



Constitutional  
Rights  
Foundation

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# **PEOPLE v. CRODDY**

**Burglary, Aiding and Abetting  
and Accessory After the Fact.**

Featuring a pretrial argument on the Fifth Amendment

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

Co-Sponsored by:  
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**This case is dedicated to Marshall Croddy, former president of Constitutional Rights Foundation.**

After 41 years of service, it's with warm wishes but also a heavy heart that we announced the retirement of Marshall Croddy, president of Constitutional Rights Foundation (CRF). During his tenure as President, Marshall led CRF through a period of growth and innovation. From growing the foundation's national presence in all 50 states to opening up new funding opportunities, Marshall's leadership and vision will be greatly missed.



Marshall was a leader and a mentor to countless educators and CRF staff members and we thank him for that. He has made a significant and positive impact on youth, teachers, and on us.

Marshall joined CRF in 1979 as a curriculum writer and later became CRF's director of publications in 1983. He built an extensive catalog of publications known throughout the country for their engaging content and innovative methodologies, and he developed CRF's capacity to produce sophisticated private and governmental grant proposals. Over the decades, as director of publications, then vice president, and ultimately president, he is a recognized leader in the fields of law-related and civic education and developed numerous programs of national significance.

He was always deeply involved in the case development of CRF's California Mock Trial program, as well as the development, design, and editing of the quarterly *Bill of Rights in Action* magazine. His oversight of CRF's website resulted in over three million visitors per year and a rating as a top web resource for teachers and students by the *Los Angeles Times*.

Among his significant accomplishments is the creation of Civic Action Project (CAP), a national model for online delivery of civics curriculum, and the creation of Active Citizenship Today (ACT), a framework for student civic participation, adopted as part of several states' social studies standards. Marshall designed, edited, and supervised the publications of hundreds of nationally recognized online and print resources and texts, notably as developer and original author of CRF's premier textbook, *Criminal Justice in America*. He has published articles and op-eds in numerous journals and newspapers including the *Los Angeles Times* and *San Francisco Chronicle*, and has made radio and television appearances sharing his expertise in civic and law-related education.

Marshall was the first-ever recipient of the Roy Erickson Civic Education Leadership Award in 2005 from the California Council for the Social Studies and also received the Isidore Starr Award for Excellence in Law-Related Education from the American Bar Association in 2001.

With his retirement, Marshall will now have the time to follow some of his other passions, including reading, gardening, and writing another book to follow his 2012 publication (co-authored with Patrick Jennings) *Testimony of a Death: Thelma Todd: Mystery, Media and Myth in 1935 Los Angeles*.

We will miss Marshall's leadership and contributions not only to CRF but to the field of civic education.

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# 2020-2021

## 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 wrestle with large societal problems within a structured forum and 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 interaction with positive adult role models in the legal community.

For the school, the program will:

1. Provide an opportunity for students to study key legal concepts and issues.
2. Promote cooperation and healthy academic competition among students of varying abilities and interests.
3. Demonstrate the achievements of young people to the community.
4. Provide a hands-on experience outside the classroom 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 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 of Ethical Conduct.
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 of Ethical Conduct 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 the Code. Violations of this Code of Ethical Conduct may be grounds for disqualification from a contest and/or suspension or expulsion from the program.

# INTRODUCTION TO 2020-2021 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 40th Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the *People v. Croddy* 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.

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 Los Angeles, March 19-21, 2021. The winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Evansville, Indiana, May 13–15, 2021.

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

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Lee Croddy is a self-titled political journalist who runs a popular YouTube channel called “The Right Choice of News” (RCN) on which Lee regularly posts videos. On RCN, Lee reveals stories, which Lee often claims are being hidden from the public by the government in an effort to control public perception.

Remi Montoya was, for a period of time, a loyal subscriber to Lee and followed Lee on all of Remi’s social media accounts. Remi and Lee interacted over Twitter and Instagram often enough that Lee could recognize Remi’s username (@theRCNmanifesto), though they only spoke a few times outside of social media at meet-and-greets or other events.

Around March 2019, Lee organized a small number of non-public groups to direct-message with on Twitter. One group’s members consisted of Remi, Zuri O’Neill, and five others. In July 2019, Lee briefly met Remi in person after Remi had won tickets to an event Lee hosted.

On Tuesday, February 11, 2020, Lee publicly tweeted that a new video would be posted on the following Thursday regarding documents from the government showing that information was being kept from its citizens. Remi Montoya and Zuri O’Neill commented on the tweet that they were excited to see the video.

The day after the tweet, on February 12, Lee sent a message to the group chat with a sneak peek of the YouTube video to be released later that week. Lee claimed to have received government documents from an anonymous source that it had proof of extraterrestrial beings and UFOs. The video included an image of the documents listing the name, title, and home address of a federal agent named Drew Marshak. In the chat, Lee stated, “We have to make demands, march up to this Marshak person and DEMAND ANSWERS! And if Marshak won’t answer us, we’ll just TAKE what is OURS!”

Lee posted the full video publicly on YouTube on February 13. In the video, Drew’s name and information were blurred out. The documents were marked “confidential” and “government property.” After describing and providing commentary on the documents, Lee asked viewers to “like and comment” on the video. Remi saw the video, liked and commented, “I’ll be there Lee! I’ll be right next to you!”



1 On February 14, Lee texted Remi via WhatsApp, stating “I  
2 need you to go to that agent Marshak’s place...Get the rest  
3 of the documents.” Remi replied via WhatsApp with “Yah  
4 for sure! I’ve still got the address from the group chat.” Lee  
5 also texted, “You really need to get into that house  
6 tomorrow.”

7 On February 15, Remi went to the house and entered  
8 Drew’s property through the side fence in the backyard.  
9 Remi entered the house through an open window. In the  
10 house, Remi found Drew’s personal laptop and transferred  
11 files from it onto a USB flash drive. Remi also took a  
12 briefcase that bore a state government insignia and Drew’s  
13 first initial and last name (D. Marshak). Before Remi could  
14 leave, Drew returned home and attempted to grab the  
15 briefcase from Remi. A brief struggle followed, during  
16 which Remi punched Drew in the face causing Drew to fall  
17 backwards hitting Drew’s head.

18 Remi fled with the briefcase to a café where Lee Croddy  
19 was hosting a meet-and-greet event with Lee’s fans. Remi  
20 had a brief conversation with Lee. After the event, Lee and  
21 Remi took Lee’s car and drove to Lee’s residence.

22 At Lee’s residence, Lee guided Remi, by way of a secluded  
23 entrance, to a room in a guest house in the back of the  
24 property. Remi spent the night in that room.

25 Remi woke up the next morning and was observed by a  
26 neighbor pacing around in the front yard. Responding to a  
27 tip by the neighbor, a local police officer, Max Bird, showed  
28 up at Lee’s residence and arrested Remi in the front yard.  
29 Lee then approached Officer Bird, and Officer Bird told Lee  
30 that Remi had just been arrested for burglary and assault.  
31 Lee cooperated with Officer Bird’s request to examine the  
32 premises and led Officer Bird to the guest house and room.  
33 A briefcase engraved with the California Department of  
34 Justice insignia and the name “D. Marshak” was discovered  
35 in the room. Inside the briefcase was a USB flash drive that  
36 was later found to contain files from Drew’s computer.  
37 Officer Bird arrested Remi.

38 During Officer Bird’s investigation, the officer gathered  
39 information from a variety of witnesses. On February 23,  
40 Officer Bird returned to Lee’s residence with a warrant for  
41 Lee’s arrest and arrested Lee. Lee was charged with aiding  
42 and abetting first degree burglary and with accessory after  
43 the fact.

1 **STATEMENT OF CHARGES**

2

3 Count One

4 The defendant is charged with aiding and abetting a first-  
5 degree burglary committed by Remi Montoya. (Cal. Pen.  
6 Code § 459, 460 (a))

7

8 Count Two

9 The defendant is charged as an accessory after the fact to a  
10 felony committed by Remi Montoya. (Cal. Pen. Code § 32)

11 **PHYSICAL EVIDENCE**

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

14

15 Exhibit A | Photograph of Drew Marshak’s briefcase.

16

17 Exhibit B | Faithful and accurate transcript of the February  
18 12 conversation on Twitter between Lee Croddy, Remi  
19 Montoya, Zuri O’Neill, Christopher D’Morio, Buzz  
20 Darkmin, Taylor Gold and Michael Wolf.

21

22 Exhibit C | Faithful and accurate transcript of the February  
23 14 conversation on WhatsApp between Lee Croddy and  
24 Remi Montoya.

25

26 **STIPULATIONS**

27 Prosecution and defense stipulate to the following:

- 28 1. The All-Points Bulletin (APB) contained an accurate and  
29 complete physical description of Remi Montoya.  
30 2. All witness statements were taken in a timely manner.  
31 3. Any information contained in the “UFO documents”  
32 discussed is confidential in relation to an ongoing state  
33 investigation unrelated to the facts of the instant case.  
34 As such, any such documents in Lee Croddy’s  
35 possession or found in Drew Marshak’s briefcase may  
36 not be entered into evidence.  
37 4. All physical evidence and witnesses not provided in the  
38 case packet are unavailable and their availability may  
39 not be questioned. This includes but is not limited to  
40 the video clip shared on February 12 and the full video  
41 shared on February 13.  
42 5. Dr. Kai Chavez and Dr. Jes Beart are qualified expert  
43 witnesses and can testify to each other’s statements.  
44 They may also testify to any relevant information they  
45 would have reasonable knowledge of from the fact  
46 situation, witness statements, and exhibits.

- 1 6. Remi Montoya, Lee Croddy and Zuri O’Neill may testify  
2 without objection to the content of the group chat to the  
3 extent that it is included in evidence or in their  
4 testimony or what they would reasonably know from  
5 the fact situation. The other members of the group chat  
6 are unavailable to testify and their unavailability may  
7 not be questioned.
- 8 7. Remi Montoya pleaded guilty to two felonies, first  
9 degree burglary (PC § 459, 460(a)) and assault on a  
10 peace officer (PC § 217.1) and agreed to give truthful  
11 testimony at Lee Croddy’s trial. Remi will be sentenced  
12 after Lee’s trial on a date to be set after the conclusion  
13 of this trial. Remi Montoya could receive a sentence of  
14 up to five years. “Truthful testimony” shall be, for the  
15 purposes of this stipulation, testimony given based  
16 solely on the witness’s memory of events and  
17 circumstances to the best of his or her ability without  
18 reference or influence of any third party.
- 19 8. Exhibit A is a photograph of Drew Marshak’s briefcase.  
20 Exhibit B is a faithful and accurate transcript of the  
21 February 12 conversation on Twitter between Lee  
22 Croddy, Remi Montoya, Zuri O’Neill, Christopher  
23 D’Morio, Buzz Darkmin, Taylor Gold and Michael Wolf.  
24 Exhibit C is a faithful and accurate transcript of the  
25 February 14 conversation on WhatsApp between Lee  
26 Croddy and Remi Montoya.
- 27 9. The arrest warrant of Lee Croddy was based on  
28 sufficient probable cause and properly issued.
- 29 10. Remi maintained possession of the briefcase at all times  
30 and did not share the contents with Lee.
- 31 11. Lee Croddy, the defendant, is present during the trial.  
32 Under the conditions of an online trial, any witness that  
33 knows or should know the defendant, is assumed to  
34 have correctly identified Lee Croddy as the defendant in  
35 this case.
- 36 12. During the investigation, the officer properly collected  
37 the evidence listed as Exhibit A, B, and C.

38

## 39 **SOURCES FOR THE TRIAL**

40

41 The sources for the mock trial are a “closed library,” which  
42 means that Mock Trial participants may only use the  
43 materials provided in this case packet.

44

45

### 46 **RELEVANT STATUTES**

47

48 First Degree Burglary (Cal. Pen. Code § 459, 460 (a))

1 Every person who enters any house, room . . . with intent  
2 to commit grand or petit larceny or any felony is guilty of  
3 burglary. As used in this chapter, “inhabited” means  
4 currently being used for dwelling purposes, whether  
5 occupied or not. Every burglary of an inhabited dwelling  
6 house . . . which is inhabited and designed for habitation . .  
7 . is burglary of the first degree.

8

9 Who are principals (Cal. Pen. Code § 31)

10 All persons concerned in the commission of a crime,  
11 whether it be felony or misdemeanor, and whether they  
12 directly commit the act constituting the offense, or aid and  
13 abet in its commission, or, not being present, have advised  
14 and encouraged its commission . . . or who, by threats,  
15 menaces, command, or coercion, compel another to commit  
16 any crime, are principals in any crime so committed.

17

18 Accessory After the Fact (Cal. Pen. Code § 32)

19 Every person who, after a felony has been committed,  
20 harbors, conceals or aids a principal in such felony, with  
21 the intent that said principal may avoid or escape from  
22 arrest, trial, conviction or punishment, having knowledge  
23 that said principal has committed such felony or has been  
24 charged with such felony or convicted thereof, is an  
25 accessory to such felony.

26

27 JURY INSTRUCTIONS

28

29 CALCRIM 223 (Direct and Circumstantial Evidence)

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

35 Circumstantial evidence also may be called indirect  
36 evidence. Circumstantial evidence does not directly prove  
37 the fact to be decided but is evidence of another fact or  
38 group of facts from which you may logically and reasonably  
39 conclude the truth of the fact in question. For example, if a  
40 witness testifies that he saw someone come inside wearing  
41 a raincoat covered with drops of water, that testimony is  
42 circumstantial evidence because it may support  
43 a conclusion that it was raining outside. Both direct and  
44 circumstantial evidence are acceptable types of evidence to  
45 prove or disprove the elements of a charge, including intent  
46 and mental state and acts necessary to a conviction, and  
47 neither is necessarily more reliable than the other. Neither  
48 is entitled to any greater weight than the other. You must

1 decide whether a fact in issue has been proved based on all  
2 the evidence.

3  
4 CALCRIM 224 (Circumstantial Evidence: Sufficiency of  
5 Evidence)

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

21  
22 CalCrim 400 (Aiding and Abetting: General Principles)  
23 A person may be guilty of a crime in two ways. One, he or  
24 she may have directly committed the crime. The court will  
25 call that person the perpetrator. Two, he or she may have  
26 aided and abetted a perpetrator, who directly committed  
27 the crime.

