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PEOPLE v. FRANKS



Robbery and Battery

Featuring a pretrial argument on the Fourth Amendment

OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION

A Program of Constitutional Rights Foundation

Co-Sponsored by:

American Board of Trial Advocates Foundation

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The image of the signet ring in Exhibit B is used with the permission of the Shakespeare Birthplace Trust.

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Dennis Franks



The 2022-2023 California Mock Trial case is dedicated in memory of Dennis Franks. Dennis was more than a CRF board member and longtime mock trial volunteer; he was a friend and member of the CRF family. Dennis was always the first to step up to help others. No task was too big or too small. When asked to serve, Dennis would always immediately respond, “Yes.” He spent countless hours helping CRF fulfill our mission, from coaching students from St. Cyril’s mock trial team for over 20 years to volunteering to score trials, leading seminars for new mock trial coaches, working with students from underserved areas, and so much more. Dennis’ big smile and even bigger heart will never be forgotten. It is with great pleasure that we honor Dennis Franks’ legacy in service to others by dedicating this year’s case to his memory.

Thom Scher



Another loss to the Mock Trial community was the passing of Thom Scher, the beloved coach of Menlo School's mock trial team from 2008-2018. During his tenure, Thom led his team to one California state championship and eight San Mateo County championships. Thom's passion for the high school and college mock trial programs was unparalleled. He will be greatly missed by the students he worked with and the greater mock trial family.

TABLE OF CONTENTS

Acknowledgements	2
Program Objectives.....	6
Code of Ethical Conduct	7
Introduction to 2022-2023 Mock Trial Competition.....	9
California Mock Trial Fact Situation	10
Sources for the Trial	12
Statement of Charges.....	13
Physical Evidence	14
Stipulations.....	14
Legal Authorities.....	16
Pretrial Motion	20
Prosecution Witnesses Statements	30
Defense Witnesses Statements	39
Exhibits	48
Forms and Substance of a Trial	52
Team Role Descriptions.....	53
Procedures for Presenting a Mock Trial Case	58
Diagram of a Typical Courtroom	63
Mock Trial Simplified Rules of Evidence	64
Allowable Evidentiary Objections	65
Summary of Allowable Evidentiary Objections.....	79

2022-2023 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation creates the mock trial case for students across the state of California. The case provides students an opportunity to examine legal issues within a structured forum and is designed 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.

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 positive interaction with 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 that enables students to learn about law, society, and themselves.
5. Provide a challenging and rewarding experience for teachers.

CODE OF ETHICAL CONDUCT

All participants (including observers) are bound by all sections of this Code of Ethical Conduct and agree to abide by the provisions.

1. **All competitors, coaches, and other participants**, including observers will show courtesy and respect for all team members and participants, including their opponents and all courthouse staff, judges, attorney coaches, teacher coaches, and mock trial staff and volunteer personnel. All competitors, coaches, and participants, including observers, will show dignity and restraint, irrespective of the outcome of any trial. Trials, contests, and activities will be conducted honestly, fairly, and with civility.
2. **Team members and all student participants** will conform to the highest standards of deportment. Team members and participants will not employ tactics they believe to be wrong or in violation of the rules. Members and participants will not willfully violate the rules of the competition in spirit or in practice. All teams and participants are responsible for ensuring that all observers are aware of the code.
3. **Teacher Coaches** agree to focus on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules and/or this code. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the letter and the spirit of the competition's rules and this code.
4. **Attorney Coaches** agree to uphold the highest standards of the legal profession and will zealously encourage fair play. Attorney coaches are reminded that they must serve as positive role models for the students. They will promote conduct and decorum among their team members and fellow coaches in accordance with the letter and the spirit of the competition's rules and this code and will demonstrate the same through their own behavior. They will emphasize the educational value of the experience by requiring that all courtroom presentations (e.g., pretrial, questions, objections, etc.) be substantially the work product of the student team members.

By participating in the program, students, teacher coaches and attorney coaches are presumed to have read and agreed to the provisions of this code. Violations of this code may be grounds for disqualification from a contest and/or suspension or expulsion from the program.



The American Board of Trial Lawyers (ABOTA) provides its members with a Code of Professionalism. Consider this code as you participate in Mock Trial.

**Excerpt from the American Board of Trial Advocates
Code of Professionalism**

- *Always remember that the practice of law is first and foremost a profession.*
- *Encourage respect for the law and the courts.*
- *Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.*
- *Be respectful in my conduct towards my adversaries.*
- *Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and should encourage others to do so.*

For more about ABOTA, visit:
www.abota.org

INTRODUCTION TO 2022-2023 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 42nd Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the *People v. Franks* case packet. The competition is sponsored and administered by Constitutional Rights Foundation. The program is co-sponsored by the Daily Journal Corporation and American Board of Trial Advocates Foundation.

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 March 2023. The winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Little Rock, Arkansas, May 18–20, 2023.

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 also 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. The judging and scoring results in each trial are final.

CALIFORNIA MOCK TRIAL

FACT SITUATION

Heart of the Ocean is a luxury cruise ship owned and operated by Great Adventures Corporation. It is an \$800 million ship that can hold 4,000 passengers plus a crew of 1,200 people. The ship has been in operation for eight years and primarily cruises along the West Coast of the United States of America. On the voyage in question, the ship departed from Coastline, California, and headed toward its destination of Bridgehaven, California. The ship planned to dock in Bridgehaven on June 10, 2022. On the evening of June 9, the final night of the voyage, the ship was docked in Portsmouth, California.

Jordan Franks had been a performer on the ship since 2018. Franks performed four nights a week in the ship's production of *Macbeth at Sea*. Franks is a "Bardolator," which is a person who idolizes Shakespeare. Franks performed in *Hamlet*, *Romeo and Juliet*, and *King Lear* before joining *Macbeth at Sea*.

Billie Scher had been a performer on the ship since 2019. Scher's grandmother was previously the casting director on *Heart of the Ocean*, and Scher's family is very involved in show business. Franks and Scher had been the show's stars since 2019. The cast of *Macbeth at Sea* spent the majority of their time at rehearsal. The cast also frequently gathered at the Blue Diamond Cafe, a popular 24-hour buffet on the ship, and the Midnight Lounge. While the cast was not rehearsing or eating, they were usually socializing with other castmates in their crew cabins.

The final *Macbeth at Sea* performance occurred while the ship was docked in Portsmouth on June 9. Because this was the final show, most members of the cast searched for new roles either in the ship's next performance or off the ship. Some cast members, including Franks and Scher, auditioned for Broadway shows to continue their acting careers. Most recently, both Franks and Scher had auditioned for *Jefferson: The Musical*, an upcoming Broadway musical in New York City. Scher secured the lead role and Franks was cast as Scher's understudy. The musical was scheduled to begin rehearsal on June 20, 2022. Scher and Franks both planned to leave the ship on June 10 and fly to New York.

Scher and Franks shared a cabin, and they slept on bunk beds, as most crew members did. Their room contained

1 one bunk bed, two dressers, two closets each with one
2 safe. Scher's dresser was located next to the bunk bed and
3 Franks' dresser was located in Franks' closet.

4 Cleo Shafer is a philanthropist and longtime benefactor of
5 *Heart of the Ocean's* performances. Shafer comes from a
6 long line of wealthy contributors to the arts and was an
7 avid fan of *Macbeth at Sea*. Shafer's and Scher's families
8 had been friends for years because of each family's
9 involvement in show business and the arts. Since retiring,
10 Shafer spent a significant amount of time on the ship and
11 often fraternized with the performers. In April 2022,
12 Shafer gave Scher a signet ring that came in a black ring
13 box. Shafer said it belonged to Shakespeare and had been
14 in Shafer's family for hundreds of years. Scher wore the
15 ring to each *Macbeth at Sea* performance. After the closing
16 performance, which ended at approximately 9:00 p.m., Franks
17 confronted Scher backstage, exclaiming that Scher made a line
18 change that embarrassed Franks during the show. Their brief
19 argument was interrupted by Shafer's reminder about the
20 show's wrap party. Shafer had planned the celebration
21 and had reserved the Midnight Lounge for the party.
22 Before the party, Scher returned to Scher's and Franks'
23 shared room and placed the signet ring in its box on
24 Scher's dresser.

25 Karter Lucky is an actor who joined *Heart of the Ocean* six
26 months before the show closed. Scher, Shafer, Franks, and
27 Lucky were all in attendance at the start of the party.
28 Shafer was the first person to leave the party, despite
29 being the host. Franks left shortly after Shafer. Scher left
30 the party at 12:00 a.m. Lucky left a minute later to look
31 for Franks.

32 Franks was already in their cabin when Scher arrived. An
33 altercation ensued between Scher and Franks. Franks ran
34 out of the room. Scher called 911 around 12:30 a.m. and
35 reported the incident with Franks to the police.

36 The Portsmouth police and paramedics arrived at 1:00
37 a.m. The paramedics examined Scher's arm at the scene
38 and concluded that it was broken. Scher gave a statement
39 to Detective Mavis before Scher was taken to the hospital
40 by the paramedics.

41 After interviewing Scher, Detective Mavis interviewed
42 several other witnesses and searched the public areas of
43 the ship. Detective Mavis found Franks at the Blue
44 Diamond Cafe. When the detective entered the cafe, the
45 detective saw a black velvet ring box on top of some trash
46 in an open trash can near the soft serve ice cream
47 machine. The detective took Franks to Franks' room and

1 questioned Franks about the incident between Franks and
2 Scher. The detective requested to search through Franks’
3 and Scher’s shared room. Franks agreed.
4 [While searching through Franks’ closet, Detective Mavis
5 found a locked safe and asked Franks to open it. Franks
6 protested and told the detective that Franks would not consent
7 to a search of the safe. While standing in the doorway of the
8 room, Detective Mavis explained to Franks that a search
9 warrant would be processed. Detective Mavis told Franks that
10 consenting to a search and opening the safe would
11 demonstrate Franks’ cooperation with the police and that
12 even if Franks did not consent, Detective Mavis would soon
13 be able to search the safe with the warrant.
14 Franks unlocked the door of the safe for the detective.
15 Inside the safe, Detective Mavis found a piece of paper
16 with notes about the signet ring. Written across the top of
17 the paper was a phone number. Detective Mavis called the
18 phone number and learned that the number belonged to
19 an antique jewelry dealer in New York, but the antique
20 dealer had no memory of speaking with Franks.]
21 The detective did not find the ring during the search of
22 Franks’ room. The detective instructed Franks to stay in
23 Franks’ room and to not leave. Franks did not leave
24 the room. During a search of the ship, the detective
25 searched the cast’s shared dressing room and found
26 the signet ring in a large coat that Franks wore in
27 *Macbeth at Sea*. The costume was hanging alone on a
28 hook in front of Franks’ locker.
29 Detective Mavis enlisted the help of Ezra Weintraub, the
30 head of security on *Heart of the Ocean*. There was no
31 saved footage prior to 3:00 a.m. However, Weintraub
32 claimed to have witnessed Lucky and Franks enter the
33 dressing room separately during the night.
34 Detective Mavis obtained an arrest warrant and arrested
35 Franks for robbery and battery on June 10, 2022.

36

37 SOURCES FOR THE TRIAL

38 The sources for the Mock Trial are a “closed library,”
39 which means that Mock Trial participants may only use
40 the materials provided in this case packet. The materials
41 for the trial itself include Statement of Charges, Physical
42 Evidence, Stipulations, California Penal Code, Jury
43 Instructions, Fact Situation, Witness Statements, and the
44 Mock Trial Simplified Rules of Evidence.

45

STATEMENT OF CHARGES

The prosecution charges Jordan Franks with robbery (Cal. Penal Code §211); larceny (grand theft)(Cal. Penal Code §487); larceny (petty theft)(Cal. Penal Code §488); and battery causing serious bodily injury (Cal. Penal Code §243(d)). See the procedural explanation below.

Procedural Explanation of the Lesser Included Offenses of Grand Theft and Petty Theft

The prosecution will argue that the defendant committed robbery when the defendant (1) took the victim's ring from the victim's dresser without consent from the victim, and (2) willfully used physical force to break the victim's arm during the course of the taking.

Alternatively, the prosecution will argue that if the court finds the defendant did not willfully use physical force against the victim, then the defendant cannot be convicted of robbery but should be convicted of grand theft because the value of the taken object exceeded \$950. If the court finds that the taken object did not exceed \$950, then the prosecution will argue that the defendant should be convicted of petty theft.

The prosecution will argue that the judge should:

- find the defendant guilty of battery causing serious bodily injury; and
- find the defendant guilty of robbery; but
- if the judge finds the defendant not guilty of robbery, then they should find the defendant guilty of grand theft;
- if the judge finds the defendant not guilty of grand theft, then they should find the defendant guilty of petty theft.

The defense will argue that: (1) the defendant did not take the victim's ring from the victim's dresser, (2) the defendant did not willfully use physical force against the victim, and (3) even if the court finds the defendant took the ring, the ring's value did not exceed \$950, so the defendant is therefore only guilty of petty theft. The defense will argue that the judge should:

- find the defendant not guilty of any of the charges of battery, robbery, or theft.

PHYSICAL EVIDENCE

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

Exhibit A | Photograph of the paper with notes about the signet ring and a jeweler's phone number

Exhibit B | Photograph of the signet ring

Exhibit C | Photograph of the black velvet signet ring box

Exhibit D | Map of the layout of *Heart of the Ocean*

Exhibit E | Floorplan of Franks' and Scher's room

*All reproductions can be as small as the original document found in the case materials but no larger than 22" X 28".

STIPULATIONS

Stipulations shall be considered part of the record.

Prosecution and defense stipulate the following:

1. All witness statements were taken in a timely manner.
2. For the purpose of the pretrial argument, a photograph of the paper with notes about the signet ring and a jeweler's phone number (Exhibit A) may be used ONLY if the defense's motion to exclude the photo is denied. If the defense motion is granted, the photo cannot be admitted into evidence, nor can it be used for impeachment purposes.
3. All physical evidence and witnesses not provided in the case packet are unavailable and their availability may not be questioned. This includes but is not limited to the video footage from the ship's cameras and the ring's supporting paperwork.
4. Jade Marquez and Ari Kouch are qualified expert witnesses and can testify to each other's statements. Their methods are accepted in their respective industries. They may also testify to any relevant information they would have reasonable knowledge of from the fact situation, witness statements, and exhibits. Both experts examined the ring and the supporting paperwork provided by Cleo Shafer.
5. [Exhibit A photograph of the paper with notes about the signet ring and a jeweler's phone number.] Exhibit

- 1 B is a photograph of the signet ring owned by Scher.
- 2 Exhibit C is a photograph of the signet ring box.
- 3 Exhibit D is a map of the layout of *Heart of the Ocean*.
- 4 Exhibit E Floorplan of Frank's and Scher's room.
- 5 6. During the investigation, the detective properly
- 6 collected the evidence listed as Exhibit [A], B, C, D
- 7 and E.
- 8 7. Jordan Franks, the defendant, is present during the
- 9 trial. Under the conditions of an online trial, any
- 10 witness that knows or should know the defendant is
- 11 assumed to have correctly identified Jordan Franks as
- 12 the defendant in this case.
- 13 8. Any resemblance to real persons or entities is purely
- 14 coincidental.
- 15 9. All security footage from before 3:00 a.m. on June 10
- 16 is deleted and cannot be recovered.
- 17 10. The signet ring is 14 grams of solid gold.
- 18 11. Gold's value is \$55.09 per gram.
- 19 12. Franks' and Scher's room's dimensions are 125 square
- 20 feet.
- 21 13. Franks' cell phone is 5.18 inches (height) X 2.3 inches
- 22 (width).
- 23 14. The cast and crew members are able to use their
- 24 phones aboard the ship.
- 25 15. It is possible to travel from the Midnight Lounge to the
- 26 crew's cabins in 15 minutes.
- 27 16. It is possible to travel from the crew's cabins and the
- 28 Blue Diamond Cafe in 15 minutes.
- 29 17. Scher broke their right arm as a result of the altercation
- 30 with Franks.
- 31 18. The ring was found in Franks' costume.
- 32 19. Any resemblance to real persons or entities is purely
- 33 coincidental. The case is fictionalized and not
- 34 historically accurate.
- 35 20. The arrest warrant of Jordan Franks was based on
- 36 sufficient probable cause and properly issued.
- 37 21. No fingerprints were found on the ring box.
- 38 22. The ring box is 1.6 inches high, 6.7 inches long, and 4.7 inches
- 39 wide.
- 40 23. Franks used their key to enter their cabin.

