



People v. Vega

A Hit and Run Trial

Featuring a pretrial argument on the Fifth Amendment



OFFICIAL MATERIALS FOR THE CALIFORNIA MOCK TRIAL COMPETITION
A Program of Constitutional Rights Foundation

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People v. Vega

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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

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 or County Coordinators. 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."**

2012-2013 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation creates the Mock Trial for students across the state of California. The case provides students an opportunity to wrestle with large societal problems within a structured forum and strives 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 lesson 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. Vega*.

The following lesson concerns the 5th Amendment and the application of *Miranda* over several decades. In the lesson, students will examine cases that analyze issues of custody and discuss the case law and its application to *Miranda*. This lesson is for information purposes only and cannot be used in competitions' pretrial argument.

CLASSROOM DISCUSSION MATERIALS

Miranda's Aftermath

Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture.

— U.S. Supreme Court Chief Justice William Rehnquist, *Dickerson v. U.S.* (2000)

Miranda v. Arizona requires the police to read suspects **in custody** their rights before any **interrogation**. Police do not need to get people to waive their rights if they are not in custody or not being interrogated. Since *Miranda*, the court has clarified its decision by focusing on what “in custody” and “interrogation” mean. It has also carved out an exception and looked at other challenges to *Miranda*.

To be in custody, a person’s freedom must be significantly restrained. The court has held that most people stopped briefly by police are not in custody, because they will soon be on their way. Thus routine traffic stops and even stop and frisks do not normally require *Miranda* warnings. (*Berkemer v. McCarty*, 1984)

In *Thompson v. Keohane* (1995), the court stated an objective test for “in custody”: Given the circumstances, “would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave”?

In *Rhode Island v. Innis* (1980), the high court defined interrogation as “words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” In that case, police officers talked to each other as they drove the defendant to the police station. One mentioned that it would be too bad if children attending a nearby school for the handicapped found the abandoned shotgun that Innis had supposedly used to rob one taxi driver and kill another. Innis, who had previously requested a lawyer after hearing his *Miranda* rights, spoke up and directed the officers to the gun (a major piece of evidence in his later conviction for robbery and murder). The court ruled that the officers’ remarks did not constitute interrogation so his rights were not violated.

***New York v. Quarles* (1984)**

In 1984 in *New York v. Quarles*, the Supreme Court carved out a major exception to *Miranda*. In that case, police chased a rape suspect through a supermarket. Finally catching and handcuffing him, they found he had an empty shoulder holster. An officer asked him where the gun was. Nodding toward some empty boxes, the suspect said, “The gun is over there.” The police retrieved a loaded .38 caliber handgun from a box. Since the suspect had not been given any *Miranda* warnings, his incriminating statement and perhaps the gun should have been excluded from evidence. But the court created a **public safety exception** to *Miranda*. It ruled that the police do not have to give *Miranda* warnings when their questions are “reasonably prompted by a concern for the public safety.” Since the loaded gun in the store caused reasonable concern for public safety, the court ruled that the evidence was admissible.

***Dickerson v. U.S.* (2000)**

In 2000, the Supreme Court decided a case that directly challenged *Miranda*. It was based on a law more than 30 years old. In 1968, two years after the *Miranda* decision, Congress enacted the Omnibus Crime Control and Safe Streets Act of 1968. Section 3501 of this act purports to overturn *Miranda* for federal cases. It permits a confession to be given in evidence “if it is voluntarily given.” Section 3501 lists several factors for a court to consider in determining whether a confession is voluntary. *Miranda* warnings are one of these factors, but are not considered necessary for a voluntary confession.

For 30 years, prosecutors and police ignored Section 3501, believing it unconstitutional. They reasoned that Congress cannot overturn a Supreme Court decision on constitutional law. But a law professor at the University of Utah, Paul Cassell, thought Section 3501 was constitutional and waged a campaign to get it upheld. He noted language in *Miranda* that said Congress or states could adopt substitutes for *Miranda* warnings as long the procedures were “at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it.” Cassell argued that Congress had done this in 1968.

In 1999, a federal appeals court adopted Cassell’s argument. The case involved Charles Dickerson, a defendant who claimed the FBI had not read him his rights before he confessed. The trial judge, although noting that the confession was voluntary, threw out the confession. When the judge refused to hear new evidence that the FBI had given the defendant his *Miranda* warnings, prosecutors appealed. The appeals court reversed the trial judge’s decision, reasoning that the confession was voluntary and therefore admissible under Section 3501.

The U.S. Supreme Court, however, overturned the appeals court decision in *Dickerson v. U.S.* By a 7–2 vote, the court ruled that *Miranda* was based on the Constitution and that Congress does not have the power to overturn the decision. It therefore ruled that Section 3501 was unconstitutional. It further rejected the argument that Section 3501 provided an effective substitute for *Miranda* warnings. The court stated that Section 3501 was simply a return to the “totality of the circumstances” test of voluntariness, which existed prior to *Miranda*. This test, said the court, did not adequately protect a defendant’s constitutional rights.

For Discussion

1. When do police have to give *Miranda* warnings? Do you think a person should be considered in custody when police pull them over for a traffic stop? Explain. What is the test for whether a person is in custody? Do you agree with the court’s decision in *Rhode Island v. Innis*? Why or why not?
2. According to the *Miranda* decision, why should the incriminating statement in the *Quarles* case be excluded from evidence? The court majority in *Quarles* said that the public safety exception did not give the police the right to coerce confessions from suspects. According to the *Miranda* decision, was *Quarles*’ incriminating statement made in a coercive situation? Why or why not?

3. Both the majority and dissenting opinions in *Quarles* agreed that the decision would “lessen the desirable clarity” of the *Miranda* rule. Why is it desirable that the rule be clear?
4. Do you think Section 3501 is constitutional? Explain.
5. When *Miranda* was decided, its critics claimed that suspects would stop making confessions. This claim has proved false. Suspects confess today as often as before *Miranda*. In fact, one commentator has stated that “next to the warning label on cigarette packs, *Miranda* is the most widely ignored piece of official advice in our society.” Do you think *Miranda* sufficiently protects suspects’ Fifth Amendment rights? Do you think it goes too far? Explain.
6. Many police departments now commonly record — either on audio or video — all interrogations. Do you think this should be a requirement everywhere? Explain.

Lesson is excerpted from *Criminal Justice in America* (2012).

INTRODUCTION TO 2012-2013 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 32nd Annual California Mock Trial Competition. In preparation for their trials, participants may refer to all information included in the *People v. Vega* case (except for the classroom discussion materials). The competition is sponsored and administered by Constitutional Rights Foundation. The program is co-sponsored by the American Board of Trial Advocates Foundation 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 22–24, 2013. In May, 2013, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Indianapolis, Indiana.

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

Please visit our Facebook page AND Twitter page for all program and case updates “CRF California Mock Trial” or our web site at: www.crf-usa.org

CALIFORNIA MOCK TRIAL FACT SITUATION

Hidden Valley is, for the most part, a calm and peaceful city. It boasts 90 acres of parks, sports fields, and trails — a much cherished relief from the urban congestion just 30 miles south. Its high school, Hidden Valley High, located on Skyline Drive, is renowned for its stellar swimming program.

On the night of Thursday, April 19, 2012, a large crowd congregated in front of the high school. The Hidden Valley Highlanders had claimed another victory, qualifying them for the California State Championship. As the crowd celebrated the victory, a vintage 1961 Bueller GT left the school at approximately 10:30 p.m. and headed northbound on Skyline Drive.

That night, shortly after 10:30, Cameron Douglas was riding a bright turquoise bike from the northwest corner of Skyline and Grand toward the northeast corner of Skyline and Grand. The intersection is controlled by a two-way stop with stop signs facing north and south.

As Cameron crossed the intersection of Skyline and Grand, an automobile struck Cameron with its left front bumper. Cameron was sent flying from the bike and landed several feet away in the street.

Quinn Liu, who lives near the intersection of Skyline and Grand, saw the Bueller collide with Cameron’s bicycle. Quinn ran to call 911. While waiting for an answer, Quinn wrote down part of the car’s California license plate number, SLC86.

Officers Wright and Jackson arrived at the scene around 10:40 p.m. just as Cameron was loaded into an ambulance and then taken to a hospital. Cameron was treated at the hospital for several serious abrasions, a shattered right knee, a cracked collarbone, and a moderate concussion. At the scene, the officers began questioning witnesses. Quinn described the vehicle and the driver’s clothes and mentioned that there was a glow that appeared to emanate from a cell phone screen on the driver’s side of the vehicle.

Wright and Jackson questioned Dallas Decamp, who also witnessed the accident. Dallas confirmed Quinn’s description of the vehicle.

After the investigation at the scene concluded, a police dispatcher connected with a statewide computer system, searched all California license plates with the information provided by Quinn. Of the two possible matches, only one was for a car registered in Hidden Valley. That car was registered to an address on Orion Boulevard to Oliver Vega, the mayor’s spouse. Mayor Angelica Vega was an outspoken politician and a supporter of FADD, Families Against Distracted Driving. The Vegas have only one child, named Adrian.

Officers Wright and Jackson arrived at the Vega home at approximately 11:05 p.m. and found a black Bueller parked in the driveway with one of its tires over the front lawn. Wright verified that the license plate matched

1 the partial plate provided by Quinn and felt the hood of the car, which
2 was warm even though the air was cold. Wright noticed a couple of
3 scrapes of turquoise paint on the driver's side of the front bumper.

4
5 The officers approached the house, rang the doorbell, and knocked, but
6 there was no answer. After a couple of minutes of ringing and knocking,
7 Toni De Luca emerged from the side of the house wearing a light blue
8 Hidden Valley T-shirt.

9
10 Wright and Jackson spoke to Toni about the accident. Toni explained that
11 the mayor's child, Adrian, drove them both home from a swim meet
12 earlier that night and may have hit something. After questioning Toni, the
13 officers allowed Toni to go back to the guest house. Jackson resumed
14 investigating the outside of the Bueller while Wright walked back to the
15 police car to radio for a tow truck. It was approximately 11:25 p.m.

16
17 Wright then noticed a figure walking toward the Vega home. It was
18 Adrian, wearing a white T-shirt and a cardinal and gold cap. Adrian
19 confirmed living in the Vega home and stated that the Bueller belonged to
20 Adrian's father.