28 A person is guilty of a crime whether he or she committed  
29 it personally or aided and abetted the perpetrator.

30  
31 CalCrim 401 (Aiding and Abetting: Intended Crimes)  
32 To prove that the defendant is guilty of a crime based on  
33 aiding and abetting that crime, the People must prove that:

- 34 1. The perpetrator committed the crime;
- 35 2. The defendant knew that the perpetrator intended to  
36 commit the crime;
- 37 3. Before or during the commission of the crime, the  
38 defendant intended to aid and abet the perpetrator in  
39 committing the crime;

40 AND

- 41 4. The defendant's words or conduct did in fact aid and  
42 abet the perpetrator's commission of the crime.  
43 Someone *aids and abets* a crime if he or she knows of  
44 the perpetrator's unlawful purpose and he or she  
45 specifically intends to, and does in fact, aid, facilitate,  
46 promote, encourage, or instigate the perpetrator's  
47 commission of that crime.

48 If all of these requirements are proved, the defendant  
49 does not need to actually have been present when the

1 crime was committed to be guilty as an aider and  
2 abettor.  
3  
4 CalCrim 1700 (Burglary)  
5 To prove that the defendant is guilty of this crime, the  
6 People must prove that:  
7 1. The defendant entered a residential home;  
8 2. When (he/she) entered a residential home, (he/she)  
9 intended to commit *theft*.  
10  
11 To decide whether the defendant intended to commit theft,  
12 please refer to the separate instructions that have been  
13 given to you on that crime.  
14  
15 CalCrim 1701 (Burglary: Degrees)  
16 First degree burglary is the burglary of an inhabited house.  
17 A house is *inhabited* if someone uses it as a dwelling,  
18 whether or not someone is inside at the time of the alleged  
19 entry.  
20  
21 The People have the burden of proving beyond a  
22 reasonable doubt that the burglary was first degree  
23 burglary. If the People have not met this burden, you must  
24 find the defendant not guilty of first-degree burglary.  
25  
26 CalCrim 1702 (Burglary: Intent of Aider and Abettor)  
27 To be guilty of burglary as an aider and abettor, the  
28 defendant must have known of the perpetrator's unlawful  
29 purpose and must have formed the intent to aid, facilitate,  
30 promote, instigate, or encourage commission of the  
31 burglary before the perpetrator finally left the structure.  
32  
33 CalCrim 1800 (Theft)  
34 To prove that the defendant is guilty of this crime, the  
35 People must prove that:  
36 1. The defendant took possession of property owned by  
37 someone else;  
38 2. The defendant took the property without the owner's  
39 consent;  
40 3. The defendant took the property (he/she) intended to  
41 deprive the owner of it permanently or to remove it  
42 from the owner's possession for so extended a period of  
43 time that the owner would be deprived of a major  
44 portion of the value or enjoyment of the property;  
45 AND  
46 4. When the defendant moved the property, even a small  
47 distance, and kept it for any period of time, however  
48 brief.  
49 CalCrim 440 (Accessories)

- 1 To prove that the defendant is guilty of this crime, the  
2 People must prove that:
- 3 1. Another person, whom I will call the perpetrator,  
4 committed a felony;
  - 5 2. The defendant knew that the perpetrator had committed  
6 a felony or that the perpetrator had been charged with  
7 or convicted of a felony;
  - 8 3. After the felony had been committed, the defendant  
9 either harbored, concealed, or aided the perpetrator;  
10 AND
  - 11 4. When the defendant acted, he/she intended that the  
12 perpetrator avoid or escape arrest, trial, conviction, or  
13 punishment.  
14  
15

## 16 PRETRIAL MOTION AND 17 CONSTITUTIONAL ISSUE

18 (Middle school students do not argue the pretrial motion and  
19 therefore the bracketed information may be used at trial.)  
20

21 This section of the mock trial contains materials and  
22 procedures for the preparation of a pretrial motion on an  
23 important legal issue. The judge’s ruling on the pretrial  
24 motion will have a direct bearing on the admissibility of  
25 certain pieces of evidence and the possible outcome of the  
26 trial. The pretrial motion is designed to help students learn  
27 about the legal process and legal reasoning. Students will  
28 learn how to draw analogies, distinguish a variety of factual  
29 situations, and analyze and debate constitutional issues.  
30 These materials can be used as a classroom activity or  
31 incorporated into a local mock trial competition. The  
32 pretrial motion is the only allowable motion for the  
33 purposes of this competition.  
34

35 The Fifth Amendment provides that “no persons shall be  
36 compelled to be a witness against themselves.” In *Miranda*  
37 *v. Arizona*, the court held that before police may question a  
38 suspect in custody, they must inform them of their privilege  
39 against self-incrimination. The *Miranda* case established  
40 that when a defendant is in custody and being interrogated,  
41 the following warning must be given ‘You have the right to  
42 remain silent, anything you say can and will be used  
43 against you in a court of law, you have the right to the  
44 presence of an attorney, and if you cannot afford an  
45 attorney one will be appointed to you prior to any  
46 questioning.’ From this basic principle has emerged the rule  
47 requiring that *Miranda* warnings must precede any  
48 custodial interrogation. If the suspect provides information  
49 during a custodial interrogation without being given his or

1 her *Miranda* warnings, and providing a knowing and  
2 intelligent waiver, it may be a violation of the suspect's  
3 Fifth Amendment rights. As a consequence, such evidence  
4 may not be used against the accused in a criminal trial.

5  
6 The test for custodial interrogation has two parts: First, the  
7 circumstances of the interrogation must objectively amount  
8 to custody (ie., a reasonable person under those  
9 circumstances would believe that they are not free to  
10 leave). Second, there must be an interrogation, which can  
11 be questioning by a law enforcement officer or statements  
12 by the officer that the officer should know could produce  
13 incriminating responses. This two-part test is objective and  
14 based on a reasonable person's perspective; the subjective  
15 beliefs of the person being interrogated, and the officer  
16 interrogating are not controlling.

17  
18 The exclusionary rule is a legal remedy created by the  
19 courts to compel police to respect the constitutional rights  
20 of suspects. Under this rule, illegally obtained evidence —  
21 whether papers, objects, or testimony — may not be used  
22 in court to convict a defendant. The exclusionary rule is  
23 based on two concepts: the preservation of judicial integrity  
24 and the deterrence of unlawful government conduct. Courts  
25 uphold the rule of law. The use of illegally obtained  
26 evidence violates this basic principle. How can citizens  
27 respect a judicial system that condones such illegal  
28 practices? As to deterrence, excluding tainted evidence has  
29 been judicially determined to be the most effective way to  
30 prevent police abuse of constitutional rights.

31  
32 The pretrial motion challenges the admissibility of the  
33 conversation between Officer Max Bird and Lee Croddy on  
34 February 16 in Officer Bird's unmarked vehicle.

35  
36 Since no *Miranda* warnings were given, if the conversation  
37 is found to be the result of a custodial interrogation  
38 designed to elicit incriminating evidence from Lee, then it is  
39 inadmissible and a violation of Lee Croddy's Fifth  
40 Amendment rights. If the conversation is not determined to  
41 be incident to custodial interrogation, it is not a violation of  
42 Lee Croddy's Fifth Amendment rights and the testimony  
43 can be used as evidence during the trial (subject to other  
44 evidentiary objections).

45  
46 The outcome of the pretrial motion will have a direct  
47 bearing on the admissibility of this conversation. If the  
48 judge excludes the statement, then attorneys and witnesses  
49 may not refer to or discuss it during the trial.

50



1 The text affected by this motion can be found in the  
2 witness statements of Officer Bird and Lee Croddy, as  
3 well as in the Pretrial Facts, within brackets, e.g., [text].  
4

5 Important: The only facts from the Pretrial Facts section  
6 below that are potentially admissible at trial following  
7 the pretrial hearing are those within brackets. All other  
8 facts from the Pretrial Facts section are inadmissible at  
9 trial and are provided solely for use in the pretrial  
10 hearing.  
11

#### 12 Pretrial Facts

13 On February 16, the day of Remi’s arrest, Officer Bird asked  
14 Lee to come down to the station to answer some questions.  
15 Officer Bird offered to drive Lee to the station, and Lee  
16 accepted the offer. Officer Bird was in plain clothes and  
17 driving an unmarked vehicle. [On the way to the police  
18 station, Officer Bird began a conversation with Lee, who  
19 was sitting in the backseat. The car had no metal cage  
20 separating the front seat from the backseat and no siren,  
21 but did have a police radio that was visible from the  
22 backseat. Officer Bird recognized Lee previously during  
23 Remi’s arrest, but was not sure from where at the time.  
24 Now having realized it was from Lee’s YouTube channel,  
25 Officer Bird began the conversation with, “Hey, I’ve seen  
26 some clips from your videos on Twitter. You’re the RCN  
27 person, right? The anarchist YouTuber?”  
28

29 Lee responded defensively, “Just because I criticize the  
30 government without all that partisan nonsense doesn’t  
31 mean that I’m an anarchist. I just think the government  
32 should be held accountable for the lies that they tell, even  
33 lies by omission.” The conversation was interrupted by a  
34 call that came through on the radio. The call was unrelated  
35 to this case, but Officer Bird saw Lee eyeing the radio. “But  
36 you have to admit,” Officer Bird resumed the conversation,  
37 “whether you are an anarchist or not, your stuff can  
38 definitely be taken that way, at least from what I’ve seen.”  
39

40 “So what? You think what Remi did was my fault then?”  
41 Lee asked, still defensive. “Do I need to call my lawyer?”  
42

43 “No, that’s not what I meant,” Officer Bird responded. “I  
44 was speaking generally that your content can be taken out  
45 of context,” Officer Bird continued. Lee stated, “Look, the  
46 kid and I are not close, okay? I mean, from what I know  
47 about Remi, the kid could be aggressive and is passionate  
48 about the cause.” Lee paused, looking up at Officer Bird,  
49 and added, “Sure, I told the kid to go down there and get  
50 those documents, but I’m not responsible for Remi doing

1 anything illegal. That kid took things way too far!”  
2 “Nobody was accusing you of anything, Lee,” Officer Bird  
3 said.] As they pulled into the police station, Lee responded,  
4 “I think I’d like to speak to my attorney.” Lee was  
5 interviewed later that day with counsel present.

6

## 7 Arguments

8 Prosecution will argue that the statement made by Lee  
9 Croddy is admissible primarily because the conversation  
10 between Lee and Officer Max Bird was not a custodial  
11 interrogation thus not a violation of Lee’s Fifth Amendment  
12 rights. It was just a conversation. Lee came down to the  
13 station willingly and accepted the invitation to ride with  
14 Officer Bird. Lee volunteered the information and was not  
15 questioned in such a manner that Officer Bird should  
16 reasonably expect to elicit an incriminating response from  
17 Lee. There was no express questioning of Lee regarding the  
18 case. Lee had no reason to feel like a suspect at the time  
19 because none of Officer Bird’s statements were accusatory  
20 nor did they indicate a necessity for Lee to reply. Further,  
21 Officer Bird was in plain clothes and in an unmarked  
22 vehicle thus a reasonable person would not objectively feel  
23 like they were under interrogation.

24

25 Defense will argue that the statement made by Lee must be  
26 excluded because it was given during a custodial  
27 interrogation without *Miranda* warnings. The use of the  
28 statements would be a violation of Lee’s Fifth Amendment  
29 rights. The defense will argue that despite the unmarked  
30 vehicle, Lee was sitting in the back of the car and there  
31 were clear indications that the vehicle was an official police  
32 vehicle due to the radio set up in the front. Additionally,  
33 Lee was reasonably suspicious of Officer Bird’s questioning  
34 regarding Lee’s criticisms of the government. Further,  
35 Officer Bird prompted the statements from Lee, even if not  
36 explicitly, by implying that Lee’s government criticisms  
37 were connected to Remi’s actions.

38

## 39 Sources

40 The sources for the pretrial motion arguments are a “closed  
41 library,” which means that Mock Trial participants may  
42 only use the materials provided in this case packet. These  
43 materials include: any relevant testimony to be found in  
44 any witness statements, excerpts from the U.S.  
45 Constitution, edited court opinions, and Pretrial Facts.  
46 Relevant witness testimony is admissible in the pretrial  
47 hearing without corroborative testimony for the purposes of  
48 the pretrial motion only.

49

1 The U.S. Constitution, U.S. Supreme Court holdings, and  
2 California Supreme Court and California Appellate Court  
3 holdings are all binding and must be followed by California  
4 trial courts. All other cases are not binding but are  
5 persuasive authority. In developing arguments for this  
6 Mock Trial, both sides should compare or distinguish the  
7 facts in the cited cases from one another and from the facts  
8 in *People v. Croddy*.

1 **LEGAL AUTHORITIES**

2

3 *Constitutional*

4

5 *Amendment V*

6

7 “No person . . . shall be compelled in any criminal case to  
8 be a witness against himself, nor be deprived of life, liberty,  
9 or property, without due process of law...”

10

11 *Amendment XIV*

12

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

22

23 *Federal Cases*

24

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

26

27 Facts: Defendant was taken into a police station for  
28 questioning as a potential witness to a homicide of a 10-  
29 year-old girl. At the station, the defendant said that he  
30 borrowed his housemate’s car, which matched the  
31 description of the vehicle implicated in the homicide and  
32 raised the officers’ suspicions of him. After further  
33 questioning, he then admitted to prior convictions of rape,  
34 kidnapping and child molestation. It was not until after he  
35 made these statements that he was advised of his *Miranda*  
36 rights and arrested. The defendant sought to bar the  
37 admission of all statements made at the police station and  
38 any evidence found as a result because he had not been  
39 advised of his *Miranda* warnings despite being  
40 interrogated.

41

42 Issue: Can a trial court consider a defendant to be “in  
43 custody” for *Miranda* purposes on the basis of police  
44 officers’ subjective and undisclosed conclusions about  
45 when they considered the defendant a suspect?

46

1 Holding: No. The subjective and undisclosed conclusions of  
2 the officers involved generally should not bear any weight  
3 in the determination of custody.

4  
5 Reasoning: For the purpose of *Miranda*, custodial  
6 interrogation operates on an objective standard. The  
7 determination should be made based on at what point a  
8 reasonable person in the suspect’s position would believe  
9 he or she was in custody at the time. However, if the  
10 subjective beliefs of the officer or officers are conveyed,  
11 either by word or action, to the suspect, those beliefs may  
12 be considered to the extent that they would affect a  
13 reasonable person’s perception of the situation.