LEGAL AUTHORITIES

Statutes

Robbery – Cal. Pen. Code § 211

Felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Larceny (Grand Theft) – Cal. Pen. Code § 487

Every person who takes the personal property (valued over \$950) of another without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Grand Theft.

Larceny (Petty Theft) – Cal. Pen. Code § 488

Every person who takes the personal property (valued \$950 or less) of another without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Petty Theft.

Battery Causing Serious Bodily Injury – Cal. Pen. Code § 243(d)

When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment for two, three, or four years.

Jury Instructions

CALCRIM 223 (Direct and Circumstantial Evidence)

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

Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may

1 support a conclusion that it was raining outside. Both
2 direct and circumstantial evidence are acceptable types of
3 evidence to prove or disprove the elements of a charge,
4 including intent and mental state and acts necessary to a
5 conviction, and neither is necessarily more reliable than
6 the other. Neither is entitled to any greater weight than
7 the other. You must decide whether a fact in issue has
8 been proved based on all the evidence.

9

10 CALCRIM 224 (Circumstantial Evidence: Sufficiency of
11 Evidence)

12 Before you may rely on circumstantial evidence to
13 conclude that a fact necessary to find the defendant guilty
14 has been proved, you must be convinced that the People
15 have proved each fact essential to that conclusion beyond
16 a reasonable doubt. Also, before you may rely on
17 circumstantial evidence to find the defendant guilty, you
18 must be convinced that the only reasonable conclusion
19 supported by the circumstantial evidence is that the
20 defendant is guilty. If you can draw two or more
21 reasonable conclusions from the circumstantial evidence
22 and one of those reasonable conclusions points to
23 innocence and another to guilt, you must accept the one
24 that points to innocence. However, when considering
25 circumstantial evidence, you must accept only reasonable
26 conclusions and reject any that are unreasonable.

27

28 CALCRIM 1860 (Owner's Opinion of Value)

29 A witness gave (his/her) opinion of the value of the
30 property they owned. In considering the opinion, you may
31 but are not required to accept it as true or correct.
32 Consider the reasons the witness gave for any opinion, the
33 facts or information on which they relied in forming that
34 opinion, and whether the information on which the
35 witness relied was true and accurate. You may disregard
36 all or any part of an opinion that you find unbelievable or
37 unreasonable. You may give the opinion whatever weight,
38 if any, you believe it deserves.

39

40 CALCRIM 1600 (Robbery)

41 The defendant is charged with robbery. To prove that the
42 defendant is guilty of this crime, the People must prove
43 that:

- 44 1. The defendant took property that was not (his/her)
45 own;

- 1 2. The property was in the possession of another person;
- 2 3. The property was taken from the other person or
- 3 (his/her) immediate presence;
- 4 4. The property was taken against that person's will;
- 5 5. The defendant used force or fear to take the property
- 6 or to prevent the person from resisting; AND
- 7 6. When the defendant used force or fear, (he/she)
- 8 intended (to deprive the owner of the property
- 9 permanently/ [or] to remove the property from the
- 10 owner's possession for so extended a period of time
- 11 that the owner would be deprived of a major portion
- 12 of the value or enjoyment of the property).

13 The defendant's intent to take the property must have
14 been formed before or during the time (he/she) used force
15 or fear. If the defendant did not form this required intent
16 until after using the force or fear, then (he/she) did not
17 commit robbery.

18 The defendant is not guilty of robbery if (he/she) acted
19 without the intent required for that crime, but acted
20 instead accidentally. You may not find the defendant
21 guilty of robbery unless you are convinced beyond a
22 reasonable doubt that they acted with the required intent.

23 A person takes something when he or she gains
24 possession of it and moves it some distance. The distance
25 moved may be short.

26 The property taken can be of any value, however slight.

27 A person does not have to actually hold or touch
28 something to possess it. It is enough if the person has
29 control over it.

30

31 **CALCRIM 1800 (Larceny)**

32 The defendant is charged with [grand/petty] theft. To
33 prove that the defendant is guilty of this crime, the People
34 must prove that:

- 35 1. The defendant took possession of property owned by
- 36 someone else;
- 37 2. The defendant took the property without the owner's
- 38 [or owner's agent's] consent;
- 39 3. When the defendant took the property (he/she)
- 40 intended (to deprive the owner of it permanently/ [or]
- 41 to remove it from the owner's [or owner's agent's]
- 42 possession for so extended a period of time that the
- 43 owner would be deprived of a major portion of the
- 44 value or enjoyment of the property); AND

1 4. The defendant moved the property, even a small
2 distance, and kept it for any period of time, however
3 brief.
4 The defendant is not guilty of larceny if they acted without
5 the intent required for that crime, but acted instead
6 accidentally. You may not find the defendant guilty of
7 larceny unless you are convinced beyond a reasonable
8 doubt that they acted with the required intent.

9
10 **CALCRIM 925 (Battery Causing Serious Bodily Injury)**

11 The defendant is charged with battery causing serious
12 bodily injury. To prove that the defendant is guilty of this
13 charge, the People must prove that:

- 14 1. The defendant willfully [and unlawfully] touched the
15 victim in a harmful or offensive manner; AND
16 2. The victim suffered serious bodily injury as a result of
17 the force used.

18 Someone commits an act willfully when he or she does it
19 willingly or on purpose. It is not required that he or she
20 intend to break the law, hurt someone else, or gain any
21 advantage.

22 Making contact with another person, including through
23 his or her clothing, is enough to commit a battery.

24 A serious bodily injury means a serious impairment of
25 physical condition. Such an injury may include, but is not
26 limited to: loss of consciousness/concussion/bone
27 fracture/protracted loss or impairment of function of any
28 bodily member or organ/a wound requiring extensive
29 suturing.

30

31

PRETRIAL MOTION

(Middle school students do not argue the pretrial motion and therefore the bracketed information and Exhibit A may be used at trial.)

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The presider'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. The pretrial motion is the only allowable motion for the purposes of this competition.

The pretrial motion involves the Fourth Amendment protection against unreasonable searches and seizures. The question is whether Franks voluntarily gave Detective Mavis consent to search Franks' safe, or if Detective Mavis coerced Franks into giving consent, rendering it involuntary.

The defendant is bringing this motion to exclude the paper with notes about the ring and the antique dealer's phone number (Exhibit A) from being admitted in evidence at trial, as the product of a search conducted in violation of the Fourth Amendment. If the search of the safe was unconstitutional, Exhibit A may not be used at trial, and neither may the evidence within brackets in the fact situation and witness statements.

In the area of criminal due process, the Fourth Amendment protects individuals, their homes, and belongings from unreasonable police searches and seizures. ("Police" here refers to any law enforcement agency.) The Fourth Amendment originally protected citizens from the federal government, but Fourth Amendment protections are applied to the states through 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 led to 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 (not disputed in this case); and (2) whether the search or seizure was lawful.

1 In this case, the court must consider whether the
2 defendant was coerced to consent to the search of the
3 safe, rendering the consent involuntary, and whether
4 Detective Mavis acted in good faith when the detective
5 expressed that a warrant would be processed at any
6 moment.

7

8 Pretrial Arguments

9 The defense will argue that consent to a search must be
10 given voluntarily for it to be valid. Therefore, under the
11 totality of the circumstances, including the defendant
12 being pressured and coerced by the police to consent to a
13 search of the safe, the consent was invalid, and the search
14 was unconstitutional.

15 The prosecution will argue that, in lieu of a search
16 warrant, a defendant can consent to a search. Therefore,
17 under the totality of the circumstances, the defendant's
18 consent to the search of the safe was valid, and a search
19 warrant was not necessary.

20

21 Sources

22 The sources for the pretrial motion arguments are a
23 "closed library," which means that Mock Trial participants
24 may only use the materials provided in this case packet.
25 These materials include: the fact situation, exhibits, any relevant
26 testimony to be found in any witness statements, excerpts
27 from the U.S. Constitution, and edited court opinions.
28 Relevant witness testimony is admissible in the pretrial
29 hearing without corroborative testimony for the purposes
30 of the pretrial motion only. Exhibits referenced during the pretrial
31 hearing have not been entered into evidence for the trial. Teams
32 will still need to enter those exhibits into evidence during the
33 trial.

34

35 The U.S. Constitution, U.S. Supreme Court holdings,
36 California Supreme Court and California Appellate Court
37 holdings are all binding and must be followed by
38 California trial courts. All other cases are not binding but
39 are persuasive authority. In developing arguments for this
40 Mock Trial, both sides should compare or distinguish the
41 facts in the cited cases from one another and from the
42 facts in *People v. Franks*.

39

1 SOURCES FOR PRETRIAL HEARING

2 Constitutional

3 U.S. Constitution, Amendment IV

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

10 U.S. Constitution, Amendment XIV

11 “Section 1. All persons born or naturalized in the United
12 States, and subject to the jurisdiction thereof, are citizens
13 of the United States and of the States wherein they reside.
14 No State shall make or enforce any law which shall
15 abridge the privileges or immunities of citizens of the
16 United States; nor shall any State deprive any person of
17 life, liberty, or property, without due process of law; nor
18 deny to any person within its jurisdiction the equal
19 protection of the laws.”

20 Supreme Court Cases

21 *Bumper v. North Carolina*, 391 U.S. 543 (1968)

22 **Facts:** Police were investigating the defendant for a felony.
23 They arrived at the home of the defendant’s grandmother,
24 where the defendant lived. The grandmother answered the
25 door, and four police officers announced they had a
26 search warrant. However, the police had no valid warrant.
27 The grandmother of the home said, “Go ahead,” and let
28 the police officers inside. Inside, the officers found a rifle
29 that was later shown to have been used in the felony.

30 **Issue:** Is consent for a search valid if consent is given only
31 after police say they have a search warrant?

32 **Holding:** No. The state must meet its burden of proof that
33 consent was freely and voluntarily given because the
34 police had no warrant. “A search conducted in reliance
35 upon a warrant,” the U.S. Supreme Court ruled, “cannot
36 later be justified on the basis of consent if it turns out the
37 warrant was invalid.” When law enforcement officers
38 claim they have authority to search under a warrant, they
39 are claiming “in effect that the occupant has no right to
40 resist the search.” Here, the officer’s claim that he had a
41 search warrant was coercion, and therefore there was no
42 voluntary consent by the defendant’s grandmother since it
43 followed a suggestion by police that they had a right to
44 search the premises.

1 *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)

2 **Facts:** A police officer pulled over a car for a suspected
3 traffic violation and found the defendant and a third party
4 in the front seat. The third party said that the car belonged
5 to his brother. The officer asked to search the vehicle, and
6 the third party said, “Sure, go ahead.” The third party
7 opened the trunk and glove compartment for the officer.
8 Under the left rear seat, the police officer found three
9 stolen checks. The defendant was arrested.

10 **Issue:** Is consent to search valid if the person consenting
11 does not know that they have an option not to consent?

12 **Holding:** Yes. “When the subject of a search is not in
13 custody,” held the U.S. Supreme Court, “and the state
14 would justify a search on the basis of his consent, the
15 Fourth and 14th Amendments require that it demonstrate
16 that the consent was in fact voluntary.” Voluntariness is
17 determined from the “totality of the surrounding
18 circumstances.” Relevant circumstances include the age of
19 the accused, level of education, whether the person
20 providing consent was advised of their constitutional
21 rights, the length of any detention, and the nature of
22 questioning.

23 “While the subject’s knowledge [in this case] of his right
24 to refuse is a factor to be taken into account,” wrote the
25 court, “the prosecution is not required to demonstrate
26 such knowledge as a prerequisite to establishing a
27 voluntary consent.” The court noted that neither the
28 presence nor the absence of any single factor will be
29 controlling in determining voluntariness. In this case,
30 there was no evidence of any coercion from the police’s
31 questioning and thus the consent was found to be
32 voluntary.

33

34 **Federal Cases**

35 *United States v. Hicks*, 539 F.3d 566 (7th Cir. 2008)

36 **Facts:** Police Detective B was investigating a shooting
37 incident involving Hicks. Police Detective B told Police
38 Detective A to go to Hicks’ home and get consent for a
39 search. Police Detective B explained that there was
40 enough evidence for a search warrant. However, Detective
41 A did not have independent knowledge of the facts
42 supposedly supporting probable cause for a search
43 warrant. When Hicks answered the door, police arrested
44 Hicks. Hicks was removed from the home and put into a
45 squad car. Detective A told Hicks’ girlfriend who was in
46 the residence with four children to cooperate and consent

1 to a search. When she demanded a search warrant,
2 Detective A told her that they could get a warrant, but that
3 it would take some time. They also told her they believed
4 guns were in the residence. In return for her consent, the
5 police said they would not destroy the home in the
6 process of the search. The girlfriend said to go ahead with
7 the search but she refused to sign a written consent form.

8 **Issue:** Can an officer rely on another officer's statement
9 that there is enough probable cause to get a search
10 warrant, when representing that they are getting a warrant
11 and requesting someone to consent to a search?

12 **Holding:** No. The government bears the burden of
13 showing that consent to a search was voluntary. A threat
14 to obtain a search warrant can render consent invalid. The
15 court recited the factors for free and voluntary consent,
16 based on the *totality of the circumstances*. While the court
17 did not question Officer A's legitimate belief that there
18 was a basis for a search warrant, there was in fact no
19 reasonable factual basis for probable cause to search. For
20 this reason, the police's claim that they could get a search
21 warrant was a baseless/pretextual threat," and the
22 girlfriend's consent was invalid.
23

24 ***U.S. v. Carter, 378 F.3d 584 (6th Cir. 2004)***

25 **Facts:** Based on an informant's tip about illegal drug
26 possession, police arrived at the defendant's hotel room.
27 They knocked four times, the first two times identifying
28 themselves and wearing vests marked "POLICE." The
29 police smelled marijuana in the hotel room. They asked
30 the defendant if they could enter the room and talk to the
31 defendant, at which time the defendant silently stepped
32 aside and made way for the officers to enter. Inside, they
33 found evidence of illegal drugs.

34 **Issue:** Is moving out of the way to allow a police officer
35 entry into a location considered consent?

36 **Holding:** Yes. Consent to search may be in the form of
37 gesture, words, or conduct. In this case, the police were
38 clearly identified and did not act threatening. When the
39 defendant stepped away from the doorway, he gave the
40 police consent to enter. "Any ordinary caller, under like
41 circumstances, would understand consent to have been
42 given, and the police are not held to a higher standard in
43 this regard than an ordinary person."
44
45

1 ***United States v. Griffin, 530 F.2d 739 (7th Cir. 1976)***

2 **Facts:** Based on an anonymous tip of a stolen mailbag, the
3 police arrived at the defendant Griffin’s apartment and
4 disclosed to the person who answered the door (Russell)
5 that they were searching for a stolen mailbag. The police
6 requested to search the apartment and Russell responded, “no”
7 because he was entertaining and shut the door in the officers’
8 faces. After the officers apprehended someone leaving Griffin’s
9 apartment through a window, they knocked on the front door
10 again, and requested that Russell let them search the apartment
11 a second time. Russell told them the apartment was not his.
12 Then he stepped away from the open door and did not say
13 anything more. The police entered and in plain view, saw
14 Griffin with evidence of mail and a mailbag.
15

16 **Issue:** Under the totality of the circumstances test, does a
17 person’s actions constitute voluntary consent after the
18 person originally refused to consent to a search?