21
22 Wright asked if Adrian wanted to talk about events from that evening.
23 Adrian told Wright that Adrian had competed successfully in a swim meet
24 that night at Hidden Valley High. Adrian also told Wright that a foreign
25 exchange student named Toni drove both of them home in the Bueller
26 and may have hit something. Shortly thereafter, Adrian made Toni stop
27 the car, and the two switched places for the remainder of the ride to
28 Adrian's house.

29
30 After a few minutes of talking to Wright, Adrian was shivering in the cold
31 air and said, "Don't you think it's cold out here?" Wright offered to let
32 Adrian sit in the back seat of the patrol car and gestured to the open rear
33 door. Officer Wright's patrol car was a cage car. Adrian sat on the edge of
34 the rear bench seat, but Adrian's feet were outside on the ground. Wright
35 stood by the open door, a few feet away. Officer Jackson stood in the
36 yard, about 15 feet behind Officer Wright. Officer Jackson is a former
37 college wrestler and shot putter standing 6 foot 5 inches tall and weighing
38 250 pounds.

39
40 [Wright and Adrian exchanged pleasantries about swimming and Adrian's
41 future. Wright then closed the rear door of the car and entered the driver's
42 seat. The patrol car's back doors cannot be opened from the inside when
43 shut. Wright asked Adrian to continue talking about what happened that
44 night. Wright again asked what Adrian had done earlier that evening.
45 Adrian repeated what Adrian had said before getting into the back seat of
46 the car. By the time they finished their conversation, Adrian had been in
47 the car for about half an hour.

48
49 Officer Wright then said, "Well, we think that it's possible that you drove
50 the car that struck the bicyclist on Skyline and Grand tonight."

1 Adrian blurted: “It was a bicyclist?! I am so sorry. I — I could never
2 forgive myself!”]

3
4 Wright believed that Adrian had been driving the Bueller that struck
5 Cameron. Wright arrested Adrian for the felony violation of California
6 Vehicle Code Section 20001. At that point Wright recited *Miranda*
7 warnings to Adrian.

8
9 Adrian was taken to the police station and booked at approximately 12:15
10 a.m. on Friday, April 20, 2012. After being there for an hour, Adrian
11 called Taylor Berard, Adrian’s private swim coach, and asked for help to
12 bail out of jail.

13
14 The Bueller was taken to the police impound lot. As required by the
15 Hidden Valley Police Department’s inventory policy, the police conducted
16 an inventory search of the vehicle. Among the things found in the car
17 were a business card of the University of Los Angeles swimming scout
18 under the driver’s seat and Adrian’s cell phone in the center console.

19
20 Officer Jackson’s U.S. Army Reserve unit has been called to active duty in
21 Afghanistan and will not be back for 15 months.

22 23 **CHARGES:**

24 The prosecution charges Adrian Vega with:
25 Failure to Perform Duty Following Accident: Death or Injury, a felony
26 (commonly referred to as “felony hit-and-run”). California Vehicle Code
27 Section 20001 (a).

28 29 **PHYSICAL EVIDENCE**

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

- 32 1. A faithful reproduction of Exhibit A, a diagram of the accident scene.
33 ALL reproductions should be no larger than 22 inches x 28 inches

34 35 **STIPULATIONS**

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

- 38 1. At the time of arrest, there was sufficient probable cause to arrest
39 Adrian Vega.
40 2. All physical evidence and witnesses not provided for in the case are
41 unavailable and their availability may not be questioned.
42 3. Beyond what’s stated in the witness statements, there was no other
43 forensic evidence found in this case.
44 4. All witness statements were taken in a timely manner.
45 5. Due to a technical glitch, no messages or numbers could be retrieved
46 from the Adrian Vegas’ phone or the phones of Adrian’s parents and
47 friends.
48 6. Cameron Douglas’ right knee is permanently damaged.
49

1 PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

2
3 This section contains materials and procedures for the preparation of a
4 pretrial motion on an important legal issue. The judge’s ruling on the
5 pretrial motion will have a direct bearing on the charges in this trial and
6 the possible outcome of this trial. The pretrial motion is designed to help
7 students learn about the legal process and legal reasoning. Students will
8 learn how to draw analogies, distinguish a variety of factual situations,
9 and analyze and debate constitutional issues.

10
11 For the pretrial argument, students may use all the pretrial materials and
12 relevant parts of the fact situation, stipulations, and witness statements.
13 The defense will bring the motion. If the court rules in favor of the
14 defense, the bracketed information in the fact situation and witnesses
15 statements may not be used during the trial. If the defenses’ motion is
16 unsuccessful, the prosecution may use the bracketed information. Middle
17 school competitions do not argue the pretrial motion and may use all
18 bracketed information in their trials.

19 20 **ISSUE**

21 The pretrial issue in *People v. Vega* centers on the Fifth Amendment and
22 the U.S. Supreme Court decision as set forth in *Miranda v. Arizona*. The
23 Fifth Amendment provides that “no persons shall be compelled to be a
24 witness against themselves.” The *Miranda* decision held that before police
25 may question people in custody, they must inform them of their rights.

26
27 The issue in this case is whether or not the circumstances surrounding the
28 defendant’s interaction with Officer Wright would invoke the protection of
29 the Fifth Amendment and thus require the officer to read the defendant
30 the *Miranda* warnings.

31
32 Police are only required to give these *Miranda* warnings before
33 interrogating someone in custody. The question is whether or not Adrian
34 was in custody. If Adrian was not in custody, there was no need for
35 Officer Wright to read the *Miranda* warnings prior to questioning Adrian,
36 and Adrian’s bracketed statement is admissible. If in fact Adrian was in
37 custody, Officer Wright would be required to have read the *Miranda*
38 warnings to Adrian, and Adrian’s bracketed statement is inadmissible.

39 40 **ARGUMENTS**

41 The defense will argue that Adrian was in custody. A reasonable person in
42 Adrian’s position would have felt in custody, due to several factors,
43 including that the questioning took place late at night and in the back seat
44 of a locked police cruiser. Furthermore, when the police began
45 questioning Adrian, Adrian was their main suspect. The defense will
46 argue that Adrian’s freedom was restricted and Adrian therefore did not
47 feel free to leave.

48
49 The defense will further argue that Adrian did not feel free at any time to
50 terminate the conversation with Officer Wright and felt intimidated by the
51 physical presence and behavior of the second officer, Phoenix Jackson.

1 Because *Miranda* warnings were required but not given, Adrian’s
2 bracketed statement is inadmissible in court.

3
4 The prosecution will argue that Adrian was not in custody when speaking
5 to Officer Wright, and therefore no *Miranda* warnings were required.
6 Adrian’s freedom was not restricted in any way because Adrian
7 voluntarily sat inside the police cruiser to get out of the cold air.
8 Furthermore, a portion of the conversation between Wright and Adrian,
9 the back door of the police car was completely open and Adrian’s feet
10 were planted on the ground while Adrian sat on the edge of the rear
11 passenger seat. Both Officer Wright and Adrian sat inside the police
12 cruiser only because of the cold weather. Adrian never asked to leave,
13 never asked if the doors were locked, and was never told by Wright to
14 stay. Because *Miranda* warnings were not required, Adrian’s bracketed
15 statement is admissible in court.

16 **LEGAL AUTHORITIES**

17 **U.S. Constitution**

18 *Amendment V*

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

27 *Amendment XIV*

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

35 **Statutory**

36 *California Vehicle Code* § 20001. ***Duty to stop at scene of injury accident:***

37 The driver of a vehicle involved in an accident resulting in injury to a
38 person, other than himself or herself, or in the death of a person shall
39 immediately stop the vehicle at the scene of the accident and shall fulfill
40 the requirements of Sections 20003.... [Penalties omitted.]

41 *California Vehicle Code* § 20003. The driver of any vehicle involved in an
42 accident resulting in injury to or death of any person shall also give his or
43 her name, current residence address, the names and current residence
44 addresses of any occupant of the driver’s vehicle injured in the accident,
45 the registration number of the vehicle he or she is driving, and the name
46 and current residence address of the owner to the person struck or the
47

1 driver or occupants of any vehicle collided with, and shall give the
2 information to any traffic or police officer at the scene of the accident. The
3 driver also shall render to any person injured in the accident reasonable
4 assistance, including transporting, or making arrangements for
5 transporting, any injured person to a physician, surgeon, or hospital for
6 medical or surgical treatment if it is apparent that treatment is necessary
7 or if that transportation is requested by any injured person.
8

9 **Jury Instructions**

10 Judicial Council of California Criminal Jury Instructions (CALCRIM 2140)
11 Failure to Perform Duty Following Accident: Death or Injury – Defendant
12 Driver (Veh. Code, §§ 20001, 20003)

13 The defendant is charged with failure to perform a duty following an
14 accident. To prove that the defendant is guilty of this crime, the
15 prosecution must prove the following:

- 16 1. While driving, the defendant was involved in a vehicle accident;
- 17 2. The accident caused the death of or permanent, serious injury to
18 someone else;
- 19 3. The defendant knew he/she had been involved in an accident that
20 injured another person or knew from the nature of the accident
21 that it was probable that another person had been injured;

22 AND

- 23 4. The defendant willfully failed to perform one or more of the
24 following duties:
 - 25 a. To stop immediately at the scene of the accident;
 - 26 b. To provide reasonable assistance to any person injured in
27 the accident;

28 Someone commits an act *willfully* when that person does it willingly or on
29 purpose. It is not required that the person intend to break the law, hurt
30 another, or gain any type of advantage.
31

32 The duty to *stop immediately* means that the driver must stop his or her
33 vehicle as soon as reasonably possible under the circumstances.
34

35 To *provide reasonable assistance* means that the driver must determine
36 what assistance, if any, the injured person needs and make a reasonable
37 effort to provide that assistance (provided either by the driver or someone
38 else).
39

40 *Reasonable assistance* includes the following: transporting any injured
41 person for medical treatment or arranging the transportation for treatment
42 if it is apparently necessary or if requested by the injured person. The
43 driver is not responsible to provide unnecessary assistance or assistance
44 already being provided by someone else. However, the driver is not
45 excused from providing assistance because there are bystanders on the
46 scene or because those bystanders could provide assistance.
47

1 The driver of the vehicle must perform the listed duties regardless of who
2 was injured or how/why the accident occurred. It does not matter if
3 someone else caused the accident or the accident was unavoidable.

4
5 *A permanent, serious injury* is one that permanently impairs the function
6 or causes the loss of any organ or body part. An accident causes death or
7 permanent, serious injury if the death or injury is the direct, natural, and
8 probable consequence of the accident and the death or injury would not
9 have happened without the accident.

