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People v. Concha

A Murder Trial

Featuring a pretrial argument on the Fourth Amendment



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

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Participating California Counties for 2013-2014

Alameda	Lake	Napa	San Diego	Shasta
Butte	Los Angeles	Nevada	San Francisco	Sonoma
Contra Costa	Madera	Orange	San Joaquin	Stanislaus
El Dorado	Marin	Placer	San Luis Obispo	Tulare
Fresno	Mendocino	Riverside	San Mateo	Ventura
Imperial	Mono	Sacramento	Santa Barbara	Yolo
Kern	Monterey	San Bernardino	Santa Cruz	

This case is dedicate to the memory of Michael Concha, (March 18, 1945 - March 5, 2009) a long time mock trial supporter

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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."**

2013-2014 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. Concha*.

The following lesson concerns drug use by students and searches under the Fourth Amendment. In the lesson, students examine the youth drug problem and analyze different ways schools have tried to address the issue. In the activity, students analyze and evaluate a proposed school drug policy. This lesson is for information purposes only and cannot be used in competitions' pretrial argument.

CLASSROOM DISCUSSION MATERIALS

Youth, Drugs, and Schools

By the age of 16, many teenagers have experimented with several different types of drugs, including marijuana, cigarettes, steroids, and alcohol. Some only try these substances while others become habitual users. Unfortunately, the United States has the highest rate of teen illegal drug use of any industrialized nation. For example, a 2012 University of Michigan survey showed that more than twice as many teenagers in the U.S. reported recent use of marijuana than teenagers in Europe (based on an average across 36 European nations). The proportion of U.S. teens reporting a lifetime use of amphetamines was three times the proportion of European teens.

Alcohol is the most popular, and perhaps the most dangerous drug used by American teenagers, but its use has significantly declined in the last ten years, while marijuana use is on the rise. The National Institute on Drug Abuse (NIDA) surveyed middle school and high school students in 2012 and found that 3.6 percent of 8th graders, 14.5 percent of 10th graders, and 28 percent of 12th graders had gotten drunk in the month prior to the survey. On the other hand, 6.5, 17, and 23 percent, respectively, had used marijuana in the same one-month period. Teens who use drugs are generally less interested in school, more likely to drop out, and in the worst-case scenario, become associated with gangs who promote violence on and off campus.

Peer pressure is one reason teens become involved in drugs. Often, gangs and drugs become a way for teens to “fit in.” Nowadays, networking and sharing on social media has increased the peer pressure to do drugs. According to a 2012 survey by the National Center on Addiction and Substance Abuse, “75 percent of 12- to 17-year olds say that seeing pictures of teens partying with alcohol or marijuana on Facebook, MySpace or another social networking site encourages other teens to want to party like that.” For many people, the teenage years can be the most difficult. Growing up and etching out an adult identity is difficult for many young people. Feelings of not belonging or being alienated are common. At this stage in the game, some problems seem overwhelming and some young people feel that friends or family cannot understand. Drugs and gangs become a way for some teens to cope.

To help teens cope and to combat the problems associated with teen substance abuse, some schools have started prevention programs while others are stressing more law-enforcement measures. Most states employ drug-prevention programs in middle schools and high schools that offer educational options and information to students. Through simulations and videos, teens learn reasons to resist peer pressure. To combat tobacco and alcohol use, teens analyze commercial advertisements that seem to glorify substance abuse. Students also organize their own programs including

“Drug Free Youth in Town” clubs and the Youth Alcohol and Drug Abuse Prevention Project (YADAPP).

Other schools are taking the “get-tough” attitude towards teen drug abuse and stepping up enforcement strategies. Many states, like California, have declared schools “drug-free” zones. This means that there are stricter penalties for selling or possessing drugs within a certain radius of a school. In some schools, student athletes must consent to random drug testing as a condition of participation and even non-athlete students can be subjected to random drug testing. Drug testing at school has risen, with 14 percent of public school districts conducting random drug testing in 2005. Within school grounds, expulsions for drug-related delinquency or crimes are becoming more frequent.

Tactics such as these raise questions about the civil liberties of students. The Fourth Amendment protects all persons from unreasonable search and seizure by law enforcement. While the U.S. Supreme Court has recognized that students are protected by the Fourth Amendment at school, their rights are not the same as adults. For example, courts have held that students, or their lockers, can be searched if school officials have a reasonable basis to do so. The U.S. Supreme Court has also held that schools may require drug-testing of student athletes, and that random drug-testing of students in competitive, non-athletic extracurricular activities is reasonable.

The reasonable basis for a search does have limits. In *Safford Union School District #1 v. Redding* (2009), the U.S. Supreme Court held that school officials may not conduct strip searches without probable cause of students to find illicit drugs. Based on a tip from one student, the vice principal searched another female student’s backpack and outer clothing where he found illegal pills (prescription-strength Ibuprofen). He then sent her to the school nurse in order to have her strip to her underwear, pull out her bra and shake the bra, and pull out the elastic of her panties. No more drugs were found. After her parents sued the school and officials, the court found that the reasonableness of the search in this case ended after the principal searched the girl’s outer clothing and backpack.

There has been an increase in undercover police pretending to be high school students arresting teens who use or sell drugs. Undercover stings can be successful but are also controversial. In 2013, a California high school student contended that he was pressured by an undercover officer to buy marijuana. The student had many discipline referrals at his previous high school but was also diagnosed with autism, bipolar disorder, and other conditions. When he did buy a small amount of marijuana from the officer, he was arrested and then expelled from school. Although he was later cleared of criminal charges, his parents filed a claim against the school district. They thought the expulsion was unfair, since their son was a special-needs student and had felt emotionally pressured. The school district countered that it had simply cooperated with law enforcement and fairly applied school discipline involving illicit drugs. After a hearing, an administrative law judge reversed the process of expulsion.

Everyone wants to stem teen drug abuse. No one wants to see young people physically abuse their bodies during such an important stage in their development. Drugs can impair emotional, psychological and mental development as well as physical growth. But what measures should be taken to prevent teen drug abuse?

For Discussion and Writing

1. What substance is most abused by teenaged youth?
2. What are some ways schools are reducing student drug abuse? What are the limits to what schools may do?
3. Do you think undercover sting operations are fair? Why or why not?

Activity: A School's New Drug Policy

Imagine that Temple Unified School District (TUSD) operates four high schools, nine middle schools, and 27 elementary schools. In the last year, an epidemic of drug use has hit the middle and high schools. Imagine also that you are a member of the TUSD school board. You must vote either "Yes" or "No" on a proposed new policy to address this increasing drug problem. The policy is as follows:

All students will be required to take a drug test at the beginning of the year. Students have a choice of taking a urine or blood test. Students taking the urine test will be able to go to a private stall to provide the urine sample with an adult monitor of the same sex listening outside the stall. The blood test will be taken by the school nurse. During the school year, additional tests will be taken from names drawn at random. Anyone who tests positive must take another test. If that test is positive, then the student will be required to attend special anti-drug classes after school and be tested twice more during the year. Anyone in the special class who tests positive will be transferred to a special middle or high school. Anyone at that school who tests positive will be removed to a special part of the campus to take even more intensive anti-drug classes. No student failing a drug test will be turned over to the police, and all test results will remain confidential.

To make an informed decision and to be able to support your decision either way, you must be able to take a critical look at the policy.

Procedure

1. Form small groups of four or five. Each group represents the TUSD school board. Assign one person to be the **notetaker**, another to be the **presenter**, and a third person to be the **discussion leader**.
2. In your small group, use the following GRADE questions to evaluate the proposed policy. The notetaker should write down the main points your group discusses for each of the five steps of the GRADE procedure. The discussion leader should make sure that the group stays focused on the task.

3. It is important that each member of your group have an opportunity to speak and be heard in each step of the GRADE procedure before your group takes a vote on whether or not TUSD will adopt the new policy.
4. After each group takes a vote, each group's presenter will present the group's decision to the whole class.

Goal. What is the goal of the policy? If you don't know what it's supposed to do, you can't measure its success or failure. Policies are designed to address problems. What problem or problems is this policy supposed to address?

Rivals. Who might (or does) support the policy? Who might (or does) oppose it? Knowing the rivals can help you understand who the policy might affect and whether the policy favors special interests. Also, rivals are terrific sources for information, but you must check their facts.

Advantages. What are the policy's benefits? What is good about the policy? Does the policy address the causes or effects of the problem? Will it achieve (or has it achieved) its goal? Will it achieve the goal efficiently? Is it inexpensive? Does it protect people from harm? Does it ensure people's liberties?

Disadvantages. What are the policy's costs? What is bad about the policy? Does the policy fail to address the causes or effects of the problem? Is it inefficient? Is it expensive? Does it cause harm? Does it intrude on people's liberties? Are there any potential consequences that may cause damage?

Evaluate. Weigh the advantages versus the disadvantages. Are there alternative policies? One alternative is to do nothing. Most serious problems have various policy proposals. Evaluate them. Look at their goals, advantages, and disadvantages.

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INTRODUCTION TO 2013-2014 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 33rd Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the *People v. Concha* case packet (except for the classroom discussion materials). The competition is sponsored and administered by Constitutional Rights Foundation. The program is co-sponsored by 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 San Jose, March 21–23, 2014. In May, 2014, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Madison, Wisconsin, May 8-10th.

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 evidence that can be used at trial.

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

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Rosewood High School has been experiencing a serious drug problem. An illegal trade in prescription drugs, among other illicit drugs, has started to flourish, sometimes with grave consequences. In late 2012, before the end of the semester, one student, Sandra Medina, died in an automobile accident. Sandra was driving under the influence of alcohol and Adderall, a prescription form of amphetamine (a stimulant), purchased from an unknown source at her school. Concerned about any harm to more teenagers and the school's reputation, school authorities decided to enroll Officer Robin Doherty, a youthful-looking undercover police officer, to pose as a student at Rosewood High School starting on February 4, 2013. Only the principal, Riley McAlister, was informed of the police undercover operation and knew the true identity of Officer Doherty. (Officer Doherty enrolled as Sam Shumway.)

When Officer Doherty started the assignment, Principal McAlister told Officer Doherty that McAlister suspected someone in the school marching band of selling drugs on campus. Officer Doherty made friends with Alex Weaver, a transfer student from a private high school. Alex and Officer Doherty tried out and became drummers in the school band. On February 13, Rae Concha, Alex, and Officer Doherty auditioned for two lead drummer positions with the school band. The band director, Avery Perkins, chose Rae and Officer Doherty (aka Sam Shumway).