14  
15 *Rhode Island v. Innis*, 446 U.S. 291 (1980)

16  
17 Facts: Defendant was arrested for the robbery and murder  
18 of a taxi driver. The driver was killed by a shotgun, but the  
19 shotgun was not found by the time Defendant was arrested.  
20 Defendant was arrested with *Miranda* warnings and then  
21 put into the backseat of the police car. Defendant invoked  
22 his right to speak with a lawyer. The police officers  
23 discussed amongst themselves that the shotgun used to kill  
24 the taxi driver might be found by a child. Defendant was  
25 moved by the discussion enough to tell the officers the  
26 location of the shotgun.

27  
28 Issue: Did the conversation between the police officers in  
29 front of Defendant constitute an interrogation under  
30 *Miranda*?

31  
32 Holding: No. The conversation was not considered an  
33 interrogation and therefore did not violate Defendant’s Fifth  
34 Amendment rights.

35  
36 Reasoning: For the purpose of *Miranda*, an interrogation is  
37 “any words or actions on the part of the police, other than  
38 those normally attendant on arrest and custody, that the  
39 police should know are reasonably likely to elicit an  
40 incriminating response from the suspect.” The words or  
41 actions may be in the form of explicit questioning or the  
42 functional equivalent of such questioning if the “officers  
43 should have known that their brief conversation in  
44 [Defendant’s] presence was reasonably likely to elicit an  
45 incriminating response.” The court reasoned that the  
46 officers would have had no reason to believe that the  
47 Defendant “would be susceptible to an appeal to his  
48 conscience concerning the safety of children and would

1 respond by offering to show the officers where a shotgun  
2 was buried.”

3

4

5

6 *State Cases*

7

8 *People v. Boyer*, 48 Cal. 3d 247 (1989)

9

10 Facts: Defendant in a murder case was transported to a  
11 police station and interrogated. The police characterized his  
12 participation as “voluntary”, but the defense argued that  
13 the police had no legal ground for the restraint. Under these  
14 conditions, the defendant admitted to the killings of two  
15 individuals and was subsequently sentenced to death  
16 during his trial.

17 Issue: Did the defendant’s questioning constitute a  
18 custodial interrogation triggering the *Miranda* rule?

19 Holding: Yes. A coercive environment that diminishes the  
20 defendant’s ability to exercise his *Miranda* rights deems the  
21 resulting statements inadmissible.

22

23 Reasoning: The Supreme Court of California held that the  
24 defendant was indeed under custodial interrogation.  
25 Detectives consistently ignored the defendant’s attempts to  
26 assert his *Miranda* rights to silence and counsel. After  
27 initial questioning was over, one of the detectives once  
28 again failed to honor the defendant’s request for an  
29 attorney and instead began a new conversation about the  
30 case which, considering the coercive environment, was a  
31 reasonably calculated attempt to elicit an incriminating  
32 response. This ploy was eventually successful as the  
33 defendant admitted to the crime. For these reasons, the  
34 Court held that the defendant’s statement was indeed the  
35 fruit of an illegal arrest, and therefore reversed the  
36 convictions.

37

38 *People v. Andreasen*, 214 Cal. App. 4<sup>th</sup> 70 (2013)

39

40 Facts: During taped sessions, officers engaged in  
41 conversation with the defendant. The topics discussed were  
42 neutral and related to the defendant’s interests and life. In  
43 pursuance of an insanity defense, the defendant argued that  
44 this conversation should be inadmissible, given that the  
45 defendant had yet to be read his *Miranda* rights.

46 Prosecution argues that it is permissible given that it is a  
47 “casual conversation” that is normally attendant to a  
48 custody situation.

49

1 Issue: Do casual conversations that produce incriminating  
2 evidence constitute a custodial interrogation requiring the  
3 defendant be read his *Miranda* rights?  
4

5 Holding: No. Casual conversations are permissible and do  
6 not require the prerequisite of a defendant being read his  
7 *Miranda* rights, even if the resulting conversation produces  
8 incriminating evidence.  
9

10 Reasoning: Aware of the defendant’s angry and delusional  
11 demeanor, the officers would take preventative measures to  
12 prevent any aggression. A casual conversation during the  
13 waiting period is a measure consistent with that goal. Upon  
14 a review of the video, there is nothing to suggest that the  
15 casual conversation was actually an interrogation designed  
16 to elicit incriminating responses, which would in turn  
17 trigger the need for the *Miranda* rule. The fact that these  
18 conversations resulted in evidence of rationality relevant to  
19 defendant’s sanity does not transform the conversations  
20 into a *Miranda* violation.  
21

22 *People v. Lewis*, 50 Cal. 3d 262 (1990)  
23

24 Facts: Defendant convicted of first-degree murder and  
25 robbery and sentenced to death contended that the trial  
26 court erred in denying his motion to suppress statements he  
27 made to a Sergeant while sitting in the backseat of a police  
28 car after his arrest. Defendant asserts that the statements  
29 made during that conversation with the Sergeant were the  
30 product of a custodial interrogation without *Miranda* rights.  
31 Sergeant Woodward, who was not involved in the arrest of  
32 the defendant, arrived at the scene. Wanting to see if he  
33 recognized the defendant, the Sergeant walked towards the  
34 police car. The defendant called out to the Sergeant, “Is that  
35 you, Big Mike?” The Sergeant answered in the affirmative  
36 and a conversation between the two followed.  
37

38 Issue: Is a conversation with a detained suspect in the back  
39 of a police car inadmissible when the suspect is not advised  
40 of his *Miranda* rights?  
41

42 Holding: No, a casual conversation, even in a custodial  
43 setting, does not equate to an impermissible interrogation  
44 under *Miranda*, especially if the conversation is voluntary.  
45

46 Reasoning: The Court held that the record portrays a casual  
47 conversation between two acquaintances. The conversation  
48 was also initiated by the defendant, thereby affirming it  
49 was voluntary in nature. Although the setting was

1 custodial, these factors reveal that the statements were not  
2 made in response to an interrogation. Given that these  
3 statements were not given during a custodial interrogation,  
4 *Miranda* did not apply and the statements were held  
5 admissible.

6

7 *People v. Torres*, 213 Cal. App. 3d 1248 (1989)

8

9 Facts: Defendant was transported to the Stockton Police  
10 Department after his arrest. When a Sergeant approached,  
11 the defendant, in broken English, offered a spontaneous  
12 admission voluntarily. In response, the Sergeant showed  
13 the defendant the picture of a suspect in the case and began  
14 asking questions, without administering *Miranda* warnings.  
15 The trial court excluded the defendant's response,  
16 determining the interrogation to be in violation of *Miranda*.  
17 Questioning then ceased, as the Sergeant waited for another  
18 officer to arrive and administer *Miranda* warnings in  
19 Spanish. During this time, the defendant volunteered  
20 another statement, which the trial court deemed admissible  
21 since it was voluntary and not during an interrogation. The  
22 defendant argued that the second statement should be  
23 inadmissible as well, since there was no "break in the  
24 causative chain" between the two statements.

25

26 Issue: Does the lack of a *Miranda* warning constitute police  
27 coercion and thereby make any statement, even a voluntary  
28 one, inadmissible?

29

30 Holding: No. A statement volunteered by a defendant that  
31 is not being interrogated does not require *Miranda*  
32 warnings and is thereby admissible.

33

34 Reasoning: The Supreme Court in *Elstad* set forth a two-  
35 step analysis for admissibility: (1) whether the statements  
36 obtained in violation of *Miranda* were otherwise voluntary;  
37 and (2) whether, under the totality of the circumstances,  
38 defendant's subsequent statements also were voluntarily  
39 made. Here, the defendant's initial statement, although in  
40 violation of *Miranda*, was voluntary. Hence, the statement  
41 offered by the defendant following the termination of his  
42 non-*Miranda* interrogation is also admissible.

43

44

45

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52



# 1 WITNESS STATEMENTS

2  
3 Prosecution Witness: Remi Montoya (Pleaded guilty to the  
4 burglary)

5  
6 My name is Remi Montoya. I am 21 years old and a sales  
7 associate for Thinker Toy Corporation while attending Beacon  
8 Hills Community College. I first watched one of Lee Croddy's  
9 videos in November 2018, while researching the Roswell "UFO  
10 crash" in New Mexico in 1947. After watching a few of Lee's  
11 videos, I began following Lee's YouTube channel, "The Right  
12 Choice of News," and followed all of Lee's social media. I had  
13 grown to thoroughly enjoy Lee's willingness to talk about  
14 subjects that the mainstream media and politicians didn't want  
15 to touch. Lee was brilliant. I would often share, like, and  
16 comment on Lee's posts.

17  
18 In March of 2019, I was excited to see a direct message from Lee  
19 inviting some of Lee's other followers and me to a private group  
20 chat. This was the first time we directly interacted. I was beyond  
21 excited to have the opportunity to talk directly to Lee and other  
22 people who believed the same things. Prior to the group chat,  
23 Lee had liked a few of my comments on various social media  
24 sites.

25  
26 Since March 2019, Lee and I have interacted two to three times  
27 per week directly and indirectly through likes or comments and  
28 occasional chats. Further, Lee held a competition in July 2019  
29 where Lee's fans were picked at random to win tickets to a  
30 panel that Lee was speaking on about the lack of transparency  
31 in government. I was thrilled my name was picked and I ended  
32 up attending the panel with five or six others. We also got  
33 backstage passes and were able to talk to Lee over lunch. Lee  
34 also does monthly Instagram Live videos where Lee brings in  
35 fans to discuss current events or ask questions, and in August  
36 2019, I was brought on Lee's Instagram Live as well. I have also  
37 attended a couple of Lee's meet-and-greets before the last meet-  
38 and greet at the Hale Cafe.

39  
40 On February 11, 2020, I saw that Lee tweeted about a new video  
41 to be posted on that Thursday regarding government secrets. I  
42 liked, retweeted, and commented on the post that I was excited  
43 for the video to come out. The following day, Lee sent a  
44 message to our small group chat. The group members were Zuri,  
45 Taylor, Chris, Mike, and Buzz. My username is  
46 @theRCNmanifesto and Lee Croddy's username is @LeeC\_RCN.  
47 In that group chat, I remember Lee told us to go to Marshak's  
48 house, demand answers from Marshak, and take the documents

1 from Marshak. I could see from the short video clip that Lee was  
2 holding official-looking documents. I could clearly see what  
3 appeared to be Marshak’s name and address on the documents.  
4 When I watched the video clip after the group chat, I paused the  
5 video to write down Marshak’s address information.

6  
7 After the group chat, everything started to make sense. There  
8 was a meet-and-greet planned in Beacon Hills, California, at  
9 Hale Cafe at 3:30 p.m. This was the first time that many of us  
10 would be in the same place, so it all seemed much more real  
11 and tangible to me. Though the next steps were not yet  
12 specified, I knew that this was a call to action for all of us and I  
13 was ready to act.

14  
15 When Lee posted the video on YouTube on February 13, I  
16 immediately watched the video. Lee made a statement in the  
17 video encouraging all of us, the viewers, to “get down to where  
18 this official lives if necessary and demand answers.” Of course, I  
19 knew that not every viewer would have Marshak’s address and  
20 name, so I assumed this was a more general call to action to  
21 most viewers but a direct call to action for us group chat  
22 members. Lee asked us to “like and comment” on the video if  
23 we would be with Lee on that Saturday. In direct response to  
24 this statement, I liked and commented on the video saying “I’ll  
25 be there Lee! I’ll be there right next to you!”

26  
27 Lee had indicated in the group chat that the “RCN family,”  
28 which is what Lee called the fans, would be “mobilizing” and  
29 would no longer “stay silent.” Therefore, I believed that Lee  
30 intended to collect all of the information and then distribute it to  
31 Lee’s followers to ignite a movement to demand transparency  
32 from our government.

33  
34 The next day, I received a message from Lee asking if I was in  
35 the Beacon Hills area. I responded saying that I was, and Lee  
36 asked that I go to Marshak’s house and get the documents. Lee  
37 emphasized the urgency of the matter and that the documents  
38 Lee needed to continue Lee’s story on the alien threats would be  
39 in the house. I knew that this was important, and Lee reminded  
40 me that the momentum needed to continue. Based on that  
41 conversation, I knew that I had to get into that house and get  
42 those papers by any means necessary.

43  
44 On Saturday, February 15 I went to Marshak’s property. I first  
45 knocked on the door, but no one answered. I decided to peek  
46 through some windows to see if Marshak was there. Looking in  
47 the bay window at the front of the house, I saw a briefcase on  
48 the table with Marshak’s first initial and last name on it. I found

1 a window left open after going through the side fence into the  
2 backyard.

3

4 After getting through the window, I went to the front room  
5 where I had seen the briefcase. I did not stop to check what data  
6 was available as I was nervous and wanted to get in and out as  
7 quickly as possible. I knew I had to get this information. Lee had  
8 said that the information was needed immediately, especially  
9 because the meet-and-greet was that same day.

10

11 Once inside, I saw a desktop computer that was turned on and  
12 had a user already logged in. I quickly looked around the files  
13 on the desktop and came across a folder titled “Unidentified.” I  
14 assumed this had to be the folder containing the documents we  
15 were looking for. I plugged in my USB flash drive to the  
16 computer and downloaded the “Unidentified” folder. It took  
17 about 30 seconds. Then I put the flash drive in my pocket.  
18 Before I could make my way out of the house, I ran into  
19 Marshak in the entryway. I had the flash drive in my pocket and  
20 the briefcase in my hand. Marshak attempted to take the  
21 briefcase back and in my panic, I punched Marshak in the face  
22 before running as quickly as possible out of the house and down  
23 the street.

24

25 After the incident at the official’s house, my first instinct was to  
26 find Lee and ask for help. I was panicking, overwhelmed with  
27 what I had just done. I hadn’t wanted to hurt anyone. I got to  
28 the café where Lee was hosting the meet-and-greet. There was a  
29 line of fans waiting to greet Lee, and I was anxious.