10
11 **Direct and Circumstantial Evidence: Defined**
12 **Judicial Council of California Criminal Jury Instructions**
13 **(CAL-CRIM 223)**

14
15 Facts may be proved by direct or circumstantial evidence or by a
16 combination of both. *Direct evidence* can prove a fact by itself. For
17 example, if a witness testifies he saw it raining outside before he came
18 into the courthouse, that testimony is direct evidence that it was raining.
19 *Circumstantial evidence* also may be called indirect evidence.
20 Circumstantial evidence does not directly prove the fact to be decided, but
21 is evidence of another fact or group of facts from which you may logically
22 and reasonably conclude the truth of the fact in question. For example, if
23 a witness testifies that he saw someone come inside wearing a raincoat
24 covered with drops of water, that testimony is circumstantial evidence
25 because it may support a conclusion that it was raining outside.

26
27 Both direct and circumstantial evidence are acceptable types of evidence
28 to prove or disprove the elements of a charge, including intent and mental
29 state and acts necessary to a conviction, and neither is necessarily more
30 reliable than the other. Neither is entitled to any greater weight than the
31 other. You must decide whether a fact in issue has been proved based on
32 all the evidence.

33
34 **Circumstantial Evidence: Sufficiency of Evidence**
35 **Judicial Council of California Criminal Jury Instructions**
36 **(CAL-CRIM 224)**

37
38 Before you may rely on circumstantial evidence to conclude that a fact
39 necessary to find the defendant guilty has been proved, you must be
40 convinced that the People have proved each fact essential to that
41 conclusion beyond a reasonable doubt.

42
43 Also, before you may rely on circumstantial evidence to find the
44 defendant guilty, you must be convinced that the only reasonable
45 conclusion supported by the circumstantial evidence is that the defendant
46 is guilty. If you can draw two or more reasonable conclusions from the
47 circumstantial evidence and one of those reasonable conclusions points to
48 innocence and another to guilt, you must accept the one that points to
49 innocence. However, when considering circumstantial evidence, you must
50 accept only reasonable conclusions and reject any that are unreasonable.

1 **Cases: Supreme Court**

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

3 Facts: Ernesto Miranda was suspected of kidnapping and rape. Police
4 arrested him at his home and took him to the police station. A witness
5 identified him, and two detectives took him into a special room. After two
6 hours of interrogation, the officers got Miranda to sign a written
7 confession. At his trial, Miranda was convicted and sentenced to 20 to 30
8 years in prison. However, the police had never informed him of his Fifth
9 Amendment right not to talk to them.

10
11 Issue: Are law enforcement officers required to notify persons in custody
12 of their Fifth Amendment rights prior to interrogation?

13 Holding: Yes, the government must notify arrested defendants of their
14 Fifth Amendment constitutional rights prior to an interrogation. Writing
15 for the five-member majority, Chief Justice Earl Warren stressed that the
16 Fifth Amendment does not just apply to criminal trials. Its command that
17 no person “shall be compelled in any criminal case to be a witness against
18 himself” also applies to suspects in police custody. Chief Justice Warren
19 noted that Miranda was in no way informed of his right to consult with an
20 attorney to have with him during questioning nor was he given the right
21 to not be compelled to incriminate himself (the right to remain silent).

22 Warren’s opinion examined what made a confession coerced. Coercion
23 can arise out of physical brutality. It can also arise from mental stress
24 resulting from police tactics.

25 The court concluded that proper safeguards against coercion require that
26 police clearly tell suspects in custody before any questioning the
27 following:

28 They have the right to remain silent. Anything they say may be
29 used against them in court. They have a right to a lawyer. If they
30 want a lawyer but can’t afford one, the court will appoint one
31 before any questioning.

32 Also, after giving a suspect these warnings, the police may not continue
33 interrogating unless suspects “knowingly and intelligently” waive their
34 rights. That is, suspects must completely understand their rights before
35 they can give them up. Warren stated that a statement signed by Miranda
36 declaring that he knew of his legal rights was not the same as an
37 intelligent waiver of his constitutional rights.

38 *Berkemer v. McCarty*, 468 U.S. 420 (1984)

39 Facts: The defendant was pulled over by an officer after the officer noticed
40 that the defendant’s vehicle was swerving. The officer had him get out of
41 the car to perform a field sobriety test. The defendant could not maintain
42 physical balance and failed the test. The officer asked if he had been
43 drinking or taking drugs. The defendant said that he had two beers and
44 marijuana. The officer arrested the defendant and drove the defendant to

1 county jail where a blood test failed to indicate any alcohol in the
2 defendant's blo

3 od. The officer then resumed questioning, and the defendant made an
4 incriminating statement that he was "barely" under the influence of
5 alcohol. At no time did the officer give *Miranda* warnings to the
6 defendant.

7 Issue: Were the defendant's statements to the police at the traffic stop and
8 at the station wrongfully admitted at trial when the defendant had not
9 been given *Miranda* warnings prior to making the statements?

10 Holding: (1) No, as to the statement at the traffic stop. Anyone subjected
11 to custodial interrogation is entitled to *Miranda* warnings. To be in
12 custody, a person's freedom must be significantly restrained. The Court
13 has held that most people stopped briefly by police are not in custody,
14 because they will soon be on their way. The roadside questioning
15 pursuant to the routine traffic is not "custodial interrogation." Thus,
16 routine traffic stops and even stop-and-frisks do not normally require
17 *Miranda* warnings. (2) Yes, as to the statement at the county jail. The fact
18 that the defendant had been arrested for a misdemeanor (minor offense
19 relative to a felony) is irrelevant in analysis of whether the defendant was
20 entitled to *Miranda* warnings.

21 *Yarborough v. Alvarado*, 541 U.S. 652 (2004)

22 Facts: Police asked 17-year-old Alvarado to come to the police station for
23 an interview with a detective. His parents brought him but were not
24 present at the interview. For two hours, the detective questioned him
25 about a murder. Twice during the interview, the detective asked Alvarado
26 if he needed a break. During the questioning Alvarado, admitted to
27 involvement in the murder. The detective let Alvarado go home with his
28 parents. Based on the admissions during questioning, Alvarado was later
29 arrested and convicted of murder.

30 Issue: Should a police officer consider the age and history of a suspect in
31 order to determine if the suspect is in custody and must receive *Miranda*
32 warnings?

33 Holding: No. The Court ruled that the purpose of *Miranda* was to provide
34 clear guidance to police that when interrogating a suspect who is in
35 custody, a police officer must give *Miranda warnings* to the suspect.
36 Whether a suspect is in custody and therefore entitled to *Miranda* rights is
37 determined by objective factors such as whether a suspect had been
38 brought into a police station by police or on his own accord. Subjective
39 factors such as age and criminal history transform the objective test into a
40 subject one and would therefore make it more difficult for police officers
41 to understand and follow.

42 *Oregon v. Mathiason*, 429 U.S. 492 (1977)

43 Facts: Weeks after a burglary, police sent Mathiason a note asking him to
44 call. He called and made an appointment at his convenience to come into
45 the station. On his arrival, an officer informed him he was not under

1 arrest, but led him into a conference room. The officer falsely told
2 Mathiason that police had found his fingerprints at the burglary scene.
3 Mathiason confessed to the crime. The officer then let Mathiason leave
4 without arresting him that day.

5 Issue: If a defendant voluntarily speaks about a crime and confesses when
6 questioned about the crime without first being given *Miranda* warnings, is
7 it a violation of the Fifth and Sixth Amendment to admit the confession as
8 evidence?

9 Holding: No. The Court said that in this case, there was no indication that
10 the questioning took place in a context where the defendant's freedom to
11 leave was restricted. The defendant came voluntarily to the police station
12 and immediately told that he was not under arrest. After the interview,
13 the defendant was able to leave without any issues. Under these
14 circumstances, the defendant was not in custody or otherwise deprived of
15 his freedom of action in any significant way. The Court also stated that
16 even if the police officers pressured the defendant into coming to the
17 police station for an interview, the defendant came there on his own free
18 will and was free to leave at any time. Because of this, *Miranda* rights did
19 not apply. The Court emphasized that police officers are not required to
20 *Mirandize* every suspect they question. *Miranda* warnings are only
21 required when a person's freedom has been restricted as to render him in
22 custody.

23 *Stansbury v. California*, 511 U.S. 318 (1994)

24 Facts: Police officers arrived at the defendant's home and let him know
25 they were investigating a homicide to which the defendant was a possible
26 witness. The police asked if the defendant would accompany them to the
27 police station to answer some questions. The defendant agreed to the
28 questioning and accepted a ride to the station in the front of the
29 policeman's car. The questioning ended and the defendant was
30 *Mirandized* when he described a car he saw at the scene of the killing.

31 Issue: Is a police officer's subjective view of whether or not a defendant is
32 considered a suspect is relevant in determining custody for the purposes
33 of *Miranda*?

34 Holding: No. A police officer's subjective view that a person is a suspect is
35 irrelevant to the assessment of whether a person is in custody. A police
36 officer's knowledge or beliefs may have an effect on the custody issue if
37 they are conveyed by words or acts to the person being questioned. The
38 officer's belief is only important if they affect how a reasonable person in
39 the position of the person being questioned would determine if their
40 freedom of action was restricted. The Court further stated that the
41 importance of any communication of the officer's suspicion of the person
42 being questioned depends on the facts and circumstances of that
43 particular instance.

44 *Beckwith v. U.S.*, 425 U.S. 341 (1976)

45 Facts: The defendant was interviewed in a private home where he

1 occasionally stayed by two IRS agents who told him that one of their
2 purposes of being there was to investigate the possibility of tax fraud.
3 The defendant invited the agents in. The senior agent read from a printed
4 card and advised him of his rights against self-incrimination under the
5 Fifth Amendment of the Constitution. He was interviewed for three hours.
6 During the interview, he made incriminating statements. The defendant
7 was convicted of attempted federal income tax evasion and motioned to
8 suppress all statements he made to the agents on the basis that was not
9 given his full *Miranda* warnings.