Three days later on February 16, Jason Johnson, a student at Rosewood High attended a local concert. Jason had been drinking before he arrived and brought five Adderall pills that he had purchased from an unknown source at school. Jason took three of the Adderall pills during the evening and was treated by a concert medic for a bad drug reaction. Jason had hypertrophic cardiomyopathy, a congenital heart defect, and did not have a prescription for Adderall.

Jason missed three days of school, but returned on February 21. Upon returning, Jason confided in Officer Doherty (aka Sam Shumway) that Jason had taken Adderall at the concert. When Officer Doherty expressed interest in how Jason got the Adderall, Jason would not say.

On the night of Friday, February 22, Officer Doherty was off-duty and buying groceries in a supermarket called the A-Frame Market located in Diamond Heights, the next town over from Rosewood. Inside the market, Officer Doherty saw Rae pushing a shopping cart with several boxes of plastic zip-locking bags in it. Officer Doherty and Rae made no personal contact.

In the parking lot, Officer Doherty noticed a green Buick SUV that the officer recognized as Rae's. It was dark outside and there was no streetlight nearby. The car was only illuminated by the glow of the supermarket lights about thirty feet away. All the windows, except for the windshield were covered in a dark tint.

1 Officer Doherty saw that the rear-side passenger door’s window was rolled-
2 down about two inches. Doherty used a small flashlight to illuminate the
3 interior of the car through the crack in the window. The flashlight did not
4 enter the vehicle. Doherty saw a jacket on the back seat directly behind the
5 center console of the car. A blue backpack protruded slightly from under
6 the jacket. **[To get a clearer vantage point, Doherty stepped on the front
7 passenger-side tire and lifted Doherty’s own body partially over the
8 car’s hood. Doherty leaned over the hood to about the center of the front
9 windshield. Doherty shined the flashlight into the car. From that
10 vantage point, Officer Doherty could see that the blue backpack was on
11 top of some items, and the officer could see what appeared to be a roll of
12 bills, a generic bottle of what looked to be pills for medication, a
13 sandwich-size baggie with five round orange-colored pills, and an open
14 spiral-bound notebook all only partially covered by the backpack.
15 Words written on one of the notebook’s pages appeared to be part of a
16 list. A written column next to the list on the same page showed
17 numbers.]**
18

19 A month later, on March 27, the Rosewood band’s star trumpet player,
20 Jason collapsed at school during a morning band practice. Jason was
21 rushed to the hospital by paramedics. Principal McAlister called the
22 hospital administrator, who told McAlister that Jason’s heart stopped en
23 route to the hospital. He was pronounced dead on arrival at the hospital.
24 Blood tests at the hospital revealed that Jason had alcohol and Adderall in
25 his system. Principal McAlister informed Officer Doherty of Jason’s death,
26 and asked the officer to find out what she could from the students.
27

28 Officer Doherty knew that Alex and Jason were friends and played in an
29 off-campus rock band named Double Trouble. Right before lunch, Officer
30 Doherty told Alex that it was important to find the source of the drugs to
31 prevent further tragedies. “We should find out who did this to Jason,”
32 Officer Doherty said.
33

34 At the end of lunch, Alex personally informed Principal McAlister that Rae
35 was the drug dealer who gave Jason and Sandra Medina drugs, and that
36 Rae kept drugs in Rae’s car.
37

38 McAlister then called Officer Doherty into the principal’s office, and Alex
39 repeated the same information to Doherty. Principal McAlister looked up
40 Rae’s car’s make, model, and license plate number in the school’s records.
41 It was a green 2003 Buick SUV, and the license plate was YEZ-600. They
42 immediately went to the school parking lot and found the car. The school
43 parking registration decal identified the car as belonging to Rae.
44

45 Principal McAlister asked Officer Doherty to search the car immediately.
46 Rae’s car was unlocked. Officer Doherty opened the glove compartment
47 and looked inside. Officer Doherty also visually scanned the interior of the
48 car, but saw nothing out of the ordinary. Officer Doherty then searched the
49 rear luggage area of the vehicle. In the rear luggage area of the vehicle,
50 Officer Doherty discovered a blue backpack. The main compartment of the
51 backpack was unzipped about six inches. Officer Doherty opened the pack

1 and found a single drumstick and a one blank notebook. In the smaller
2 pocket in the front of the backpack, Officer Doherty found two generic
3 prescription bottles one with 62 round shaped orange colored pills and
4 another with 21 of the same pills. Each pill was 20 mg. Next to the
5 backpack were a dozen or so sandwich bags. Six of the small sandwich
6 bags had 5 pills in each bag. Also next to the backpack was also a roll of
7 currency wrapped in a rubber band. Officer Doherty looked at the pills and
8 told McAlister that Officer Doherty believed they were Adderall.
9 Subsequent analysis confirmed that both bottles contained Adderall.

10
11 Principal McAlister went to get Rae Concha out of class and took Rae to the
12 parking lot. When Rae entered the parking lot and saw the SUV, Rae
13 spontaneously said “Oh no!” to McAlister. Rae led McAlister to the SUV.
14 Officer Doherty self-identified as a police officer, informed Rae of Rae’s
15 rights, and asked Rae if the blue backpack belonged to Rae. Rae shrugged
16 and denied that it was Rae’s backpack. Officer Doherty arrested Rae for
17 possession of drugs for sale and the murder of Jason Johnson.

18

19 **STATEMENT OF CHARGES**

20

21 **Count One**

22 The defendant is charged with second-degree murder, which is the
23 unlawful killing of another human being with malice aforethought.

24

25 **Count Two**

26 The defendant is charged with possession with the intent to sell a
27 controlled substance (Adderall).

28

29 **PHYSICAL EVIDENCE**

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

- 32 1. Exhibit A, a photo of the items found in Rae Concha’s car in the school
33 parking lot.
- 34 2. Exhibit B, a photo of Adderall pills, generic prescription bottles and cash
35 found in Rae Concha’s car in the school parking lot.

36

37 *ALL reproductions can be as small as 10 ½ x 7 1/4 but no larger than
38 22x28 inches

39

40 **STIPULATIONS**

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

- 43 1. There is no dispute based on the Fourth Amendment regarding the
44 search of Rae’s car on school grounds. The waiver for the search is
45 valid and may not be questioned.
- 46 2. Rae Concha was 18 when the alleged crimes occurred.
- 47 3. There is no dispute based on the Fifth Amendment regarding the
48 subsequent questioning of Rae by Officer Doherty.
- 49 4. At the time of arrest, there was sufficient probable cause to arrest Rae
50 Concha.
- 51 5. All physical evidence and witnesses not provided for in the case are
52 unavailable and their availability may not be questioned.

- 1 6. Beyond what's stated in the witness statements, there was no other
2 forensic evidence found in this case.
- 3 7. All witness statements were taken in a timely manner.
- 4 8. Both alcohol and Adderall contributed to Sandra Medina's death.
- 5 9. On February 16, Jason Johnson had five Adderall pills (that he had
6 purchased previously from a source at school). During the concert,
7 Jason had been drinking and consumed three of the five pills and was
8 treated by a concert medic for a bad drug reaction.
- 9 10. Jason Johnson did not have a prescription for Adderall.
- 10 11. Concha Rae has a valid prescription for Adderall and is prescribed to
11 20 mg of Adderall 3 times a day.
- 12 12. The results of the toxicology reports of Jason Johnson done on March
13 27 are not in dispute.
- 14 13. Dr. Sanchez and Dr. Burke are qualified expert witnesses and can
15 testify to each other's statements and relevant information they would
16 have reasonable knowledge of from the fact situation and witness
17 statements.
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PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

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

In the area of criminal due process, the Fourth Amendment protects individuals from government intrusions on their privacy by prohibiting unreasonable searches and seizures. These rights are extended to the states by the due process clause of the 14th Amendment. Law enforcement officers often must search or seize persons or their property when investigating crimes or apprehending suspects. The tension between personal freedom and governmental power has created numerous debates and court decisions over the years. The key issues for both the defense and prosecution are (1) whether there was a search or seizure; and (2) whether the particular search or seizure was reasonable.

The pretrial motion challenges the admissibility of Officer Doherty’s testimony regarding seeing the pill, the pill bottle, the notebook, the roll of currency, and the sandwich baggie containing pills (i.e., items in question) located in Concha’s car on February 22 in front of the A-Frame Market. There is no Fourth Amendment issue with the search of Concha’s car on March 27. The outcome of the pretrial motion will have a direct bearing on the admissibility of that evidence. If the presider excludes the testimony of the items in question, attorneys and witnesses may not refer to or discuss them during the subsequent trial.

Legal issues are matters exclusive to the pretrial hearing. For trials in which there is no pretrial hearing, evidence of the items in question are admissible. This pretrial motion is the only allowable motion for the purposes of the competition.

The text affected by this motion can be found in the witness statements of Officer Doherty, Rae Concha, as well as the fact situation, within brackets, e.g. [text].

ARGUMENTS

The defense will argue that Officer Doherty conducted a search of Rae Concha’s vehicle in the A-Frame supermarket parking lot, and that it was an unreasonable search in violation of the Fourth Amendment. The defense will contend the following arguments. Rae Concha had a reasonable expectation of privacy in the items in question. Doherty’s use of the flashlight was a search, but the items seen by Officer Doherty were not seen within the “plain view” exception to the warrant requirement. Because the jacket and partial view of the backpack seen by Officer

1 Doherty were not immediately apparent as incriminating, there was no
2 reason for any further search. Even if the first part of the search was
3 reasonable, when Officer Doherty was positioned partially over the hood to
4 look through the windshield, the contents of the car were no longer within
5 the plain view exception to the warrant requirement.
6

7 The prosecution will contend the following arguments. Officer Doherty's
8 use of the flashlight into the vehicle was not a search, but if it was, it was
9 within the plain view exception to the warrant requirement. Concha had no
10 legitimate expectation of privacy in the items in question. The intrusion
11 was minimal and not outweighed by Concha's diminished expectation of
12 privacy. The small bag of pills itself was recognizable to Doherty as
13 incriminating because of Doherty's expertise in drug-recognition and
14 because of Doherty's prior conversations with Concha about Adderall pills.
15 Officer Doherty's position partly over the hood of the car was still a vantage
16 point that allowed Officer Doherty to have plain view of the interior of the
17 vehicle.
18

19 **SOURCES**

20 The sources for the pretrial motion arguments are a "closed library," which
21 means that Mock Trial participants may only use the materials provided in
22 this case packet. The materials include excerpts from the U.S. Constitution,
23 the California Constitution, the California Penal Code, edited court
24 opinions, the Mock Trial Fact Situation, and all relevant testimony to be
25 found in the Witness Statements of Officer Doherty and Rae Concha.
26