30

31 When I finally got to Lee, I started talking, trying to relay  
32 whatever information I could. I don’t remember everything I  
33 said, and I was talking fast, but I do remember telling Lee that I  
34 got the stuff Lee wanted from the house, and that I had a run-in  
35 with the agent in the house. I was trying to convey to Lee that  
36 something had gone wrong with the plan, and I was sure I got  
37 my message across because Lee looked genuinely concerned.  
38 Lee told me to just relax in the café until the event was over. I  
39 couldn’t help but constantly pace around and look toward the  
40 door. I saw Lee look at me multiple times throughout the rest of  
41 the event. I assumed it was due to the serious nature of what  
42 had just transpired. I don’t recall speaking with anyone other  
43 than Lee during the event. I had a lot on my mind.

44

45 By the time the event was over, I was still anxious, and also  
46 exhausted from all the anxiety. Lee offered me a ride to Lee’s  
47 place. During the car ride, I remember angrily kicking the  
48 briefcase under my feet and shouting, “All my problems are

1 because of these files and stupid briefcase!” because I should  
2 never have punched that investigator. Lee asked if the briefcase  
3 was “a prop or something?” I lost my temper for a second and  
4 told Lee, “Do you really think I’d be freaking out over a prop?”  
5  
6 Lee quickly reassured me that no problem is too big to be  
7 solved, and I apologized for lashing out. I was just thankful to  
8 have a friend like Lee to rely on. Once we arrived at Lee’s place,  
9 I was even more drained and exhausted, so I pleaded with Lee  
10 that I just needed a place to lay low for a while until I was  
11 certain I wasn’t being followed. Lee showed no hesitation and  
12 immediately started guiding me somewhere.  
13  
14 Because of the back entrance route we were taking, I was sure  
15 we were going to end up at Lee’s secret bunker or something.  
16 It’s where Lee shot videos for the channel and also where Lee  
17 would hide out if it ever became necessary. I had seen glimpses  
18 of Lee’s bunker in videos on YouTube and sometimes  
19 commented how I would love a bunker like that someday. We  
20 ended up at Lee’s guest house instead, and Lee showed me the  
21 room I would be staying in. I thanked Lee for the help. I knew I  
22 could trust Lee.  
23  
24 The next morning, I felt better, but I was still worried that I  
25 would be caught. I started walking around the yard, thinking of  
26 how Lee and I would have to get our stories straight. But I knew  
27 that no matter what, we would be hailed as heroes, and no  
28 authority could stand against us, once the public got a hold of  
29 the information I had obtained.  
30  
31 Before I even got a chance to speak with Lee, however, I was  
32 confronted by an officer asking me to identify myself. Then, I  
33 was under arrest for burglary and assault. Much of what  
34 happened after this is hazy to me as I began panicking again.  
35 Later that day, I told the officer the documents were too  
36 important to pass up the opportunity to get them.

1 Prosecution Witness: Drew Marshak (Victim)

2

3 I am Drew Marshak. I am 42 years old and have been an  
4 investigator with the California State Department of Justice's  
5 Bureau of Investigation (BOI) for over 15 years. Much of my  
6 work involves confidential matters. Therefore, I cannot disclose  
7 much information, but in general it involves the collection and  
8 analysis of usually time-sensitive material.

9

10 On the day of the attack, February 15, I was on my way back  
11 from a grocery run. I usually do my grocery shopping on the  
12 weekend because my weekday schedule leaves no energy for  
13 anything outside of work. I drove up to my house around 3:00  
14 p.m. and immediately felt like something wasn't right though I  
15 couldn't put my finger on what. I parked in my driveway and  
16 noticed that the side gate was slightly open. I live in a relatively  
17 safe neighborhood, so my security is basic but perhaps slightly  
18 above average. I have a basic security camera located at the  
19 front of my house. I didn't immediately worry too much because  
20 I occasionally leave my side gate unlocked for my gardener to  
21 come in when I'm not home. At the time, I couldn't recall if I  
22 had left it open that morning or not.

23

24 I cautiously opened the front door and I saw what I thought  
25 were faint muddy footprints on the floor inside. I stepped into  
26 the entryway and immediately saw someone (who was later  
27 identified to me as Remi Montoya) turn the corner from my  
28 sitting room and into the entryway. I tried to stop Remi, but  
29 before I could put up any kind of real fight, I was punched in  
30 the face and I lost my balance. I fell backwards toward the floor  
31 and my forehead collided with the edge of a small table.

32

33 Standing over me was the perpetrator, Remi. Remi was holding  
34 my state-issued briefcase, engraved with my first initial, full last  
35 name, and work insignia. I noticed how panicked Remi got  
36 when Remi looked at me. Remi started muttering audibly,  
37 cursing and saying, "Oh no, what have I done? What am I  
38 doing?" What I found really strange was when Remi began  
39 panicking, Remi muttered, "Lee is not going to like this," and  
40 "At least I got the proof we needed." Then the pain from my  
41 wound made me a little dizzy, and I was in shock, but I  
42 remember Remi saying something about "trust" and a  
43 "revolution," that Remi needed to tell someone something. Even  
44 through the pain, I could tell Remi was frantic, and Remi bolted  
45 suddenly from the room.

46

47 Before running out of the room, I distinctly remember Remi  
48 looked at me and quickly said, "I'm so sorry, I didn't mean to. I

1 had to do it. I had to do it. This is for the people.” After Remi  
2 was gone, I called 911.  
3 I remember how dazed and confused I felt in the hospital. At  
4 one point, I was surrounded by doctors, and then the next thing  
5 I knew I was being questioned by a police officer. I felt so  
6 helpless and angry, but mostly terrified. Now, not only had  
7 work infiltrated my family life, but every investigator’s worst  
8 nightmare had become my reality. I love my work, but not to  
9 the point where I’d be willing to risk my family’s wellbeing.  
10 Even now, I feel lost and don’t know how to move on from this  
11 trauma-physically, personally, or professionally.

12  
13 In terms of the documents contained within the briefcase, I am  
14 once again obligated to keep the material confidential because it  
15 is privileged state information. However, as my previous  
16 statement suggests, I can confirm that the documents contained  
17 within the briefcase were of sensitive government matters.

1 Prosecution Witness: Officer Max Bird (Police Officer)

2

3 My name is Max Bird. I am an officer with the Beacon County  
4 Sheriff Station in Beacon County, California. I have been with  
5 this station for nearly a decade now. My tenure does classify me  
6 as a veteran of my station, and I do consider myself well-attuned  
7 to the issues impacting my community in Beacon Hills.

8

9 On February 15, at 3:12 p.m., the Station received a call from  
10 Drew Marshak saying Marshak had been robbed. Upon arriving  
11 at the scene, I saw Marshak, clearly wounded and in a daze  
12 from a wound to the face and a large gash on the forehead. The  
13 front door was wide open and the screen of one of the windows  
14 had popped out. Marshak gave me a description of the  
15 perpetrator and informed me that the perpetrator had taken a  
16 briefcase, but Marshak wasn't sure if anything else was taken.  
17 Marshak was taken to the hospital and when asked for a  
18 description, informed the officers that there was a security  
19 camera at the front door that would have caught the suspect  
20 leaving. After gaining access to that security footage, an All-  
21 Points Bulletin (APB) was sent out in the area for someone  
22 matching that description and the photograph by that evening.  
23 The APB asked anybody who saw someone with that description  
24 to call the Sheriff's Department. That evening the sketch and  
25 footage from the camera at the front door was aired on local  
26 news stations asking anyone with information to please call the  
27 tip line.

28

29 On February 16, at 9:34 a.m., dispatch received a tip from  
30 someone claiming to have recognized a suspect, later identified  
31 as Remi Montoya, from the news segment the night before.  
32 Being in close proximity to the location and on duty for  
33 community policing, I immediately went to the address from the  
34 tip. I assumed the suspect would be armed and dangerous.

35

36 When I arrived at the scene, an individual who matched the  
37 suspect's description was pacing in the front yard. I approached  
38 the suspect carefully, announcing myself and showing my badge  
39 because I was conducting community policing and not in  
40 uniform, and asked for the suspect's name. The suspect was  
41 identified as Remi Montoya. I told Montoya to "put your hands  
42 up" as I drew closer, and based on the photograph match, I  
43 placed Montoya under arrest. A fellow officer arrived on the  
44 scene, and Montoya became frantic, yelling out apologies and  
45 saying something about "government lies." As I was placing  
46 Montoya in the back of the officer's car, I remember Montoya  
47 turning to me and saying, "Officer, we are starting a revolution  
48 here, my friend. Join us, we're the only ones that know the

1 truth.” I guessed the “us” meant Montoya and whomever else  
2 might be in that house because Montoya nodded toward the  
3 home while saying that statement.

4

5 The commotion must have alerted the resident in the house,  
6 whom I later confirmed to be Lee Croddy, the homeowner.  
7 Croddy rushed outside in pajamas and slippers. Croddy seemed  
8 quite distressed about the whole situation. Croddy’s immediate  
9 response was, “Oh God, what did Remi do? What did Remi  
10 take?” After presenting Croddy with my badge and identifying  
11 myself, I told Croddy that Montoya had been arrested for  
12 burglary and assault. I immediately began asking Croddy who  
13 Croddy was. Croddy seemed nervous and repeatedly asked what  
14 was going to happen to Montoya.

15

16 I asked Croddy a few standard questions, including how Croddy  
17 knew Montoya, and how Montoya had ended up at Croddy’s  
18 residence. Croddy stated that Montoya was a huge fan that  
19 Croddy had housed for the night. According to Croddy, Montoya  
20 was invited to the residence because Croddy was concerned  
21 about Montoya’s panicked state during an event the night  
22 before. At my request, Croddy showed me the room where  
23 Montoya slept the night before. I asked Croddy to accompany  
24 me in my unmarked vehicle down to the station for further  
25 questioning.

26

27 [On the way to the station, I attempted to begin a casual  
28 conversation with Croddy after realizing that I had seen clips  
29 from Croddy’s YouTube page on Twitter and Instagram. Croddy  
30 seemed on edge the whole time, constantly glancing around the  
31 car and frequently glancing between the rearview mirror  
32 presumably to look at me and the radio sitting in the front of the  
33 car. Croddy grew defensive immediately at the mention of the  
34 clips being used by anarchists or that Croddy represented  
35 anarchist views. Croddy asked me, “You think what Remi did  
36 was my fault then?” and questioned whether an attorney should  
37 be involved. At the time, I did not suspect Croddy of anything  
38 beyond knowing Montoya so I tried to explain that but was  
39 interrupted by Croddy, who said, “Look, the kid and I are not  
40 close, okay? I mean, from what I know about Remi, the kid  
41 could be aggressive and is passionate about the cause.” Croddy  
42 stopped speaking here and glared directly at me through the  
43 rearview mirror before continuing, “Sure, I told the kid to go  
44 down there and get those documents, but I’m not responsible  
45 for Remi doing anything illegal. That kid took things way too  
46 far!”] After arriving at the station, Croddy refused any  
47 questioning without legal counsel and waited outside the station  
48 until Croddy’s lawyer arrived before beginning the interview.



1  
2 Montoya was questioned in the meantime on the day of the  
3 arrest and the following day, February 17. Montoya revealed  
4 how Croddy had provided Montoya with the personal  
5 information about Drew Marshak’s name and address, as well as  
6 documents Marshak had that apparently both Croddy and  
7 Montoya thought were crucial to exposing the truth about UFOs  
8 to the American public. Montoya also disclosed to me how  
9 Croddy had instructed Montoya to get into Marshak’s house and  
10 steal the documents.

11  
12 Following the interviews with Croddy and Montoya, I considered  
13 Croddy a suspect and followed up with another interview of  
14 Montoya in addition to an interview with Zuri O’Neill, another  
15 member of the group chat Montoya had told us about. We also  
16 interviewed Erin Sullivan, Croddy’s agent. Montoya’s witness  
17 statement clearly portrayed Croddy as the prime instigator of the  
18 crime and further revealed Croddy’s willingness to hide  
19 Montoya and the evidence from the authorities seeking  
20 Montoya. This information, along with the information I  
21 gathered from the other witnesses I interviewed, provided more  
22 than enough evidence for us to seek an arrest warrant against  
23 Croddy.

24  
25 On February 23, nearly a week after arresting Montoya, I  
26 returned to Croddy’s residence with a warrant for Croddy’s  
27 arrest. I knocked on the door, announced myself, and waited by  
28 the door. Within the next minute, Croddy opened the door and  
29 calmly complied with my instructions. I placed Croddy under  
30 arrest for aiding and abetting first degree burglary and accessory  
31 after the fact, informed Croddy of Croddy’s *Miranda* rights, and  
32 proceeded to drive Croddy down to the station. Croddy did not  
33 speak a word the entire time.

1 Prosecution Witness: Dr. Kai Chavez, MD (Expert)

2

3 My name is Dr. Kai Chavez. I earned a bachelor's degree in  
4 psychology at the University of South Hudson in 2004. Following  
5 graduation, I pursued an M.D. and completed my graduate studies  
6 in 2011 with three years of residency, specializing in various  
7 mental illnesses. The research I specialize in pertains to mood and  
8 personality disorders, such as depression, and also personalities  
9 that are perceived as being extreme and inflexible. In my practice, I  
10 treat patients with various psychiatric illnesses and prescribe them  
11 the necessary medications along with psychotherapy. I have been  
12 an expert witness for approximately 150 cases prior to this current  
13 case.

14

15 One area I have researched extensively is the concept of  
16 groupthink. Those who participate in groupthink are arguably  
17 directly associated with traits of personality disorders. Often the  
18 idea governing groupthink is that a group behaves in certain  
19 inflexible ways that leave little room for individual creativity or  
20 decision-making. Essentially, the group agrees for the sake of  
21 agreeing. An environment of conformity is promoted as opposed  
22 to individualized thinking, and disaster can result.

23

24 One of the more infamous cases of catastrophic failures  
25 attributed to groupthink is the tragedy of the Space Shuttle  
26 Challenger in 1986. Despite having verified knowledge that the  
27 temperatures on launch day posed a real danger to critical  
28 components in the boosters of the vehicle, NASA proceeded  
29 with the launch. The shuttle exploded mid-flight, completely  
30 destroying the vehicle as well as killing all the crew members. It  
31 was revealed that NASA's rush to launch was fueled by a need  
32 to meet unrealistic deadlines and limit any possibility of  
33 negative press coverage. Even though experts were well aware  
34 of the dire situation, groupthink inhibited individual actions and  
35 promoted the inflexible group view that the launch must  
36 proceed even with the evident dangers.