19 **Holding:** Yes. Consent can be in the form of words, a
20 gesture or conduct. While there was a disparity in the
21 defendant’s actions leading to the officers’ entry, his conduct
22 must be placed in perspective and viewed in relation to the
23 totality of the circumstances surrounding his confrontation
24 with the officers. Here, there was “the clear absence of any
25 misrepresentation, deception, or trickery on the part of the
26 police.” Russell was “both aware of his right to refuse entry
27 under the circumstances and unintimidated by the officers’
28 . . . authority.” There was no coercion on these facts under
29 the totality of the circumstances.
30

31 ***U.S. v. Jones, 647 F. Supp.2d 1055 (W.D. Wis. 2009)***

32 **Facts:** Defendant Jones and his girlfriend arrived at their
33 home. Upon arrival, the defendant realized he was being
34 followed by the police, abandoned his girlfriend and car
35 and fled on foot. A police officer detained the girlfriend in
36 handcuffs and the girlfriend testified that the officer
37 pointed a gun at her, but the officer testified that he had
38 his gun pointed at the ground. Her children were in the
39 car observing the detention.

40 Another officer arrived and talked to the girlfriend for 15
41 minutes and told her that if she consented to a search of
42 her apartment on the premises, “the process would go
43 more quickly.” The girlfriend later testified that the officer
44 told her children would have to watch her in handcuffs
45 while they waited for the search warrant. She then
46 consented to a search in writing, during which police
47 found evidence to subsequently arrest Jones.

1 **Issue:** Does informing a suspect that consent to search
2 will allow the process to be quicker constitute coercion
3 that invalidates consent?
4 **Holding:** No. Coercion was not found under a totality of the
5 circumstances. The court did not find the girlfriend's
6 testimony credible about the behavior of the officer or the
7 statement about the search warrant, but even if the court had
8 believed her, the police "could have and would have obtained
9 a search warrant in the absence of [the girlfriend's] consent."

10

11 *United States v. Jones, 475 F.2d 723 (5th Cir. 1973)*

12 **Facts:** FBI agents arrived at Jones' home with a search
13 warrant to investigate a bank robbery. Jones's wife
14 answered the door. The agents told her that they had a
15 warrant to search the home. His wife told the agents that
16 Jones was not there. The agents entered the house, found
17 Jones in Jones' bedroom and handcuffed him. He was
18 placed under arrest and given his Miranda warnings (told
19 he had the right to refuse to answer questions and
20 anything he said could be used against him). The agents
21 asked Jones where the money from the robbery was.
22 While still in handcuffs, Jones directed the agents to a
23 suitcase in his room. In the suitcase, agents found
24 evidence of money stolen during the bank robbery.

25 **Issue:** Was the defendant's consent to search the suitcase
26 valid?

27 **Holding:** Yes. Although the agent's search warrant was
28 found invalid, the Court found that the defendant
29 consented to the search. The defendant argued that the
30 totality of the circumstances invalidated his consent: he
31 was in handcuffs; five to seven FBI agents were present in
32 the bedroom where he was found; and he had been
33 awakened by the agents, so he was not fully aware of
34 what was happening. The obtaining of consent from a
35 person in custody is inherently suspect. However, it is
36 only a single factor among a totality of circumstances and
37 cannot be determinative alone. Here, the officers did not
38 use coercive tactics or take unlawful advantage of the fact
39 that the defendant was under arrest. The police also did
40 not tell the defendant that they had a search warrant so
41 his consent could not be the product of "resigned
42 inevitability," as the defendant argued. Finally, given that
43 the defendant had been given his Miranda warnings, he
44 knew that he could refuse to talk and anything he said
45 could be used against him.

46

1 ***U.S. v. Evans, 27 F.3d 1219 (7th Cir. 1994)***

2 **Facts:** FBI agents found a stolen car in the defendant's
3 driveway. The agents arrested the defendant. They were then
4 met by Glenn, the defendant's father, who owned the
5 property. The agents stated they would obtain a search
6 warrant if Glenn did not sign a form giving agents consent to
7 search the premises. Glenn signed the form and gave consent.

8 **Issue:** Is the consent valid?

9 **Holding:** Yes. In the totality of the circumstances, Glenn's
10 consent was voluntary, and the agents had consent to search
11 the entire premises and vehicles on the property. Glenn
12 showed he had not been intimidated by the agents. He
13 defied one agent's order not to go near the garage. "Police
14 may not threaten to obtain a search warrant," wrote the
15 court in its decision, "when there are no grounds for a valid
16 warrant." As long as the police express genuine intention to
17 get a warrant which is "not merely a pretext to induce
18 submission," then consent is not invalidated.

19

20 **State Cases**

21 ***People v. McClure, 39 Cal.App.3d 64 (1974)***

22 **Facts:** Based on an informant who said they purchased
23 heroin from the defendant, a police officer knocked on the
24 defendant's front door. The officer announced "Police
25 officers. Narcotics investigation. You are under arrest.
26 Open the door." The defendant opened the door, and the
27 officer arrested him. The officer offered the defendant a
28 choice of waiting for officers to get a search warrant or
29 consenting immediately to a search. Defendant consented.

30 **Issue:** Is consent voluntary if police offer the defendant an
31 option between consenting and waiting for a search
32 warrant?

33 **Holding:** Yes. Defendant's consent to a search of his
34 apartment following his arrest for possession of heroin was
35 not vitiated [or made invalid] by the fact that the arresting
36 officers offered him a choice of consenting or waiting until
37 they obtained a search warrant, where they believed in good
38 faith that they could obtain a warrant. There was no
39 coercion or improper assertion of police authority.

40

41 ***People v. Ratliff, 41 Cal.3d 675 (1986)***

42 **Facts:** The police arrived at the defendant's house, and the
43 defendant's father let them in. The police had their guns
44 drawn and woke the defendant who was sleeping in his
45 bedroom. The defendant was startled and excitedly

1 jumping up and down so the police placed the defendant
2 in handcuffs. The police no longer had their guns drawn
3 when they began questioning the defendant in his living
4 room. The police asked the defendant if he objected to a
5 search of the trunk of his car. The officer told the
6 defendant that if he did not consent to a search of the
7 trunk, the police would obtain a warrant and break into
8 the trunk. The defendant then gave consent to search.

9 **Issue:** Was the defendant's consent to search the trunk of
10 his car voluntary if given in response to a threat the police
11 would otherwise get a search warrant?

12 **Holding:** The defendant's consent was voluntary. While
13 the fact that the defendant was in handcuffs when he
14 provided consent was a factor to consider, the totality of
15 circumstances did not show that consent was involuntary.
16 The "threat" to get a search warrant only amounted to a
17 declaration of the legal remedies that an officer could
18 resort to if consent was not given.

19

20 ***People v. Gurtenstein, 69 Cal.App.3d 441 (1977)***

21 **Facts:** Police officer told the defendant, accused of drug
22 crimes, that the police wanted to search the house for
23 additional contraband and advised them that they could
24 either wait for a search warrant or consent to search the
25 house. The officer explained to the defendant that if the
26 officer applied for a search warrant it would be up to the
27 magistrate to determine whether to issue the warrant. The
28 defendant said he could go ahead and search the closet.
29 The officer replied that that "wasn't enough" and to
30 complete his work the defendant would have to consent to
31 search the entire house. The defendant then stated, "Well,
32 you've got the marijuana. Go ahead and search the
33 house." The police searched the house, and after finding
34 additional drugs, asked the defendant to sign a written
35 consent, which the defendant refused to do.

36 **Issue:** Under the totality of the circumstances, is consent
37 to search a product of duress or coercion when in the
38 presence of seven police officers, and when an officer tells
39 the defendant they can either consent to a search or wait
40 for a warrant?

41 **Holding:** No. There was no evidence that the defendant's
42 consent to search was motivated by the officer's statement
43 regarding the possibility of obtaining a warrant. Advising
44 the defendant of his right to refuse consent to a search is
45 not a prerequisite to establishing that defendant
46 voluntarily consented.

1 *Castaneda v. Superior Court of Los Angeles County, 59*
2 *Cal.2d 439 (1963)*

3 **Facts:** During an incident in the home of a third party,
4 where there was probable cause to arrest and handcuff
5 Castaneda, the officer, knowing that several drug addicts
6 identified Castaneda as a drug dealer, asked if Castaneda
7 had drugs at Castaneda's home. Castaneda said he did not
8 have drugs at his home.

9 When the police asked if they could search his home,
10 Castaneda asked if they had a search warrant. The police
11 told him they did not have a search warrant and did not
12 need one if Castaneda consented to the search. Castaneda
13 told the police to go ahead and look.

14 The police drove Castaneda to his home and Castaneda
15 told the police he didn't live there and gave a different
16 address. When the police asked if he was sure that was
17 the address, Castaneda said, "All right. You guys know
18 where I live."

19 When the police arrived at Castaneda's house, he told the
20 police he didn't live there and instead lived across the
21 street. When the police approached the house,
22 Castaneda's aunt told the police he did not live there, but
23 pointed to the house that the police originally thought
24 belonged to Castaneda. When the police brought
25 Castaneda to his home, he told the police he kept the
26 drugs at his mother's house. The police took Castaneda to
27 his mother's house and did not find any drugs. The police
28 returned to Castaneda's original address, searched the
29 home and found illegal drugs.

30 **Issue:** Did the defendant freely consent to a search of his
31 home while in handcuffs and in custody and after making
32 multiple attempts to lead the officers away from his home?

33 **Holding:** No. Although not conclusive, a circumstance of
34 particular significance is a defendant's custody at the time
35 of the request for permission to search. In this case, the
36 defendant was handcuffed, under arrest, and had no
37 choice but to go wherever the police wanted to take him.
38 He believed that he was virtually powerless to prevent the
39 search, even after making attempts to lead the police away
40 from his home. Here, the totality of circumstances showed
41 that the defendant's consent was not voluntary.

42

43

44

WITNESS STATEMENTS

Prosecution Witness – Billie Scher (Victim)

My name is Billie Scher. I am a professional actor and a graduate of Central State University with a bachelor's degree in dramatic arts. I joined the crew of *Heart of the Ocean* in 2019. I was one of the lead performers in *Macbeth at Sea* and I shared a cabin with my co-star, Jordan Franks. In April 2022, Cleo Shafer gave me Shakespeare's signet ring. Shafer and I both had families in show business and had been family friends for years. The ring was an amazing gift and I wore it during each *Macbeth at Sea* performance.

Recently, I auditioned for the lead in *Jefferson: The Musical*, and early in the morning on June 9, I received a call that I had gotten the part. I was also told that Franks was cast as my understudy. The day had been off to a great start. However, my day quickly took a turn for the worse after the final performance. As soon as the curtain dropped, Franks accosted me backstage. Franks was yelling at me about changing some lines in the show, but I really had no idea what Franks was talking about. Shafer interrupted our conversation to remind us about the show's wrap party that evening in the Midnight Lounge. It was such a relief because I thought that the party would distract Franks and get Franks to give me a break and stop yelling at me.

Before the party, I returned to our room to place the signet ring in its box on my dresser. I didn't want to wear it out to the party and risk losing it because I knew the ring was valuable. Shafer showed me some paperwork and told me the ring was worth \$170,000. Normally I would put the ring in my safe, but I was in a hurry to get to the wrap party. I was in such a hurry, I do not recall if I used my key to lock the door on my way out. I went to the party and spent the night talking to Shafer and a few castmates, but I avoided Franks because the casting situation felt really awkward and I didn't want to deal with any of Franks' drama.

I left the party at midnight and headed straight to my room. When I opened the door to the room, Franks was standing in front of my dresser and turned toward me, holding what looked like the ring box. The light in the room was dim but the lighting from the hallway helped me see. I screamed, "Give me back my ring!" Franks

1 seemed startled. Franks started to walk toward me and
2 yelled “How could you do this to me?! You don’t deserve
3 the role or the ring! Get out of my way!” I tried to stop
4 Franks by blocking Franks’ way to the door. Franks
5 shoved me with all Franks’ might, and I fell to the floor.
6 On my fall, I hit my forearm on the frame of our bunk
7 beds. I scrambled to get up, but I immediately felt an
8 intense pain in my arm.

9
10 Franks ran out of the room with the ring box in hand. It
11 wasn’t until Franks ran out that I saw Lucky standing in
12 the doorway. It all happened so fast. I called 911 from the phone
13 in my room after I got over the shock from what just happened. I
14 think it was around 12:30a.m. I told them I was violently shoved
15 and robbed and that I thought my arm was broken.

16
17 When the paramedics and the detective finally got to the
18 ship, I told the detective everything that happened that
19 night. I shared about Franks, the arguments, the jealousy
20 and how Franks took my ring and attacked me. I was in a
21 lot of pain and the paramedics took me to the hospital.
22 The doctor told me that my arm was broken in two places
23 and that I would have a cast for the next 12 to 16 weeks. I
24 broke both my radius and ulna in my forearm when I hit
25 my arm on the bunk beds.

26
27 I was devastated that I couldn’t perform in *Jefferson: The*
28 *Musical*. Even worse is that Franks was my understudy,
29 and now the person who broke my arm will be given the
30 role. I know it wasn’t an accident. Franks wanted to hurt
31 me. Franks would do anything to get my role and my ring.
32 Franks was obsessed with Shakespeare, and I knew
33 Franks was incredibly jealous that Shafer gave me that
34 ring.

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1 Prosecution Witness – Cleo Shafer (Theater
2 Fan)

3
4 My name is Cleo Shafer. I am 76 years old, and I am a
5 benefactor of *Macbeth at Sea* on *Heart of the Ocean*. I'm
6 retired and I spend a significant amount of time on
7 cruises. *Heart of the Ocean* is by far my favorite ship
8 because I love the *Macbeth at Sea* show. I come from a
9 long line of philanthropists and avid fans of theater. I love
10 to travel, and I am dedicated to donating my family's
11 fortune to good causes. Now that I'm older and traveling
12 has become more difficult due to a knee injury, a cruise
13 ship is the perfect vessel to explore and find worthy
14 causes to donate to.

15
16 Over time I have gotten to know some of the cast quite
17 well. Scher's grandmother was previously the casting
18 director on the ship. I have known her since we attended
19 performing arts school together in college. Our family
20 connection has brought me especially close to Scher. It is
21 as if Scher were my own child. In fact, I gave Scher an
22 authentic Shakespeare ring that has been passed down in
23 my family for centuries. Since I have no heirs of my own,
24 and Scher has done such a fantastic job performing in this
25 adaption of my favorite Shakespeare play, I thought Scher
26 would be the perfect person to own this ring. Of course, I
27 also showed Scher the paperwork that showed the origins
28 and history of the ring. The paperwork came from the
29 Royal Academy of Arts in 1780. The ring was very
30 valuable, worth over \$170,000, although I don't think you
31 can put a price tag on something owned by Shakespeare.
32 In my opinion, the ring is priceless!

33
34 I thought Scher was especially deserving because Scher
35 has to put up with so much hostility from other cast
36 members. On multiple occasions, I've heard Franks and
37 Karter Lucky insult Scher. Franks and Lucky were
38 constantly complaining about Scher when I would see
39 them around the ship. In fact, just last week I heard
40 Franks and Lucky complain that Scher got special
41 treatment and that Scher didn't deserve the lead roles or that
42 ring. From my experience in the theater world, I know that
43 performers can be jealous of others' success, and so I
44 understood the hostility that Scher was facing. I always
45 figured that they were both just jealous.