10 Issue: Was the defendant in custody for purposes of *Miranda* when the
11 IRS agents came into his home?

12 Holding: The Court held that the defendant did not find “himself in the
13 custodial situation described by the *Miranda* Court as the basis for its
14 holding” and thus was not required to be read *Miranda* rights. The
15 defendant argued that “he was placed in a functional, and, therefore,
16 legal, equivalent of the *Miranda* situation.” The Court stated although the
17 defendant may have been the “focus” of a criminal investigation, he was
18 not subject to custodial interrogation – questioning initiated by officers
19 after someone has been taken into custody or deprived of his freedom of
20 action in a significant way. The Court emphasized that it “was the
21 compulsive aspect of custodial interrogation, and not the strength or
22 content of the government’s suspicions at the time the questioning was
23 conducted, which led the Court to impose the *Miranda* requirements with
24 regard to custodial questioning.” The Court rejected the defendant’s
25 argument that *Miranda* warnings “should be extended to cover
26 interrogation in non-custodial circumstances after a police investigation
27 has focused on the suspect.”

28 *Thompson v. Keohane*, 516 U.S. 99 (1995)

29 Facts: The defendant was convicted of murdering his former wife and
30 sought to suppress a confession he made to officers when he voluntarily
31 came into the police station after identifying the wife’s body. He was not
32 read his *Miranda* rights.

33 Issue: Is the determination of when a person is in custody an issue of fact
34 or law?

35
36 Holding: The Court ruled that “the issue [of] whether a suspect is “in
37 custody,” and therefore entitled to *Miranda* warnings, presents a mixed
38 question of law and fact qualifying for independent review.” The Court
39 further stated that there are two essential inquiries needed to determine
40 whether a person is in custody: “first, what were the circumstances
41 surrounding the interrogation; and second, given those circumstances,
42 would a reasonable person have felt he or she was not at liberty to
43 terminate the interrogation and leave.”
44

45 *Rhode Island v. Innis*, 446 U.S. 291 (1980)

46 Facts: The defendant was arrested for the robbery and murder of taxi
47 driver. The driver was killed by a shotgun, but the shotgun was not found

1 by the time the defendant was arrested. The defendant was arrested with
2 *Miranda warnings* and then put into the backseat of the police car. The
3 defendant invoked his right to speak with a lawyer. The police discussed
4 amongst themselves that the shotgun used to kill the taxi driver might be
5 found by a child. The defendant was moved by the discussion enough to
6 tell the officers the location of the shotgun.

7
8 Issue: Did the conversation between the police officers in front of the
9 respondent constitute an interrogation under *Miranda*?

10
11 Holding: No. The conversation was not considered interrogation and
12 therefore did not violate the defendant's Fifth Amendment. Interrogation,
13 for *Miranda* purposes, refers to "any words or actions on the part of the
14 police, other than those normally attendant on arrest and custody, that the
15 police should know are reasonably likely to elicit an incriminating
16 response from the suspect." The Court stated that the defendant was not
17 subjected to interrogation or its functional equivalent of questioning
18 because "it could not be said that the officers should have known that
19 their brief conversation [that consisted of a few off-handed remarks] in
20 [the defendant's] presence was reasonably likely to elicit an incriminating
21 response and there was nothing in the record to suggest that the officer's
22 knew that [the] defendant would be susceptible to an appeal to his
23 conscience concerning the safety of children and would respond by
24 offering to show the officers where a shotgun was buried."

25 **Cases: Federal**

26 *U.S. v. Craighead*, 539 F.3d 1073 (2008)

27 Facts: The FBI investigated defendant for trafficking obscene materials
28 online. Five FBI agents, a police detective, and other officials, all armed,
29 went to the defendant's house. They told defendant that he was not under
30 arrest and that he would not be arrested that day regardless of what
31 information he provided, and that he was free to leave. He was taken into
32 a storage room for a private conversation with two law enforcement
33 officers and was not allowed to bring anyone else with him. He was not
34 handcuffed and the door was shut during the 20-30 minute interview. No
35 threats or promises were made to induce the defendant to speak. No force
36 was used and no *Miranda* warnings were given. During the interview, the
37 defendant admitted to downloading obscene material.

38 Issue: Was the interrogation by law enforcement done in a "police-
39 dominated atmosphere" and therefore custodial, requiring that the suspect
40 receive *Miranda* warnings?

41 Holding: Yes. The court considered factors that "turned the otherwise
42 comfortable and familiar surroundings of the home into a 'police-
43 dominated atmosphere.'" These factors include: 1) the number of law
44 enforcement personnel and if they were armed; 2) whether the suspect
45 was at any point restrained (by either physical force or threat); 3) whether
46 the suspect was isolated by others; and 4) whether the suspect was
47 informed that he was free to leave or terminate the interrogation. The

1 court found that there was a large number of law enforcement in the
2 home during the interrogation; the defendant's freedom of action was
3 restrained, increasing the likelihood that he would succumb to police
4 pressure to incriminate himself; the mere recitation of a statement that the
5 suspect was free to leave did not mean that the interrogation was non-
6 custodial; and the fact that the defendant was in the storage room instead
7 of other rooms played was relevant as well.

8 **Cases: California**

9 *People v. Herdan*, 42 Cal.App.3d 300 (1974)

10 Facts: Police officers conducted a surveillance of an automobile body shop
11 which, according to information obtained by one of the officers from an
12 informant, would be the site of a delivery of drugs. An officer observed
13 the defendant arrive to the site with another man in a car. The informant
14 looked in the trunk of that car before the trunk was closed. The informant
15 signaled to the police that the vehicle contained contraband. The
16 informant and the defendant then drove to the defendant's house. The
17 police rushed to the defendant, asked him if he had any narcotics in the
18 vehicle, and the defendant responded affirmatively. The police then
19 arrested the defendant without reading *Miranda* rights.

20 Issue: Was the defendant due *Miranda* warnings?

21 Holding: Yes. The court stated that the prosecution could not prove that
22 the defendant was not in custody and that the defendant should have
23 been read his *Miranda* rights before being asked if he had narcotics in his
24 car. All the factors (below) were present in the situation involving the
25 defendant. With regard to the totality of the circumstances (first prong of
26 custody test), the following are significant factors, but are not dispositive:
27 The site of the interrogation; whether the investigation focused on the
28 suspect; whether the objective indicia of arrest are present; and length
29 and form of questioning.

30 *People v. Aguilera*, 59 Cal.Rptr.2d 587 (1996)

31 Facts: The defendant appealed from his conviction of involuntary
32 manslaughter, conspiracy to commit battery, and fighting or challenging
33 to fight in public. The charges arose from a gang shooting at a school. In
34 the defendant's interview with police officers, the defendant initially
35 denied being with the gang members that day. As the interview
36 continued, the defendant ultimately admitted that he was with the gang
37 members and saw a person from another vehicle shoot someone. He
38 claimed that there was insufficient evidence to support the convictions.
39 He also stated that his statements to the police were involuntary and
40 obtained in violation of the *Miranda* rule.

41 Issue: Was the defendant in custody or otherwise deprived of his freedom
42 of action in any significant way for purposes of *Miranda*?

43 Holding: Yes. The court concluded that at least by the time defendant
44 partially abandoned his story, the environment during the interrogation

1 had become coercive. Thus, a reasonable person would have felt deprived
2 of liberty in a significant way and that the restraint was tantamount to
3 being under arrest. These circumstances constituted “custodial
4 interrogation” and triggered the duty to give *Miranda* advisements. The
5 court could not conclude beyond a reasonable doubt that the admission of
6 the defendant’s statements did not materially contribute to the jury’s
7 verdict, thus their admission at trial compelled reversal. Also, the totality
8 of circumstances test considers the following: Was the individual free to
9 leave? Was the purpose of the interrogation to question the person as a
10 suspect or a witness? Finally, were the officers confrontational or
11 accusatory?

12
13 *Green v. Superior Court*, 707 P.2d 248 (1985)

14 Facts: Police officers were investigating a robbery and a murder. They
15 asked the defendant, who was not considered a suspect at the time, to
16 meet them at the station for questioning. The initial questioning took
17 place in a locked room. The defendant did not know the room was locked
18 and was not given *Miranda* warnings. The police then said they were late
19 for a meeting and asked the defendant to wait for them. The defendant
20 agreed to stay in the room while being looked after by another officer. The
21 officers questioned the defendant again after returning. They considered
22 the defendant a suspect after discovering blood on his coveralls. They
23 *Mirandized* him. The defendant waived his rights and was interrogated.
24 The police arrested him and the defendant confessed to the robbery and
25 murder.

26
27 Issue: Was the defendant’s freedom restricted when questioned by police
28 behind a locked door that he did not know was locked?

29
30 Holding: (1) No, as to the initial interrogation. The court concluded that
31 the first interview conducted by the police was not “custodial
32 interrogation” under *Miranda*. Defendant was not due *Miranda* warnings
33 before the initial interrogation because he was not deprived of his
34 freedom. The defendant’s motion to suppress the evidence was denied
35 because he wasn’t taken into police custody and the evidence (blood-
36 stained coveralls) would have inevitably been discovered by the police.
37 Furthermore, the Court said that “notwithstanding the lock on the
38 interview room door, the evidence [did] not compel the conclusion that
39 defendant could not have left whenever he had wanted during the
40 interview.” It is possible that a “reasonable person in defendant’s position
41 would not have felt that he was ‘in custody’ and restrained from departing
42 at will.”

43 (2) Yes, as to the second interrogation. The Court found that the
44 defendant was unlawfully “in custody” for the purposes of *Miranda*
45 during the second interview, because before the second interview, officers
46 had left him alone in the interview room and there were “no apparent or
47 ready means of leaving.” Furthermore, the officer who looked after the
48 defendant while he was waiting testified that he would not have allowed
49 the defendant to leave during the waiting period (even to use the
50 bathroom) without first checking with the police officers who asked him
51 to come into the station for questioning.

WITNESS STATEMENTS

WITNESS STATEMENT—Prosecution Witness: Officer Kelly Wright

My name is Kelly Wright. I am 37 years old and am a parent of two young children. I currently live in Hidden Valley and have served on the Hidden Valley Police Department for 12 years. I have extensive experience in investigating traffic collisions and hit-and-run incidents.

On the night of Thursday, April 19, 2012, I was on patrol with my partner, Officer Phoenix Jackson, and we responded to the intersection of Skyline and Grand on a traffic incident call. When we arrived at about 10:40 p.m., the victim, Cameron Douglas, was being loaded into an ambulance for transport to a hospital.

At the scene, Officer Jackson and I questioned a witness named Quinn Liu, who described seeing a hit-and-run incident. Liu had told us a black vehicle heading north on Skyline Drive ran the stop sign at Skyline and Grand and struck a bicyclist. Although Liu was not able to identify the person driving the vehicle, we were told that there was the glow of a cell phone screen on the driver's side and that the driver was wearing a white T-shirt and cardinal and gold baseball cap. Liu also gave us a partial license plate number, SLC86.