27 The U.S. Constitution, U.S. Supreme Court holdings, and California
28 Supreme Court and Appellate Court holdings are all binding and must be
29 followed by California trial courts. Cases outside of the Ninth Circuit
30 jurisdiction are not binding but are persuasive authority. In developing
31 arguments for this mock trial, both sides should compare or distinguish the
32 facts in the cited cases from one another and from the facts in *People v.*
33 *Concha*.
34

35 **LEGAL AUTHORITIES**

36 **U.S. Constitution**

37 *Amendment IV*

38 The right of the people to be secure in their persons, houses, papers and
39 effects, against unreasonable searches and seizures, shall not be violated,
40 and no warrants shall issue, but upon probable cause, supported by oath or
41 affirmation, and particularly describing the place to be searched, and the
42 persons or things to be seized.
43

44 *Amendment XIV*

45 Section 1. All persons born or naturalized in the United States, and subject
46 to the jurisdiction thereof, are citizens of the United States and of the States
47 wherein they reside. No State shall make or enforce any law which shall
48 abridge the privileges or immunities of citizens of the United States; nor
49 shall any State deprive any person of life, liberty, or property, without due
50 process of law; nor deny to any person within its jurisdiction the equal
51 protection of the laws.
52

1 **California Constitution**

2 Article I

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

8

9 **Statutory**

10 **Pen. Code Sec. 187 (Second Degree Murder)**

11 Murder is the unlawful killing of a human being with malice aforethought.

12

13 **Pen. Code Sec. 188 (Definition of Malice)**

14 Malice may be *express* (with intent to kill) or *implied* (with circumstances
15 that show an abandoned or malignant heart).

16

17 **CALCRIM 520 (Jury Instructions)**

18 The defendant acted with *implied malice* if

19 (1) he or she intentionally committed an act;

20 (2) the natural and probable consequences of the act were dangerous to
21 human life;

22 (3) at the time he or she acted, he or she knew his or her act was
23 dangerous to human life;

24 AND

25 (4) he or she deliberately acted with conscious disregard for human life.

26

27 **California Health & Safety Code §11378 (Possession for Sale of a
28 Controlled Substance)**

29 Every person who possesses for sale amphetamine (Adderall) shall be
30 charged with a felony which shall be punished by imprisonment in state
31 prison for not less than two years or more than ten.

32

33 **CALCRIM 2302 (Jury Instructions)**

34 **Possession for Sale of Controlled Substance**

35 The defendant is charged in Count Two with possession for sale
36 of amphetamine (Adderall), a controlled substance.

37 To prove that the defendant is guilty of this crime, the People must prove
38 that:

39 1. The defendant unlawfully possessed a controlled substance (which can
40 include possession with a valid prescription);

41 2. The defendant knew of its presence;

42 3. The defendant knew of the substance's nature or character as a
43 controlled substance;

44 4. When the defendant possessed the controlled substance, (he/she)
45 intended to sell it;

46 5. The controlled substance was amphetamine (Adderall), a controlled
47 substance;

1 AND

2 6. The controlled substance was in a usable amount.

3 *Selling* for the purpose of this instruction means exchanging amphetamine
4 (Adderall), a controlled substance for money, services, or anything of
5 value.

6 *A usable amount* is a quantity that is enough to be used by someone as a
7 controlled substance. Useless traces [or debris] are not usable amounts. On
8 the other hand, a usable amount does not have to be enough, in either
9 amount or strength, to affect the user.

10 The People do not need to prove that the defendant knew which specific
11 controlled substance (he/she) possessed, only that (he/she) was aware of
12 the substance's presence and that it was a controlled substance.

13 A person does not have to actually hold or touch something to possess it. It
14 is enough if the person has (control over it/ [or] the right to control it),
15 either personally or through another person.

16 **CALCRIM 223 (Jury Instructions)**

17 **Direct and Circumstantial Evidence**

18 Facts may be proved by direct or circumstantial evidence or by a
19 combination of both. *Direct evidence* can prove a fact by itself. For
20 example, if a witness testifies he saw it raining outside before he came into
21 the courthouse, that testimony is direct evidence that it was raining.

22 *Circumstantial evidence* also may be called indirect evidence.

23 Circumstantial evidence does not directly prove the fact to be decided, but
24 is evidence of another fact or group of facts from which you may logically
25 and reasonably conclude the truth of the fact in question. For example, if a
26 witness testifies that he saw someone come inside wearing a raincoat
27 covered with drops of water, that testimony is circumstantial evidence
28 because it may support a conclusion that it was raining outside.

29

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

36

37 **CALCRIM 224 Circumstantial Evidence: Sufficiency of Evidence**

38

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

43

44 Also, before you may rely on circumstantial evidence to find the defendant
45 guilty, you must be convinced that the only reasonable conclusion
46 supported by the circumstantial evidence is that the defendant is guilty. If

1 you can draw two or more reasonable conclusions from the circumstantial
2 evidence and one of those reasonable conclusions points to innocence and
3 another to guilt, you must accept the one that points to innocence.
4 However, when considering circumstantial evidence, you must accept only
5 reasonable conclusions and reject any that are unreasonable.

6
7 **Cases**

8 **1. *Katz v. United States*, 389 U.S. 347 (1967)**

9
10 **Facts:** FBI agents attached an electronic listening device to the outside of a
11 public phone booth in order to hear the defendant's end of a conversation
12 in which the defendant transmitted gambling information in violation of a
13 statute.

14
15 **Issue:** Did the Government's eavesdropping technique violate the privacy
16 upon which the defendant relied, thus constituting a "search and seizure"
17 within the meaning of the Fourth Amendment?

18
19 **Holding:** Yes. The Government's activities in electronically listening to and
20 recording the defendant's words constituted a search and seizure requiring
21 a warrant. The fact that the device did not physically penetrate the phone
22 booth "can have no constitutional significance." Justice Harlan's concurring
23 opinion established an important two-part inquiry to determine what
24 protection the Fourth Amendment gives to people. First, has the person
25 shown an actual (subjective) expectation of privacy in the object searched
26 or seized? Second, does society view that expectation as reasonable?
27 "[O]bjects, activities, or statements that [a person] exposes to the 'plain
28 view' of outsiders are not 'protected' because no intention to keep them to
29 himself has been exhibited."

30
31 **2. *Arizona v. Hicks*, 480 U.S. 321 (1987)**

32
33 **Facts:** Investigating a shooting, police legally enter an apartment looking
34 for weapons and the shooter. While inside, an officer spots a high-priced
35 stereo system that seems out of place in the rundown apartment. The
36 officer picks it up, jots down the serial number, puts it down, calls
37 headquarters, and finds out that the stereo is stolen.

38
39 **Issue:** Did the officer's actions violate the Fourth Amendment?

40
41 **Holding:** Yes. The officer's actions come within the purview of the Fourth
42 Amendment. The mere recording of the serial numbers did not constitute a
43 "seizure" because it did not meaningfully interfere with respondent's
44 possession of either the numbers or the stereo equipment. But moving the
45 stereo system was a "search" separate and apart from the search that was
46 the lawful objective of entering the apartment. The fact that the search
47 uncovered nothing of great personal value to respondent is irrelevant. It
48 was a search because the serial numbers were not in plain view, and the
49 search was invalid because the policeman did not have probable cause to
50 believe that the stereo equipment was stolen.

1 Facts: After a bullet had been fired through the defendant's floor, police
2 entered to look for the shooter, other victims, and for weapons. The officers
3 then noticed expensive stereo equipment, which they suspected was stolen.
4 They moved some of the equipment to record the serial numbers, later
5 discovering that the equipment was indeed stolen in an armed robbery.
6

7 **3. *Texas v. Brown*, 460 U.S. 730 (1983)**
8

9 **Facts:** At a routine driver's license checkpoint, a police officer asked the
10 defendant for his license, shined a flashlight into the car, and saw a green
11 balloon fall from the defendant's hand. Based on his experience, the officer
12 suspected the balloon was full of narcotics. When the defendant failed to
13 produce a license, the officer had him step out of the car. The officer
14 inspected the balloon, which was revealed to contain heroin.
15

16 **Issue:** Can the evidence of the balloon be suppressed on the grounds that
17 the officer's flashlight search and subsequent seizure violated the "plain
18 view" exception to the Fourth Amendment's requirement of a warrant?
19

20 **Holding:** No. Plain-view is simply "an extension of whatever the prior
21 justification for an officer's 'access to an object' may be," and makes the
22 requirement of a warrant a "needless inconvenience" when the police have
23 obtained first-hand perception of incriminating evidence. The officer's
24 "action in shining his flashlight to illuminate the interior of [the
25 defendant's] car trench[es] upon no right secured to the latter by the Fourth
26 Amendment." In addition, the fact that the officer bent down at an angle to
27 see what was inside the car "is irrelevant to Fourth Amendment analysis."
28 There is no legitimate expectation of privacy "shielding that portion of the
29 interior of an automobile which may be viewed from outside the vehicle by
30 either inquisitive passersby or diligent police officers." The officer had
31 probable cause to believe that the balloon contained an illicit substance
32 based on his prior experience. Moreover, the circumstances of the meeting
33 between the defendant and the officer "give no suggestion that the
34 roadblock was a pretext whereby evidence of narcotics violation might be
35 uncovered in 'plain view' in the course of a check for driver's licenses."
36 There is no indication in the record that the officers at the roadblock had
37 more than a generalized expectation that some of the cars they would halt
38 would contain narcotics.
39

40 **4. *Horton v. California*, 496 U.S. 128 (1990)**

41 **Facts:** The defendant was accused of robbing the treasurer of a coin club.
42 The police had a valid search warrant to search the suspect's home. The
43 warrant only specified the proceeds from the robbery; weapons were not
44 mentioned. When the police conducted a search, they found weapons in
45 plain view.
46

47 **Issue:** Can police seize evidence in plain view without a warrant?
48

49 **Holding:** Yes. Evidence in plain view can be seized if it meets the following
50 test:

51 1. The officer was lawfully present at the place where the evidence can be
52 plainly viewed,

- 1 2. The officer must have a lawful right of access to the object, and
2 3. The incriminating character of the object must be “immediately
3 apparent.”
4

5 The court concluded that the police officer had a valid search warrant and
6 therefore was lawfully in the area to be searched. Additionally, the officer
7 saw the weapons in plain view and had reason to believe the weapons
8 were used in the robbery. Therefore the officer’s seizure of the weapons
9 was not a violation of the suspect’s Fourth Amendment rights.
10

