It also has sections on judges, judicial independence, the court system, defense attorneys and prosecutors, and the rights of criminal defendants.



Corrections includes sections on theories of punishment, history of corrections, sentencing, alternatives to incarceration, prison conditions, parole, recidivism, capital punishment, and current debates on corrections such as whether too many people are behind bars.

Juvenile Justice includes sections on the history of the juvenile system, delinquency, status offenses, steps in a juvenile case, rights of juveniles, juvenile corrections, transfer to the adult system, and death penalty for juveniles.

Solutions includes sections on the debates over the cause of crime, racism in the justice system, history of vigilantism, policy options to reduce crime and make the criminal justice system fairer, and options for individual citizens.

The Teacher's Edition, a comprehensive guide, provides detailed descriptions of teaching strategies, activity masters, chapter and final tests, background readings, and extra resources to supplement the text.

Criminal Justice in America

#10120CMT	**Student Edition, 360 pp.**	**$19.95 ea.**
#10121CMT	**Teacher's Guide, 80 pp.**	**$9.95 ea.**
#10122CMT	**Set of 10 Student Editions**	**$189.95**

CityWorks

Engaging Students in Government

Grades 9-12

CityWorks is a standards-based local government curriculum designed to fit into any civics or government class. An independent, multi-year research-based study released in 2002 concluded that classes using ***CityWorks improved*** **student knowledge** of both regular and local government content ***and*** **helped prepare students for effective citizenship** by increasing student civic competencies as compared to students in traditional government courses.

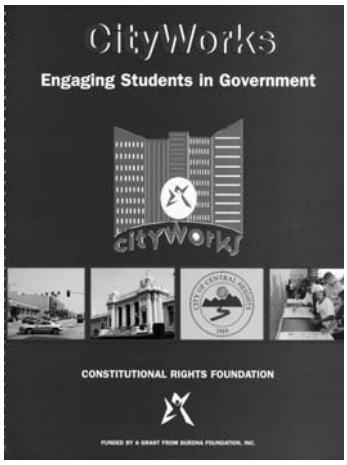
Students become citizens of the fictional city of Central Heights, learn about issues of state and local government, and practice critical-thinking skills. Along the way, they take on the role of local political leaders and active citizens to address political and social issues facing the community.

The curriculum has two strands:

Six interactive lesson modules centering on specific local government content, such as the executive, legislative, and judicial functions of local government and on realistic public policy issues, such as the economy and crime and safety.

CityWorks project activities follow each lesson. These activities and assignments help students explore problems, institutions, and public policy issues in their own community. Students are guided through a civics-based **service-learning** project that addresses a local community problem they have studied.

CityWorks curriculum materials consist of three components:



The **CityWorks Teacher's Guide** includes everything you need—lessons, reproducible masters for all lesson handouts (including the *Bugle*), instructions for the CityWorks project activities, and reproducible masters of the Student Handbook.

The *Central Heights Bugle*, six issues of a simulated newspaper in class sets of 35. Each edition is linked to one of the lessons in the Teacher's Guide and provides students with readings and information for the lesson.

A **Student Handbook** containing detailed instructions for completing the CityWorks project activities and serving as a portfolio for students to record much of their work.

CityWorks

#35351CMT	**Teacher's Guide**	**$39.95**
#35355CMT	**Student Handbook(Set of 35)**	**$115.95**
#35360CMT	**Central Heights Bugle(Set of 35)**	**$64.95**
#35356CMT	**Class Set**	**$199.95**

1 Teacher's Guide, 35 Student Handbook, and a set of Central Heights Bugle.

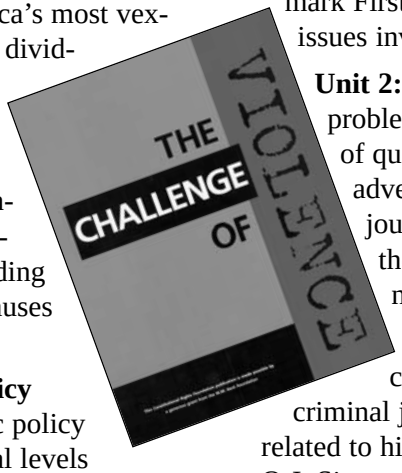
To order a publication, go to www.crf-usa.org and click on publications.