We interviewed another witness at the scene named Dallas Decamp. Decamp confirmed that the vehicle was a vintage black Bueller and also mentioned that the victim had white "earbud" style headphones on (like those for an MP3 player) and was looking down when struck by the vehicle.

Jackson radioed the partial plate information to dispatch for a search. Only one vehicle matching the partial plate belonged to a car registered in Hidden Valley. I immediately recognized the owner's name, Oliver Vega, the husband of the mayor, Angelica Vega.

We drove to the mayor's house to look for the suspect vehicle. It was about 11:05 p.m. When we got there, we saw a black vintage Bueller parked in the driveway, but at an angle with one tire on the lawn. Because it was such a cold night, Jackson left the police cruiser engine running to operate the heater. We then checked the license plate on the vehicle: It was SLC8693 and it matched the partial Liu gave us. The hood was warm, which indicated that it had recently been driven. I spotted scratches of turquoise-colored paint on the Bueller's left front bumper. It appeared from the lack of dirt on the scratches of turquoise, compared to the dirt on the rest of the bumper, that the turquoise scratches were recent.

The porch light was on, and we knocked on the door twice, but there was no answer. We then heard a noise and saw a teenager come out from the side of the house. The teenager was Toni De Luca. Toni explained to me that Toni was a foreign exchange student from Italy who lived in the mayor's guest house behind the main house. Toni was wearing a light

1 blue Hidden Valley T-shirt. I asked about the car and about the accident.
2 Toni said that the mayor's child, Adrian, drove them both home from the
3 swim meet earlier that night. Furthermore, Toni said that Adrian was
4 driving and may have struck something when they were on Skyline, on
5 the way home. Toni was not exactly sure where on Skyline it occurred.
6

7 After speaking with Toni, Toni went back to the guest house. I saw
8 Jackson inspect the outside of the Bueller again while I went to the patrol
9 car to call a tow truck. I opened the passenger-side rear door to the police
10 car, obtained some paperwork that was in the backseat, and sat in the
11 front seat to make the call on the police radio. The back door remained
12 open as I made the call. When I finished, I looked up at the rearview
13 mirror and saw someone walking toward us along the side of the road.
14 That person was wearing a white T-shirt and cardinal and gold baseball
15 cap. That matched Liu's description of the suspect driver. It stood out in
16 my mind as unusual that someone would be walking alone so late at
17 night.
18

19 I signaled to Jackson that I would talk to this person, and Jackson
20 remained in the front yard by the Bueller. I called out to the approaching
21 figure and asked if it wasn't late for someone to be walking around. I
22 asked, "Are you all right?" The person said "I live here" and gestured
23 toward the house. I asked for a name, and the person told me "Adrian
24 Vega." I asked if the car belonged to Adrian, and Adrian responded that
25 the Bueller belonged to Oliver Vega, Adrian's father. Adrian had just come
26 back from a walk and had lost Adrian's keys. I mentioned I was
27 investigating an accident from earlier that night.
28

29 I asked Adrian what Adrian had done earlier that evening. Adrian told me
30 that Adrian had just come home from competing in a swimming meet at
31 the high school. Adrian explained that Toni drove both of them home
32 from the meet. Then, Adrian told me that Toni was apparently upset and
33 grabbed Adrian's hat and phone during the drive home. The two started
34 bickering when Adrian tried to get the hat and phone back. Suddenly,
35 Adrian felt a bump and feared they had hit something. Toni said that they
36 didn't hit anything, and Adrian made Toni pull over. Adrian was not sure
37 of the exact location but it was somewhere on Skyline after Grand. Then
38 Adrian drove the rest of the way back home.
39

40 Adrian shivered and complained about the cold. I offered that Adrian
41 could sit in the patrol car, since there was apparently no way to get into
42 the house or, for that matter, the Bueller. I pointed to the rear seat of the
43 patrol car rather than the front, because it is against policy to have anyone
44 but officers in the front seat in non-emergency situations.
45

46 [At that point, Adrian and I discussed Adrian's swimming and Olympic
47 aspirations. I was a big fan of the Hidden Valley's team and knew that
48 Adrian was the star swimmer. I congratulated Adrian on the win.
49

50 After talking for a few minutes, I said, "It really is cold out here." I closed
51 the back door. I moved to the front of the car and sat inside the driver's

1 seat. The doors of the cruiser lock automatically; I did not tell Adrian that
2 they were locked, and Adrian did not ask about it. I again asked Adrian
3 what Adrian had done earlier that evening. Adrian repeated the same
4 story that Adrian stated earlier.

5
6 As our conversation continued, Adrian began answering questions with
7 nothing more than quick shrugs of the shoulders. Adrian told me that
8 Adrian was tired. I told Adrian that we thought that Adrian drove the car
9 that struck the bicyclist on Skyline and Grand. Adrian said, “It was a
10 bicyclist?! I am so sorry. I could never forgive myself!”]

11
12 I arrested Adrian. As I did so, the tow truck arrived. Jackson handled the
13 impound of the Bueller. We transported Adrian to the station for booking.
14 Later, during our inventory search of the car, I found a business card of a
15 swimming scout from the University of Los Angeles under the driver’s
16 seat and a cell phone in the center console. I later learned the cell phone
17 belonged to Adrian Vega. Due to a technical glitch, no messages or
18 numbers could be retrieved from the phone. The Bueller was dusted for
19 prints, but none of them were usable.

20
21 The day after the arrest I was able to take a statement from the victim,
22 Cameron Douglas, at the hospital. Cameron stated that Cameron thought
23 the driver of the vehicle was Adrian Vega and identified the car as a black
24 Bueller. Cameron also mentioned seeing Adrian speeding and driving
25 recklessly through the city on numerous occasions prior to the accident.

26
27 A few days after the arrest, one of Adrian’s friends, Aubrey, came forward
28 with information about Adrian. Aubrey was nearly positive that before
29 Adrian and Toni left school, Toni was standing by the closed door on the
30 driver’s side of the Bueller.

31
32 My partner for seven years, Officer Jackson, is in the Army Reserves and
33 was called up to duty in Afghanistan.

1 **WITNESS STATEMENT—Prosecution Witness: Toni De Luca**

2 My name is Toni De Luca and I am 18 years old. I am originally from
3 Treviso, Italy. I have studied the English language since I was a child. I
4 always get complimented because I can speak it without an Italian accent;
5 I think it's because I watch a lot of American TV.
6

7 I came to the United States as a foreign exchange student in July of 2010. I
8 came here because it's always been my dream to swim competitively for a
9 university in America. My dream school is the University of Los Angeles.
10 Its swim team is ranked number one on the West Coast. My main goal is
11 to one day compete in the Olympics.
12

13 Swimming is a passion of mine, and I really feel I can be more successful
14 here than back home. My parents have many contacts in the United States
15 and made arrangements for me to live with the Vega family. The Vega
16 family was generous to allow me to live in its guest house since July of
17 last year. I would do anything to reach my goal, but I would never
18 jeopardize my chances of going to school; I want to make my family
19 proud of me.
20

21 I came to Hidden Valley High School because of its swimming program. I
22 soon became one of the fastest swimmers on the team. The coach has
23 always been impressed with me.
24

25 Adrian is one of my teammates and is the only child of the Vega family.
26 We're friends — we go to school and swim in our free time together. We
27 both want to swim on the team at the University of Los Angeles.
28

29 The night that we won the State Championship qualifying meet, Adrian
30 had the opportunity to speak with one of the scouts from the University of
31 Los Angeles. Adrian began to act as if no one else on the team had any
32 talent. It was off-putting, but I put up with it the best that I could for as
33 long as I could. I want to say I was happy for Adrian, but it's hard
34 because I've been working just as hard all year to get the attention of that
35 scout. I guess Adrian is the star and, after all, the child of the mayor. It's
36 so unfair.
37

38 I told Adrian that we had to go home because I had to get some sleep
39 before volunteering at the hospital the next morning. Adrian was proud
40 and extremely boastful to others at the gathering in front of the high
41 school. I heard Adrian talking a lot about meeting the University of Los
42 Angeles scout. As soon as we got in the car, Adrian could not stop texting
43 while driving the Bueller, most likely bragging to everyone Adrian knew. I
44 thought Adrian was being reckless because of all the sharp turns. I told
45 Adrian to stop texting, but Adrian just wouldn't stop.
46

47 Adrian kept talking about Adrian's own swim times. I couldn't stand
48 listening to all of Adrian's self-centered comments and became annoyed. I
49 tried to drown Adrian's voice out. I wanted to call my parents to tell them
50 we had won the meet, but my phone was dead. The only thing that could

1 save me from all of Adrian's talking was my MP3 player. I put my
2 headphones on and closed my eyes to rest for a little bit.

3
4 All of a sudden, I felt a large bump and opened my eyes. I was worried,
5 fearing that Adrian had hit something. I couldn't tell if there was anything
6 in front of us and asked Adrian what had happened. Adrian immediately
7 told me that we didn't hit anything and continued driving home. We both
8 started arguing because I could have sworn we hit something, but Adrian
9 told me that there were a lot of bumps on the road and that I was crazy
10 for thinking that we struck something.

11
12 By the time we got home, I was so sick of being around Adrian that I left
13 to the guest house to get some sleep. A little while later, I heard what
14 sounded like a police radio in front of the house and saw blue and red
15 lights flashing in my window. I went outside to check it out.

16
17 When I saw the police outside, I told Officer Wright about all of the events
18 from that night. I guess Adrian wasn't around to talk them, but I had no
19 idea why. I figured that Adrian had gone to one of our teammate's parties.
20 Adrian is always hanging out with them.

21
22 After talking to Officer Wright, I told the officer I was very tired. Wright
23 told me I could go back inside if I wanted, but that Wright may need to
24 talk to me again later. I went back inside and fell fast asleep.

25
26 Just for the record, I was not driving the car the night of the accident. In
27 fact I have never driven the Bueller. I do not have a California driver's
28 license, but I do have a valid driver's license from Italy. I'm familiar with
29 basic traffic laws. I have driven a couple of my friends cars here in the U.S
30 and I'm a very safe driver.