46

1 I hosted a wrap party for the cast and crew in the
2 Midnight Lounge. I have really enjoyed the show and I am
3 always looking for an excuse to celebrate. At the party, I
4 overheard Franks tell Lucky, "I can't believe they would
5 give this role to Scher. If Scher breaks a leg or something,
6 then they'd at least have someone competent to take
7 Scher's place." That was around 10:30 p.m. I think I left
8 the party around 10:45 p.m., just after I overheard Franks'
9 and Lucky's conversation. I went back to my room and
10 watched TV until I decided to grab a midnight snack.

11
12 When I arrived at the Blue Diamond Cafe to get my soft
13 serve ice cream, I saw Franks throwing away some trash
14 near the ice cream machine and then going to a table
15 where Lucky was sitting. I didn't speak to Franks, as it
16 looked like Franks was having a deep conversation with
17 Lucky. I didn't think much of it. Then I returned to my
18 room and didn't see anyone else for the rest of the night. I
19 didn't know that Scher was injured or that the ring was
20 stolen until I was awakened by Detective Mavis knocking
21 on my door. I spoke with Detective Mavis and told them
22 everything that I remembered from that night and
23 everything I knew about Franks' and Scher's rocky
24 relationship.

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1 **Prosecution Witness – Ari Kouch (Expert)**

2

3 My name is Ari Kouch, and I am a certified jewelry
4 appraiser with both the American and French Jewelers
5 Associations. I have been hired to evaluate the lineage of
6 the Shakespearian signet ring. I majored in archaeology at
7 the University of Oxford before I completed the Graduate
8 Gemologist Program at the Gemological Institute of
9 America 15 years ago. At the Gemological Institute, I specialized in
10 The 15th and 16th century pieces due to my background in
11 archaeology. I reviewed the supporting papers for
12 Shakespeare's signet ring provided by Cleo Shafer, and I
13 can confirm that this is an authentic ring owned by
14 Shakespeare in the late 1500's.

15

16 In Shakespeare's last will and testament, Shakespeare left
17 the signet ring to fellow actor and founding shareholder of
18 the Globe Theater, John Heminges. No records exist of the
19 signet ring's location or ownership in the years following
20 Heminges' death. It wasn't until after the Shakespeare
21 Jubilee was hosted in Stratford-upon-Avon in 1769, that
22 the signet ring was rediscovered and brought to the Royal
23 Academy of Arts in London. The signet ring, then under
24 the possession of Heminges' distant relative, Henry
25 Shafer, was examined by the archivists at the Royal
26 Academy of Arts in 1780 who also generated the
27 supporting paperwork in this case. The ring bears the
28 initials "W.S." and is distinctly of Elizabethan style. Signet
29 rings are used to stamp the wearer's initials into wax
30 seals.

31

32 The supporting papers from Shafer note the date and
33 location of the ring's discovery in the 18th century. The
34 papers showed that the ring was found in a location that
35 was frequented by Shakespeare, that the ring's size and
36 distinctive details around the lettering was consistent with
37 rings made during the Elizabethan era.

38

39 I was able to use nitric acid to detect the metal of the ring,
40 which is a basic professional method of determining
41 whether or not the metal in an item is actual gold. In this
42 case, the signet ring was made of 14 grams of solid gold.
43 Given the ring's connection to William Shakespeare, I
44 determined that the ring's value is 148,908.59 pounds, which in
45 today's US dollars is about \$170,000.

46

1 This ring was on display at the Royal Academy of Arts for
2 nearly 100 years. The ring was later displayed at the
3 Shakespeare Birthplace Trust, located in Stratford-upon-
4 Avon, from 1867 till 2009. The ring was at the
5 Shakespeare Birthplace Trust on continued loan from the
6 Shafer family, a family well known for their collection of
7 Elizabethan objects and fine art and distant relations to
8 prominent historical figures. After over 200 years of the
9 signet ring being on display in museums, the Shafer family
10 removed the ring to display in their private collection,
11 based in London.

12
13 On display at the Shakespeare Birthplace Trust is an 8 x
14 11-foot portrait of Shakespeare, dating back to the early
15 1600's. In this portrait, Shakespeare is wearing the signet
16 ring. The initials "W.S." surrounded by intertwined
17 tassels, also known as a "Bowen," are clearly visible. The
18 large size of the portrait allows for ample detail of the ring
19 to be seen. The ring in the portrait is undoubtedly the
20 signet ring that is in Scher's possession. It is my
21 professional opinion that Shakespeare owned this ring.

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1 Prosecution Witness – Dylan Mavis
2 (Detective)

3

4 My name is Dylan Mavis. I am the lead detective with the
5 Portsmouth Police Department. Originally, I wanted to be
6 an actor after graduating high school. I toured in a six-
7 week run of *West Side Story* before I attended the police
8 academy. I have since worked for the Portsmouth Police
9 for 12 years.

10

11 I responded to Scher's 911 call and arrived on the ship at
12 1:00 a.m., along with the paramedics. When I arrived, I
13 immediately spoke with Scher. Scher appeared to be in
14 substantial pain. I interviewed Scher and Scher told me
15 that Scher walked into Scher's and Franks' room at
16 approximately midnight and saw Franks with the ring
17 box. Scher said the ring was inside the ring box and told
18 Franks to give Scher back the ring. Scher said they argued
19 about a role in some play and then Franks shoved Scher
20 causing Scher to fall and break Scher's arm. Scher
21 explained that after Franks shoved Scher, Franks ran out
22 of the room with the ring box. It was at that time Scher
23 noticed Lucky in the doorway.

24

25 I asked Scher about any potential motive Franks would
26 have for stealing the ring and whether the ring was
27 valuable or sentimental. Scher explained that the ring was
28 very valuable, and that Franks was jealous and injured
29 Scher to steal both the ring and Scher's role in an
30 upcoming musical. Scher also thought Franks stole the
31 ring either because Franks was obsessed with Shakespeare
32 or wanted to sell the ring for a profit.

33

34 The paramedics evaluated Scher's injuries and said that it
35 looked like Scher had a broken arm, but they would need
36 to take Scher to the hospital for treatment. That was
37 around 1:30 a.m. I called the captain of the ship and told
38 her that the ship must remain in Portsmouth. The ship
39 could not leave for its final destination of Bridgehaven
40 until the witnesses were questioned and the ring was
41 found.

42

43 After I interviewed Scher, I went to Lucky's room to get
44 more information about the incident. Lucky told me about
45 Franks' and Scher's contentious relationship and told me

1 about the fight that resulted in Scher's injury. I asked
2 Lucky if they knew where Franks was and Lucky said,
3 "No. I asked some questions about the ring and Lucky
4 said I should talk to Shafer.
5
6 I found Shafer in Shafer's cabin. Shafer told me all about
7 the ring and everything Shafer knew about Scher and
8 Franks' relationship. This included statements about Scher
9 not deserving the ring. Shafer also told me about Franks
10 wanting to hurt Scher so that Scher couldn't play the lead
11 in *Jefferson: The Musical*. I asked Shafer if they knew
12 where Franks was. Shafer said the last time they saw
13 Franks, Franks was in the Blue Diamond Cafe.
14
15 I located Franks in the Blue Diamond Cafe and noticed a
16 black object inside an open trash can near the soft serve
17 ice cream machine. I retrieved the object and discovered it
18 was an empty black velvet ring box. I placed it inside an
19 evidence bag. I approached Franks who was sitting alone
20 at a table and asked if Franks recognized the ring box.
21 Franks identified it as the ring box for Scher's signet ring.
22 [Based on my interviews and the empty ring box, I
23 prepared a warrant application to submit to the magistrate
24 on duty in case Franks did not give me consent to search
25 Franks' cabin. I expected that the warrant would be
26 approved within 24 hours.]
27
28 I took Franks to Franks' cabin to question Franks about
29 the physical altercation and missing ring. Franks shared a
30 different account of the events that led up to Scher's
31 broken arm. Franks said that Franks didn't mean to bump
32 into Scher and that it was an accident. Franks explained
33 that Franks was in the room and reaching for Franks
34 phone from Scher's dresser when Scher burst into the
35 room, leaving the door open. Scher made a rude
36 comment, and the two began to argue. Franks stated that
37 Franks wanted to end the conversation and was about to
38 turn to leave the room when suddenly Scher barreled
39 forwards towards Franks, running into Franks. Then,
40 Scher fell to the ground. Franks ran out of the room.
41 Franks claimed they had no knowledge of where Scher's
42 ring was.
43
44 After I questioned Franks, I asked for consent to search
45 the room, which Franks agreed to. [In Franks' closet, I
46 found a small, locked safe. Franks told me that the safe

1 belonged to Franks. However, Franks refused to open it
2 and told me that there were sensitive medical documents
3 in the safe. I stood in the doorway of the room to give
4 Franks space to open the safe in such a small room. I told
5 Franks that a search warrant was being authorized and
6 that it was in Franks' best interest to unlock the safe.
7 Franks unlocked the safe. Inside the safe, I found a manila
8 folder marked "Medical," but other than that, there were
9 no other markings or indications of personal information
10 on the folder. I set it aside. There was also a loose piece of
11 paper in the safe with notes about a Shakespeare
12 heirloom, a signet ring and a phone number scribbled
13 across the top. Upon investigation, I discovered that the
14 phone number belonged to an antique jewelry dealer in
15 New York City. I called the phone number, but the
16 antique dealer had no memory of speaking with Franks.]

17

18 I told Franks to stay in the cabin as I went to complete my
19 investigation. Since both Franks and Scher were cast
20 members, I decided to search the cast's backstage area of
21 the show, as well as the dressing room shared by the cast.
22 While searching through costumes in the dressing room, I
23 found the signet ring inside a coat pocket. The coat was
24 hanging outside Franks' empty locker.

25

26 Before returning to question Franks about the found ring, I
27 located the head of security, Ezra Weintraub. Weintraub
28 explained that the cameras near the cast dressing room
29 did not capture any footage at the time in question, but
30 that Weintraub did see Lucky and Franks separately enter
31 the dressing room at different times that night.

32

33 I returned to Franks' room and Franks confirmed that the
34 coat was Franks' costume but explained that Franks didn't
35 steal the ring. Franks argued that Franks was leaving the
36 ship the following day and that it wouldn't make sense to
37 hide the ring in Franks' costume pocket because Franks
38 would not be wearing the costume again. Franks also
39 argued that any member of the cast or crew could have
40 accessed the communal dressing room because they all
41 have access anytime. Franks told me Franks was framed.

42

43 I determined that enough evidence pointed toward Franks
44 as the suspect. I received an arrest warrant and arrested
45 Franks for robbery and battery on June 10, 2022, at 8:00
46 a.m.

1 **Defense Witness – Jordan Franks**
2 **(Defendant)**
3

4 My name is Jordan Franks, and I am a professional actor.
5 After graduating high school in rural Nebraska, I moved to
6 New York City and took part in many acting classes. I had
7 a brief stint in off-Broadway theater and regional theater,
8 performing in Shakespeare plays, before auditioning for
9 *Macbeth at Sea* and joining the crew of *Heart of the Ocean*
10 out here in California. I acted alongside Scher in *Macbeth*
11 *at Sea*. I respect Scher as an actor, but Scher was
12 constantly given special treatment because Scher's
13 grandmother used to work as the casting director on the
14 ship. I received a call the morning of June 9th informing
15 me that I was offered the part as Scher's understudy in
16 *Jefferson: The Musical*. I know it was a great opportunity,
17 but it was still frustrating. I can't believe that Scher stole
18 my dream role. Scher gets everything Scher wants!

19
20 During our final show on June 9, Scher changed up some
21 lines in one of the scenes, causing me to stumble a line
22 and embarrassing me in front of the audience. That was
23 the last straw. After the show I told Scher how upset I was
24 about the line changes, but Scher didn't seem to care. Our
25 conversation ended quickly because Shafer interrupted us
26 and reminded us about the wrap party at the Midnight
27 Lounge. The party was a great distraction from the
28 *Jefferson: The Musical* debacle and the embarrassing
29 show. I said something to Lucky that I hoped Scher
30 "breaks a leg" (theater-talk for "good luck").

31
32 I left the party early, around 11:00 p.m., because I was
33 sick of being around Scher. I didn't want to keep
34 pretending I wasn't upset about the show. I went straight
35 to my cabin. I don't recall if I used my key to unlock the door.
36 After some time, I decided to head to the Blue Diamond Cafe to
37 grab a snack. I turned off the light and turned to grab my phone
38 off Scher's dresser. Scher and I had separate dressers, but mine
39 was in the closet so I usually used the top of Scher's dresser
40 because it was next to my bed. I slept on the lower bunk.

41
42 When I turned to leave, Scher rushed into the room and
43 rudely said something about the ring and bragged about
44 getting the lead. Hearing that was frustrating, especially
45 because Scher knew how upset I was about losing the
46 role. I tried to leave but Scher wasn't having it and got in

1 my way. I couldn't avoid bumping into Scher, and we
2 collided. Scher fell to the ground, but I didn't mean to
3 touch Scher at all. Later I learned that Scher hit their arm
4 on the bunk bed frame on the way down or something.
5 Scher was screaming about their arm, but I just thought
6 Scher was being overly dramatic. Typical Scher — it didn't
7 look that bad to me. That's when I saw Lucky in the
8 doorway. I'm not sure how long Lucky was there, but I
9 was glad to have an excuse to leave the room and get
10 away from Scher.

11
12 I headed to the Blue Diamond Cafe to decompress after
13 such a stressful confrontation. Lucky said they would meet me
14 there. Lucky showed up 30 minutes after I arrived at the café, and
15 we chatted for about 30 minutes. I didn't return to the dressing
16 room after our disagreement and ended up spending the rest of
17 the night in the cafe drinking coffee and scrolling through social
18 media.

19
20 Detective Mavis found me at the cafe and asked if I
21 recognized a black velvet ring box. The detective told me
22 they found the box in the trash can next to the soft serve
23 ice cream machine. I told the detective that it was the ring
24 box for Scher's signet ring and that I had no idea why it
25 was in the trash. The detective escorted me to my room
26 and told me they had some questions for me. While in my
27 room, I answered the detective's questions and told the
28 detective about my history with Scher and the altercation
29 that happened that night.

29
30 The detective asked me some more questions and then
31 asked for consent to search the room, which I agreed to. I
32 had nothing to hide. [Detective Mavis also asked me if I
33 would open the safe in my closet, but I refused. I knew
34 my rights, and I knew that I didn't have to open that safe
35 if I didn't want to. I told Detective Mavis that I had some
36 very private medical documents in the safe that I would
37 prefer not to have searched. These were documents about
38 medications I am taking and details from doctor visits.
39 However, Detective Mavis was very pushy and told me
40 over and over again—probably five or six times, at least—
41 they would be opening the safe whether I agreed to it or
42 not.

43
44 Detective Mavis blocked the doorway to the room and
45 relentlessly requested that I open the safe. Mavis told me
46 that a search warrant would be processed at any moment.

1 I believe the detective said the warrant was “being
2 authorized.” I was scared of the detective’s attitude,
3 talking to me as if I was a criminal, and I felt pressured to
4 open the safe, so I unlocked it for Detective Mavis. Mavis
5 found some things in the safe about Shakespeare along
6 with my medical file. I don’t get why it’s such a big deal
7 that I had stuff on Shakespeare in my safe. I did write
8 down a number to an auction house in New York. I
9 wanted to find out if Scher was lying about whether the
10 ring really belonged to Shakespeare.]

11
12 Everyone knows I’m a huge Shakespeare fan. Of course,
13 I’m a fan, I’ve spent the last few years performing in
14 *Macbeth at Sea*! And yeah, I was interested in the ring, but
15 I wouldn’t steal it. I don’t remember ever talking to Karter
16 Lucky about the ring’s value. For all we knew, it was a
17 replica. But so few of Shakespeare’s personal items are
18 still around, something of his with his initials on it would
19 cause quite a stir at auction. I love learning more about
20 Shakespeare and his life and that’s why I’m going to the
21 Shakespeare Museum in Washington, D.C., as soon as I
22 get a break from performing in New York.