37

38 There is evidence of this groupthink phenomenon in the case in  
39 question. Zuri's statement shows that the behavior participants  
40 displayed in the group chat conversations started by Lee is  
41 consistent with the environment Lee created. Zuri proceeds to  
42 support the overarching ideas of the group chat because that  
43 was the perceived desire of the group's founder, Lee.

44

45 Groupthink can also embolden individualized ideas. For  
46 example, in summer 2017, far-right activists in Charlottesville,  
47 Virginia, felt bolstered by being part of a very large group of  
48 like-minded peers and took to the streets to publicly voice their

1 platform as a group. The members of that group would almost  
2 certainly never have taken such actions as individuals.  
3 In an online setting, groupthink can often be associated with the  
4 idolizing of an online personality. The way the established fan-  
5 group acts quickly becomes a reflection of the online  
6 environment created by the idolized celebrity. This is evident  
7 when a well-known online personality specifically calls out  
8 someone on their platform for some perceived wrongdoing,  
9 which can create a toxic environment of cyberbullying or  
10 doxxing (revealing someone’s personal, identifying information  
11 online). What follows after this initial targeting is a slew of  
12 individual fans targeting that person as well — what is  
13 commonly known as a “Twitter mob.” Although the fans are  
14 technically acting individually, it is undeniable that groupthink  
15 is the driver of the situation, and that the toxic environment  
16 established by the celebrity encouraged the individual toxic  
17 actions of the celebrity’s fans.

18  
19 Groupthink is not a new phenomenon, as my examples have  
20 clearly shown. These patterns in behavior are as relevant to our  
21 understanding of pre-Internet culture as they are to our  
22 understanding of online culture.

23  
24 Based on my examination of the evidence, the environment that  
25 the defendant, Lee, created in Lee’s online sphere is consistent  
26 with the characteristics of a “toxic” environment. A consistent  
27 flow of content with long, angry rants that specifically target the  
28 government and even named officials could create a hostile  
29 environment in an online community. Direct calls for actions,  
30 although not by themselves toxic, also can be traits of such an  
31 environment when the actions themselves promote toxic  
32 behavior. Hence, given how groupthink can limit individual  
33 creativity and decision-making, the actions of those operating in  
34 such an environment become an expression of the toxic  
35 ecosystem created by the leading figure, a role that would be  
36 filled in this case by Lee Croddy.

1 Defense Witness: Lee Croddy (Defendant)

2

3 My name is Lee Croddy. I am 35 years old and the host of the  
4 YouTube show “The Right Choice of News” (RCN). RCN is  
5 about revealing the truth about issues that the mainstream  
6 media suppresses. Prior to my YouTube career, I was a freelance  
7 journalist writing about similar issues for my personal blog. My  
8 work on YouTube started off as a supplement for my freelancing  
9 career, but it became evident that YouTube could provide a  
10 much greater and more sustainable financial support for me, as  
11 well as spread my message to many more people. As of March  
12 2019, I had approximately 1.4 million subscribers on YouTube  
13 and 586,000 followers on Twitter, and I was averaging 3 million  
14 to 3.5 million views per month. As this time, I had only been on  
15 YouTube for two-and-a-half years and had only been doing it  
16 full time for a year. Because of my growing notoriety, I was able  
17 to start picking up brand deals as well as make appearances on  
18 talk shows and podcasts.

19

20 Under the advice of my agent, I created group chats on Twitter  
21 with my most engaged followers. The group chat was designed  
22 to be a publicity thing. My followers had begun to plateau in  
23 January of 2019, so my agent, Erin Sullivan suggested that I  
24 increase my interaction with fans. I created several group chats  
25 in March 2019 to promote my videos and give sneak peeks to  
26 the content in an effort to excite my followers enough so they  
27 would advertise it themselves. One that I created was with Remi  
28 Montoya (whom I just knew as “Remi”), Zuri O’Neill, someone  
29 named Taylor, someone named Chris, someone named Mike,  
30 and someone named Buzz. My username was @LeeC\_RCN. I  
31 sometimes sent them sneak peeks of videos or brand deals to  
32 test out the content before I released it publicly. They often had  
33 really helpful feedback or questions.

34

35 I know Remi, but we are not close. I interact with a lot of my  
36 fans, and I admire them all. Remi and I mainly interacted  
37 through the group chat, though Remi had attended a couple of  
38 my meet-and-greets in the past. And I cannot recall who won  
39 the contest in July 2019 to attend the panel, though it very well  
40 could have included Remi Montoya. Remi was a guest on my  
41 August 2019 Instagram Live event, but I don’t remember any  
42 details as so many of my fans have been guests at those events.  
43 But I do remember Remi once shared in a group chat how Remi  
44 shoved someone who called our movement “a bunch of  
45 lunatics.” I admired Remi for standing up for the cause and not  
46 letting other people walk all over Remi.

47 On February 9, a blank envelope was delivered to my mailbox,  
48 which I retrieved at approximately 2:30 p.m. I did not know

1 what was in the envelope and to this day do not know who left  
2 it there. I discovered a memo and a supplemental report written  
3 by Drew Marshak of the BOI regarding the confirmed existence  
4 and sighting of UFOs and extraterrestrial beings. I always knew  
5 the government was hiding this important information from the  
6 public.

7  
8 On February 11, I tweeted about a new video I planned to post  
9 that Thursday regarding government secrets. There was a  
10 comment on the tweet from Remi Montoya, but I did not notice  
11 it on that particular day as I routinely get hundreds of comments  
12 on each tweet.

13  
14 The following day on February 12, I sent a message in a group  
15 chat with fans of mine, which included Remi, Zuri, Taylor,  
16 Chris, Mike, and Buzz.

17  
18 The conversation on February 12 was pretty typical of what the  
19 previous “sneak peek” conversations had looked like. It was not  
20 uncommon for the group to get the uncensored version of the  
21 content I would be later posting on YouTube. In this case, the  
22 uncensored content was a short clip excerpt from the video  
23 itself.

24  
25 On Thursday, February 13, I posted the video on YouTube titled  
26 “ALIENS EXIST!?! PROOF GOVERNMENT HAS BEEN HIDING IT  
27 FROM US!” regarding the documents. In the video, I blurred the  
28 name and address of the official, on the advice of my legal team  
29 not to reveal personal information of people in the videos I  
30 make without their consent. I guess I forgot to do that in our  
31 group chat by accident, I was so excited by what I’d discovered.

32  
33 In the edited YouTube version of the video, I held up the  
34 documents just as evidence that I had received important  
35 information. I told my viewers I was going to march straight into  
36 the official’s house this weekend and take the information that  
37 rightfully belongs to us. I also urged my viewers to like and  
38 comment if they agreed with me. As a part of marketing, I have  
39 always urged my viewers and followers to interact with the  
40 content I put out, whether through likes or comments, in order  
41 to make the viewers feel more connected to me.

42  
43 At no point did I intend for anyone to break into Marshak’s  
44 home or steal anything from Marshak. Further, the group chat  
45 and language used in the video is simply passionate: to demand  
46 from Marshak answers about what the government is up to. In  
47 the group chats we often encourage each other to take  
48 individual action, but to be honest, no one ever really did. There

1 is a lot of hyperbole. It was basically a form of venting for stress  
2 relief.

3  
4 Because of Remi’s enthusiasm about our movement, on  
5 February 14 over WhatsApp I asked Remi to go to Marshak’s  
6 house the next day and ask Marshak for the documents. I only  
7 asked Remi to go and try to get the documents from Marshak. I  
8 only expected that Remi would go to the house, knock on the  
9 door and maybe demand the documents. I knew that I needed to  
10 build on the momentum that I had already started with my  
11 YouTube video, so I wanted the documents as soon as possible.

12  
13 When I was approached by Remi at my meet-and-greet event, it  
14 took me a moment to recognize Remi. Remi was familiar to me  
15 from brief interactions before at other meet-and-greets and  
16 events. Once I recognized Remi, I noticed that Remi seemed  
17 visibly shaken by something. Remi started rambling about  
18 something so fast and incoherently that I could not make out a  
19 single word. I became concerned about Remi’s mental state.

20  
21 I talked for a minute to my agent, Erin Sullivan, and asked Erin  
22 to keep an eye on Remi while I was doing my celebrity thing for  
23 the fans. Erin warned me not to get “involved” with Remi, but  
24 Erin always says things like that. To help Remi calm down, I  
25 offered Remi to come over after the meet-and-greet. I try to  
26 maintain a strong connection with my fans and am loyal to them  
27 because we are all part of the movement together, and they trust  
28 me to tell them the truth about issues. Besides, without them, I  
29 don’t have a job. I always want to help them in any way I can,  
30 so I told Remi to wait with us in the café until the event was  
31 over. I noticed during the event that Remi kept glancing at the  
32 entrance whenever someone entered or exited. Remi seemed  
33 very fidgety.

34  
35 In the car ride back to my place, Remi suddenly kicked  
36 something at the base of Remi’s seat and yelled, “All my  
37 problems are because of these files and stupid briefcase!” I  
38 glanced at the briefcase which definitely was official-looking,  
39 and I thought I saw the outer part of a circular insignia on it, but  
40 I had to keep my eyes on the road.

41  
42 After the initial shock of Remi’s outburst went away, I noted  
43 Remi’s “briefcase” had sounded really hollow, and the way it  
44 flopped around after the kick made it seem fake, like it was a  
45 prop or something. So I asked Remi if it was indeed a prop.  
46 Remi seemed really worked up by that question, so I  
47 immediately tried to calm Remi down. I realized that any sort of

1 civilized discussion with Remi would be futile. I should just  
2 provide Remi a place to rest.

3

4 I knew Remi had an interest in getting a first-hand look inside  
5 my bunker since I had posted small clips of it in my videos from  
6 time to time. For months, Remi had been mentioning in  
7 comments Remi's own plans for a bunker and how Remi wanted  
8 to use my bunker as a guide. There are tons of videos out there  
9 about how to prep your bunker, but Remi was always adamant  
10 about mine being the best. The fact that Remi kept annoying me  
11 about my specific bunker details didn't sit well with me. I did  
12 not intend to disclose more information about a place I would  
13 seek refuge in when the world goes to hell.

14

15 The bunker was one particular detail that Remi had been trying  
16 to learn more about, so I was suspicious that Remi might have  
17 ulterior motives. Nevertheless, I did see that Remi appeared very  
18 distressed and could even be experiencing a panic attack.

19

20 Once we got to my house, I could see that Remi looked  
21 exhausted. Remi asked to "lay low" for a while because Remi  
22 thought Remi was being "followed." I never asked Remi to  
23 elaborate what that meant because it was evident Remi was  
24 exhausted and at some kind of breaking point. It seemed like  
25 some kind of paranoia about something. I was extremely  
26 worried about how paranoid Remi was acting, so I took Remi to  
27 my guest house from a back entrance to make it seem like it was  
28 quite hidden to try and ease Remi's concern. We both went to  
29 bed soon after and didn't talk to each other about anything  
30 more.

31

32 In the morning I remember seeing Remi pacing in the yard. I  
33 was still really tired from the night before, so I decided to sleep  
34 in a little longer. Soon after, I heard Remi yelling from the yard  
35 and immediately ran outside. That is when I saw Remi being  
36 arrested. A million thoughts were rushing through my head.  
37 Now, I was the one panicking while trying to speak with the  
38 officer. I knew then something was very wrong, and it appeared  
39 Remi had done something horrible. I spoke with the arresting  
40 officer who told me Remi had been arrested for burglary and  
41 assault. I answered some basic questions. The officer asked me  
42 if it was okay to see where Remi had stayed the night before,  
43 and I showed the officer the room on my property. The officer  
44 then asked if I wanted to accompany the officer down to the  
45 station for further questioning. I obliged.

46

47 [On the way to the station, Officer Bird started talking to me  
48 about my YouTube channel and accused me of inciting anarchist

1 movements through my videos. I tried to defend myself by  
2 clarifying that being critical of the government did not make me  
3 an anarchist and that the government lying was a bipartisan  
4 issue. Officer Bird tried to explain that that wasn't the intention,  
5 but I knew it was and I didn't want Officer Bird thinking that I  
6 was at fault for Remi's actions, which seemed to be the  
7 implication. I explained, "Look, the kid and I are not close,  
8 okay? I mean, from what I know about Remi, the kid could be  
9 aggressive and is passionate about the cause." I paused to make  
10 sure that Officer Bird was paying attention. I said, "Sure, I told  
11 the kid to go down there and get those documents, but I'm not  
12 responsible for Remi doing anything illegal. That kid took things  
13 way too far!"] After arriving at the police station, I said, "I think  
14 I'd like to speak to my attorney." I was allowed to wait until my  
15 legal counsel arrived, and then I was interviewed.

16

17 On February 23, I heard several loud knocks on my front door  
18 followed by a loud voice I recognized as belonging to the officer  
19 that had arrested Remi and questioned me. The officer told me  
20 to open the door, and I complied. Then, I was arrested for aiding  
21 and abetting Remi in a burglary and accessory after the fact. I  
22 was confused and did not speak at all after that. I barely know  
23 Remi. I'm just trying to make a living, be good to my fans, and  
24 provide a public service.



1 **Defense Witness: Zuri O’Neill (Group chat member)**

2  
3 My name is Zuri O’Neill. I am 18 years old and I am an intern at  
4 Atlantis News Nightly. I began following Lee Croddy’s YouTube  
5 channel, “The Right Choice of News,” in August 2018 and  
6 followed all of Lee’s social media the month after. The first  
7 video I watched of Lee’s was when I was researching a segment  
8 we were doing at Atlantis regarding online politics. Though my  
9 initial interest was through my job, I quickly became a fan  
10 independent of my employment and began commenting on Lee’s  
11 videos and participating in discussions with Lee’s other  
12 followers.

13  
14 Personally, I don’t trust the government much and that’s why  
15 when I’m 21, I’m going to buy a gun, not alcohol. I believe in  
16 the right to bear arms, not because the Constitution gives it to  
17 me, but because I give myself the right. The government is  
18 constantly finding new ways to control us, so I stay well-  
19 informed about what they try to hide from us. I liked how Lee  
20 was highly skeptical of authority in the videos.