11 **5. *Kyllo v. United States*, 533 U.S. 27 (2003)**
12

13 **Facts:** During an investigation of a suspected marijuana-growing operation,
14 police used a thermal-imaging device to detect heat through the walls of the
15 defendant’s home. The device detected heat that was consistent with the
16 presence of heat-lamps used to grow marijuana indoors.
17

18 **Issue:** Was the use of the thermal-imaging device an unreasonable search
19 of defendant’s home?
20

21 **Holding:** Yes. The defendant did have a reasonable expectation of privacy
22 in the home. The device was could reveal intimate details of the home and
23 was not readily available for public use.
24

25 **6. *United States v. Dunn*, 480 U.S. 294 (1987)**
26

27 **Facts:** During the course of surveillance of the defendant’s truck, Drug
28 Enforcement Administration agents took aerial photographs of the truck
29 back up to a barn on the premises of defendant’s ranch. The ranch was
30 completely encircled by a fence. Based on the surveillance, the agents
31 crossed the perimeter of the fence. At the barn, they smelled chemicals and
32 shined a flashlight through the locked gate of the barn and saw evidence of
33 an illegal-narcotics laboratory.
34

35 **Issue:** Was the shining of the flashlight into the barn an unreasonable
36 search?
37

38 **Holding:** No. The agents did not need a warrant to shine the flashlight into
39 the barn. The Fourth Amendment protects a home and its “curtilage”
40 (private land connected to a home). Curtilage is part of the “sanctity of a
41 man’s home.” The Fourth Amendment does not, however, protect “open
42 fields” (land outside the curtilage). Open fields need not be “open” nor
43 “fields;” they can be unoccupied or undeveloped land. They are not
44 “houses” or “effects” as stated in the Fourth Amendment. When the agents
45 stood outside the barn, they were in open fields. Therefore, when they
46 shined the flashlight into the barn, the contents of the barn were in plain
47 view. There is no difference between police standing in a public place and
48 police standing in open fields.
49

50 **7. *United States v. Coplen*, 541 F.2d 211 (9th Cir. 1976)**
51

1 **Facts:** During surveillance of defendant and his airplane for suspected
2 narcotics, a police officer approached the defendant's unoccupied airplane.
3 The officer used a flashlight to look into the back window of the airplane
4 and saw marijuana in the airplane.
5
6 **Issue:** Was the officer's shining of a flashlight into the plane an
7 unreasonable search?
8
9 **Holding:** No, it was not a search within the meaning of the Fourth
10 Amendment. The officer was lawfully present next to the airplane; it was dark
11 outside; and the defendant did not close off the window from public view.
12

13 **8. *People v. Rogers*, 21 Cal. 3d 542 (1978)**
14

15 **Facts:** Police arrived at a parked van that fit description of a van belonging
16 to a person suspected of lewd acts. An officer knocked on the van's rear
17 door. The defendant opened the door from within. It was night and the
18 van's interior was dark. The officer shined a flashlight into the van. The
19 light revealed illegal pornographic photographs in the van.
20

21 **Issue:** Was the shining of the flashlight an unreasonable search?
22

23 **Holding:** No, the shining of the flashlight was not a search within the
24 meaning of the Fourth Amendment. The photographs were in plain view.
25 The officer had a right to stand where he was standing. The light provided
26 by the officer's flashlight is not significant.
27

28 **9. *In the Matter of the Welfare of: B.R.K.*, 658 N.W.2d 565 (2003 Minn.)**
29

30 **Facts:** Sheriff's deputies were called to investigate a report of an underage
31 drinking party at a home. Upon arrival, the house was dark and quiet. A
32 deputy saw a dim light and lighted beer sign through a basement window.
33 The deputy shined his flashlight through the basement window, which
34 revealed liquor and beer bottles on top of a built-in bar, which led to a
35 subsequent search of the home and arrests. The defendant is B.R.K., a
36 short-term social guest of the home.
37

38 **Issue:** Was the shining of the flashlight through the window an
39 unreasonable search?
40

41 **Holding:** The court did not determine the reasonableness of shining the
42 flashlight. The court did determine, however, that there were no exigent
43 (emergency) circumstances for the deputies to search a home that appeared
44 dark and quiet upon arrival. B.R.K. did have a reasonable expectation of
45 privacy in the home. The deputies should have gotten a warrant in the
46 absence of exigent circumstances.
47

WITNESS STATEMENTS

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WITNESS STATEMENT—Prosecution Witness: Officer Robin Doherty

My name is Officer Robin Doherty. I am 28 years old and earned my degree in criminal justice before entering the police academy and became a police officer for Rosewood County. I have extensive training in drug recognition and sales. I also have been recognized as an expert in this area. Due to reports of rampant drug use among Rosewood teens, possibly centered on persons in the marching band, my supervisor recruited me to serve as an undercover officer at Rosewood High School. The main drug problems on campus were prescription drugs, such as Adderall, as well as marijuana and alcohol. I do not live in the community (I live in Diamond Heights) and would not likely be recognized by any of the students or school staff. Moreover, I have a young appearance and many years of practice as a percussionist, so I could easily infiltrate the marching band.

Only Principal Riley McAlister knew my true identity when I registered as a transfer student named Sam Shumway. I enrolled in February for the spring semester, and my first day was February 4, 2013. I claimed to have just moved to Rosewood from Iowa. Principal McAlister believed that the main source of illegal narcotics on campus was someone in the school marching band. I had experience and training as a drummer, so I tried out for the marching band. Later in February, there were two openings for solo drummers, and after tryouts, I made it. The other person to make it was Rae Concha.

I got to know members of the band, including Alex Weaver, Rae Concha and Jason Johnson. I did notice Rae always had that blue backpack almost all the time at school. Shortly after I made it onto the marching band, I noticed Jason did not report for band practice. Alex was sitting with me and Rae and told us it was because Jason had a bad reaction to some drugs. Rae said, “Jason just couldn’t keep up with addy.” I knew that “addy” was slang for Adderall, but I did not let on. I asked, “Who’s Addy?” Rae laughed and said, “Addy’s Adderall, Shumway. ‘Smart pills.’ You interested in that stuff? I have a hook-up.” I pretended to laugh and just said, “I don’t know. Maybe.” Rae changed the subject. I also knew their band was called Double Trouble, a street slang term for Adderall. I began to form the opinion that Rae either knew the dealer of drugs or was the dealer of drugs.

On February 21, Jason returned to school. Just before marching band practice, I asked Jason where he got the addy pills. Jason stalled in his answer, looking around. He never answered my question. I formed the opinion, however, that Jason was protecting someone, perhaps Rae. The next evening, on February 22, I was off-duty and buying groceries in my local supermarket in Diamond Heights, called the A-Frame Market. Inside the market, I stood in a checkout line and noticed Rae pushing a shopping cart down an aisle in my direction. I thought that was odd that Rae would be shopping in another town. I was approximately thirty feet away from Rae. I could see what looked like four or five boxes of plastic zip-locking bags in Rae’s cart. A couple of the boxes appeared to be

1 sandwich-bag size, and the others appeared to be of a larger size. I
2 completed my purchase and exited the store.
3
4 In the parking lot, I noticed a green Buick SUV with the license plate of
5 YEZ-600. I had seen Rae driving that same car into the student parking lot
6 on campus. I walked over to the vehicle and saw that all the windows were
7 tinted with dark tint. I then walked around the back of the vehicle to the
8 passenger side and again saw that all the vehicle's windows were covered
9 in the same dark tint making visibility almost impossible.
10
11 I then took a small flashlight from my keychain and shined it through the
12 rear passenger's window which was rolled down approximately two
13 inches. My flashlight did not enter the vehicle. Behind the center console
14 on the back seat, I could see what looked to be a jacket draped over a blue
15 backpack, which only slightly stuck out from under the jacket. **[To get a
16 better view, I had to look straight down the center of the interior, which
17 required me to hoist myself up a bit over the hood of the car. I shined
18 my flashlight through the windshield and saw that the jacket was
19 indeed draped over a blue backpack. It appeared that someone wanted
20 to cover up the backpack. Still, I could see that there were items under
21 the backpack, as if the backpack had been set on top of them. One item
22 was a roll of money. It appeared to be a roll of bills (approximately one
23 inch thick) wrapped tightly together. I saw clearly that the bill on the
24 outside of the roll was a \$20 bill. I also saw the top few inches of a
25 notebook with a column of words next to a column of numbers and
26 dollar signs, like a ledger. This type of ledger is typically used by low-
27 level drug dealers to keep track of their customers and amount paid or
28 owed. I also saw a sandwich-sized plastic bag of what looked to be five
29 Adderall pills. All of this bolstered my opinion at the time that Rae was
30 a person of interest in the drug-dealing on campus. Maybe Rae was a
31 small time dealer and working for someone else. I wasn't sure. I needed
32 to do further investigation.]**
33
34 About a month later, Jason came to band practice early in the morning and
35 he did not look well. He looked pallid and in pain. Then, without warning,
36 he just passed out and fell over. Soon an ambulance came and took him
37 away. About three hours later, Principal McAlister called me and informed
38 me that Jason was dead on arrival at the hospital. Initial blood tests
39 showed that Jason had .05 percent blood alcohol content (or .05 BAC) and
40 a stimulant in his bloodstream. McAlister asked me to find out as quickly
41 as possible if Jason had bought any stimulants, such as Adderall, that day.
42 McAlister wanted to make sure no further students were at risk.
43
44 At lunch I sat with Alex Weaver. I said to Alex that I was angry about
45 Jason's death. I said, "We should find out who did this to Jason." I stared
46 at Alex, but Alex looked away. Alex seemed anxious. I did not see Rae at
47 lunch, but I wanted to talk to Rae, too.
48
49 About two hours after my encounter with Alex, McAlister called me into
50 the principal's office and there I saw Alex talking with McAlister. Alex then
51 informed me that Rae was a drug dealer and that Rae kept the drugs in the

1 SUV. In the past, Alex informed me, Alex had seen Rae sell Adderall and
2 marijuana on two or three occasions next to the SUV in the parking lot.
3 Alex told me that on that morning, shortly before band practice, Alex saw
4 Rae standing by the back of the SUV with the tailgate open. Jason was
5 there, too, talking quietly to Rae. Alex saw Rae hand pills to Jason as they
6 were shaking hands. Handshaking is often how drug dealers pass product
7 and receive money from their customers. The interaction is designed to
8 look casual, but definitely serves a purpose.
9