CRF's Challenge Series

Grades 9-12

The four volumes in the Challenge series help students understand and evaluate controversial topics. The volumes cover four areas of crucial interest to our society: violence, information, diversity, and governance. Made possible by a generous grant from the W.M. Keck Foundation of Los Angeles, these supplemental materials feature balanced readings, guided discussions, and interactive lessons designed to address key challenges to our democracy. Each volume is 72 pages long and is fully illustrated with photos, graphs, and charts. Each comes with a teacher's guide with reproducible handouts and step-by-step instructions for high-interest interactive activities that foster critical thinking.

The Challenge of Violence challenges students to grapple with one of America's most vexing problems—violence. It is divided into three units:



Unit 1: The Problem of Violence places the problem of violence in a historical context. It also explores the problems of violence today, including gangs, youth violence, and causes and risk factors of violence.

Unit 2: Law and Public Policy examines how law and public policy at the national, state, and local levels seek to address the problem. Students engage in crucial societal debates over proposed solutions, including punishment versus prevention, gun control, curfews, and school uniforms.

Unit 3: Taking Action Against Violence helps students move beyond the classroom and learn how to take action against violence in their own lives and communities.

The Challenge of Violence

#10800CMT	**Student Edition, 72 pp.**	**$9.95**
#10801CMT	**Teacher's Guide, 47 pp.**	**$8.95**
#10802CMT	**Set of 10 Student Editions**	**$94.95**

The Challenge of Information examines issues surrounding information and the media. This high-interest book is divided into five units:

Unit 1: A Free Press covers basic constitutional issues dealing with the media and free press. It begins by explaining how the free press developed historically. It then examines landmark First Amendment cases and explores issues involving the right to know.

Unit 2: A Responsible Press looks into problems of press ethics, such as the use of questionable sources, the influence of advertising on editorial content, tabloid journalism, undercover journalism, and the violent content of local broadcast news coverage.

Unit 3: Free Press-Fair Trial discusses issues involving the press and criminal justice system. It explores problems related to high-profile cases such as the trial of O.J. Simpson and evaluates whether reporters should have to reveal their sources in court.

Unit 4: The Myth Makers encourages students to take a critical look at information. It gives students background for evaluating urban myths and rumors, conspiracy theories, and claims of paranormal phenomena.

Unit 5: New Frontiers addresses policy issues relating to the Internet. It looks at the growth of the Internet and at issues surrounding hate speech and indecency on the Internet.

The Challenge of Information

#10810CMT	**Student Edition, 72 pp.**	**$9.95**
#10811CMT	**Teacher's Guide, 47 pp.**	**$8.95**
#10812CMT	**Set of 10 Student Editions**	**$94.95**

The Challenge of Diversity gives students with an in-depth look at issues of racial and ethnic diversity in the United States. The book is divided into five units:

Unit 1: The Ideal of Equality traces the development of equal protection from slavery and the Constitution to the Civil War amendments.

Unit 2: A Diverse Nation provides a brief historical review of the experience and struggles of various ethnic groups during the 19th and first half of the 20th century.

Unit 3: Civil Rights Movement covers the turbulent period between 1954 and 1975 that changed America forever. It examines the social protests, landmark Supreme Court decisions, the Civil Rights Act of 1964 and Voting Rights Act of 1965, and Mexican-American activism.

Unit 4: Issues and Policies explores current issues of diversity-affirmative action, bilingual education, multiculturalism, reparations, hate crimes, and the extent of progress in race relations.

Unit 5: Bringing Us Together tells of governmental and grassroots efforts to bring people together and provides students with ideas and resources for service-learning projects.

The Challenge of Diversity

#10820CMT	**Student Edition, 72 pp.**	**$9.95**
#10821CMT	**Teacher's Guide, 47 pp.**	**$8.95**
#10822CMT	**Set of 10 Student Editions**	**$94.95**

The Challenge of Governance is designed to help students gain proficiency in meeting the National Standards for Civics and Government. It goes through every standard and provides an exciting activity to reinforce learning. It covers the Constitution, republicanism, civil society, equality, conflicts, taxation, state and local government, the branches of government, the public agenda, elections, public policy, foreign policy, and much, much more. Perfect for a review of all the government standards.

The Challenge of Governance

#10830CMT	**Student Edition, 72 pp.**	**$9.95**
#10831CMT	**Teacher's Guide, 47 pp.**	**$8.95**
#10832CMT	**Set of 10 Student Editions**	**$94.95**

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