21  
22 Lee and I first communicated directly with each other in March  
23 2019 over Twitter when Lee created a non-public group chat  
24 with myself and some of Lee’s other followers. Since March  
25 2019, Lee and I have interacted two to three times per week  
26 through the group chat and more than that indirectly through  
27 likes or comments. Communicating via the group chat was not  
28 something I was comfortable with at first, let alone on Twitter.  
29 However, I trusted Lee’s judgment on using this platform and  
30 wanted to be in contact with Lee whenever I could.

31  
32 On February 11, I saw that Lee tweeted about a new video to be  
33 posted on Thursday regarding government secrets. I liked and  
34 retweeted the post, commenting that I couldn’t wait for it to  
35 come out. The following day on February 12, Lee sent a message  
36 in a group chat that included myself, Remi, Taylor, Chris, Mike,  
37 and Buzz. My username was @ZuriO’Neill.

38  
39 The group chats usually involved sneak peeks of videos or brand  
40 deals that Lee was planning to do. It was a good place for  
41 passionate debate and stress-relieving ranting about the issues  
42 that Lee talked about. All of us often came from a place of  
43 frustration, so the conversations could get a little heated. To an  
44 outsider, our conversations sometimes would have seemed  
45 revolutionary or promoting rash behavior. But it was always  
46 really harmless venting among friends. The February 12  
47 conversation was no different.

48

1 Lee does not beat around the bush. If Lee has something to say  
2 or has a belief that Lee wants to be heard, it will be said. Lee’s  
3 words leave very little room for interpretation, and that is what I  
4 love about RCN and Lee. Lee’s words mean what they say on a  
5 surface level. There’s no subtext or hidden meaning. Lee is a  
6 straight shooter. Unlike our government, Lee is exactly the  
7 person who we see on the outside and has no fake persona. Lee  
8 never says anything in private that Lee would not  
9 wholeheartedly stand by in public. Lee has a passion for the  
10 truth and for freedom that I rarely see in other online  
11 personalities.  
12

13 On February 13 at 2:00 p.m., Lee posted a video titled “ALIENS  
14 EXIST!? PROOF GOVERNMENT HAS BEEN HIDING IT FROM  
15 US!” I immediately watched the video, though I had received a  
16 sneak peek already in the group chat. Lee made a statement in  
17 the video encouraging the viewers to like and comment on the  
18 video if we were “with Lee.” Despite suggesting that the viewers  
19 join Lee in demanding information from the official on the  
20 documents, Lee never revealed any personal information such  
21 as the address or name of the government official in the video  
22 unlike in the group chat, where Lee had sent us the video clip  
23 including the address and official’s name visibly. In direct  
24 response to this statement, I liked and commented on the video  
25 saying, “We can’t just sit around and do nothing. The  
26 government has been lying to us! They haven’t given us ALL the  
27 information we need!”  
28

29 I had no further contact with Lee or Remi until the meet-and-  
30 greet on Saturday at approximately 3:30 p.m. I was at the meet-  
31 and-greet organized by Lee. I noticed Remi was also there, who  
32 I recognized from the group chat’s profile pictures. Remi was a  
33 couple of people ahead of me in the line and definitely seemed  
34 nervous, feet constantly tapping on the floor and looking over  
35 people’s shoulders waiting for Lee. Remi was definitely  
36 panicking about something.  
37

38 I couldn’t hear anything they were saying but I could see that  
39 once Remi got to Lee, Remi was rapidly saying something to  
40 Lee. Lee gripped Remi’s shoulders, as if to calm Remi down. A  
41 few minutes later, I saw Remi just standing alone in a corner of  
42 the café. I went over, intending to say hello. When I approached  
43 Remi, Remi was pretty short with me, answering only with  
44 “yes” or “no” when I tried to chat with Remi. Eventually, I gave  
45 up on a conversation and returned to the larger group. Remi  
46 kept nervously looking around, and Remi’s glance quickly shot  
47 toward the front door anytime it opened or closed. I remember  
48 seeing Remi kick a backpack or briefcase or something like that

1 under the table on several occasions, too. When I left the event,  
2 Lee, Remi, and a few fans were still there.  
3 I learned on Twitter that Remi and Lee had been arrested.  
4 Clearly the government is just trying to silence those who want  
5 to speak the truth and question their power.

1 Defense Witness: Dr. Jes Beart, Ph.D. (Expert)

2

3 My name is Dr. Jes Beart. I graduated from Peterson University  
4 in 2007 with a bachelor’s degree in sociology and marketing,  
5 and a minor in psychology. From there, I pursued a Ph.D. in  
6 sociology, focusing on activism and social movements, at  
7 Peterson University and published my thesis titled “Slacktivism  
8 in the Age of Twitter” in 2015. Since then, I became an associate  
9 professor of sociology at Beachwood University and continued  
10 my research on social movements. I have published articles in  
11 several publications on this subject, including *The New York*  
12 *Times* and the *Wall Street Journal*. In June 2020, I published an  
13 article in *Social Networks*, a peer-reviewed sociology journal,  
14 analyzing how social movements adjusted to the global  
15 coronavirus lockdown. I focused primarily on what made the  
16 movements successfully switch to social media and found that  
17 the most effective movements were led by youth and young  
18 adults.

19

20 When social media first started to take root and play a part in  
21 our everyday lives, it seemed that online reality and in-person  
22 reality existed in entirely separate worlds. The anonymity of  
23 social media allowed users to act in ways online that they would  
24 not necessarily act in person. However, while environmental  
25 activism was part of the first wave of online activism, it was not  
26 until Greta Thunberg, a 15-year-old girl in Sweden, sat outside  
27 the parliament building instead of going to school in August  
28 2018 that I began to see the potential of social media to affect in-  
29 person or real-time activism. Over the next year, over seven  
30 million students participated in a movement called school strike  
31 for climate, which began with the hashtag  
32 #SchoolStrike4Climate, inspired by Thunberg.

33

34 Thunberg can be considered the kind of activist who sees herself  
35 as a catalyst for a movement, but not as the leader of an  
36 organization that will direct the actions of the movement. Lee is  
37 that kind of activist, too, who seeks to inspire others to take  
38 independent action without participating in those actions. The  
39 goal is achieving movement objectives and not in getting credit  
40 for those objectives being fulfilled. Lee’s videos and  
41 communications to fans and in group chats are consistently  
42 framed as a means of getting information out to the world, not  
43 taking illegal action.

44

45 Social-media activism today is a result of the new generation of  
46 high school- and college-age activists, like Thunberg and also  
47 like Remi in the instant case. Remi is part of Generation Z, or  
48 Gen Z, which is a generation born in the late nineties through

1 the early 2000s. Gen Z has grown up with social media as a  
2 primary facet of their social development and experience, and  
3 can be thought of as the “social media generation.” Young  
4 people get inspired to not only participate in but often organize  
5 and lead protests and movements, such as March for Our Lives  
6 against gun violence, following the Parkland, Florida, school  
7 shooting. This is a generation whose online literacy surpasses  
8 that of most of the academic scholars and news media trying to  
9 study and report on it. Social media has become the most  
10 accessible and most widely used space for public discourse on  
11 virtually every issue of our daily lives.

12  
13 In my professional opinion, Lee’s interactions with Remi are pretty  
14 typical of how activist movements begin online before carrying  
15 over into the in-person world. They often grow out of fandom or  
16 “stan Twitter,” which refers to sects of hardcore fans, or “stans”  
17 (which is a reference to the Eminem song “Stan”), who ardently  
18 promote, follow, and often idolize the object of their affection  
19 online. Based on the evidence I have seen in the exhibits related to  
20 Lee’s and Remi’s online communications, Lee wants to tap into the  
21 power of the fandom that follows Lee to start a movement that —  
22 analogous to Thunberg’s school-strike movement — acts  
23 independently of Lee.

24  
25 I have seen Gen Z stans join forces online to promote  
26 collaborations or causes that they believe in, and it is almost  
27 never prompted by the person or group that they idolize. For the  
28 most part, they have the ability to act autonomously in a way  
29 that more often than not surprises their idols. For example, it’s  
30 common for fans to take a song released by an artist and create  
31 their own project, such as an entirely fan-made music video.

32  
33 After examining the communications between Lee and Remi in  
34 this case, Remi appears to be the kind of activist who will act  
35 independently of a political influencer like Lee in pursuit of  
36 shared political goals. For example, Lee texted Remi to see if  
37 Remi could acquire documents, and it was Remi, not Lee, who  
38 later showed agency and decided to rob the house.

39  
40 Remi’s frequent participation in social media, including  
41 Twitter and YouTube, is consistent with the degree of  
42 involvement that is typical of stans who not only support their  
43 idols, but contribute to, engage in, and sometimes create  
44 movements themselves. In my professional opinion, it seems to  
45 me that Remi would have been able to separate Remi’s  
46 adoration of Lee from the reality of Remi’s actions and act  
47 independently of Lee’s influence in order to show dedication to  
48 the cause they shared.

1 Defense Witness: Erin Sullivan (Lee's agent)

2

3 My name is Erin Sullivan. I have worked as Lee Croddy's agent  
4 for three years now. As Lee's agent, I help set up events for Lee,  
5 schedule appearances, act as liaison with Lee's publicist, and  
6 works with the legal and business sides of Lee's brand. On the  
7 legal side in particular, I ensure that anytime Lee is going to  
8 advocate for a certain cause or charity, directly ask for action  
9 from Lee's followers, or encourage donations or the signing of  
10 petitions, it is cleared legally and could not implicate Lee in any  
11 serious legal issues. We have a legal team that we work with to  
12 review any copyright issues as well as advocacy questions. Very  
13 rarely does Lee take any action of that type without consulting  
14 me and, by extension, the full legal team. For instance, our legal  
15 team encouraged Lee to put a disclaimer at the beginning of  
16 each video to outline the intent of the video and to warn  
17 potentially younger viewers of the sensitive nature of the  
18 information, which reads:

19

20 This video discusses topics and news that may be disturbing to  
21 some viewers. It may include images that are more graphic in  
22 nature. The purpose of this video is for education and discussion  
23 only.

24

25 Further, in collaboration with Lee's publicist, approximately a  
26 year ago, we designed an outreach project for Lee to create a  
27 series of private group chats on Twitter with some of Lee's most  
28 loyal followers. At the height of Lee's growth, Lee was gaining  
29 close to 10,000 followers per month. But toward the end of  
30 2018, Lee's follower growth had plateaued at less than one  
31 thousand per month and started dropping monthly.

32

33 After starting the group chats, not only did we see engagement  
34 with Lee's social media go up, but Lee hit one million followers  
35 within six months, which was an additional four to five hundred  
36 thousand followers. Lee had tapped into something in Lee's fan  
37 base that made them feel like they were part of the mystery and  
38 the investigation. Some of Lee's videos were starting to hit seven  
39 figure view counts. Lee was making it onto the YouTube  
40 trending page and Lee was starting to book more interviews and  
41 collaborations.

42

43 Lee's brand deals expanded, too. By making the followers in  
44 these group chats feel like Lee was more connected to them, it  
45 basically resulted in free advertising for Lee's brand. Followers  
46 feel like they're supporting a friend instead of a social media  
47 personality. They feel like they're doing them a favor and there's  
48 more pride involved when someone else begins to like this

1 “celebrity” that you’re actually friends with. From my  
2 knowledge, one of these group chats included Remi.  
3  
4 I was in attendance at the meet-and-greet event. When someone  
5 (who I later learned was Remi Montoya), approached Lee. I  
6 could see Lee’s interactions were not the same as they were  
7 with any other fans. I assumed Lee knew this person quite well.  
8 I remember Lee sort of embracing Remi before showing Remi to  
9 a table nearby. Remi soon left that table to stand in a corner and  
10 just watch over everybody.  
11  
12 Lee turned to me at one point and said, “Look my friend Remi  
13 over there is having some kind of an episode.” Now this all  
14 made sense to me. Lee told me about a WhatsApp conversation  
15 between Lee and Remi in which Lee encouraged Remi to come  
16 to the meet-and-greet so they could discuss getting some  
17 documents from a government investigator. It sounded like  
18 pretty standard Lee stuff; the kind of thing that makes Lee a  
19 good client for me: very edgy. But Lee said the “kid” (Remi)  
20 seemed to be in some kind of panic. Once in a while, Lee takes  
21 on lost causes or helps fans who really need professional  
22 attention, so I warned Lee not to get too involved. Nonetheless,  
23 Lee said Lee would have Remi “crash at my place tonight”  
24 (meaning Lee’s place).  
25  
26 Lee asked me to keep an eye on Remi until the event was over.  
27 This was nothing out of the ordinary for Lee. Lee always looked  
28 out for the fans, whether they were longtime viewers or new  
29 fans of Lee’s channel. Several times during similar events, I have  
30 seen Lee go above and beyond for Lee’s fans, acting more as a  
31 friend than an internet celebrity. I did as Lee asked and kept an  
32 eye on Remi, who appeared to nervously pace around the café  
33 for the rest of the event. Remi’s demeanor clearly impacted the  
34 overall mood of the event. However, when it was over, Lee said  
35 goodbye to the fans with a smile. I know Lee is innocent of the  
36 charges. Lee would never do anything to jeopardize Lee’s brand  
37 and financial livelihood.

# EXHIBIT A

Drew Marshak's Briefcase

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**EXHIBIT B**  
**February 12 Twitter Group Chat**

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Lee Croddy (@LeeC\_RCN): Here is a sneak peek at what's coming in this week's video guys. A source dropped these official documents in my mailbox yesterday for me to release to the world! It's true, aliens will be the next threat to our lives, best stock up on supplies!!

Chris (@chrismorio): OMG! Knew they were HIDING from us!!

Buzz (@buzzzzbro): Nice find Lee! This'll be the STORY OF OUR GENERATION!

Zuri O'Neill (@ZuriO'Neill): Crazy! Can't believe they've known about this and won't even give us the information we need to protect ourselves!

Lee: Don't worry, I'm still doing some digging. The person who wrote these reports was stupid enough to leave their name on it! I'll march right up to Marshak and DEMAND the information.

Remi Montoya (@theRCNmanifesto): You're doing the NEEDED work here Lee. No more secrets!!!

Mike (@mikewolf\_rcn): How do they expect us to just be OKAY with HALF the information?

Lee: Barely even half! That's why I'm going to make sure we get the full story. This is going to be a series, I've known about this for years but now I have PROOF

Taylor (@taytaygolden2): Anything you need from us, we're there! Right there next to you! This is the RIGHT side of history!