10 McAlister and I went to the school parking lot and found the same car I had
11 seen at the A-Frame Market parking lot. It was a green SUV that belonged
12 to Rae Concha. Principal McAlister asked me to search the car immediately.
13 The car was unlocked. I looked in the glove compartment first, but found
14 nothing. I visually scanned the interior of the car, but saw nothing out of
15 the ordinary. Then I searched the rear luggage area of the vehicle. In the
16 rear of the SUV were two jackets, and a blue backpack which was partly
17 unzipped. The backpack appeared to be the same color as the backpack I
18 had seen on February 22 in Rae's SUV. I photographed what I saw prior to
19 investigating further. I looked in the main compartment of the backpack
20 and found one drumstick and a blank notebook; I also found two generic
21 prescription bottles, one with 62 round-shaped orange colored pills and
22 another with 21 of the same pills. I immediately recognized the pills as
23 Adderall. Each pill was 20 mg. Near the backpack, I found six small
24 sandwich bags with pills in them. I counted, and each one had five pills.
25 From my training, I knew that high school students often sold illegal
26 narcotics to each other in plastic sandwich bags, or "baggies." This was not
27 for personal use. Usually baggies are used for marijuana, but could be used
28 for other narcotics as well. Next to the backpack was a roll of currency,
29 wrapped in a rubber band. The outside bill was a \$20 bill (total amount
30 was \$180 in mixed one-dollar, five-dollar, ten-dollar, and 20-dollar
31 increments). I laid out the above items and took a second photograph.
32

33 I remained at the car while McAlister went to get Rae. When they arrived
34 back at the SUV, I told Rae that I was a police officer. I gave Rae Miranda
35 warnings and asked Rae "Who does this blue backpack belong to?" Rae
36 shrugged and said, "It's not mine." I showed Rae the pills I had found in
37 Rae's backpack and in the rear-luggage area. I arrested Rae for possession
38 of drugs for sale and the murder of Jason Johnson.

1 **WITNESS STATEMENT—Prosecution Witness: Alex Weaver**

2 My name is Alex Weaver. I'm 17 years old and a senior at Rosewood High
3 School. I had transferred at the beginning of the 2012 fall semester from
4 another high school across town after I was expelled from school for a
5 harmless prank. I'm ashamed of it now, but back then I didn't think
6 breaking into the school cafeteria and replacing the sugar with salt was a
7 big deal. The administration and many students and parents were mad. I'm
8 happy to be at my new school and glad to have a fresh start.

9
10 I've been friends with Jason Johnson since coming to Rosewood High, and
11 we started a band with two other Rosewood kids, called Double Trouble. I
12 played drums, and Jason was the lead singer and songwriter. We had just
13 recorded a few songs and put a couple of them up on Soundcloud. We
14 burned CDs for our fans at school, made t-shirts, and planned to put a
15 record out on vinyl. We had big plans, until Jason died.

16
17 I had been friends with Rae since about the time I met Jason, after Rae
18 came to one of Double Trouble's shows. Rae had a dream of being an
19 entrepreneur and wanted to be the manager of our band. Jason thought
20 that was a good idea, and initially I was fine with it. Rae also played
21 drums, apparently, and joked a lot with Jason about replacing me in the
22 band. I didn't like that, but Rae thought it was funny.

23
24 We started making t-shirts with a home silk-screening machine that Jason
25 bought. Rae would sell the t-shirts at our shows, at school, and at parties.
26 By the time first semester ended, none of us in the band had seen any of
27 the money Rae supposedly had from the t-shirt sales. Rae said Rae was
28 "banking it" to finance printing our vinyl record. To this day, I have never
29 seen the money.

30
31 It's common knowledge around school that Rae takes Adderall for attention
32 deficit hyperactivity disorder (ADHD). I have seen Rae leave from the
33 nurse's office a couple of times. Rae seems perfectly normal to me. I bet
34 Rae is pretending to have ADHD to get a prescription for the drugs. That's
35 the type of person Rae is. I don't trust Rae.

36
37 In early February, Sam Shumway showed up at school. I met Sam right
38 away, because we were in a math class together. Sam came from Iowa, or
39 so I thought. Because we were both transfer students in the senior year, we
40 bonded pretty quickly. We were outsiders. I cannot believe Sam was really
41 a cop. It really was an incredible hoax. No one I talked to had any
42 suspicions about Sam, or Officer Doherty. I can't help but say "Sam." Sam,
43 like me, was a drummer and joined the school marching band. Later in
44 February, we all tried out to be the lead drummers in the marching band,
45 but Band Instructor Perkins picked Rae and Sam. I was surprised that Rae
46 was picked; I think I am a better drummer. I think Avery Perkins has it out
47 for me. I'm not sure why, I'm a pretty popular kid.

48
49 It was around this time that I noticed a change in the relationship between
50 Jason and Rae. Jason decided to go to a concert on February 16 instead of
51 playing a show with Double Trouble. I had an argument with Jason at my
52 house, and then Rae showed up. Rae told me to "chill out" because Jason

1 just wanted to have a little fun. Rae had some family party to go to, but
2 gave Jason a ride home. It was weird to me that Rae was showing such an
3 interest in Jason’s social life while at the same time excusing Jason from
4 working on his music.
5
6 When I learned that Jason passed out at the concert and did not come back
7 to school, I was worried. I began to think that Jason was taking drugs, and
8 sure enough, he was. That morning, I sat with Sam and Rae , just before
9 band practice. I told them my suspicion that Jason had a bad reaction to
10 drugs. Then Rae said something about Jason taking “addy” and asked Sam
11 if Sam was “into that stuff?” I don’t remember if Rae said anything to Sam
12 about where to get Adderall. I do remember that it was a tense moment. It
13 seemed to me that Rae wanted Sam to be interested in Adderall. What’s
14 weirder is that Sam did seem a little interested, but then Rae started playing
15 the snare drum and we started practicing.
16
17 When Jason returned to school, he told both Rae and me that he had a
18 heart defect which meant that he should probably cut down on taking
19 drugs and drinking alcohol. Jason also mentioned that he had a surgery
20 scheduled in late March. Later that same day, Jason told me that Rae sold
21 him the Adderall pills.
22
23 Jason and Rae stopped showing up at our after-school band practices for
24 Double Trouble (Rae usually came to listen and also to criticize my
25 drumming.) We played one gig on March 26 at a 16-and-older club. I saw
26 Rae shaking hands with Jason just before it started. When Jason took the
27 stage a few minutes later, Jason was sweating a lot, almost immediately.
28 Jason seemed more anxious than usual, and yet kept drinking beers during
29 the show. I asked Jason what was up, and Jason handed me a pill. “It’s a
30 little smart pill, Alex,” he said. “Try it.” Jason also explained it was
31 Adderall. I am embarrassed to say I did, and I played the show feeling a
32 little more “amped up” than normal. I’ll never do that again.
33
34 Because I need a big car to transport my drum kit, Rae often gives me rides
35 to gigs. That night, Rae took me to the gig and gave me a ride home in
36 Rae’s SUV. We left shortly after 1:00 a.m. I did not see Jason after the
37 show. Rae and I did not speak during the ride. The backpack in the picture
38 is not my backpack. I had a blue backpack for most of the year, but the
39 zipper broke in early March sometime, and I threw it away. I since used an
40 old a red backpack of mine for school stuff, whenever I actually use a
41 backpack, that is. Anyway, I never had any backpack with me that night,
42 and I would never sell drugs. I wouldn’t want to jeopardize my opportunity
43 to go to college.
44
45 On the morning of March 27, I saw Rae standing by the back of the SUV
46 with the tailgate open. Jason was there, too, talking quietly to Rae. They
47 shook hands again, which looked odd. I knew that Rae was handing pills to
48 Jason. During band practice, Jason fell over. Later that day, after I learned
49 that Jason died, Sam (Robin Doherty) said, “We should find out who did
50 this to Jason.” That really moved me, and I decided it was too important to
51 keep my suspicions about Rae’s secret any longer.
52

1 I went to Principal McAlister and told McAlister, that Rae was a drug dealer
2 and kept the drugs in Rae's SUV. I also told Principal McAlister that in the
3 past, I had seen Rae sell Adderall and marijuana on two or three occasions
4 next to the SUV in the parking lot. Officer Doherty showed up. I knew Rae
5 dealt drugs and kept them in the SUV. I had seen Rae handing something to
6 Jason early in that same morning in the parking lot, next to the SUV, before
7 band practice, and believed that it was probably Adderall. I told all this to
8 Officer Doherty at that time.

1 **WITNESS STATEMENT—Prosecution Witness: Principal Riley McAlister**

2 My name is Riley McAlister. I have been the principal at Rosewood High
3 School for three years. We have 4,000 students and we are proud of our
4 diverse academic and extracurricular programs. Most students take full
5 advantage of what our school has to offer. But many are the type of student
6 who is just getting by. I would say that some of the band members fall into
7 the latter group. I seem to have the many problems with that group. Don't
8 get me wrong, obviously the marching band is talented and has even won a
9 state awards. However, I think all the accolades make them feel they can
10 get away with anything. For example, I often see members of the band
11 coming to school late, or in the hallways when they should be in class. I
12 have also seen several members in detention after school.

13
14 Although I'm proud of our school, I'm also deeply concerned about student
15 drug abuse. A couple of high-profile drug-dealing incidents with our
16 students have brought negative attention to our school. Since school started
17 this academic year, we have had six drug related incidents. If you ask me,
18 that's six incidents too many. I decided to make it a priority to put an end
19 to on-campus drug-dealing. I wanted to create a zero-tolerance drug policy
20 at our school and make it a model for schools across our district.

21
22 First I had to educate myself about the problem. The previous summer,
23 before Jason's death, I had taken extensive professional development
24 courses dealing with students' drug activity so I felt I was qualified to speak
25 to the dangers of drug and alcohol abuse. I made my first presentation in
26 early 2013, at the beginning of first period band class. Although none of the
27 six previous drug incidents involved band members, I had my suspicions
28 about them and decided to speak to them first. I recall that a group of
29 students snickered as I discussed the dangers of mixing different drugs, like
30 Adderall, with alcohol. I was surprised they would take this issue so lightly.
31 I reminded all the students to take the problem seriously and that Sandra
32 Medina would still be alive today if she hadn't been drinking alcohol and
33 taking Adderall. I made a point to tell them that prescription drug reactions
34 are a frequent cause of teenage death. I recall that Alex and Rae were there.

35
36 I remember that Alex Weaver transferred to my school in the fall of 2012
37 from a private school. Alex's parents explained that Alex was expelled for
38 breaking into the school cafeteria. I was unable to verify the reason for
39 Alex's expulsion. Thankfully I haven't had any issues with Alex. Alex
40 appeared to me a very bright, very self-assured student. I also know Rae
41 Concha. Rae started our school as a freshman. Rae was an average student
42 and to the best of my knowledge stayed out of trouble.