23
24 The detective left and told me to stay in my cabin. When
25 the detective returned to my cabin, the detective said they
26 found the ring in the pocket of my costume. I have no
27 idea how the ring got there. I did not steal the ring. Why
28 would I do that? I was leaving the ship the following day
29 and that it wouldn’t make sense to hide the ring in my
30 costume pocket because I would not be wearing the
31 costume again. Any member of the cast could have
32 accessed the communal dressing room because they all
33 have access anytime. If anyone saw me in the dressing
34 room that night, they must be mistaken. I think I’m being
35 framed.

36
37 I was shocked when the detective arrested me for robbery
38 and battery. I was only grabbing my phone off of Scher’s
39 dresser. I did not take Scher’s stupid ring. The only thing I
40 had in my hand was my phone. I don’t remember seeing
41 the black velvet ring box or the ring. This entire situation
42 is terrible. Now I’m going to lose my role in *Jefferson: The*
43 *Musical*. Scher always ruins everything.

44
45

1 **Defense Witness – Jade Marquez (Expert)**

2 My name is Jade Marquez. I am 63 years old, and I have
3 worked in the jewelry industry for over 40 years. After the
4 arrest was made on June 10, 2022, I was asked to examine
5 the ring and supporting paperwork. It is my opinion that
6 although the ring may date back to the 15th or 16th
7 century, there was no evidence that this ring actually
8 belonged to William Shakespeare.

9
10 After high school, I moved cross-country to New York
11 City. For two years I did customer service work until I
12 began an internship with a prestigious old auction house,
13 Macduffs. Later as an associate, I became Macduff's
14 leading expert in historical appraisals and museum
15 partnerships due to my knack for research. I climbed the
16 corporate ladder for 24 years before I was promoted to
17 Senior Vice President of Jewelry and became well-
18 regarded in the jewelry appraisal industry. After a six-year
19 stint in that role, I moved on to start my own independent
20 jewelry appraisal firm and auction house: Marquez's
21 Auction House. In this role, I have traveled around the
22 world visiting private residences, auction houses,
23 museums, and courthouses. I perform appraisals and do
24 other consulting work for my high-end clientele.

25
26 As an appraiser of fine jewelry, I follow the industry
27 standard whenever conducting an appraisal or consulting
28 with a client about their pieces. While jewelry appraisal is
29 a skill that takes decades of practice to get right, there are
30 five key things I look for when appraising jewelry.

31
32 First, I examine the piece for stamps that would tell the
33 brand or quality of the material. When I examined the ring
34 I did not find any stamps that would tell me a brand or
35 quality. Second, I test the metal to decide whether it is
36 made of any valuable material. In this case the ring
37 consisted of 14-grams of gold. Third, I examine the stones
38 and settings to determine their purity, cut, and precision
39 of craftsmanship. The ring in this case did not have any
40 stones, however the markings of the "W" and the "S" look
41 like a similar style of writing that would be used during
42 Shakespeare's time period. However, that writing could
43 have easily been duplicated at a date after Shakespeare
44 passed away, which has happened with other counterfeit
45 artifacts of the Elizabethan era and other historical
46 periods. Fourth, I determine the age of the piece, which
47 involves extensive research into the history of specific

1 styles and jewelers. The style of the ring is consistent with
2 jewelry of that time period, however, I failed to find any
3 evidence the ring belonged to William Shakespeare.
4 Finally, I calculate the metal weight price for the precious
5 metals that may make up the piece itself.
6
7 Without a historical connection that increases value, a
8 gram of gold is worth \$55.09. Even if the ring were from
9 the 1600's, it was not well maintained and would likely
10 not be worth much more than a gold ring created today.
11 Because the historical connection is unsubstantiated, even
12 by the organization that developed the ring's provenance
13 papers, the 14-gram gold ring is worth only \$771.26.
14
15 Now that I have explained the methods used by fine
16 jewelry appraisers, I can offer some insight into the piece
17 in question. Back in November of 2021, I first heard
18 rumblings in the jewelry industry about Shakespeare's
19 signet ring being prepared to leave a private collection
20 based in London, England. I was intrigued because very
21 few of William Shakespeare's personal items have
22 survived the over 400 years since his death. Unfortunately, I
23 was never able to visit the collection, but I had heard from
24 one of my London connections that not everyone who saw
25 the ring believed it actually belonged to Shakespeare.
26
27 The seal on this ring was never used to seal any
28 documents produced by Shakespeare. The fact that this
29 ring was owned by Shakespeare is purely speculative. In
30 fact, there are multiple other documented businessmen
31 who lived in Stratford-upon-Avon at a similar time—for
32 example William Smith. The letters "WS" were very
33 common initials in England. Despite Henry Shafer's claim
34 of being related to the documented owner of the actual
35 signet ring, there is no evidence connecting the Shafer
36 family to Shakespeare's friend John Heminges.
37
38 The provenance papers provided were created by the
39 Royal Academy of Arts. However, even the Royal
40 Academy of Arts and the ring's second exhibitor, the
41 Shakespeare Birthplace Trust, note the speculation behind
42 the ring on their websites. When displaying the ring the
43 Shakespeare Birthplace Trust acknowledged the
44 disagreement in the field regarding the ownership of the
45 ring, and never claimed definitively that this ring is a
46 legitimate Shakespeare heirloom.

1 **Defense Witness – Karter Lucky (Franks’**
2 **Friend)**

3
4 My name is Karter Lucky and I’m a recent high school
5 graduate. *Macbeth at Sea* had been my first professional
6 role as an actor. I started performing on *Heart of the*
7 *Ocean* only about six months before the show closed. I
8 can’t imagine my life without performing. Since the show
9 was ending soon, I was anxious to find my next paying
10 gig. I auditioned for role after role and still hadn’t secured
11 my next job.

12
13 I loved performing in *Macbeth at Sea* because Franks is
14 such a talented performer. Franks and I are close friends.
15 When I joined *Heart of the Ocean*, Franks took me in as a
16 mentee. I’m not close with Scher, but I have seen Scher
17 always causing drama on the ship. I would describe Scher
18 as manipulative and dramatic, so I avoid Scher when I
19 can. Also, Scher’s family’s connections with management
20 and casting were so unfair to the rest of us in the cast.

21
22 I knew that Shafer had given Scher a Shakespeare ring a
23 few months ago. Franks told me the ring was worth a
24 crazy amount of money, and that the ring was the last
25 thing that Scher’s huge ego needed. I’m jealous of Scher’s
26 family connections, especially now that *Macbeth at Sea*
27 has come to an end. It’s a very hard time to find work as
28 an actor, and I’m not sure what I’ll be doing once I leave
29 the ship tomorrow. I’ll need to find a new role quickly so I
30 won’t need to move back in with my parents. Unfortunately,
31 this job didn’t pay as well as I expected.

32
33 At the wrap party in the Midnight Lounge on the ship, I
34 talked with several cast members, a great group of people.
35 I did talk with Franks about Scher, too. Franks said to me
36 that Franks hoped Scher would “break a leg.” That’s what
37 we all often said to each other before performances. It
38 means “good luck” in the theater business. I left the party
39 right after Scher did, around 12:00 a.m.

40
41 I realized that I hadn’t seen Franks in a while, and I went
42 to go look for Franks. I walked towards Franks’ and
43 Scher’s cabin, and I heard yelling inside. The door was
44 open, and I stood in the doorway, watching Franks and
45 Scher argue. It looked like Scher ran into Franks and fell

1 and hit Scher's arm on the wooden bed frame. I couldn't
2 exactly see what was happening though, because the light
3 in the room wasn't on. But I could see a little bit from the
4 light coming from the hallway. Franks seemed flustered,
5 and I didn't blame Franks for rushing out of the room to
6 get away from Scher.

7

8 I told Franks I would meet Franks in the Blue Diamond
9 Cafe after I went to my room to grab a jacket. I got side-
10 tracked but met Franks in the cafe about 30 minutes later.
11 I chatted with Franks for 30 minutes and then headed to
12 my room. On my way, I swung by the cast dressing room
13 and peeked my head in to see if any cast members were
14 around. I didn't see anyone and did not enter the dressing
15 room. Then I returned to my room and fell asleep. I woke up
16 when I heard a knock at my door and was surprised to see a police
17 detective. I spoke with Detective Mavis and told them
18 about what I know about Franks' and Scher's relationship
19 and what I had witnessed in Franks' and Scher's room. I
20 was surprised that Franks was arrested. No one stole that fake
21 ring. Billie is just creating more drama. Franks is not a
22 violent person and would never steal anything.

23

24

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1 **Defense Witness – Ezra Weintraub (Head**
2 **of Ship’s Security)**

3 My name is Ezra Weintraub. I am 52 years old and I have
4 worked on *Heart of the Ocean* for eight years. I am
5 nearsighted, and I usually wear my glasses while I work. I
6 am currently the head of security aboard *Heart of the Ocean*.
7 I am responsible for monitoring security cameras, keycard
8 usage, and guest WiFi. I was able to catch a performance of
9 *Macbeth at Sea* while off duty in early June 2022.

10

11 Normally, every crew member accesses their
12 room using a keycard, just like the ship’s guests
13 do. Shortly after we departed from Coastline,
14 California, several digital locks on the crew deck
15 malfunctioned, including the room where Billie
16 Scher and Jordan Franks slept. Every electronic
17 lock also has a standard keyhole, and I issued
18 standard keys to all crew with malfunctioning
19 locks, so that they could manually lock and unlock
20 their doors. The doors are not self-locking. There
21 is no digital record of who went in or out of any
22 malfunctioning door.

23

24 I reviewed the camera footage from the night
25 of June 9. Our camera footage is cleared daily
26 at 3:00 a.m., unless requested earlier. The
27 camera runs on a continuous loop and tapes
28 over older footage. This is standard procedure
29 for our data storage system. Because we record
30 24/7 throughout the ship, we only store the
31 data for a short period of time. This is partially
32 due to the nature of the cruise ship. Passengers
33 are only on the ship for a period of 5-12 days,
34 so any emergency issues that occur are usually
35 dealt with immediately.

36

37 Detective Mavis requested footage from the
38 dressing room entrance between the hours of
39 11:00 p.m. and 3:00 a.m. I was only able to
40 recover the footage that was recorded after
41 3:00 a.m. on the morning of June 10.

42

43 I told the detective that the dressing room is
44 open for staff use all day and is accessible

1 24/7. Guests are prohibited from entering the
2 crew deck and the dressing room without
3 permission. The entry doors to those areas are
4 not locked, but signs on those doors say, "Crew
5 Members Only Beyond This Point." Occasionally,
6 a guest will wander into those areas
7 accidentally, but they always leave when asked
8 or directed by a crew member. There are no
9 cameras inside the dressing room due to
10 privacy concerns, but a security camera
11 monitors the hallway outside of the dressing
12 room. I don't recall seeing any staff members
13 enter or exit the dressing room after 3:00 a.m.
14
15 While there is no recording of the night of June
16 9 or the early morning of June 10, I was
17 monitoring the security footage during those
18 hours. The screens are about three feet away
19 from my desk chair, and I monitor 18 screens
20 simultaneously. As you can imagine, I was tired at
21 1:00 a.m. We work 12-hour shifts in the security
22 department, and my shift was over at 7:00 a.m.
23 on June 10. I remember seeing several cast
24 members go in and out of the dressing room that
25 evening after the performance, including Karter
26 Lucky at one time and Jordan Franks at another
27 time. I don't recall what time. I know the crew
28 members on *Heart of the Ocean* quite well. I don't
29 recall seeing anyone enter or leave the dressing
30 room after 3:00 a.m.

Exhibit A

Photograph of Paper With Notes About the
Signet Ring and a Jeweler's Phone Number