Lee: We have to make demands, march up to this Marshak person and DEMAND ANSWERS! And if Marshak won't answer us, we'll just TAKE what is OURS!

Remi: I'll be right next to you! You're not doing this alone!

Zuri: Fight the good fight!

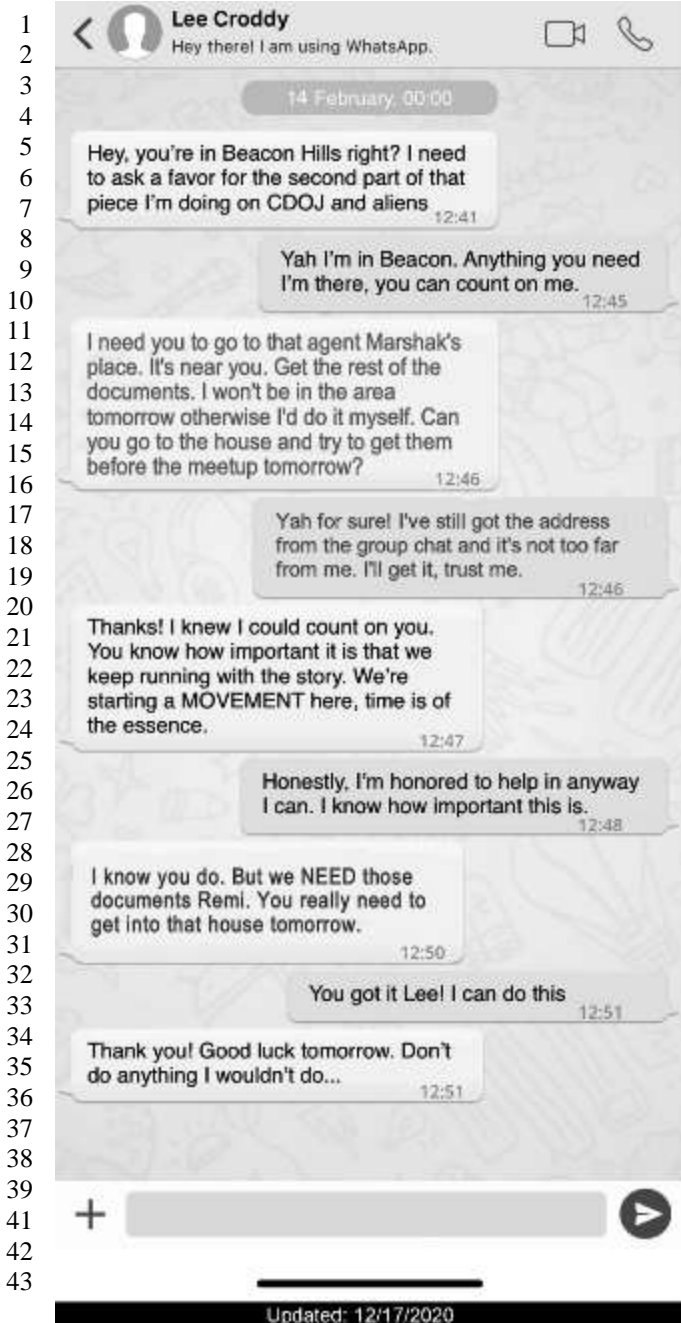
Chris: We'll all be there!!! Can't deny AMERICAN CITIZENS their RIGHT to PROTECT THEMSELVES!

Remi: Most of us will be in Beacon Hills this weekend for the meet-and-greet! Marshak lives close to there!!

Buzz: Just a quick detour before the meet-and-greet.

Lee: Guess this meet-and-greet couldn't have come at a better time, can't wait to see most of you again on Saturday!! After the release this Thursday, the RCN family is going to want to MOBILIZE! No more STAYING SILENT!

**EXHIBIT C**  
February 14 WhatsApp Text Conversation -  
Lee Croddy and Remi Montoya



# 1     **FORM AND SUBSTANCE OF A TRIAL**

## 2     **The Elements of a Criminal Offense**

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

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

## 20   **The Presumption of Innocence**

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

## 27   **The Concept of Reasonable Doubt**

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

38   Jurors must often reach verdicts despite contradictory  
39   evidence. Two witnesses might give different accounts of the  
40   same event. Sometimes a single witness will give a different  
41   account of the same event at different times. Such  
42   inconsistencies often result from human fallibility rather  
43   than intentional lying. The trier of fact (in the Mock Trial

1 competition, the judge) must apply his or her own best  
2 judgment when evaluating inconsistent testimony.

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

15 Proof beyond a reasonable doubt is proof that leaves you  
16 firmly convinced of the defendant's guilt.

17

## 18 **TEAM ROLE DESCRIPTIONS**

### 19 **Attorneys**

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

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

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

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

42 Trial attorneys will:

- 43 ● Conduct direct examination.
- 44 ● Conduct cross-examination.

- 1 • Conduct redirect examination, if necessary.
- 2 • Make appropriate objections: Only the direct and cross-
- 3 examination attorneys for a particular witness may make
- 4 objections during that testimony.
- 5 • Conduct the necessary research and be prepared to act as
- 6 a substitute for any other attorneys.
- 7 • Make opening statements and closing arguments.

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

10

## 11 **Witnesses**

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

21 You may testify to facts stated in or reasonably inferred from  
22 your record. If an attorney asks you a question, and there is  
23 no answer to it in your official testimony, you can choose  
24 how to answer it. You can either reply, “I don’t know” or “I  
25 can’t remember,” or you can infer an answer from the facts  
26 you do officially know. Inferences are only allowed if they  
27 are *reasonable*. Your inference cannot contradict your official  
28 testimony, or else you can be impeached using the  
29 procedures outlined in this packet. Practicing your testimony  
30 with your attorney coach and your team will help you to fill  
31 in any gaps in the official materials (see Unfair Extrapolation  
32 on p. 63).

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

38

## 39 **Court Clerk, Court Bailiff, Unofficial Timer**

40 We recommend that you provide two separate people for the  
41 roles of clerk and bailiff, but if you assign only one, then that  
42 person must be prepared to perform as clerk or bailiff in any  
43 given trial.

1 The unofficial timer may be any member of the team  
2 presenting the defense. However, it is advised that the  
3 unofficial timer not have a substantial role, if any, during the  
4 trial so they may concentrate on timing. The ideal unofficial  
5 timer would be the defense team’s clerk.

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

12 In a real trial, the court clerk and the bailiff aid the judge in  
13 conducting the trial. The court clerk calls the court to order  
14 and swears in the witnesses to tell the truth. The bailiff  
15 watches over the defendant to protect the security of the  
16 courtroom.

17 In the Mock Trial, the clerk and bailiff have different duties.  
18 For the purpose of the competition, the duties described  
19 below are assigned to the roles of clerk and bailiff.  
20 (Prosecution teams will be expected to provide the clerk  
21 for the trial; defense teams are to provide the bailiff.)

22

## 23 **Duties of the Court Clerk**

24 When the judge and scoring attorneys arrive in the  
25 courtroom, introduce yourself, explain that you will assist as  
26 the court clerk and distribute team roster forms to the  
27 opposing team, each scoring attorney, and the judge.

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

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

34 Interruptions in the presentations do not count as time.  
35 For direct, cross, and redirect examination, record only time  
36 spent by attorneys asking questions and witnesses answering  
37 them.

38 Do not include time when:

- 39 ● Witnesses are called to the stand.
- 40 ● Attorneys are making objections.
- 41 ● Judges are questioning attorneys or witnesses or  
42 offering their observations.

1 When a team has two minutes remaining in a category, hold  
2 up the two- minute sign; when one minute remains, hold up  
3 the one-minute sign; when 30 seconds remain, hold up the  
4 30-second sign; when time for a category has run out, hold  
5 up the stop sign and announce, “Stop!” The only verbal  
6 warning during the trial should be “Stop!” Remember to  
7 speak loud enough for everyone to hear you.

8 Time allocations: Two Minutes, One Minute, 30 Seconds,  
9 Stop

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

15

## 16 **Duties of the Bailiff**

17 When the judge arrives in the courtroom, introduce yourself,  
18 explain that you will assist as the court bailiff and distribute  
19 team roster forms to the opposing team, each scoring  
20 attorney, and the judge.

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

25 “All rise, Superior Court of the State of California, County of  
26 \_\_\_\_\_, Department\_\_\_\_\_, is now in session.  
27 Judge\_\_\_\_\_presiding, please be seated and come to  
28 order. Please turn off all cell phones and refrain from  
29 talking.”

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

32 “Do you solemnly affirm that the testimony you are about to  
33 give will faithfully and truthfully conform to the facts and  
34 rules of the Mock Trial competition?”

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

39

## 40 **Duties of the Unofficial Timer**

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

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

7 Any objections to the clerk’s official time must be made by  
8 this unofficial timer during the trial, before the verdict is  
9 rendered. The judge shall determine whether to accept the  
10 clerk’s time or make a time adjustment.

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

14 “Your honor, before bringing the next witness, may I bring  
15 to the court’s attention that there is a time discrepancy.”

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

18 Be prepared to show your records and defend your requests.  
19

## 20 **Team Manager**

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



# PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

## Introduction of Physical Evidence

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

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

## Moving the Item into Evidence

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

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

## The Opening Statement

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

- Explain what you plan to prove and how you will prove it.

- 1 • Present the events of the case in an orderly sequence  
2 that is easy to understand.
- 3 • Suggest a motive or emphasize a lack of motive for the  
4 crime.
- 5 Begin your statement with a formal address to the judge:
- 6 • “Your honor, my name is (full name), the prosecutor  
7 representing the people of the state of California in this  
8 action,” or
- 9 • “Your honor, my name is (full name), counsel for  
10 Reagan Croddy, the defendant in this action.”
- 11
- 12 Proper phrasing includes:
- 13 • “The evidence will indicate that...”
- 14 • “The facts will show that...”
- 15 • “Witness (full name) will be called to tell...”
- 16 • “The defendant will testify that...”

## 17 **Direct Examination**

18 Attorneys conduct direct examination of their own witnesses  
19 to bring out the facts of the case. Direct examination should:

- 20 • Call for answers based on information provided in the  
21 case materials.
- 22 • Reveal all of the facts favorable to your position.
- 23 • Ask the witnesses to tell the story rather than using leading  
24 questions, which call for “yes” or “no” answers. (An  
25 opposing attorney may object to the use of leading questions  
26 on direct examination.)
- 27 • Make the witnesses seem believable.
- 28 • Keep the witness from rambling about unimportant  
29 issues.

30 Call for the witness with a formal request:

- 31 • “Your honor, I would like to call (name of witness) to  
32 the stand.”
- 33 • The witness will then be sworn in before testifying.

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

- 37 • The witness’s name.
- 38 • Length of residence or present employment, if this  
39 information helps to establish the witness’s credibility.
- 40

1 Further questions about professional qualifications, if you  
2 wish to qualify the witness as an expert. Examples of proper  
3 questions on direct examination:

- 4 • “Could you please tell the court what occurred on\_  
5 \_\_\_\_ (date)?”
- 6 • “What happened after the defendant slapped you?”
- 7 • “How long did you see...?”
- 8 • “Did anyone do anything while you waited?”
- 9 • “How long did you remain in that spot?” Conclude your  
10 direct examination with:
  - 11 • “Thank you, Mr./Ms. (name). That will be all, your  
12 honor.” (The witness remains on the stand for cross-  
13 examination.)

## 14 **Cross-Examination**

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

- 21 • Call for answers based on information given in Witness  
22 Statements or the Fact Situation.
- 23 • Use leading questions, which are designed to get “yes”  
24 and “no” answers.
- 25 • Never give the witness a chance to unpleasantly surprise  
26 the attorney.

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

32 Examples of proper questions on cross-examinations:

- 33 • “Isn’t it a fact that...?”
- 34 • “Wouldn’t you agree that...?”
- 35 • “Don’t you think that...?”
- 36 • “When you spoke with your neighbor on the night of the  
37 murder, weren’t you wearing a red shirt?”

38 Cross examination should conclude with:

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

# 1    **Impeachment During Cross-Examination**

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

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

14   The attorney does not need to tell the court that he or she is  
15   impeaching the witness, unless in response to an objection  
16   from the opposing side. The attorney needs only to point out  
17   during closing argument that the witness was impeached, and  
18   therefore should not be believed.

19   Example: (Using signed witness statement to impeach) In  
20   the witness statement, Mr. Jones stated that the suspect was  
21   wearing a pink shirt. In answering a question on direct  
22   examination, however, Mr. Jones stated that the suspect  
23   wore a red shirt.

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

26   Mr. Jones responds, “Yes.”

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

30   Then ask Mr. Jones, “Do you recognize the statement on  
31   page \_\_\_\_\_, line \_\_\_\_\_ of the case packet?”

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

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

## 1     **Redirect Examination**

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

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

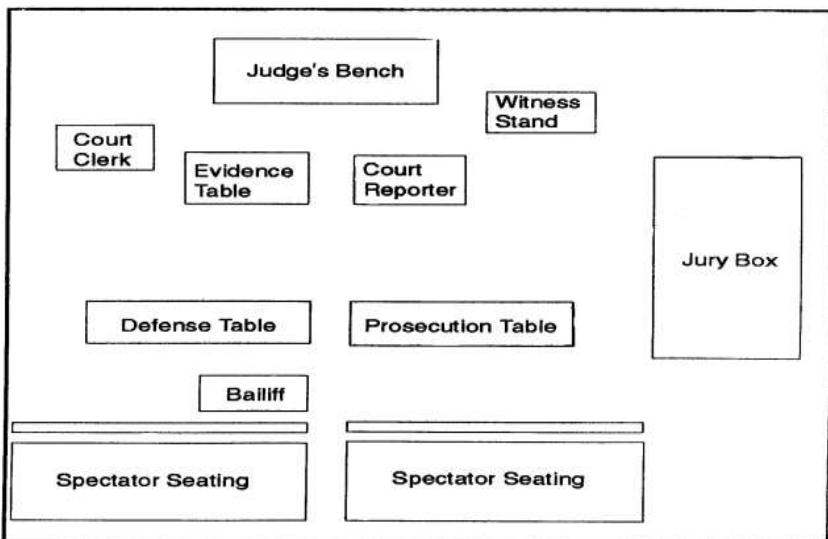
## 22    **Closing Arguments**

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

- 28    • Be spontaneous, synthesizing what actually happened in  
29    court rather than being “prepackaged.” NOTE: Points  
30    will be deducted from the closing argument score if  
31    concluding remarks do not actually reflect statements  
32    and evidence presented during the trial.
- 33    • Be emotionally charged and strongly appealing (unlike  
34    the calm opening statement).
- 35    • Emphasize the facts that support the claims of your side,  
36    but not raise any new facts.
- 37    • Summarize the favorable testimony.
- 38    • Attempt to reconcile inconsistencies that might hurt your  
39    side.
- 40    • Be well-organized. (Starting and ending with your  
41    strongest point helps to structure the presentation and  
42    gives you a good introduction and conclusion.)
- 43    • The prosecution should emphasize that the state has  
44    proven guilt beyond a reasonable doubt.