43
44 The most popular illegal drugs on campus are marijuana and prescription
45 drugs, like Vicodin (a pain reliever) and Adderall (an amphetamine-based
46 stimulant). The problem with prescription drugs is that many students have
47 access to these drugs legally. Adderall, for example, is effective in helping
48 students with ADHD (attention deficit hyperactivity disorder). But then
49 some students turn around and either share the pills or sell them. It shocks
50 me that students think sharing drugs is legal. They are rudely awakened
51 when they get prosecuted for giving drugs away.

52

1 In January of 2013, my suspicions about the band were confirmed when
2 my vice principal reported he overheard a couple of students say they got
3 some “smart pills” from someone in the marching band. I had a regular
4 phone call with the local chief of police, and she recommended using an
5 undercover officer, colloquially called a “narc” for “narcotics officer.” In
6 the past, undercover officers had success in rooting out drug problems at
7 other high schools in the district. Within two weeks she had located an
8 officer with musical ability in another police department about 30 miles
9 away. I said, “Let’s try this.”
10
11 In late January, I met Officer Robin Doherty at the police station. Officer
12 Doherty looked very young. I briefed Officer Doherty on the problems at
13 the school and what my vice principal had told me about the marching
14 band. Officer Doherty’s cover (new identity) was Sam Shumway, who had
15 moved here from Iowa and wanted to join the marching band.
16
17 “Sam Shumway” came to the campus on February 4. We met briefly in my
18 office to go over details, under the pretext that it was a routine interview I
19 always do with new students from other states. Shumway/Doherty told me
20 that our contact would be limited, so as not to arouse suspicions. This
21 turned out to be true over the next few months.
22
23 On March 27 of this year, the band director, Avery Perkins, told me Jason
24 Johnson, collapsed at school during a morning band practice and the
25 paramedics had been called. I rushed down to the band room and saw
26 Jason lying on the floor. I confirmed that Jason was breathing but was
27 nonresponsive. Thankfully, I could hear the sirens from an ambulance and
28 I knew help was on its way. Jason was rushed to the hospital by
29 paramedics. I called Jason’s parents immediately. I called the hospital a few
30 hours later and learned the devastating news that Jason’s heart stopped en
31 route to the hospital and he was pronounced dead on arrival at the
32 hospital. I also learned that initial toxicology tests revealed that Jason had
33 Adderall and alcohol in his system. I informed Officer Doherty of Jason’s
34 death, and asked Doherty to find out what Doherty could from the
35 students.
36
37 A short while later that day, Alex came to my office. Alex told me that Rae
38 was a drug dealer and kept the drugs in Rae’s SUV. Alex also told me that
39 in the past, Alex had seen Rae sell Adderall and marijuana on two or three
40 occasions, next to the SUV in the parking lot. I had to act on this
41 information and called Officer Doherty into my office where Alex repeated
42 all that Alex had told me. I had had very infrequent interactions with
43 Doherty up until then.
44
45 Rae had a standard waiver on file signed by Rae and Rae’s parents that
46 allowed for lockers and cars on school property to be searched. I found the
47 waiver and asked Officer Doherty to search Rae’s car. Officer Doherty
48 found the backpack and the bottles of pills. Doherty informed me they were
49 Adderall pills. I went to get Rae out of class but did not tell Rae why. When
50 we entered the senior parking lot and were within view of the SUV with its
51 back tailgate up, Rae said aloud, “Oh, no.” I then led Rae over to the SUV.
52 At that point, Officer Doherty plainly stated that Doherty was a police

1 officer, not “Sam Shumway.” Doherty asked Rae if the backpack belonged
2 to Rae , and Rae denied it. Doherty arrested Rae.

1 **WITNESS STATEMENT—Prosecution Witness: Dr. Ricki Sanchez**
2 My name is Dr. Ricki Sanchez and I am 52 years old. I am the chief medical
3 examiner-coroner for Rosewood County. I received my bachelor's degree
4 and medical degree from the University of San Francisco. I served a six-
5 year residency in forensic pathology at St. Joseph's Hospital. Twenty years
6 ago, I became a licensed pathologist. Five years later, I was appointed
7 deputy coroner for Rosewood County and became the county's chief
8 medical examiner eight years ago.
9

10 On March 27, I received the body of Jason Johnson. The original incident
11 occurred that morning at Rosewood High School. The decedent was
12 transported by ambulance to the hospital. Upon arrival, paramedics found
13 the decedent breathing shallowly and then he was transported to the ER via
14 ambulance. During the short trip to the hospital, the decedent was in full
15 arrest with CPR in progress by paramedics. He was pronounced dead at
16 8:53 a.m. The mechanism of death was cardiac arrhythmia, a lethal change
17 in heart rhythm. This led to sudden cardiac arrest and sudden cardiac
18 death.
19

20 A blood sample from the aorta was taken and an alcohol screen using the
21 blood sample revealed a blood alcohol content (BAC) of .05. Another test
22 revealed that the decedent had traces of Adderall in his system. Jason's
23 medical records and family members confirmed that Jason did not have a
24 prescription for Adderall. Adderall is an amphetamine drug used primarily
25 to treat ADHD (attention deficit hyperactivity disorder) and narcolepsy, a
26 sleep problem. Adderall is a commonly used prescription drug but can
27 become dangerous when taken above the maximum prescription level of 60
28 mg a day. Persons with heart conditions, of course, should not take even
29 small doses of Adderall except in the rarest of occasions and always under
30 doctor supervision. Therapeutic concentrations of Adderall range from .02-
31 .06 mg/Liter and toxic, possibly lethal, when blood levels are greater than
32 2.5 mg/Liter. The blood tests detected around 1.0 mg/liter of Adderall in
33 Jason's system. Based upon the blood tests, my opinion would be that the
34 Adderall was in his system within ten hours of his death and if not the
35 direct cause of his death, a significant causal factor in Jason's sudden
36 cardiac arrest. On average, ingesting 40 mg of Adderall approximately leads
37 to between 5,290 and 11,896 ng/mL of the drug in the body. Although
38 12,500 ng/mL is towards the high end of Adderall prescription, it's often
39 not deadly. However, Jason had a severe case of hypertrophic
40 cardiomyopathy for many years, which would place him at an elevated risk
41 of harm.
42

43 Deaths have been reported related to Adderall use. Adderall can cause a
44 heart to stop, as happened here. Stimulants such as amphetamines
45 (Adderall) speed up the heart. This can cause vessels to burst, reported
46 incidents from Adderall. Vessels can burst in the brain causing immediate
47 death. Medical records obtained for Jason show he had a heart condition.
48 Adderall is known to be contraindicated in patients such as Jason.
49

50 In Jason's case, the cardiac arrhythmia was most likely caused by the
51 consumption of Adderall. Jason had a pre-existing congenital heart defect
52 called hypertrophic cardiomyopathy or HCM for short. HCM causes the

1 heart muscles to thicken and blocks blood flow in the heart. Cardiac
2 arrhythmias and sudden cardiac arrest are common in patients with HCM.
3 HCM symptoms are exacerbated by both alcohol and amphetamine usage.
4 Alcohol, however, does not seem to be the main cause of Jason's sudden
5 cardiac arrest despite his HCM. The level of alcohol in Jason's body was
6 only .05 BAC, which can cause slight impairment but is much lower than
7 the usual concentration seen in alcohol poisoning or alcohol-caused deaths.
8 Even with his pre-existing heart condition, this level of alcohol would not
9 have been enough to cause Jason's death.

10
11 Rather, the amphetamine caused Jason's cardiac arrhythmias. Alcohol
12 increases the effects of amphetamine in the body because the two compete
13 for metabolizing enzymes in the liver. The increased effect of amphetamine
14 seems to have lead to coronary vasospasm, a sudden narrowing of one of
15 the coronary arteries that supplies blood to the heart. A vasospasm can
16 stop blood flow to the heart, leading to arrhythmias and sudden death. It is
17 my professional opinion that Jason's death was a result of sudden cardiac
18 arrhythmia, brought on by 1.0 mg/liter of Adderall found in his system.

1 **WITNESS STATEMENT—Defense Witness: Rae Concha**
2 My name is Rae Concha. I am 18 years old and a senior at Rosewood High
3 School. I had known Jason Johnson since we were in middle school, and
4 we'd always been friends. I never sold any drugs to anyone, and I've never
5 given drugs to anyone. I do have a prescription for Adderall because I have
6 been diagnosed since tenth grade with attention deficit hyperactivity
7 disorder (ADHD). My prescription is to take three pills a day and each pill
8 contains 20 mg of Adderall. It angers me that anyone would think I gave
9 drugs to my friend Jason when I knew he had a heart condition.
10
11 Alex Weaver was new to the school in the fall of 2012, and Jason
12 introduced me to Alex as the new drummer in a band they were forming. I
13 played drums, too, but I was more interested in the business side of music.
14 My mom used to be a publicist for rock and R&B groups back in the 90s.
15
16 Jason insisted that the band needed a manager, and that I should do it.
17 They had big ambitions, and I thought it would be good practice for me.
18 Alex seemed friendly at first, but objected to my being the manager of the
19 band and told me so on more than one occasion. My first task was to name
20 the band. I brought a bunch of options to the table and we all decided that
21 we would call ourselves "Double Trouble." That was one of my favorite
22 names. My mom used to call my brother and me that when we were
23 younger. I'm now ashamed of the name. I had no idea "Double Trouble"
24 was a street name for Adderall. My next tasks were to book gigs for the
25 band, sell the t-shirts at gigs that Jason silk-screened, haul band equipment
26 and band members around in my SUV pretty frequently, and show up to
27 rehearsals whenever I could. I told the band that putting out a record on
28 vinyl would be a good idea, as well as marketing the music on the Internet.
29 CDs were unnecessary. Alex disagreed with me about that.
30
31 All the proceeds from t-shirt sales I saved in order to fund the eventual
32 recording and pressing of a vinyl album. I kept the cash rolled up in my
33 backpack, a blue backpack. I would deposit the money into a special bank
34 account I opened for Double Trouble. I gave Jason access to the account,
35 but honestly I didn't trust the other band members enough to do the same
36 with them. I had known Jason for so long.
37
38 I once joked with Jason and Alex that I should try out to be the drummer in
39 Double Trouble, if Alex doesn't work out. I could tell by the weird,
40 sneering look Alex gave me that Alex didn't appreciate my sense of humor.
41 I didn't joke like that again in Alex's presence.
42
43 Once, in January, Alex saw me after I took my Adderall dose in the nurse's
44 office at school. I came out of the nurse's office, and Alex demanded that I
45 share some "addy" with Alex. I thought Alex was kidding, so I laughed.
46 Then Alex got a little hostile and put a hand on my shoulder and said very
47 seriously, "I think I know where I can get some." I had no idea what that
48 meant, but I felt uncomfortable about it. Later that same day, I found my
49 car, a 2003 green Buick SUV, had been broken into. The lock had been
50 picked. Nothing was taken except a bottle of Adderall I had foolishly left in
51 the glove compartment. I was mad, because I had just picked up a new
52 prescription. I never reported the incident to the school. I don't know why.