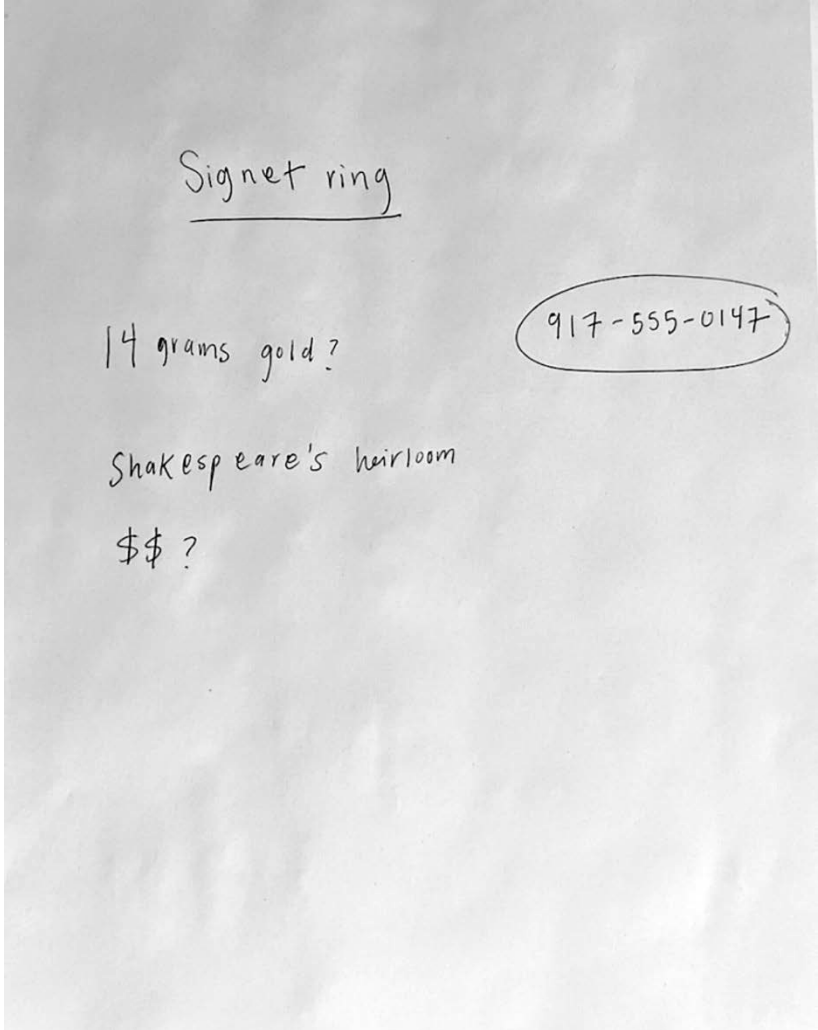


Exhibit D

Map of The Heart of the Ocean

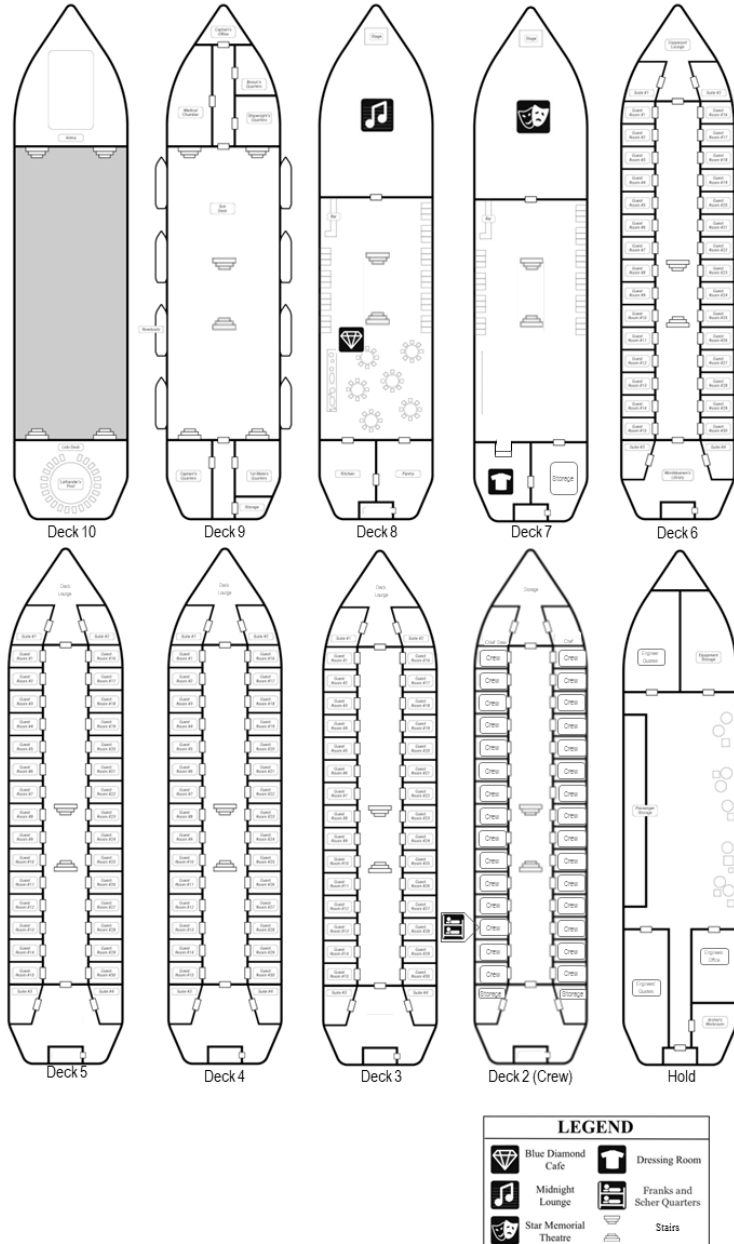
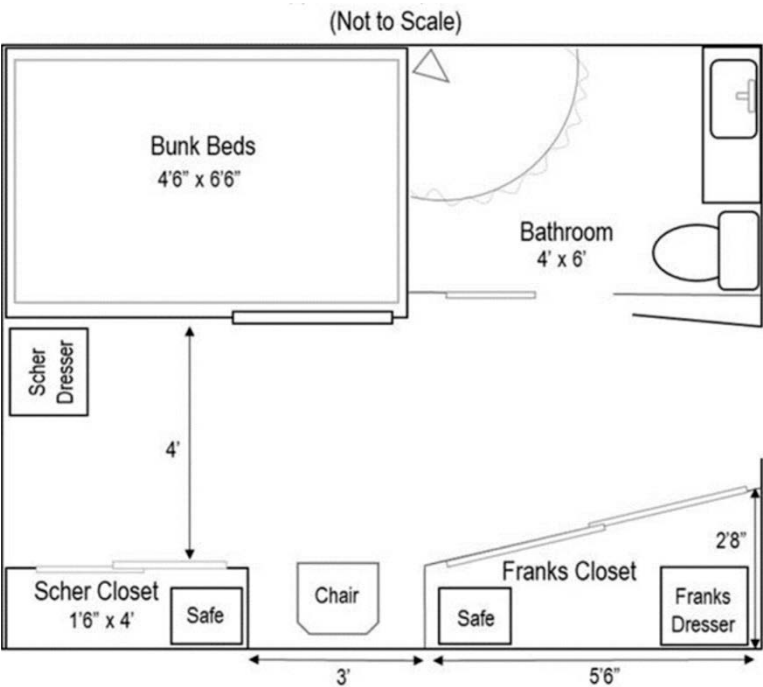


Exhibit E

Floorplan of Franks and Scher's room



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 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.

1 TEAM ROLE DESCRIPTIONS

2 Attorneys

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

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

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

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

25 Trial attorneys will:

- 26 ● Conduct direct examination.
- 27 ● Conduct cross-examination
- 28 ● Conduct redirect examination, if necessary. Make
29 appropriate objections: Only the direct and cross-
30 examination attorneys for a particular witness may
31 make objections during that testimony.
- 32 ● Conduct the necessary research and be prepared to act
33 as a substitute for any other attorneys.
- 34 ● Make opening statements and closing arguments.

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

37 Witnesses

38 You will supply the facts of the case. As a witness, the
39 official source of your testimony, or record, is composed
40 of your witness statement, and any portion of the fact

1 situation, stipulations, and exhibits, of which you would
2 reasonably have knowledge. **The fact situation is a set of**
3 **indisputable facts that witnesses and attorneys may**
4 **refer to and draw reasonable inferences from.** The
5 witness statements contained in the packet should be
6 viewed as signed statements made to the police by the
7 witnesses.

8 You may testify to facts stated in or reasonably inferred
9 from your record. If an attorney asks you a question, and
10 there is no answer to it in your official testimony, you can
11 choose how to answer it. You can either reply, "I don't
12 know" or "I can't remember," or you can infer an answer
13 from the facts you do officially know. Inferences are only
14 allowed if they are *reasonable*. Your inference cannot
15 contradict your official testimony, or else **you can be**
16 **impeached** using the procedures outlined in this packet.
17 Practicing your testimony with your attorney coach and
18 your team will help you to fill in any gaps in the official
19 materials (see Unfair Extrapolation on p. 64).

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

25 Court Clerk, Court Bailiff, Unofficial 26 Timer

27 We recommend that you provide two separate people for
28 the roles of clerk and bailiff, but if you assign only one, then
29 that person **must** be prepared to perform as clerk or bailiff
30 in any given trial.

31 The unofficial timer may be any member of the team
32 presenting the defense. However, it is advised that the
33 unofficial timer not have a substantial role, if any, during
34 the trial so they may concentrate on timing. The ideal
35 unofficial timer would be the defense team's clerk.

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

42 In a real trial, the court clerk and the bailiff aid the judge
43 in conducting the trial. The court clerk calls the court to

1 order and swears in the witnesses to tell the truth. The
2 bailiff watches over the defendant to protect the security
3 of the courtroom.

4 In the Mock Trial, the clerk and bailiff have different
5 duties. For the purpose of the competition, the duties
6 described below are assigned to the roles of clerk and
7 bailiff. **(Prosecution teams will be expected to provide
8 the clerk for the trial; defense teams are to provide the
9 bailiff.)**

10 Duties of the Court Clerk

11 When the judge and scoring attorneys arrive in the
12 courtroom, introduce yourself, explain that you will assist
13 as the court clerk and distribute team roster forms to the
14 opposing team, each scoring attorney, and the judge.

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

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

21 **Interruptions in the presentations do not count as time.**
22 For direct, cross, and redirect examination, record only
23 time spent by attorneys asking questions and witnesses
24 answering them.

25 **Do not include time when:**

- 26 • **Witnesses are called to the stand.**
27 • **Attorneys are making objections.**
28 • **Judges are questioning attorneys or witnesses or
29 offering their observations.**

30 The clerk will stop students both visually and verbally at
31 the end of the allotted time for each section. Both visual
32 and verbal warnings will be given a two-minute, one-
33 minute, 30 second, and STOP before the end of each
34 section. The time remaining cards must be displayed in a
35 manner to ensure that there is a clear view for the counsel
36 and presiding judge. Remember to speak loud enough for
37 everyone to hear you.

38 **Time allocations:** Two Minutes, One Minute, 30 Seconds,
39 Stop

40

1 There is to be no allowance for overtime under any
2 circumstance. This will be the procedure adhered to at the
3 state finals. After each witness has completed his or her
4 testimony, mark down the exact time on the time sheet.
5 Do not round off the time.

6 Duties of the Bailiff

7 When the judge arrives in the courtroom, introduce
8 yourself, explain that you will assist as the court bailiff
9 and distribute team roster forms to the opposing team,
10 each scoring attorney, and the judge.

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

15 "All rise, Superior Court of the State of California, County
16 of _____ Department _____, is now in session. Judge
17 presiding, please be seated and come to order. Please turn
18 off all cell phones and refrain from talking."

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

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

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

29 Duties of the Unofficial Timer

30 Any official member of the team presenting defense may
31 serve as an official timer. This unofficial timer must be
32 identified before the trial begins and sit next to the official
33 timer (clerk).

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

40 Any objections to the clerk's official time must be made
41 by this unofficial timer during the trial, before the verdict

1 is rendered. The judge shall determine whether to accept
2 the clerk's time or make a time adjustment.

3 If the times differ significantly, notify the judge and ask
4 for a ruling as to the time remaining. You may use the
5 following sample questions and statements:

6 "Your honor, before bringing the next witness, may I
7 bring to the court's attention that there is a time
8 discrepancy."

9 "Your honor, there is a discrepancy between my records
10 and those of the official timekeeper."

11 Be prepared to show your records and defend your
12 requests.

13 Team Manager

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

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1 PROCEDURES FOR PRESENTING 2 A MOCK TRIAL CASE

3 Introduction of Physical Evidence

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

- 10 1. Present the item to an attorney for the opposing team
11 prior to trial. If that attorney objects to the use of the
12 item, the judge will rule whether the evidence is
13 appropriate or not.
- 14 2. Before beginning the trial, mark all exhibits for
15 identification. Address the judge as follows: “Your
16 honor, I ask that this item be marked for identification
17 as Exhibit # _____.”
- 18 3. When a witness is on the stand testifying about the
19 exhibit, show the item to the witness and ask the witness
20 if he/she recognizes the item. If the witness does, ask him
21 or her to explain it or answer questions about it. This
22 shows how the exhibit is relevant to the trial.

23 Moving the Item into Evidence

24 Exhibits must be introduced into evidence if attorneys
25 wish the court to consider the items themselves as
26 evidence, not just the testimony about the exhibits.
27 Attorneys must ask to move the item into evidence during
28 the witness examination or before they finish presenting
29 their case.

- 30 1. “Your honor, I ask that this item (describe) be moved
31 into evidence as People’s (or Defendant’s) Exhibit #
32 and request that the court so admit it.”
- 33 2. At this point, opposing counsel may make any proper
34 objections.
- 35 3. The judge will then rule on whether the item may be
36 admitted into evidence.

37 The Opening Statement

38 The opening statement outlines the case as you intend to
39 present it. The prosecution delivers the first opening

1 statement. A defense attorney may follow immediately or
2 delay the opening statement until the prosecution has
3 finished presenting its witnesses. A good opening statement
4 should:

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

11 Begin your statement with a formal address to the judge:

- 12 • “Your honor, my name is (full name), the prosecutor
13 representing the people of the state of California in this
14 action,” or
 - 15 • “Your honor, my name is (full name), counsel for
16 Jordan Franks, the defendant in this action.”
- 17 Proper phrasing includes:
- 18 • “The evidence will indicate that...”
 - 19 • “The facts will show that...”
 - 20 • “Witness (full name) will be called to tell...”
 - 21 • “The defendant will testify that...”

22 Direct Examination

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

- 26 • Call for answers based on information provided in the
27 case materials.
 - 28 • Reveal all of the facts favorable to your position.
 - 29 • Ask the witnesses to tell the story rather than using
30 leading questions, which call for “yes” or “no” answers.
31 (An opposing attorney may object to the use of leading
32 questions on direct examination.)
 - 33 • Make the witnesses seem believable.
 - 34 • Keep the witness from rambling about unimportant
35 issues.
 - 36 • Call for the witness with a formal request:
 - 37 • “Your honor, I would like to call (name of witness) to
38 the stand.”
 - 39 • The witness will then be sworn in before testifying
- 40 After the witness swears to tell the truth, you may wish to

1 ask some introductory questions to make the witness feel
2 more comfortable. Appropriate inquiries include:

- 3 • The witness's name.
- 4 • Length of residence or present employment, if this
5 information helps to establish the witness's credibility.
- 6 • Further questions about professional qualifications, if
7 you wish to qualify the witness as an expert. Examples
8 of proper questions on direct examination:
- 9 • "Could you please tell the court what occurred on _
10 _____(date)?"
- 11 • "What happened after the defendant slapped you?"
- 12 • "How long did you see...?"
- 13 • "Did anyone do anything while you waited?"
- 14 • "How long did you remain in that spot?" Conclude
15 your direct examination with:
- 16 • "Thank you, Mr./Ms. (name). That will be all, your
17 honor." (The witness remains on the stand for cross-
18 examination.)

19 Cross-Examination

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

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

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

37 Examples of proper questions on cross-examinations:

- 38 • "Isn't it a fact that...?"
- 39 • "Wouldn't you agree that...?"
- 40 • "Don't you think that...?"

- 1 • “When you spoke with your neighbor on the night of
2 the murder, weren’t you wearing a red shirt?”

3 Cross examination should conclude with:

4 “Thank you, Mr./Ms. (name of witness). That will be all,
5 your honor.”

6 Impeachment During Cross-Examination

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

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

19 **The attorney does not need to tell the court that he or she**
20 **is impeaching the witness**, unless in response to an
21 objection from the opposing side. The attorney needs only to
22 point out during closing argument that the witness was
23 impeached, and therefore should not be believed.

24 Example: (Using signed witness statement to impeach) In
25 the witness statement, Mr. Jones stated that the suspect
26 was wearing a pink shirt. In answering a question on
27 direct examination, however, Mr. Jones stated that the
28 suspect wore a red shirt.

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

31 Mr. Jones responds, “Yes.”

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

36 Then ask Mr. Jones, “Do you recognize the statement on
37 page_____, line_____of the case packet?”

38 Read the statement aloud to the court and ask the witness:
39 “Does this not directly contradict what you said on direct
40 examination?”

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

5 Redirect Examination

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

20 If the credibility or reputation for truthfulness of a witness
21 has been attacked on cross-examination, the attorney
22 whose witness has been damaged may wish to ‘save’ the
23 witness through re-direct. These questions should be
24 limited to the damage the attorney thinks has been done
25 and enhance the witness’s truth-telling image in the eyes
26 of the court. Work closely with your attorney coach on
27 redirect strategies.

28 Closing Arguments

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

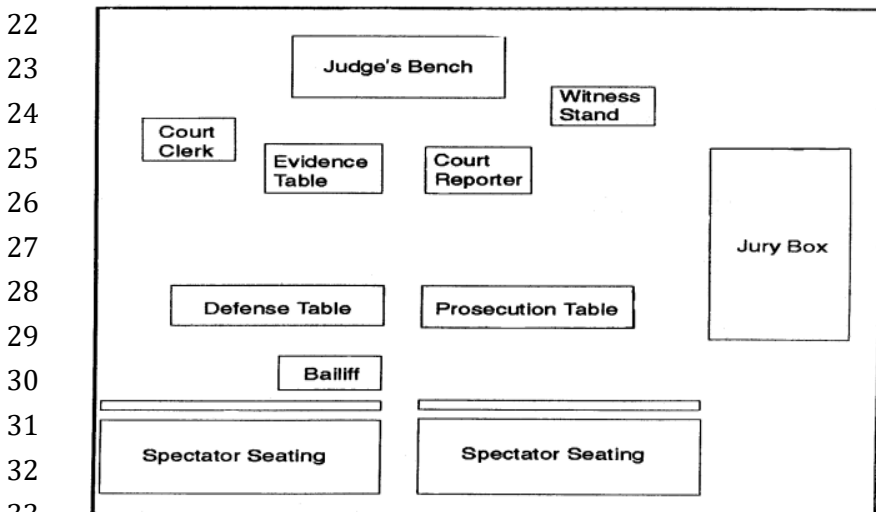
- 34 • Be spontaneous, synthesizing what actually happened
35 in court rather than being “prepackaged.” NOTE:
36 Points will be deducted from the closing argument
37 score if concluding remarks do not actually reflect
38 statements and evidence presented during the trial.
- 39 • Be emotionally charged and strongly appealing (unlike
40 the calm opening statement).
- 41 • Emphasize the facts that support the claims of your
42 side, but not raise any new facts.
- 43 • Summarize the favorable testimony.
- 44 • Attempt to reconcile inconsistencies that might hurt
45 your side.