1 **WITNESS STATEMENT—Prosecution Witness: Quinn Liu**

2 My name is Quinn Liu. I am 47 years old. I have worked as a general
3 manager for Global Union Bank for the past 20 years, and I am a parent to
4 three grown children. I've lived in Hidden Valley for the past 20 years.
5

6 I have seen that bicyclist, Cameron, around town several times. Cameron
7 is a nice person; we talked a few times. I really do admire that kind of
8 devotion to a sport, you know. It must not be easy training so hard all of
9 the time. I know I couldn't do it.

10
11 I live on the east side of Grand Avenue where it intersects with Skyline
12 Drive. I was standing on my front steps smoking a cigarette, as my spouse
13 does not allow any smoking inside the house.
14

15 That night, I saw Cameron was almost over halfway through the
16 intersection toward the northeast corner of Skyline and Grand. I saw that
17 there was a light strapped to Cameron's helmet, which I think you call a
18 headlamp. I could see the light was on. To my shock, the black car just
19 raced by the stop sign. I yelled, "Look out!"
20

21 Cameron didn't hear me. I knew that there was no way that poor soul was
22 going to make it across the street. I watched helplessly as the black car
23 caught Cameron with its left front bumper. I just saw the body fly through
24 the air and land on the street.
25

26 The car did seem to slow down for a second, and I wondered if it was
27 going to stop. But it didn't. I tried to get a good look at the driver. All I
28 could see was the driver's white T-shirt, cardinal and gold baseball cap,
29 and the glow of a cell phone screen. It was a little hard to see that night. I
30 have good vision, but it was dark and really cloudy. Plus, some of the
31 street lights were not working. I'm kicking myself for not being able to see
32 the driver's face more clearly. As the car sped away, I trained my eyes on
33 the license plate and began to recite to myself the letters and numbers I
34 could make out. I could only remember SLC86.
35

36 I ran to Cameron and saw that Cameron was breathing. I yelled, "Can you
37 hear me!?" The poor kid didn't respond; the whole body was limp. I ran
38 to my house. As I did so, I saw one of my neighbors, Dallas. I shouted
39 that I was going to call 911.
40

41 When I was inside my house, I scribbled down what I remembered from
42 the license plate and called 911. I'm not going to lie and say I wasn't
43 panicking, because I was. However, I managed to pull myself together and
44 find a blanket. I ran back outside to put the blanket on Cameron and wait
45 for an ambulance and the cops. Dallas was already at Cameron's side.
46
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1 **WITNESS STATEMENT—Prosecution Witness: Cameron Douglas**

2 My name is Cameron Douglas, and I am 30 years old. For the past 12
3 years, I have competed worldwide in triathlons. I have lived in Hidden
4 Valley for about 10 years. I own the only bike shop in town and have
5 grown to know many of my customers. One is Aubrey Fox, a friend of
6 Adrian’s from what Aubrey told me in the shop. I also am a member of
7 the city’s bike club, and I have read in the local paper that one of the
8 members, Taylor Berard, is Adrian’s swim coach.
9

10 I remember everything from the night of the accident. I was on my bike
11 that night after closing up the shop. I prefer to bike at night because of the
12 cooler weather. Because some of the streetlights were out that night, I
13 made sure I was wearing a working headlight. I was listening to my MP3
14 player and enjoying my ride. As I was halfway through the intersection of
15 Skyline and Grand, I looked up and saw this car racing at me. It was
16 terrifying, but there was nothing I could do to get out of the way. The
17 whole event went by so quickly. I could only see the driver for a split
18 second, but I’m pretty sure it was Adrian. I know what Adrian looks like
19 because I always see Adrian recklessly driving around the neighborhood
20 in that same car.
21

22 The car was a black Bueller, and I saw it speed away as I was lying on the
23 ground. One person came up to me for a second and left. Then, another
24 person came and stayed by my side. I tried speaking, but I was in so
25 much pain. I think I said at one point when I was on the ground that
26 Adrian was in the driver’s seat. When the Officer Wright came to see me
27 in the hospital after the accident I told the officer I thought Adrian was the
28 driver of the car that hit me.
29

30 I always see Adrian speeding and careening through sharp turns around
31 the city in that car with no regard for pedestrians or bicyclists like myself.
32 I actually don’t think that this kid has ever been stopped by the police
33 before, but I think that’s because Angelica Vega is Adrian’s mother.
34 What’s more is that the whole city adores Adrian for being the high
35 school swim team’s star. If you ask me, I think the special treatment
36 should be put to an end.
37

38 I never voted for Mayor Vega, you know. She has never implemented any
39 legislation that provided bikers, like myself, with bike lanes throughout
40 the city. For the past 10 years or so, I have been an incredibly active
41 advocate for bikers’ rights. Before Mayor Vega was voted into office, I was
42 working with the previous mayor to create a plan to make bike lanes
43 throughout the city. I even worked long hours on that mayor’s re-election
44 campaign. I became extremely frustrated to see all that hard work go
45 down the drain when Vega won the election and became mayor. The
46 amount of car accidents involving bicyclists has nearly doubled since she
47 took office in 2008, and Vega has yet to do anything about it. It seems as
48 though biker safety is not a priority for her.
49

50 As a result of the accident, I suffered a shattered right knee, a cracked
51 collarbone, many serious abrasions, and a moderate concussion. Although

1 I might look all right, the doctors confirmed that I will never compete in
2 triathlons anymore, as my right knee is permanently damaged.
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1 **WITNESS STATEMENT—Defense Witness: Adrian Vega**

2 My name is Adrian Vega and I am 18 years old. I am a senior at Hidden
3 Valley High. I am on the Hidden Valley Highlanders Swim Team.
4 Swimming is my life. I practice hard every day and dream of getting a
5 scholarship to compete at the university level. My dream school is the
6 University of Los Angeles. Both of my parents went there and both were
7 swimmers, so I'm hoping to continue the tradition.
8

9 On the night of April 19, the State Championship qualifying meet was
10 hosted at Hidden Valley High. It was an even more important meet
11 because everyone knew that a scout for the University of Los Angeles
12 would be there. Everyone on the team was trying to get the scout's
13 attention, especially Toni. You could say that we were competitive with
14 each other. I think Toni's a great swimmer; I just think that I have more
15 experience and skill. Regardless, it was obvious that we were both trying
16 to shine throughout the meet to get that scout's attention.
17

18 Our team won the most races that night. It was such an amazing feeling.
19 What made it even better was that the scout for the University of Los
20 Angeles approached me after the meet and told me that I had solid talent.
21 I was given a business card with the scout's personal line and a cardinal
22 and gold baseball cap with the school's logo. I was ecstatic, but I couldn't
23 say the same for Toni. Toni had been trying to get the attention of the
24 scout for the entire season but unfortunately didn't.
25

26 Toni and I left the meet together. Toni drove my car because I was just
27 too excited to drive. I was in a good mood. I kept texting my parents and
28 friends about my meeting with the scout. We only live about five miles
29 from Hidden Valley High, off of Skyline Drive, so I figured it was OK for
30 Toni to drive the Bueller. The car has a manual transmission. Looking
31 back, I feel stupid about letting Toni drive my car. My dad doesn't let
32 anyone but me drive that car, and he gave me explicit instructions not to
33 let anyone else drive it. It's a vintage model and worth a lot of money. It
34 was a huge mistake on my part.
35

36 I soon realized that Toni was driving too fast. I was worried because
37 Skyline is a really twisty road. My good mood went away. I figured that
38 Toni must have been a little upset and just wanted to go home quickly or
39 something. I tried to break the awkward silence by talking about the meet
40 and about how Toni may be able to speak with the scout in the future. All
41 of a sudden, Toni snatched my hat and put it on, saying how I didn't look
42 good in the school colors. I was annoyed. Toni kept talking about how I
43 didn't even perform well during the meet and didn't understand why the
44 scout went up to me. I was not about to argue so I just kept texting, just
45 trying to block all that negativity out. Then Toni grabbed my phone and
46 started pushing random buttons, mocking me about how I'm so attached
47 to my phone and how I don't listen to anyone. By this time, I was upset
48 and tried to get it back.
49

50 Before I knew it, I heard this loud crash in front of the car. It all happened
51 so fast, I wasn't able to make out anything in front of the car. Also, the

1 street seemed a little dark, like the street lights weren't all working or
2 something. I asked Toni if we hit something, but Toni just said nothing.
3

4 I demanded that we stop, but Toni just kept going. After about a minute, I
5 finally made Toni stop somewhere on Skyline but north of Grand. We
6 switched places, and I grabbed my hat back. I do not know exactly where
7 we pulled over. When we got home, I parked the car hastily and might
8 have parked it kind of crooked; I was in a hurry to get away from Toni.
9 Toni just went straight to the guest house behind our main house, not
10 saying a word to me. I looked at the scratches on the bumper of the car
11 and started panicking because it looked like we did hit something. I didn't
12 know what to do. My parents were gone for the weekend and left me in
13 charge of everything. I knew they would be furious.
14

15 I had to get myself together, so I took a quick walk to collect my thoughts.
16 Somewhere along the street, I noticed my keys were missing. They must
17 have fallen out of my pocket. I was trying to retrace my steps to find
18 them. That's when I saw the police at my house.
19

20 One of the officers, Officer Wright, told me they were investigating an
21 accident from that evening. Wright started asking me questions about
22 what I did that evening. I told the officer everything stated above about
23 swimming in the meet, Toni's driving, our arguing, the loud crash, and
24 then switching places before coming home. I told Wright about wanting to
25 clear my head by taking a walk. I was tired and cold from the meet and
26 my walk so all I wanted to do find my keys and go to sleep.
27

28 I complained about the cold night air, and the officer suggested that I sit
29 in the back seat of the cruiser, so I did. I talked to the officer for a few
30 minutes about swim team. I could see the front yard while sitting there in
31 the backseat. I could see the other officer there, the only other one besides
32 Officer Wright. He had a towering frame. I would guess six foot four or
33 five — and big, too, like a wrestler. I noticed that the officer kept staring
34 at me, too, which made me so uncomfortable. I was scared, actually. I
35 remember thinking, I wouldn't want to get on that officer's bad side. I
36 wondered if they were going to let me go home that night.
37

38 [While the Officer Wright was asking me questions, suddenly, Wright
39 shuts my door and gets in the car. I didn't know if the doors were locked
40 or not, but it didn't matter, I felt like I was already in big trouble. This is
41 where I started to get a little more nervous. Wright started asking more
42 about that night, and even though I was really tired, I explained what had
43 happened again. When the officer told me that a bicyclist was hit, I felt
44 horrible. I felt so awful that my car had been involved in an accident. I
45 knew right then and there that if I had been driving, this would not have
46 happened. I felt the need to say how sorry I was that someone did get
47 injured, after all. I told the officer, "It was a bicyclist?! I am so sorry. I
48 could never forgive myself!"
49

50 Before I knew it, I was under arrest and in a cell at the station. I had to
51 call my coach to bail me out. Do you know how embarrassing that is? I

1 said it before and I'll say it again: I didn't do anything wrong, Toni was
2 driving.