1
2 When Sam Shumway (Officer Doherty) came to school in February, we
3 become friends. We played in the school marching band together, along
4 with Alex and Jason. Sam and I were picked by Avery Perkins to be the
5 lead drummers. That was cool, but Alex congratulated Sam that day but
6 not me, even though I stood right next to Sam. Alex just ignored me
7 completely, and I guessed that Alex felt bad about not being picked to be
8 lead drummer. That's understandable.
9

10 On February 16, Jason texted me to pick him up at Alex's house and drive
11 him home. I had been able to get Double Trouble a gig at a party in the
12 next town, but Jason had already bought tickets to a concert, so it was a
13 conflict. I didn't think it was a big deal. When I showed up, though, Jason
14 opened the door and I could hear Alex screaming at Jason about "flaking
15 out" on the band. I told Alex to take it easy, but Alex put a hand on my
16 shoulder again, just like what had happened at school. Alex said, "Stay out
17 of it, Rae." Then Alex started screaming at Jason again. Jason said nothing.
18 Little did I know that Jason was already drunk at that time. I wish I had
19 figured that out.
20

21 On Monday, I learned that Jason had passed out at the concert. I told Alex
22 and Sam that I thought Jason was taking Adderall. I never told Sam that I
23 knew of someone who would sell Adderall to Sam. I don't associate with
24 drug dealers. On the day when Jason returned to school, Jason confided in
25 Alex and me that Jason had a heart condition, or a congenital heart defect.
26 I realized that Jason had kept this a secret from me for years. Jason also
27 confided in us that Jason had taken a couple of Adderall at the concert.
28 That confirmed my suspicion. I warned Jason to take it easy and not take
29 drugs. I knew what Adderall could do to someone's heart. I've read about
30 the side effects of Adderall when I got my prescription. Jason said that he
31 had a surgery scheduled for late March.
32

33 On February 22, I remember buying some things at the A-Frame Market in
34 Diamond Heights. I bought a bunch of boxes of plastic bags (both large and
35 small) for the food bank at Achieve, which is a center I volunteer at. I work
36 for the program director, Dale Piper. Achieve is a great organization that
37 helps to provide services to low income families. We provide counseling,
38 tutoring, financial awareness classes and we have a food bank. You would
39 be amazed at how many families are struggling to make ends meet. At the
40 center, I do a bunch of things like cleaning-up, organizing donations,
41 answering phones, basically anything the center needs, I'm there to get the
42 job done.
43

44 One of my favorite tasks at the center is being a peer counselor. I'm really
45 good with people and I think my peers find me easy to talk to. I have
46 counseled several teenagers and young adults on drug and alcohol abuse. I
47 tell them stories of people I know or read about whose lives were destroyed
48 by drugs and alcohol. I also tell them what drugs do to your body. Pretty
49 scary stuff if you ask me.
50

51 I was at Achieve on the day of February 22, helping to sort some food
52 donations, when I noticed they were low on bags. I know the 15th of each

1 month the center has a “Take-Out Day,” where they hand out plastic
2 baggies filled with snacks that people can take with them for themselves or
3 for their kids. Although I have never helped with the “Take-Out” event, I
4 know how much the families who go to the center need all the help they
5 can get. I decided to do a favor for Achieve by buying extras. I also bought
6 some soap and dishwashing liquid that my mom said we needed. I put the
7 groceries in my car and drove home.

8
9 **[Later on February 22, I remember I specifically draped my jacket over**
10 **my backpack in the back of my car before I went into the A-Frame**
11 **market. I saw a few kids from school in the parking lot. I had a list of**
12 **people who owed me money for Double Trouble t-shirts and CDs, and a**
13 **couple of them are kind of deadbeats but really confrontational about it.**
14 **I didn’t want anyone snooping into my business. I don’t recall if I had**
15 **the money form my CD sells with me that night. As for the baggie of**
16 **pills, I don’t keep my prescription in baggies.]**

17
18 About this time, too, Jason began telling me that he did not want to sing in
19 the band anymore. He was feeling that life was a little out-of-control. I told
20 him to try to stick with it and lay off the drugs and booze.

21
22 We played one gig on March 26 at a 16-and-older club. Jason didn’t look so
23 good. I approached Jason and placed my hand on his back and asked if he
24 was okay. Jason told me that he didn’t want to talk and before I could ask
25 any more questions, the show started. By the time I started to gather my
26 things it was past 1:00 a.m. and Jason had disappeared. I had to take Alex
27 home because we used my car to transport Alex’s drum kit. I saw that Alex
28 had a blue backpack in my car. I was too worried about Jason to notice
29 much more. Alex’s backpack was really similar to mine, but I had lost mine
30 a few days before at school and never found it. We did not speak much
31 during the ride. I dropped off Alex at Alex’s house. I stayed in the car as
32 Alex got Alex’s stuff out of my car and then I went home. I did not look in
33 the rear luggage area of my car until Officer Doherty asked me about the
34 backpack.

35
36 The next morning, before 7:30 marching band practice, I saw Jason in the
37 school parking lot. He looked like he had been up all night. I could smell
38 booze on his breath. Jason told me he was done with the band and would
39 not be able to play in Double Trouble anymore. That was it. Jason quit the
40 band. I wish I had done something to help Jason right then. We had
41 marching-band practice about to start. Jason walked away.

42
43 About a half-hour later, Jason collapsed during band practice. Paramedics
44 came. Principal McAlister came to get me later that day out of my U.S.
45 government class and walked me to the parking lot. When I saw the SUV
46 tailgate open, I think I said “Oh, no” to Principal McAlister. I thought it was
47 another break-in, but I did not know why Sam (Officer Doherty) was
48 standing there. Then Sam said, “I am a police officer, Rae.” I felt my skin
49 go cold; I was shocked. Officer Doherty asked me if the blue backpack in
50 the trunk area was mine. I looked at it and knew it was not mine and said
51 so. My blue backpack has nylon cords on the zippers that are striped dark-
52 blue and grey. The nylon cords on this one were striped black and grey.

1 Besides, mine was lost. I remember I asked, “What’s going on?” Doherty
2 pointed to some baggies in the rear-luggage space that had pills in them,
3 and said, “These were in your SUV here.” Doherty then pointed to a couple
4 of pill-bottles there and said, “These were in that backpack in your car.” I
5 shook my head, but I knew from enough police shows not to say anything
6 else. Something was seriously wrong here. Before I knew it, I was arrested
7 for possession of drugs for sale and the murder of Jason Johnson.

8
9 Two days later, my mom paid my bail in court, and I have been out ever
10 since. I possessed Adderall because of my prescription only. The backpack
11 looked identical to mine, but it could not have been mine. Lots of people
12 knew I had a prescription, so why would I try to mask it by putting it in
13 generic prescription bottles or into plastic baggies?

1 **WITNESS STATEMENT—Defense Witness: Avery Perkins**
2 My name is Avery Perkins. I have been the band director at Rosewood High
3 School for ten years. I teach concert band and orchestra, and in the spring,
4 I direct the school marching band. I think sometimes band gets a bad
5 reputation. Sure, the members of the band might be a little rowdy and act
6 up a bit, but they deserve it. They are winning awards and shining a
7 positive light on our school. Even with the awards, I can tell that the
8 principal doesn't really like the program or the band students. Even though
9 we have won several state awards, I only get a third of what other groups
10 get to run their programs (like debate and drama club). Also, I know that
11 there is a drug problem on campus, but Principal McAlister only spoke to
12 the band kids. It seems to me if there is a drug problem it surely goes
13 beyond the band students.

14
15 Jason Johnson and Rae Concha were my students since they started
16 freshman year. I could tell Jason and Rae Concha were good friends from
17 the very first day of band practice. They always stuck together. Jason was a
18 good student the first couple years. He was on time for rehearsals and
19 excited to play new parts. He wasn't the best musician, but he was very
20 enthusiastic. That seemed to change once he hit senior year. Maybe it was
21 just the usual senior slump, but he started missing more rehearsals, and
22 when he did show up he didn't seem to care or pay attention.

23
24 It may have been a coincidence, but Jason started slacking off about the
25 same time Alex Weaver transferred to Rosewood. Jason and Alex quickly
26 became friends. Jason, Alex and Rae all had zero period marching band
27 together. I always saw them hanging out together around campus and in
28 the band room. Actually come to think about it, Alex always had several
29 kids hanging around. Alex was often carrying around a blue backpack,
30 shaking kid's hands and slapping kids on a back. It's kind of unusual for a
31 kid to be so popular transferring into a new school as a senior. I never had
32 a good feeling about Alex. Alex would come to my band class, not turn in
33 assignments and basically didn't care about anyone or anything. Once I
34 caught Alex flashing around a large wad of bills. I warned Alex if this
35 behavior didn't stop, Alex would fail my class. That didn't seem to stop the
36 bad behavior. In fact, the last couple of months Alex seemed more restless
37 than ever. Alex would often ask to be excused to the bathroom or the
38 nurse's office. I'm no expert but I have seen hundreds of kids during my
39 years of teaching and if you ask me, Alex is "on" something.

40
41 Every year, I hold auditions for the competitive spring marching band
42 season. Next season show would include several major solos for the lead
43 drummers, so competition was tough. Both Rae and Alex auditioned, but in
44 the end I chose Rae. If Alex would put in more effort, Alex could be a
45 pretty decent musician. I choose Rae because Rae is a reliable student, and
46 a talented musician and basically a really good kid — always shows up to
47 practice, knows all the music, and works harder than most kids. I could tell
48 Alex was excited for the solo parts, so I wasn't surprised when Alex
49 seemed let down. When I made the announcement that I had picked Rae
50 and Sam, Alex looked really disappointed about not getting the spot. I was
51 hoping it would encourage Alex to work harder.

52

1 The day of March 27 seemed to start off as a pretty ordinary morning.
2 However, things quickly changed. About halfway through marching band
3 practice, I noticed that Jason looked pale and seemed really short of breath.
4 Before I knew it, Jason collapsed. I rushed to Jason and checked to see if
5 Jason was still breathing. I was relieved to see that Jason was breathing,
6 but he was nonresponsive. I immediately dialed 911 and also notified
7 Principal McAlister. The paramedics arrived to take Jason to the hospital.
8 Principal McAlister told me later in the day that Jason had died en route to
9 the hospital. I was shocked beyond words.