- 1 • Be well-organized. (Starting and ending with your
- 2 strongest point helps to structure the presentation and
- 3 gives you a good introduction and conclusion.)
- 4 • The prosecution should emphasize that the state has
- 5 proven guilt beyond a reasonable doubt.
- 6 • The defense should raise questions that suggest the
- 7 continued existence of a reasonable doubt.
- 8 • Proper phrasing includes:
- 9 • “The evidence has clearly shown that...”
- 10 • “Based on this testimony, there can be no doubt
- 11 that...”
- 12 • “The prosecution has failed to prove that...”
- 13 • “The defense would have you believe that...”
- 14 • Conclude the closing argument with an appeal to
- 15 convict or acquit the defendant.
- 16 **An attorney has one minute for rebuttal.** Only issues
- 17 that were addressed in an opponent’s closing argument
- 18 may be raised during rebuttal.

19

20 DIAGRAM OF A TYPICAL

21 COURTROOM



34

35

1 **MOCK TRIAL SIMPLIFIED RULES**

2 **OF EVIDENCE**

3 Criminal trials are conducted using strict rules of evidence
4 to promote fairness. To participate in a Mock Trial, you
5 need to know its rules of evidence. The California Mock
6 Trial program bases its Mock Trial Simplified Rules of
7 Evidence on the California Evidence Code.

8 Studying the rules will prepare you to make timely
9 objections, avoid pitfalls in your own presentations, and
10 understand some of the difficulties that arise in actual
11 court trials. The purpose of using rules of evidence in the
12 competition is to structure the presentation of testimony to
13 resemble a real trial.

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

20

21 **Objections**

22 It is the responsibility of the party opposing the evidence
23 to prevent its admission by a timely and specific objection.
24 Objections not raised in a timely manner are waived or
25 given up. An effective objection is designed to keep
26 inadmissible testimony, or testimony harmful to your
27 case, from being admitted. A single objection may be
28 more effective than several objections. Attorneys can, and
29 should, pay attention to objections that need to be made
30 to questions and those that need to be made to answers.
31 Remember, the quality of an attorney's objections is
32 always more important than the quantity of the
33 objections.

34 For the purposes of this competition, teams will be
35 permitted to use only certain types of objections. The
36 allowable objections are found in the case packet. Other
37 objections may not be raised at trial. As with all
38 objections, the judge will decide whether to allow the
39 testimony, strike it, or simply not the objection for later
40 consideration.

41 The rulings of the trial judge are final. You must continue
42 the presentation even if you disagree. A proper objection
43 includes the following elements. The attorney:

- 44 • Addresses the judge,

- 1 • Indicates that he or she is raising an objection,
- 2 • Specifies what he or she is objecting to, i.e., the
- 3 particular word, phrase, or question, and
- 4 • Specifies the legal grounds for the objection.

5

6 Example: “(1) Your honor, (2) I object (3) to that question

7 (4) because it is a compound question.”

8 Throughout this packet, you will find sections titled

9 “Usage comments.” These comments further explain the

10 rule and often provide examples of how to use the rule at

11 trial.

12

13 ALLOWABLE EVIDENTIARY

14 OBJECTIONS

15 1. Unfair Extrapolation (UE)

16 This objection is specific to California Mock Trial and is

17 not an ordinary rule of evidence.

18 Each witness is bound by the facts contained in his or her

19 own official record, which, unless otherwise noted,

20 includes his or her own witness statement, the Fact

21 Situation (those facts of which the witness would

22 reasonably have knowledge), and/or any exhibit relevant

23 to his or her testimony. The **unfair extrapolation** (UE)

24 objection applies if a witness creates a material fact not

25 included in his or her official record. A **material fact** is

26 one that would likely impact the outcome of the case.

27 Witnesses may, however, make **fair extrapolations** from

28 the materials. A fair extrapolation is one in which a

29 witness makes a reasonable inference based on his or her

30 official record. A fair extrapolation does not alter the

31 material facts of the case.

32 If a witness is asked for information not contained in the

33 witness’s statement, the answer must be consistent with

34 the statement and may not materially affect the witness’s

35 testimony or any substantive issue of the case.

36 Unfair extrapolations are best attacked through

37 impeachment and closing argument. They should be dealt

38 with by attorneys during the trial. (See how to impeach a

39 witness)

40 When making a UE objection, students should be able to

41 explain to the court what facts are being unfairly

42 extrapolated and why the extrapolation is material to the

1 case. Possible rulings by a presiding judge include:
2 a) No extrapolation has occurred;
3 b) An unfair extrapolation has occurred;
4 c) The extrapolation was fair.

5 The decision of the presiding judge regarding
6 extrapolations or evidentiary matters is final.

7 Usage comments — The most common example of an
8 unfair extrapolation would be if an expert witness or
9 police officer is questioned about research and procedures
10 that require them to have specialized knowledge outside
11 what is contained in their official records. This type of
12 unfair extrapolation is illustrated in Example #1 below.

13 Example #2 provides a set of facts and an example of fair
14 and unfair extrapolation based on a sample fact scenario.

15 Example #1:

16 A defense expert witness testifies about using fluorescent
17 light when collecting fingerprints, which is described in
18 her witness statement. On cross-examination, the
19 prosecutor asks, “Did you also use a superglue processing
20 technique to collect fingerprints?” While a superglue
21 processing technique is an actual way to collect
22 fingerprints, the procedure was not mentioned anywhere
23 in the case materials. The defense could object that the
24 question calls for an unfair extrapolation.

25 Example #2: Sample Fact Scenario

26 John Doe, who is being charged with buying stolen goods
27 on a particular night, states the following in his witness
28 statement: “On the night in question, I pulled into the
29 parking lot of the Acme Grocery Store and parked my car.
30 I walked into the store with the other customers, picked
31 up some items, went to the checkout stand, and left the
32 store with my shopping bag.”

33 **Fair Extrapolation:** At trial, John Doe testifies to the
34 following: “On the night in question, around 9:00p.m., I
35 went to the Acme Grocery Store, parked my car, went into
36 the store and purchased milk and a box of cereal. The fact
37 that John Doe said he “purchased milk and a box of
38 cereal” is a fair extrapolation. Even though there is no
39 mention of what John purchased in his witness statement,
40 it can be reasonably inferred from the context of his
41 witness statement that he entered the store and purchased
42 groceries. Furthermore, the items he purchased (milk and
43 cereal) do not impact any substantive issue in the case.

44 **Unfair Extrapolation:** At trial, John Doe testifies to the
45 following: “I pulled into the parking lot of the Acme

1 Grocery Store and parked my car. I walked into the store,
2 purchased some groceries, and withdrew \$200 from the
3 ATM.” The fact that John Doe withdrew cash is an unfair
4 extrapolation because the fact John withdrew \$200 on the
5 night of the crime is material to the charge of buying
6 stolen goods because it impacts the substantive issues of
7 his motive and means to later buy stolen goods.

8 Form of Objection: **“Objection, your honor. This is an**
9 **unfair extrapolation,” or, “That question calls for**
10 **information beyond the scope of Mr. Doe’s witness**
11 **statement.”**

12 NOTE: The Unfair Extrapolation objection replaces the
13 Creation of a Material Fact objection used in previous
14 years in California Mock Trial.

15

16 2. Relevance

17 Unless prohibited by a pretrial motion ruling or by some
18 other rule of evidence listed in these Simplified Rules of
19 Evidence, all relevant evidence is admissible. Evidence is
20 relevant if it has any tendency to make a fact that is
21 important to the case more or less probable than the fact
22 would be without the evidence. Both direct and
23 circumstantial evidence may be relevant and admissible in
24 court.

25 **Example:** Eyewitness testimony that the defendant shot
26 the victim is **direct** evidence of the defendant’s assault.
27 The testimony of a witness establishing that the witness
28 saw the defendant leaving the victim’s apartment with a
29 smoking gun is **circumstantial** evidence of the
30 defendant’s assault.

31 Usage Comments — When an opposing attorney objects
32 on the ground of relevance, the judge may ask you to
33 explain how the proposed evidence relates to the case.

34 You can then make an “offer of proof” (explain what the
35 witness will testify to and how it is relevant). The judge
36 will then decide whether or not to let you question the
37 witness on the subject.

38 Form of Objection: **“Objection, your honor. This**
39 **testimony is not relevant,” or, “Objection, your honor.**
40 **Counsel’s question calls for irrelevant testimony.”**

41

42 3. More Prejudicial than Probative

43 The court in its discretion may exclude relevant evidence
44 if its probative value (its value as proof of some fact) is

1 substantially outweighed by the probability that its
2 admission creates substantial danger of undue prejudice,
3 confuses the issues, wastes time, or misleads the trier of
4 fact (judge).

5 Usage Comments — This objection should be used
6 sparingly in trial. It applies *only* in rare circumstances.
7 Undue prejudice does not mean “damaging.” Indeed, the
8 best trial evidence is always to some degree damaging to
9 the opposing side’s case. *Undue prejudice* instead is
10 prejudice that would affect the impartiality of the judge,
11 usually through provoking emotional reactions. To
12 warrant exclusion on that ground, the weighing process
13 requires a finding of clear lopsidedness such that
14 relevance is minimal and prejudice to the opposing side is
15 maximal.

16 **Example:** A criminal defendant is charged with
17 embezzling money from his employer. At trial, the
18 prosecutor elicits testimony that, several years earlier, the
19 defendant suffered an animal cruelty conviction for
20 harming a family pet.

21 The prosecution could potentially argue that the animal
22 cruelty conviction has some probative value as to
23 defendant’s credibility as a witness. However, the defense
24 would counter that the circumstances of the conviction
25 have very little probative value. By contrast, this fact
26 creates a significant danger of affecting the judge’s
27 impartiality by provoking a strong emotional dislike for
28 the defendant (undue prejudice).

29 Form of Objection: **“Objection, your honor. The**
30 **probative value of this evidence is substantially**
31 **outweighed by the danger of undue prejudice (or**
32 **confusing the issues or misleading the trier of fact).”**

33

34 4. Laying a Proper Foundation

35 To establish the relevance of direct or circumstantial
36 evidence, you may need to lay a proper foundation.
37 Laying a proper foundation means that before a witness
38 can testify about his or her personal knowledge or opinion
39 of certain facts, it must be shown that the witness was in
40 a position to know those facts in order to have personal
41 knowledge of those facts or to form an admissible opinion.
42 (See “Opinion Testimony” below.)

43 Usage Comments — Example: A prosecution attorney calls
44 a witness to the stand and begins questioning with “Did
45 you see the defendant leave the scene of the crime?” The
46 defense attorney may object based upon a lack of

1 foundation. If the judge sustains the objection, then the
2 prosecution attorney should lay a foundation by first
3 asking the witness if he was in the area at the
4 approximate time the crime occurred. This lays the
5 foundation that the witness was at the scene of the crime
6 at the time that the defendant was allegedly there in order
7 to answer the prosecution attorney's question.

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

10

11 5. Personal Knowledge/Speculation

12 A witness may not testify about any matter of which the
13 witness has no personal knowledge. Only if the witness
14 has directly observed an event may the witness testify
15 about it. Personal knowledge must be shown before a
16 witness may testify concerning a matter.

17 Usage Comments — Witnesses will sometimes make
18 inferences from what they actually did observe. An
19 attorney may properly object to this type of testimony
20 because the witness has no personal knowledge of the
21 inferred fact.

22 **Example:** From around a corner, the witness heard a
23 commotion. The witness immediately walked toward the
24 sound of the commotion, found the victim at the foot of
25 the stairs, and saw the defendant at the top of the landing,
26 smirking. The witness then testifies that the defendant
27 pushed the victim down the stairs. Even though this
28 inference may seem obvious to the witness, the witness
29 did not personally observe the defendant push the victim.
30 Therefore, the defense attorney can object based upon the
31 witness's lack of personal knowledge that the defendant
32 pushed the victim.

33 Form of Objection: **"Objection, your honor. The witness**
34 **has no personal knowledge to answer that question."**
35 **Or "Objection, your honor, speculation."**

36

37 6. Opinion Testimony (Testimony from 38 Non-Experts)

39 Opinion testimony includes inferences and other
40 subjective statements of a witness. In general, opinion
41 testimony is inadmissible because the witness is not
42 testifying to facts. Opinion testimony is admissible only
43 when it is (a) rationally based upon the perception of the
44 witness (five senses) and (b) helpful to a clear
45 understanding of his or her testimony. Opinions based on

1 a common experience are admissible. Some examples of
2 admissible witness opinions are speed of a moving object,
3 source of an odor, appearance of a person, state of
4 emotion, or identity of a voice or handwriting.
5 Usage Comments — As long as there is personal
6 knowledge and a proper foundation, a witness could
7 testify, “I saw the defendant, who was crying, looked
8 tired, and smelled of alcohol.” All of this is proper lay
9 witness (non-expert) opinion.
10 Form of Objection: **“Objection, your honor. Improper lay**
11 **witness opinion.” Or “Objection, your honor. The**
12 **question calls for speculation on the part of the**
13 **witness.”**

14

15 7. Expert Witness

16 A person may be qualified as an expert witness if he or
17 she has special knowledge, skill, experience, training, or
18 education in a subject sufficiently beyond common
19 experience. An expert witness may give an opinion based
20 on professional experience if the expert’s opinion would
21 assist the trier of fact (judge) in resolving an issue relevant
22 to the case. Experts must be qualified before testifying to a
23 professional opinion.

24 Qualified experts may give an opinion based upon their
25 personal observations as well as facts made known to
26 them at, or before, the trial. The facts need not be
27 admissible evidence if they are the type reasonably relied
28 upon by experts in the field. Experts may give opinions on
29 ultimate issues in controversy at trial. In a criminal case,
30 an expert may not state an opinion as to whether the
31 defendant did or did not have the mental state at issue.

32 Usage Comments — Examples:

- 33 1. A handwriting comparison expert testifies that police
34 investigators presented her with a sample of the
35 defendant’s handwriting and a threatening letter
36 prepared by an anonymous author. She personally
37 conducted an examination of both documents. Based
38 on her training, her professional experience, and her
39 careful examination of the documents, she concluded
40 that, in her opinion, the handwriting in the
41 anonymous letter matches the handwriting in the
42 sample of the defendant’s handwriting. This would be
43 an admissible expert opinion.
44 2. A doctor testifies that she based her opinion upon (1)
45 an examination of the patient and (2) medically

1 relevant statements of the patient’s relatives. Personal
2 examination is admissible because it is relevant and
3 based on personal knowledge. The statements of the
4 relatives are inadmissible hearsay (hearsay is defined
5 in Section 9 below) but are proper basis for opinion
6 testimony because they are reasonably relevant to a
7 doctor’s diagnosis. A judge could, in her discretion,
8 allow the expert witness to describe what the relatives
9 told her and explain how that information supports
10 her opinion. Although those statements would not be
11 admissible to prove the statements are true, they can
12 be used to explain how the statements support the
13 doctor’s opinion.

14 Form of Objection: **“Objection, your honor. There is a**
15 **lack of foundation for this opinion testimony,”** or,
16 **“Objection, your honor. Improper opinion.”**

17

18 8. Character Evidence

19 “Character evidence” is evidence of a person’s personal
20 traits or personality tendencies (e.g., honest, violent,
21 greedy, dependable, etc.). As a general rule, character
22 evidence is **inadmissible** when offered to prove that a
23 person acted in accordance with his or her character
24 trait(s) on a specific occasion. The Simplified Rules of
25 Evidence recognize three exceptions to this rule:

26 1. Defendant’s own character

27 The defense may offer evidence of the defendant’s
28 own character (in the form of opinion or evidence of
29 reputation) to prove that the defendant acted in
30 accordance with his or her character on a specific
31 occasion (where the defendant’s character is
32 inconsistent with the acts of which he or she is
33 accused). The prosecution can rebut the evidence (See
34 Usage Comments below).