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1 **WITNESS STATEMENT—Defense Witness: Dallas Decamp**

2 My name is Dallas Decamp and I'm 20 years old. I am a sophomore at the
3 University of Los Angeles, majoring in political science.

4
5 I live near the intersection of Skyline and Grand. On the night of the
6 accident, I had just come home from watching a movie with my friends. I
7 parked my car in my driveway. When I closed the door of my car, I
8 happened to look up at the intersection of Skyline and Grand. I saw the
9 bicyclist looking down, listening to an MP3 player on white headphones,
10 like "earbuds." I could see the cyclist was wearing a headlamp attached to
11 a helmet. I heard Quinn, my next-door neighbor, yell "Look out!"
12 Unfortunately, the bicyclist didn't hear and was hit by a fast-moving car.

13
14 Everything went by so fast. I saw the bicyclist hit the pavement. I also
15 thought I saw the vehicle slow down a bit, but the brake lights never
16 came on. It just continued really fast down Skyline and disappeared. I
17 would say 35 to 40 miles per hour, but the speed-limit signs on Skyline all
18 say 25 miles per hour. And there's a stop sign there, too.

19
20 I stood there almost in disbelief and saw Quinn race to the bicyclist and
21 stay for a moment. The next thing I knew, Quinn ran back into the house,
22 saw me, and shouted something about calling 911. My instinct kicked in
23 and told me to run across Quinn's lawn to the bicyclist. I remained by the
24 victim's side until the ambulance and police showed up. I felt so horrible
25 for the victim, who just looked dazed and in pain. The victim never said a
26 word to me about who drove the car. I could see the person was really
27 hurt and in a lot of pain. Lots of mumbling but nothing I could
28 understand. I just told the victim to stay still because help was on its
29 way.

30
31 I was interviewed by two police officers. I felt kind of bad that I didn't see
32 the car's license plate. All I told them was that the car was a black Bueller
33 GT. I know a thing or two about cars, and even though it was dark, I
34 could tell very clearly from the detail of the side molding that the Bueller
35 was a vintage model, probably from the early 1960s.

36
37 The police gave me a quick interview that night, but never called back.
38 The interview was brief. I later called the station twice and tried to talk to
39 the officers but never got a response. This is exactly the issue that the city
40 is worried about, that the police aren't doing enough about these
41 teenagers' reckless driving. People are getting hurt and there seems to be
42 a minimal effort, if that, on their part.

1 **WITNESS STATEMENT—Defense Witness: Aubrey Fox**

2 My name is Aubrey Fox and I'm 18 years old. I go to Hidden Valley High
3 School and I am a member of the swim team I'll be attending the San
4 Diego University in the coming fall on a swimming scholarship. I've
5 known Adrian since we were 5 years old. We've swum together for years.
6

7 On the night of Thursday, April 19, I was celebrating with the student
8 body about our swim team's win at the State Championship qualifying
9 meet. There were so many people everywhere and so much noise, too.
10 There were streamers, loud music; it was chaos. You know, a lot of the
11 residents in Hidden Valley complain about the rowdiness that occurs at
12 these celebrations, and I don't really blame them.
13

14 I had been looking for Adrian and Toni because I had invited both of them
15 to my house to celebrate the win. I then saw them by Adrian's car. They
16 were approximately 50 feet away. Toni was standing right next to the
17 closed driver's side door. It looked to me like Toni was going to drive
18 Adrian's car home. I noticed Toni was wearing a light blue shirt. Toni had
19 been scowling most of the night and still appeared to be rather upset. I'm
20 guessing it was jealousy over the scout's talking to Adrian; it didn't look
21 to me like Toni was in the mood to celebrate. I was taken by surprise that
22 Adrian would let anyone else drive the Bueller. Adrian had told me that if
23 anyone else drove it, then Mr. Vega, Adrian's father, would flip out. I
24 was distracted by a friend for a few minutes and when I looked up again,
25 Toni and Adrian were gone.
26

27 Toni is a terrible driver, by the way. One day earlier this season, Toni
28 drove one of our teammate's cars to a nearby school for a swim meet.
29 Toni wanted to prove to everyone that driving in the United States was
30 easier than driving in Italy. Four people, including Toni and myself, were
31 in the car. We almost got into a serious car accident because Toni has a
32 habit of running stop signs. I will never get into a car with Toni driving
33 ever again. If I go anywhere with Toni, I make sure someone else like
34 Adrian is driving.
35

36 On the swim team, Adrian has a reputation for honesty and good
37 sportsmanship. Adrian is someone who I trust very much. It surprises me
38 that Adrian is caught up in this situation where a bicyclist got injured.
39

40 I bike frequently, and my parents always tell me to be careful of vehicles.
41 I frequently go to the bike shop in town to conduct the proper
42 maintenance of my bike. Every time I go to the shop, I always strike up a
43 conversation with the store owner, Cameron Douglas. Cameron is part of
44 a local bike club. I see them riding around all over town. Cameron is an
45 activist for bikers' rights and is always criticizing the mayor for not being
46 sensitive to the needs of bikers in the city. During one conversation
47 between both of us, Cameron told me that Cameron would do absolutely
48 anything to get the mayor out of office. Hidden Valley seems to be a nice
49 place for bicycling already; sometimes I think that Cameron gets carried
50 away.
51

1 **WITNESS STATEMENT—Defense Witness: Taylor Berard**

2 My name is Taylor Berard and I am 34 years old. I am currently attending
3 graduate school to obtain my master’s degree in public policy. I also work
4 as a private swim coach for young athletes like Adrian. I have been
5 Adrian’s coach for the past five years. I have competed on the United
6 States Swim Team in the Olympics and received a bronze medal.

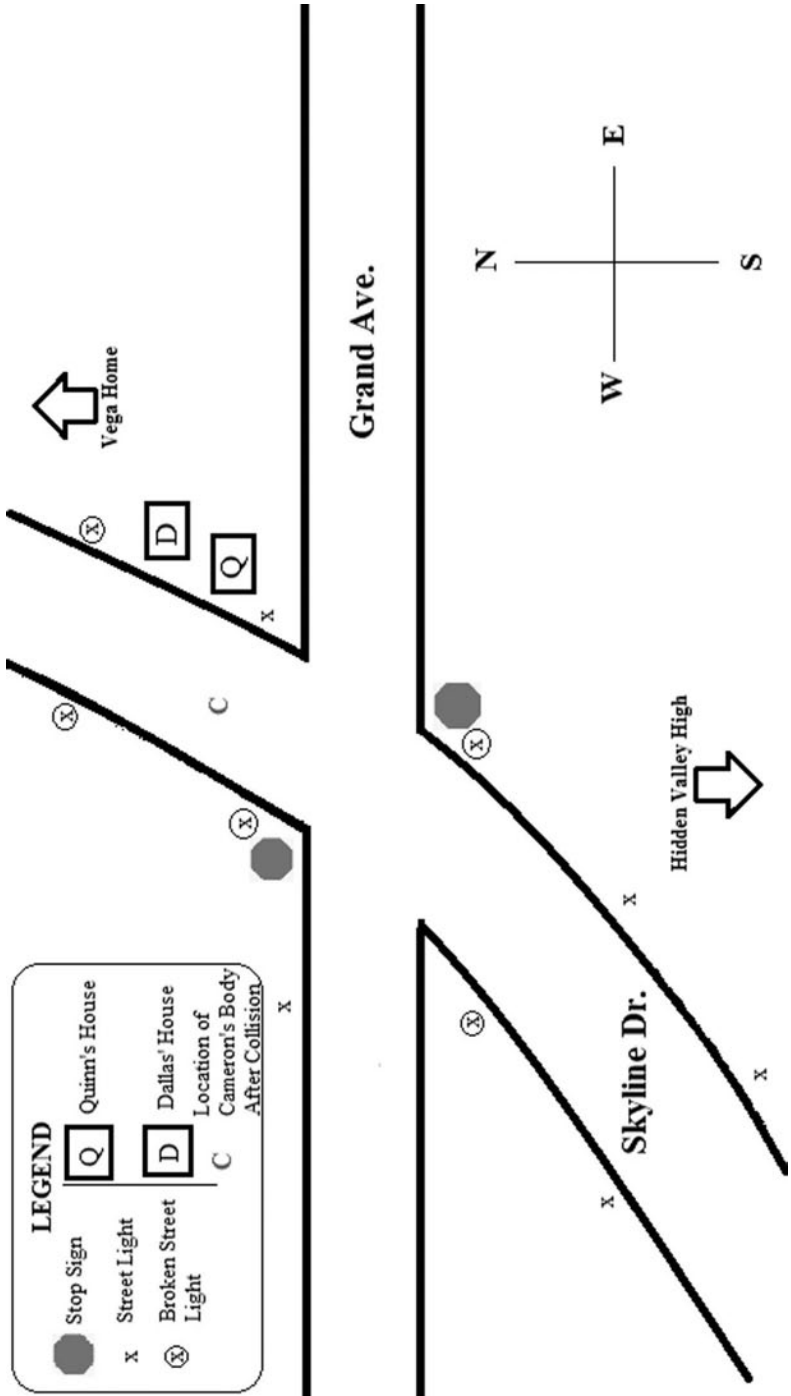
7
8 Adrian has shown great progress over the past few years. The fact that the
9 University of Los Angeles wants Adrian on its swim team further solidifies
10 Adrian’s potential. I plan to get Adrian ready for the 2016 Olympics.

11
12 Adrian is not only a promising athlete, but a responsible kid. I can
13 remember one time when I drove us to a tri-city swim meet. Without
14 thinking, I pulled out my cell phone and began texting my friend who was
15 at the meet that Adrian and I were on our way. Immediately, Adrian
16 became upset and told me to put my phone away. Adrian told me that
17 Adrian’s parents always warned Adrian about the dangers of distracted
18 driving and that Adrian took their advice very seriously. I was really
19 impressed with how mature Adrian was.