1 **WITNESS STATEMENT—Defense Witness: Dale Piper**
2 My name is Dale Piper. I am forty-two years old, and I am a program
3 director at Achieve. Achieve is a non-profit organization located in
4 Diamond Heights, that provides services for low-income families and helps
5 them achieve their dreams of education, employment, and housing. We
6 provide families with services they need to achieve in life. I have been a
7 program director at Achieve for seven years. I met Rae last year when Rae
8 started volunteering at Achieve to earn community service hours for
9 school. Rae has completed the service hours and continues to come to the
10 center a few hours each week.
11
12 Rae does a lot to help the center, like answering phones, moving boxes,
13 and sorting through donations. Although Rae helps out in many ways, I
14 would say Rae’s work as a peer counselor is the most helpful to our center.
15 Rae has a way with people and you can see that Rae really cares. Peer
16 counselors are young people who are trained to counsel other young people
17 on issues they face such as drug and alcohol abuse and family and
18 relationship problems. Peer counseling has been shown by research to be
19 an effective early intervention strategy. It’s effective because young people
20 are more likely to listen to their peers than an adult. I trained Rae on how
21 to be a peer counselor last fall. Rae learned about drug and alcohol abuse
22 and common family and relationship issues. I believe that peer counseling
23 is so effective because the counselors have often experienced many of the
24 same problems as their peers and they can share their own experiences to
25 lend credibility.
26
27 Providing food to our clients is another big priority of the center and
28 towards the middle of the month, many of our clients run short on cash
29 and regularly utilizes our on-site food bank. On the 15th of each month, we
30 have a “Take-Out Day,” where we hand out small zip lock plastic baggies
31 filled with snacks and large zip lock baggies with personal care items that
32 people can take with them for themselves or for their kids. It’s always a
33 successful event and we usually have more families than we do supplies.
34 Although Rae has never helped prepare for “Take-Out Day,” I’m sure if I
35 asked, Rae would be happy to lend a hand. That’s the type of person Rae
36 is. I recall that after the last “Take-Out Day” event, I mentioned out loud
37 that we needed more large baggies for our next event. I didn’t ask Rae
38 directly to get the baggies and I don’t recall seeing Rae bring the baggies to
39 the center, but I do know that by the next “Take-Out Day” we had enough
40 baggies to make the event a success. I’m sure Rae bought the baggies for
41 the center. Rae likes to help out anyway Rae can. Most of the young people
42 around here aren’t as thoughtful. They only volunteer at the center to get
43 their hours for school and then they’re out of here. Rae seems like a pretty
44 thoughtful young person and never appeared to be under the influence of
45 alcohol or any drugs. I’m shocked that Rae would ever be accused of doing
46 anything illegal.

1 **WITNESS STATEMENT—Defense Witness: Dr. Casey Burke**
2 My name is Dr. Casey Burke. I retired from practice three years ago from the
3 Spring County Coroner’s Office after working there for 25 years as an
4 assistant coroner. I earned my bachelor’s degree in biology from University
5 of California, San Diego. Then I earned my medical degree from Ohio State
6 University Medical School and became certified in forensic pathology. I
7 entered private practice for a few years to pay off my school loans and then
8 found a job at Spring County Coroner’s Office. I have since worked as a
9 coroner, taught seminar courses, and have published nine articles in
10 professional journals on the practice of forensic pathology. My book, *The*
11 *Pathology of Drug Abuse*, has become a standard introductory text in
12 forensic medicine programs nationwide. Since retirement, I have continued
13 teach and pursue my interest in genealogy, one of my hobbies.

14
15 According to his medical records, Jason Johnson had hypertrophic
16 cardiomyopathy, a congenital heart defect. HCM causes left ventricular
17 hypertrophy or thickening of the heart muscles in the left ventricle. This
18 partially blocks blood flow from the left ventricle to the aorta and the
19 obstruction causes the heart to pump harder to overcome the blockage. The
20 most common symptoms of HCM are cardiac arrhythmias, the most
21 common of which is atrial fibrillation, which can lead to sudden cardiac
22 arrest. Acute alcohol intoxication can also cause atrial fibrillation.

23
24 It is my opinion that the alcohol exacerbated Jason’s congenital heart problem
25 and lead to his sudden heart arrest. Jason weighed about 160 pounds at the
26 time of death. His BAC of .05 is consistent with a 160-pound male having four
27 drinks about two hours earlier. Although the .05 BAC level would not cause
28 unconsciousness or heart palpitations in normally healthy people, Jason’s
29 heart defect was severe and the negative effects of alcohol consumption
30 would have been high. Alcohol dehydrates the body and decreases the blood
31 volume that returns to the heart. This can decrease heart function and trigger
32 abnormal electrical impulses. These negative effects are especially harmful to
33 people with congenital heart defects such as HCM. The consumption of
34 alcohol, especially if it was long-term, would have been enough to stress
35 Jason’s heart and cause his arrhythmias.

36
37 The autopsy revealed that Jason did indeed have an advanced case of HCM as
38 his left ventricles were severely thickened. Jason has had HCM since birth
39 and the thickening would have gradually increased as Jason got older. Jason
40 was scheduled for a septal myotomy to relieve his symptoms in late March.
41 The severity to which Jason’s heart muscles were thickened would have
42 caused great stress on the heart and blocked blood flow to the aorta,
43 especially after alcohol consumption. Because Jason’s heart was already
44 severely thickened, it seems more likely that his arrhythmias were caused by
45 HCM and alcohol rather than a new issue such as coronary vasospasm.

46
47 Although Jason had traces of Adderall in his system, the concentration of
48 Adderall was low compared to that of alcohol. A concentration of
49 approximately 1.0mg/liter is within the range for average daily prescription
50 doses and is not suggestive of amphetamine abuse. It is my professional
51 opinion that the small amount of Adderall active in Jason’s system at his
52 time of death did not cause Jason’s death.

EXHIBIT A

Photo of items as they were found in Rae Concha's car



EXHIBIT B

Photo of Adderall pills, generic prescription bottles and cash found in Rae Concha's car



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, and any portion of the fact situation, stipulations and exhibits, of which you reasonably would have knowledge. The fact situation is a set of indisputable facts that 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 and scoring attorneys arrive in the courtroom, introduce yourself, explain that you will assist as the court clerk and distribute team roster forms to the opposing team, each scoring attorney and the judge.

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; when one minute remains, hold up the one minute sign; when 30 seconds remains, hold up the 30 second sign; and when time for a category has run out, hold up the stop sign and announce "Stop!" Always speak loud enough for everyone to hear you.

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, explain that you will assist as the court bailiff and distribute team roster forms to the opposing team, each scoring attorney and the judge.

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 sit next to the official timer (clerk).

If timing variations occur 15 seconds or more at the completion of any task during the trial, the timers will notify the judge immediately that a time discrepancy has occurred. Any time discrepancies less than 15 seconds are not considered a violation. NO time discrepancies will be entertained after the trial concludes.

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 whether to accept the clerk’s time or make a time adjustment.

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 bring to the courts attention there is a time discrepancy.

“Your honor, there is a discrepancy between my records and those of the official timekeeper.”

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 . . . ”

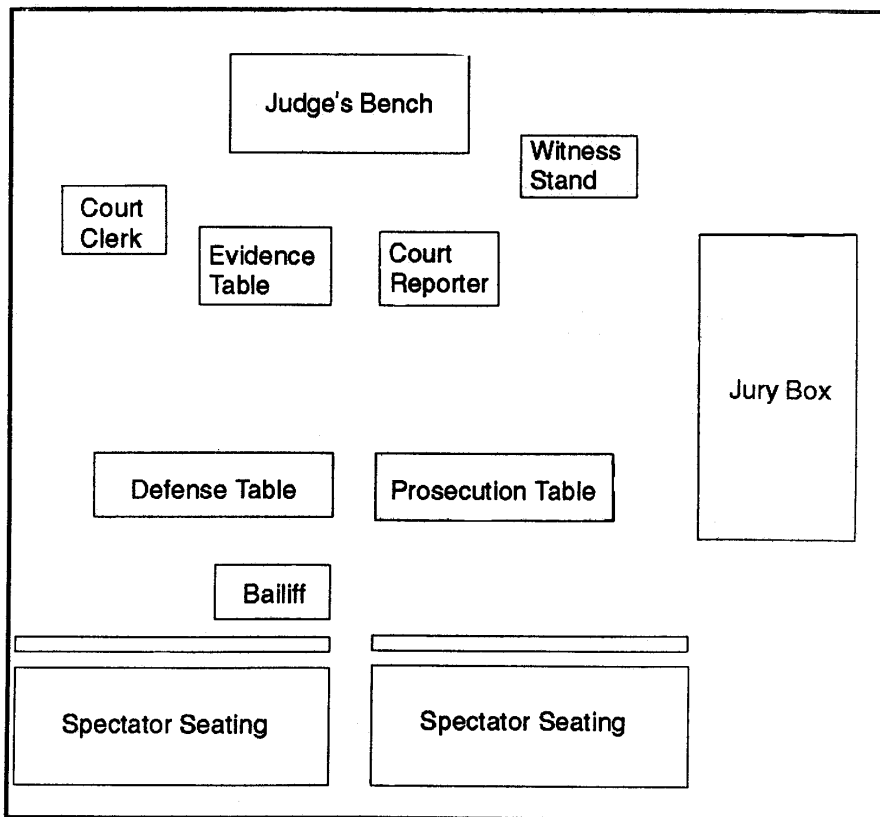
“The prosecution has failed to prove that . . . ”

“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. **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. All statements made by the defendant come in under this exception.
- 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. **Records made in the regular course of business (including medical records)**—the custodian of records is not required.
- e. **Official records and writings by public employees**
- f. **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.)
- g. **Statements for the purpose of medical diagnosis or treatment**
- h. **Reputation of a person's character in the community**
- i. **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.
- j. **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.

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.”

Selected CRF Web Sites

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.

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.

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

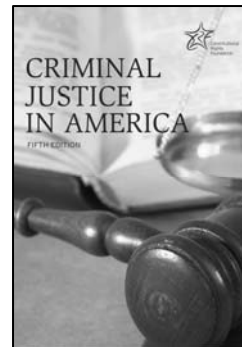
Educating for Democracy, the California Campaign for the Civic Mission of Schools, is an effort sponsored by the California Coalition for Civic Renewal, a group of concerned California individuals and organizations seeking to enlist support of education, business, law, veterans, labor, parents, and service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

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