35 2. Victim’s character

36 The defense may offer evidence of the victim’s
37 character (in the form of opinion, evidence of
38 reputation, or specific instances of conduct) to prove
39 the victim acted in accordance with his or her own
40 character on a specific occasion (where the victim’s
41 character would tend to prove the innocence of the
42 defendant). The prosecution can rebut the evidence
43 (See Usage Comments below).

44 3. Witness’s character

45 Evidence of a witness’s character for dishonesty (in

1 the form of opinion, evidence of reputation, or specific
2 instances of conduct) is admissible to attack the
3 witness's credibility. If a witness's character for
4 honesty has been attacked by the admission of bad
5 character evidence, then the opposing party may rebut
6 by presenting good character evidence (in the form of
7 opinion, evidence of reputation, or specific instances
8 of conduct) of the witness's truthfulness.

9 **Admission of Prior Acts for Limited Non-Character**
10 **Evidence Purposes**

11 **Habit or Custom to Prove Specific Behavior**

12 Evidence of the habit or routine practice of a person
13 or an organization is admissible to prove conduct on
14 a specific occasion in conformity with the habit or
15 routine practice. Habit or custom evidence is not
16 character evidence.

17 **Prior Act to Prove Motive, Intent, Knowledge,**
18 **Identity, or Absence of Mistake**

19 Nothing in this section prohibits the admission of
20 evidence that the defendant committed a crime, civil
21 wrong, or other act when relevant to prove some fact
22 (such as motive, intent, knowledge, identity, or
23 absence of mistake or accident) other than his or her
24 disposition to commit such an act.

25 **Usage Comments** — If any prosecution witness testifies to
26 the defendant or victim's character, the defense may
27 object. But the prosecution may then request to make an
28 offer of proof, or an explanation to the judge, that the
29 prosecution (a) anticipates the defense will introduce
30 evidence of defendant's or victim's character, and (b) Mock
31 Trial rules do not allow for rebuttal witnesses or recalling
32 witnesses. If the judge allows, the prosecution may present
33 evidence in the form of opinion, evidence of reputation, or
34 specific instances of conduct to rebut the defense's
35 anticipated use of character evidence. If this evidence does
36 not come in during the defense, the defense attorney can
37 move to strike the previous character evidence.

38 **Examples:**

39 **Admissible character evidence**

- 40 1. The defendant is charged with embezzlement
41 (a theft offense). The defendant's pastor
42 testifies that the defendant attends church
43 every week and has a reputation in the
44 community as an honest and trustworthy
45 person. This would be admissible character
46 evidence.

1 **Inadmissible character evidence**

2 2. The defendant is charged with assault. The
3 prosecutor calls the owner of the defendant's
4 apartment to testify in the prosecution's case-in-
5 chief. She testifies that the defendant often paid
6 his rent late and was very unreliable. This would
7 likely not be admissible character evidence for
8 two reasons: (1) This character evidence violates
9 the general rule that character evidence is
10 inadmissible (and it does not qualify under one
11 of the three recognized exceptions above), and
12 (2) the character trait of "reliability" is not
13 relevant to an assault charge (by contrast,
14 propensity for violence or non-violence would be
15 relevant character traits in an assault case).

16 Form of Objection: **"Objection, your honor. Inadmissible**
17 **character evidence," or, "Objection, your honor. The**
18 **question calls for inadmissible character evidence."**

19 **9. Hearsay**

20 Hearsay evidence is evidence of a statement that was
21 made other than by a witness while testifying at trial and
22 that is offered to prove the truth of the matter stated. (This
23 means the person who is testifying to another person's
24 statement is offering the statement to prove it is true.)
25 Hearsay is considered untrustworthy because the
26 declarant (aka the speaker) of the out-of-court statement
27 did not make the statement under oath and is not present
28 in court to be cross-examined. Because these statements
29 are unreliable, they ordinarily are not admissible.

30 Usage Comments — Testimony not offered to prove the
31 truth of the matter stated is, by definition, *not* hearsay.
32 For example, testimony to show that a statement was said
33 and heard, or to show that a declarant could speak a
34 certain language, or to show the subsequent actions of a
35 listener, is admissible.

36 **Examples:**

- 37 1. Joe is being tried for murdering Henry. The witness
38 testifies, "Ellen told me that Joe killed Henry." If
39 offered to prove that Joe killed Henry, this statement is
40 hearsay and would likely not be admitted over an
41 objection.
- 42 2. A witness testifies, "I went looking for Eric because
43 Sally told me that Eric did not come home last night."
44 Sally's comment is an out-of-court statement.
45 However, the statement could be admissible if it is not
46 offered for the truth of its contents (that Eric did not

1 come home), but instead is offered to show why the
2 witness went looking for Eric.

3 Form of Objection: **“Objection, your honor. Counsel’s**
4 **question calls for hearsay.” Or “Objection, your honor.**
5 **This testimony is hearsay. I move that it be stricken**
6 **from the record.”**

7 **Hearsay Exceptions**

8 Out of practical necessity, the law recognizes certain types
9 of hearsay that may be admissible. Exceptions have been
10 allowed for out-of-court statements made under
11 circumstances that promote greater reliability, provided
12 that a proper foundation has been laid for the statements.
13 The Simplified Rules of Evidence recognize **only** the
14 following exceptions to the hearsay rule:

15 a. **Declaration against interest:** a statement which,
16 when made, was contrary to the declarant’s own
17 economic interest, or subjected the declarant to the risk
18 of civil or criminal liability, or created a risk of making
19 the declarant an object of hatred, ridicule, or social
20 disgrace in the community. A reasonable person in the
21 declarant’s position would not have made the statement
22 unless the person believed it to be true.

23 b. **Excited Utterance:** a statement that describes or
24 explains an event perceived by the declarant, made
25 during or shortly after a startling event, while the
26 declarant is still under the stress of excitement caused
27 by the event.

28 c. **State of mind:** a statement that shows the declarant’s
29 then-existing state of mind, emotion, or physical
30 condition (including a statement of intent, plan,
31 motive, mental state, pain, or bodily health).

32 d. **Records made in the regular course of business**
33 **(including medical records):** writings made as a
34 record of an act or event by a business or governmental
35 agency (Mock Trial does not require the custodian of
36 the records to testify). To qualify as a business record,
37 the following conditions must be established: (1) The
38 writing was made in the regular course of business; (2)
39 The writing was made at or near the time of the act or
40 event; and (3) The sources of information and method
41 of preparation are trustworthy.

42 e. **Official records by public employees:** writing made
43 by a public employee as a record of an act or event.
44 The writing must be made within the scope of duty of
45 a public employee.

- 1 f. **Prior inconsistent statement:** a prior statement made
2 by the witness that is inconsistent with the witness's
3 trial testimony.
- 4 g. **Prior consistent statement:** a prior statement made by
5 a witness that is consistent with the witness's trial
6 testimony. Evidence of a prior consistent statement
7 can only be offered after evidence of a prior
8 inconsistent statement has been admitted for the
9 purpose of attacking the witness's credibility. To be
10 admissible, the consistent statement must have been
11 made before the alleged inconsistent statement.
- 12 h. **Statements for the purpose of medical diagnosis or**
13 **treatment:** *statements* made for purposes of medical
14 diagnosis or treatment, describing medical history,
15 past or present symptoms, pain, or sensations.
- 16 i. **Reputation of a person's character in the**
17 **community:** evidence of a person's general reputation
18 with reference to his or her character or a trait of his
19 or her character at a relevant time in the community in
20 which the person then resided or in a group with
21 which the person habitually associated.
- 22 j. **Dying Declaration:** a statement made by a dying
23 person about the cause and circumstances of his or
24 her death, if the statement was made on that person's
25 personal knowledge and under a sense of immediately
26 impending death.
- 27 k. **Co-Conspirator's statements:** statements made by the
28 declarant while participating in a conspiracy to
29 commit a crime or civil wrong. To be admissible, the
30 following must be established: (a) The statement was
31 made in furtherance of the objective of that
32 conspiracy; (b) The statement was made prior to or
33 during the time that the declarant was participating in
34 that conspiracy; and (c) The evidence is offered either
35 after admission of evidence sufficient to sustain a
36 finding of the facts specified in (1) or (2) or, in the
37 court's discretion as to the order of proof, subject to
38 the admission of this evidence.
- 39 l. **Adoptive admission:** a statement offered against a party,
40 that the party, with knowledge of the content of that
41 statement, has by words or other conduct adopted as true.
- 42 m. **Admission by a party opponent:** any statement by a
43 party in an action when it is offered against that party
44 by an opposing party. The statement does not have to
45 be against the declarant's interest at the time the
46 statement was made.

1 Objections for inappropriately phrased 2 questions

3 10. Leading Questions

4 Attorneys may not ask witnesses leading questions during
5 direct examination or re-direct examination. A leading
6 question is one that suggests the answer desired. Leading
7 questions are permitted on cross- examination.

8 Usage Comments — Example: during direct examination, the
9 prosecutor asks the witness, “During the conversation on
10 March 8, didn’t the defendant make a threatening gesture?”
11 Counsel could rephrase the question, “What, if anything, did
12 the defendant do during your conversation on March 8?”

13 Form of Objection: **“Objection, your honor. Counsel is
14 leading the witness.”**
15

16 11. Compound Question

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

21 Example: “Did you determine the point of impact from
22 conversations with witnesses and from physical remarks,
23 such as debris in the road?” If an objection to the
24 compound question is sustained, the attorney may state
25 “Your honor, I will rephrase the question,” and then break
26 down the question into two separate questions:

27 Q1: “Did you determine the point of impact from
28 conversations with witnesses?”

29 Q2: “Did you also determine the point of impact from
30 physical marks in the road?”

31 Remember that there may be another way to make your
32 point.

33 Form of Objection: **“Objection, your honor, on the
34 ground that this is a compound question.”**
35

36 12. Narrative

37 A narrative question is too general and calls for the
38 witness in essence to “tell a story” or give a broad and
39 unspecific response. The objection is based on the belief
40 that the question seriously inhibits the successful
41 operation of a trial and the ultimate search for the truth.

42 Usage Comments — Example: The attorney asks A,
43 “Please describe all the conversations you had with X

1 before X started the job.” This question calls for the
2 witness to give a long narrative answer. It is, therefore,
3 objectionable.

4 Form of Objection: **“Objection, your honor. Counsel’s**
5 **question calls for a narrative.” Or “Objection, your**
6 **honor. The witness is providing a narrative answer.”**

8 13. Argumentative Question

9 An argumentative question challenges the witness about
10 an inference from the facts in the case. The cross-
11 examiner may not harass a witness, become accusatory
12 toward a witness, unnecessarily interrupt the witness’s
13 answer, or make unnecessary comments on the witness’s
14 responses. These behaviors are also known as “badgering
15 the witness.” (If a witness is non-responsive to a question,
16 see the non-responsive objection, #16 below).

17 Usage Comments — Example: Questions such as “How
18 can you expect the judge to believe that?” are
19 argumentative and objectionable. The attorney may argue
20 the inferences during summation or closing argument, but
21 the attorney must ordinarily restrict his or her questions to
22 those calculated to elicit relevant facts.

23 Form of Objection: **“Objection, your honor. Counsel is**
24 **being argumentative.” Or “Objection, your honor.**
25 **Counsel is badgering the witness.”**

27 14. Asked and Answered

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

31 Usage Comments — Examples: On direct examination, the
32 prosecution attorney asks, “Did the defendant stop at the
33 stop sign?” The witness answers, “No, he did not.” Then,
34 because it is a helpful fact, the direct examining attorney
35 asks again, “So the defendant didn’t stop at the stop
36 sign?” Defense counsel could object on asked-and-
37 answered grounds.

38 On cross-examination, the defense attorney asks, “Didn’t
39 you tell a police officer after the accident that you weren’t
40 sure whether X failed to stop for the stop sign?” The
41 witness answers, “I don’t remember.” Defense attorney
42 then asks, “Do you deny telling the officer that?” If the
43 prosecution attorney makes an asked-and-answered
44 objection, it should be overruled. Why? In this example,
45 defense counsel rephrased the question based upon the

1 witness's answer.

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

4

5 15. Vague and Ambiguous Questions

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

10 Usage Comments — Example: "Does it happen at once?"

11 Form of Objection: **"Objection, your honor. This**
12 **question is vague and ambiguous as to..."**

13

14 16. Non-responsive Witness

15 A witness has a responsibility to answer the attorney's
16 questions. Sometimes a witness's reply is vague, or the
17 witness purposely does not answer the attorney's
18 question. Counsel may object to the witness's non-
19 responsive answer.

20 Usage Comments — Example: The attorney asks, "Did you
21 see the defendant's car in the driveway last night?" The
22 witness answers, "Well, when I got home from work, I
23 hurried inside to make dinner. Then I decided to watch
24 TV, and then I went to bed." This answer is non-
25 responsive, as the question is specifically asking if the
26 witness saw the defendant's car on the night in question.

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

29

30 17. Outside the Scope of Cross-Examination

31 Redirect examination is limited to issues raised by the
32 opposing attorney on cross-examination. If an attorney
33 asks questions beyond the issues raised on cross-
34 examination, opposing counsel may object to them.

35 Form of Objection: **"Objection, your honor. Counsel is**
36 **asking the witness about matters beyond the scope of**
37 **cross-examination."**

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE CALIFORNIA MOCK TRIAL

Argumentative Question: “Objection, your honor. Counsel is being argumentative.” Or, “Objection, your honor. Counsel is badgering the witness.”

Asked and Answered: “Objection, your honor. This question has been asked and answered.”

Character Evidence: “Objection, your honor. Inadmissible character evidence,” or, “Objection, your honor. The question calls for inadmissible character evidence.”

Compound Question: “Objection, your honor, on the ground that this is a compound question.”

Expert Opinion: “Objection, your honor. There is a lack of foundation for this opinion testimony,” or, “Objection, your honor. Improper opinion.”

Foundation: “Objection, your honor. There is a lack of foundation.”

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.”

Leading Question: “Objection, your honor. Counsel is leading the witness.”

More Prejudicial than Probative: “Objection, your honor. The probative value of this evidence is substantially outweighed by the danger of undue prejudice (or confusing the issues, or misleading the trier of fact).”

Narrative: “Objection, your honor. Counsel’s question calls for a narrative.” Or, “Objection, your honor. The witness is providing a narrative answer.”

Non-Responsive: “Objection, your honor. The witness is being non-responsive.”

Opinion Testimony (Testimony from Non-Experts): “Objection, your honor. Improper lay witness opinion.” Or, “Objection, your honor. The question calls for speculation on the part of the witness.”

Outside the Scope of Cross-Examination: “Objection, your honor. Counsel is asking the witness about matters beyond the scope of cross-examination.

Personal Knowledge/Speculation: “Objection, your honor. The witness has no personal knowledge to answer that question.” Or, “Objection, your honor, speculation.”

Relevance: “Objection, your honor. This testimony is not relevant,” or, “Objection, your honor. Counsel’s question calls for irrelevant testimony.”

Unfair Extrapolation: “Objection, your honor. This question is an unfair extrapolation,” or, “That information calls for information beyond the scope of the statement of facts.”

Vague and Ambiguous: “Objection, your honor. This question is vague and ambiguous as to...”

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Avery Dennison Corporation
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Butte	Mariposa	San Bernardino	Sonoma
Contra Costa	Mendocino	San Diego	Stanislaus
El Dorado	Merced	San Francisco	Tulare
Fresno	Mono	San Joaquin	Tuolumne
Imperial	Monterey	San Luis Obispo	Ventura
Kern	Napa	San Mateo	Yolo
Lake	Orange	Santa Barbara	Yuba
Los Angeles	Placer	Santa Clara	
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