20
21 I happen to know Cameron Douglas personally. Not only do I frequent the
22 shop that Cameron owns, but we are also members of the same bike club.
23 Cameron is very passionate about bikers’ rights and at every meeting that
24 we have, Cameron has something negative to say about Mayor Vega. At
25 our most recent meeting, Cameron ranted to me about how our club
26 should conduct a large protest by taking over the lanes of Grand Avenue.
27 Cameron said that drastic measures needed to be taken so that Mayor
28 Vega would take bikers’ rights seriously. If you ask me, it was a bit much.
29 There’s no need for such drama when a simple petition will do.

EXHIBIT A

Diagram of Accident Scene



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 defendant's 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.

The unofficial timer may be any member of the team presenting the defense. However, it is advised the unofficial timer not have a substantial role, if any during the trial so they may concentrate on timing. The ideal unofficial timer would be 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.

In a real trial, the court clerk and the bailiff aid the judge in conducting the 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.

In the mock trial, the clerk and bailiff have different duties. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff. **(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, Hold up the two-minute sign and call out "Two"; when one minute remains, hold up the one minute sign and call out "One," and when 30 seconds remains, hold up the 30 second sign and call out "30." Always speak loud enough for everyone to hear you. When time for a category has run out, hold up the stop sign and announce "Time!" and **insist the students stop.**

Time Allocations: Two Minutes, One Minute, 30 Seconds, 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." Please turn off all cell phones and refrain from talking.

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

Any official member of the team presenting defense 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). The unofficial timer should sit next to the official timer.

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. 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.”

“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 (15 seconds or less); 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: “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 on the stand should not be believed. This is called impeaching the witness. It maybe 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).

The attorney does not need to tell the court that he or she is impeaching the witness, unless in response to an objection from the opposing side.

The attorney needs only to point out during closing argument that the witness was impeached, and therefore should not be believed.

Example: (Using signed witness statement to impeach)

In the witness statement, Mr. Jones stated the suspect was wearing a pink shirt. In answering a question on direct examination, however, Mr. Jones stated that the suspect wore a red shirt.

On cross-examination ask, “Mr. Jones, you testified that the suspect was wearing a red shirt, correct?”

Mr. Jones responds “Yes.”

Show Mr. Jones the case packet opened up to Mr. Jones’s statement. Ask Mr. Jones, “Is this your witness statement, Mr. Jones?” (Mr. Jones has no choice but to answer “Yes.”)

Then ask 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?”

After you receive your answer (no matter what that answer is) move on with the remainder of your argument and remember to bring up the inconsistency in closing arguments.

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 . . . ”

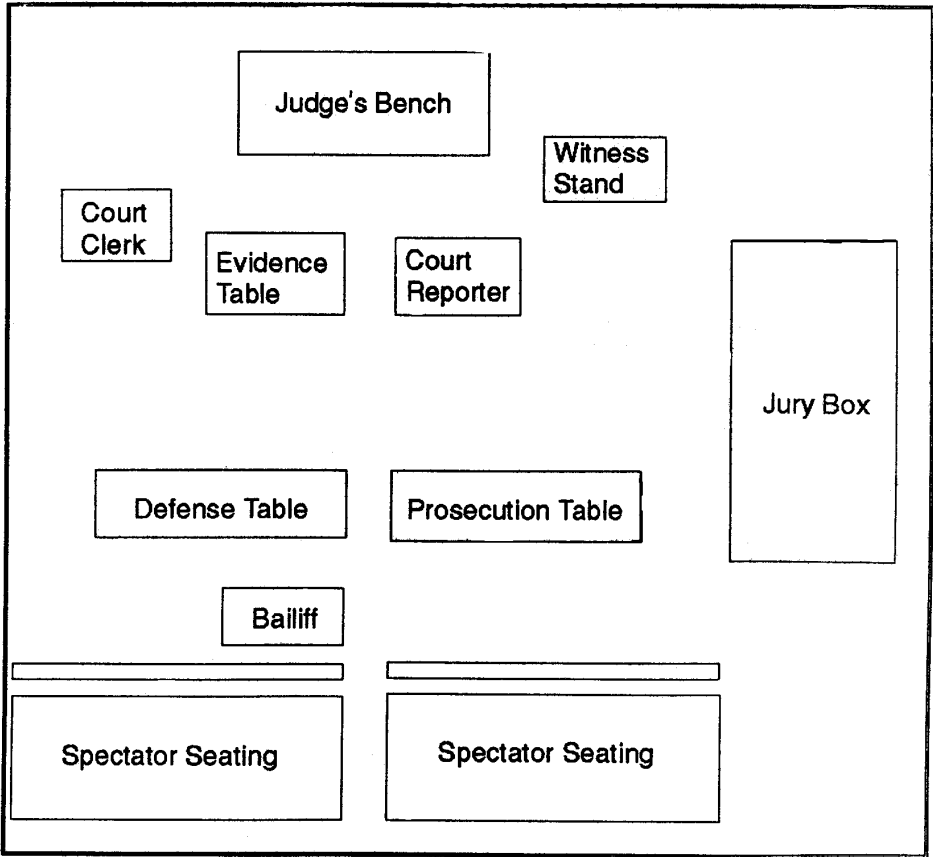
“The prosecution has failed to prove that . . . ”

“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. The California mock trial program bases the mock trial simplified rules of evidence on the California Evidence Code. 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. It is not a CMF violation for a witnesses to make a logical inference from their statement, that does not materially impact the case. 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. A material fact is one that would likely impact 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. Your honor, I move that the witness testimony about... be stricken from the record because it is not relevant.”** 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 and had personal knowledge of 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

Evidence of a person’s character or a trait of his or her character is inadmissible when offered to prove his or her conduct on a specified occasion. 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 credibility 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. Evidence that a person committed a crime, civil wrong or other act may be admissible when relevant to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident by the defendant.

In cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation. On cross examination, questions may be asked regarding relevant specific conduct. Also, evidence of the habit of a person is relevant to show the conduct of the person on a particular occasion was in conformity of the habit.

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 as 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. Speculation/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 (five senses) **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 crying, 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 speculation 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 evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. 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 may be used in the Mock Trial.

- a. **Admission against interest by a party opponent**—
An admission against interest is an exception to the hearsay rule which allows someone to testify to a statement by another person that reveals something incriminating or embarrassing to the maker of the statement. The unavailability of the party is irrelevant because the admission is non-hearsay.
- 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 by an unavailable witness that is contrary to the witness’s economic interest or that subjects the witness to the risk of civil or criminal liability, or creates a risk of making the witness an object of hatred, ridicule, or social disgrace in the community that a reasonable man in his position would not have made the statement unless he believed it to be true..
- 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 of March 8, didn’t the defendant make a threatening gesture?”

Counsel could rephrase the question, “What, if anything, did the defendant do during your conversation on March 8th?”

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, as long as the cross-examiner does not harass a witness, become accusatory toward a witness, or unnecessarily interrupt the witness's answer. These behaviors are known as "badgering the witness."

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:

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:

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?** In the above example, Counsel for X rephrased the question based upon B's answer. It is also sound policy to permit cross-examining attorneys to repeat questions more than once in order to conduct a searching probe of the direct examination testimony, provided that the attorneys do not become argumentative or badgering (see Argumentative Question above).

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 answer the attorney’s question. For example, the attorney asks “What did you see that night?” The witness answers “I would never do anything to hurt anybody!” That is non-responsive. Other times, a witness might entirely “forget” the event in question, even though it is in their witness statement in the case packet. It is possible that the witness might be using this 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. **Speculation/Lay Witness Opinion:** “Objection, your honor. The question calls for speculation (or inadmissible opinion testimony) 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.”

CRF WEB SITES

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Civic Action Project (CAP)

crfcap.org

CAP gets students to explore public policy beyond the four walls of the classroom. CAP integrates hands-on learning about public policy into standards-based content in U.S. government classes. CAP's web site allows students to post projects and communicate with peers and teachers. It also lets teachers download the curriculum, post teacher-generated materials and feedback, and easily assess their students' progress in taking civic actions.

CRF Blog

crfblog.org

With entries published every weekday, CRF Blog features information, discussion, and links useful to K–12 educators in civics, law, history, economics, and other social studies. It also has occasional announcements about CRF events, programs, and publications.

CRF Forum

crfforum.org

CRF Forum is a site built by young people, for young people. Visitors can catch up on current events and express their ideas and opinions about people, places, and events of interest to them.

Deliberating in a Democracy

deliberating.org

Deliberating in a Democracy is an international initiative designed to improve student understanding of democratic principles and the skills of civic deliberation. It is a joint effort of CRF, Constitutional Rights Foundation Chicago, and Street Law, Inc.

Educating About Immigration

crfimmigrationed.org

With initial funding from the Weingart Foundation, Educating About Immigration helps teachers and students address issues of immigration productively and critically. It is a one-stop informational and interactive clearinghouse on topics of U.S. immigration. It is primarily intended as a source for curriculum, but the general public is also invited to use it to learn more about immigration, its history, and current controversies.

Educating About Intellectual Property

educateip.org

Educating About Intellectual Property seeks to educate young people about the role and importance of intellectual property in our society and about the laws and policies in place to protect both the property and the citizens who use it. This project is a collaborative effort of Street Law, Inc. and CRF. It is funded by the U.S. Patent and Trademark Office and supported by the U.S. Department of Justice.

Educating for Democracy, California Campaign for Civic Mission of Schools

cms-ca.org

Educating for Democracy, the California Campaign for the Civic Mission of Schools, is an effort sponsored by the California Coalition for Civic Renewal, a group of concerned California individuals and organizations seeking to enlist support of education, business, law, veterans, labor, parents, and service groups around the state to promote civic education in California.

Judges, Courts, and the Law

courtsed.org

Judges, Courts, and the Law is a joint effort of CRF and the Judicial Branch of California. Featuring stories, games, and other activities, the site helps students better understand the role that courts play in our democracy.

**Visit our main web site at:
www.crf-usa.org**

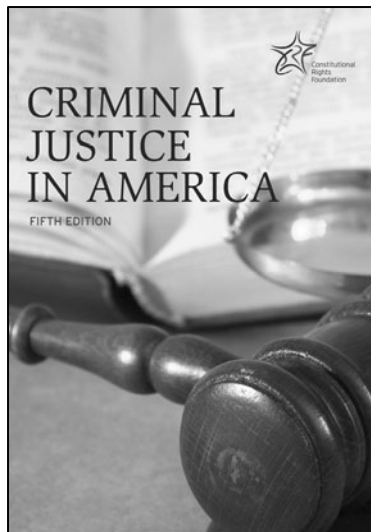
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