- 1 • The defense should raise questions that suggest the  
2 continued existence of a reasonable doubt.
- 3 Proper phrasing includes:  
4 • “The evidence has clearly shown that...”  
5 • “Based on this testimony, there can be no doubt that...”  
6 • “The prosecution has failed to prove that...”  
7 • “The defense would have you believe that...”
- 8 Conclude the closing argument with an appeal to convict or  
9 acquit the defendant.
- 10 An attorney has one minute for rebuttal. Only issues that  
11 were addressed in an opponent’s closing argument may be  
12 raised during rebuttal.  
13

14 **DIAGRAM OF A TYPICAL**  
15 **COURTROOM**



# 1   **MOCK TRIAL SIMPLIFIED RULES OF** 2   **EVIDENCE**

3   Criminal trials are conducted using strict rules of evidence to  
4   promote fairness. To participate in a Mock Trial, you need to  
5   know its rules of evidence. The California Mock Trial  
6   program bases its Mock Trial Simplified Rules of Evidence  
7   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 court  
11   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 admissible  
15   under the rules of evidence. All evidence will be admitted  
16   unless an attorney objects. To promote the educational  
17   objectives of this program, students are restricted to the use  
18   of a select number of evidentiary rules in conducting the  
19   trial.

## 20   **Objections**

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

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

- 41   1. Addresses the judge,
- 42   2. Indicates that he or she is raising an objection,
- 43   3. Specifies what he or she is objecting to, i.e., the  
44   particular word, phrase, or question, and
- 45   4. Specifies the legal grounds for the objection.

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

3 Throughout this packet, you will find sections titled “Usage  
4 comments.” These comments further explain the rule and  
5 often provide examples of how to use the rule at trial.  
6

## 7 **ALLOWABLE EVIDENTIARY** 8 **OBJECTIONS**

### 9 **1. Unfair Extrapolation (UE)**

10 This objection is specific to California Mock Trial and is not  
11 an ordinary rule of evidence.

12 Each witness is bound by the facts contained in his or her  
13 own official record, which, unless otherwise noted, includes  
14 his or her own witness statement, the Fact Situation (those  
15 facts of which the witness would reasonably have  
16 knowledge), and/or any exhibit relevant to his or her  
17 testimony. The unfair extrapolation (UE) objection applies  
18 if a witness creates a material fact not included in his or her  
19 official record. A material fact is one that would likely  
20 impact the outcome of the case.

21 Witnesses may, however, make fair extrapolations from the  
22 materials. A fair extrapolation is one in which a witness  
23 makes a reasonable inference based on his or her official  
24 record. A fair extrapolation does not alter the material facts  
25 of the case.

26 If a witness is asked information not contained in the  
27 witness’s statement, the answer must be consistent with the  
28 statement and may not materially affect the witness’s  
29 testimony or any substantive issue of the case.

30 Unfair extrapolations are best attacked through  
31 impeachment and closing argument. They should be dealt  
32 with by attorneys during the course of the trial. (See page 58  
33 on how to impeach a witness)

34 When making a UE objection, students should be able to  
35 explain to the court what facts are being unfairly  
36 extrapolated and why the extrapolation is material to the  
37 case. Possible rulings by a presiding judge include:

- 38 1. No extrapolation has occurred;
- 39 2. An unfair extrapolation has occurred;
- 40 3. The extrapolation was fair.

41 The decision of the presiding judge regarding extrapolations  
42 or evidentiary matters is final.



1 Usage comments—The most common example of an unfair  
2 extrapolation would be if an expert witness or police officer  
3 is questioned about research and procedures that require  
4 them to have specialized knowledge outside what is  
5 contained in their official records. This type of unfair  
6 extrapolation is illustrated in Example #1 below.  
7 Example #2 provides a set of facts and an example of fair  
8 and unfair extrapolation based on a sample fact scenario.

9 Example #1:

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

19 Example #2: Sample Fact Scenario

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

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

38 Unfair Extrapolation: At trial, John Doe testifies to the  
39 following: “I pulled into the parking lot of the Acme Grocery  
40 Store and parked my car. I walked into the store, purchased  
41 some groceries, and withdrew \$200 from the ATM.” The fact  
42 that John Doe withdrew cash is an unfair extrapolation  
43 because the fact John withdrew \$200 on the night of the  
44 crime is material to the charge of buying stolen goods  
45 because it impacts the substantive issues of his motive and  
46 means to later buy stolen goods.

1 Form of Objection: “Objection, your honor. This is an  
2 unfair extrapolation,” or, “That question calls for  
3 information beyond the scope of Mr. Doe’s witness  
4 statement.”

5 NOTE: The Unfair Extrapolation objection replaces the  
6 Creation of a Material Fact objection used in previous years  
7 in California Mock Trial.  
8

## 9 **2. Relevance**

10 Unless prohibited by a pretrial motion ruling or by some  
11 other rule of evidence listed in these Simplified Rules of  
12 Evidence, all relevant evidence is admissible. Evidence is  
13 relevant if it has any tendency to make a fact that is  
14 important to the case more or less probable than the fact  
15 would be without the evidence. Both direct and  
16 circumstantial evidence may be relevant and admissible in  
17 court.

18 Example: Eyewitness testimony that the defendant shot the  
19 victim is direct evidence of the defendant’s assault. The  
20 testimony of a witness establishing that the witness saw the  
21 defendant leaving the victim’s apartment with a smoking  
22 gun is circumstantial evidence of the defendant’s assault.

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

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

30 Form of Objection: “Objection, your honor. This testimony  
31 is not relevant,” or, “Objection, your honor. Counsel’s  
32 question calls for irrelevant testimony.”  
33

## 34 **3. More Prejudicial than Probative**

35 The court in its discretion may exclude relevant evidence if its  
36 probative value (its value as proof of some fact) is  
37 substantially outweighed by the probability that its admission  
38 creates substantial danger of undue prejudice, confuses the  
39 issues, wastes time, or misleads the trier of fact (judge).  
40

41 Usage Comments — This objection should be used sparingly  
42 in trial. It applies *only* in rare circumstances. Undue  
43 prejudice does not mean “damaging.” Indeed, the best trial  
44 evidence is always to some degree damaging to the opposing  
45 side’s case. *Undue prejudice* instead is prejudice that would  
46 affect the impartiality of the judge, usually through

1 provoking emotional reactions. To warrant exclusion on that  
2 ground, the weighing process requires a finding of clear  
3 lopsidedness such that relevance is minimal and prejudice to  
4 the opposing side is maximal.

5 Example: A criminal defendant is charged with embezzling  
6 money from his employer. At trial, the prosecutor elicits  
7 testimony that, several years earlier, the defendant suffered  
8 an animal cruelty conviction for harming a family pet.

9 The prosecution could potentially argue that the animal  
10 cruelty conviction has some probative value as to  
11 defendant's credibility as a witness. However, the defense  
12 would counter that the circumstances of the conviction have  
13 very little probative value. By contrast, this fact creates a  
14 significant danger of affecting the judge's impartiality by  
15 provoking a strong emotional dislike for the defendant  
16 (undue prejudice).

17 Form of Objection: "Objection, your honor. The probative  
18 value of this evidence is substantially outweighed by the  
19 danger of undue prejudice (or confusing the issues, or  
20 misleading the trier of fact)."

#### 21 **4. Laying a Proper Foundation**

22 To establish the relevance of direct or circumstantial  
23 evidence, you may need to lay a proper foundation. Laying a  
24 proper foundation means that before a witness can testify  
25 about his or her personal knowledge or opinion of certain  
26 facts, it must be shown that the witness was in a position to  
27 know those facts in order to have personal knowledge of  
28 those facts or to form an admissible opinion. (See "Opinion  
29 Testimony" below.)

30 Usage Comments — Example: A prosecution attorney calls a  
31 witness to the stand and begins questioning with "Did you  
32 see the defendant leave the scene of the crime?" The defense  
33 attorney may object based upon a lack of foundation. If the  
34 judge sustains the objection, then the prosecution attorney  
35 should lay a foundation by first asking the witness if he was  
36 in the area at the approximate time the crime occurred. This  
37 lays the foundation that the witness was at the scene of the  
38 crime at the time that the defendant was allegedly there in  
39 order to answer the prosecution attorney's question.

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

#### 42 **5. Personal Knowledge/Speculation**

43 A witness may not testify about any matter of which the  
44 witness has no personal knowledge. Only if the witness has

1 directly observed an event may the witness testify about it.  
2 Personal knowledge must be shown before a witness may  
3 testify concerning a matter.

4 Usage Comments — Witnesses will sometimes make  
5 inferences from what they actually did observe. An attorney  
6 may properly object to this type of testimony because the  
7 witness has no personal knowledge of the inferred fact.

8 Example: From around a corner, the witness heard a  
9 commotion. The witness immediately walked toward the  
10 sound of the commotion, found the victim at the foot of the  
11 stairs, and saw the defendant at the top of the landing,  
12 smirking. The witness then testifies that the defendant  
13 pushed the victim down the stairs. Even though this  
14 inference may seem obvious to the witness, the witness did  
15 not personally observe the defendant push the victim.  
16 Therefore, the defense attorney can object based upon the  
17 witness’s lack of personal knowledge that the defendant  
18 pushed the victim.

19 Form of Objection: “Objection, your honor. The witness  
20 has no personal knowledge to answer that question.” Or,  
21 “Objection, your honor, speculation.”

## 22 **6. Opinion Testimony (Testimony from** 23 **Non-Experts)**

24 Opinion testimony includes inferences and other subjective  
25 statements of a witness. In general, opinion testimony is  
26 inadmissible because the witness is not testifying to facts.  
27 Opinion testimony is admissible only when it is (a) rationally  
28 based upon the perception of the witness (five senses) and  
29 (b) helpful to a clear understanding of his or her testimony.  
30 Opinions based on a common experience are admissible.  
31 Some examples of admissible witness opinions are speed of  
32 a moving object, source of an odor, appearance of a person,  
33 state of emotion, or identity of a voice or handwriting.

34 Usage Comments — As long as there is personal knowledge  
35 and a proper foundation, a witness could testify, “I saw the  
36 defendant, who was crying, looked tired, and smelled of  
37 alcohol.” All of this is proper lay witness (non-expert)  
38 opinion.

39 Form of Objection: “Objection, your honor. Improper lay  
40 witness opinion.” Or, “Objection, your honor. The  
41 question calls for speculation on the part of the witness.”

## 42 **7. Expert Witness**

43 A person may be qualified as an expert witness if he or she  
44 has special knowledge, skill, experience, training, or

1 education in a subject sufficiently beyond common  
2 experience. An expert witness may give an opinion based on  
3 professional experience if the expert’s opinion would assist  
4 the trier of fact (judge) in resolving an issue relevant to the  
5 case. Experts must be qualified before testifying to a  
6 professional opinion.

7 Qualified experts may give an opinion based upon their  
8 personal observations as well as facts made known to them  
9 at, or before, the trial. The facts need not be admissible  
10 evidence if they are the type reasonably relied upon by  
11 experts in the field. Experts may give opinions on ultimate  
12 issues in controversy at trial. In a criminal case, an expert  
13 may not state an opinion as to whether the defendant did or  
14 did not have the mental state at issue.

15 Usage Comments—Examples:

- 16 1. A handwriting comparison expert testifies that police  
17 investigators presented her with a sample of the  
18 defendant’s handwriting and a threatening letter  
19 prepared by an anonymous author. She personally  
20 conducted an examination of both documents. Based on  
21 her training, her professional experience, and her careful  
22 examination of the documents, she concluded that, in  
23 her opinion, the handwriting in the anonymous letter  
24 matches the handwriting in the sample of the  
25 defendant’s handwriting. This would be an admissible  
26 expert opinion.
- 27 2. A doctor testifies that she based her opinion upon (1) an  
28 examination of the patient and (2) medically relevant  
29 statements of the patient’s relatives. Personal  
30 examination is admissible because it is relevant and  
31 based on personal knowledge. The statements of the  
32 relatives are inadmissible hearsay (hearsay is defined in  
33 Section 9 below) but are proper basis for opinion  
34 testimony because they are reasonably relevant to a  
35 doctor’s diagnosis. A judge could, in her discretion,  
36 allow the expert witness to describe what the relatives  
37 told her and explain how that information supports her  
38 opinion. Although those statements would not be  
39 admissible to prove the statements are true, they can be  
40 used to explain how the statements support the doctor’s  
41 opinion.

42 Form of Objection: “Objection, your honor. There is a lack  
43 of foundation for this opinion testimony,” or, “Objection,  
44 your honor. Improper opinion.”

## 1 **8. Character Evidence**

2 “Character evidence” is evidence of a person’s personal  
3 traits or personality tendencies (e.g. honest, violent, greedy,  
4 dependable, etc.). As a general rule, character evidence is  
5 inadmissible when offered to prove that a person acted in  
6 accordance with his or her character trait(s) on a specific  
7 occasion. The Simplified Rules of Evidence recognize three  
8 exceptions to this rule:

### 9 **1. Defendant’s own character**

10 The defense may offer evidence of the defendant’s own  
11 character (in the form of opinion or evidence of reputation)  
12 to prove that the defendant acted in accordance with his or  
13 her character on a specific occasion (where the defendant’s  
14 character is inconsistent with the acts of which he or she is  
15 accused). The prosecution can rebut the evidence (See Usage  
16 Comments below).

### 17 **2. Victim’s character**

18 The defense may offer evidence of the victim’s character (in  
19 the form of opinion, evidence of reputation, or specific  
20 instances of conduct) to prove the victim acted in  
21 accordance with his or her own character on a specific  
22 occasion (where the victim’s character would tend to prove  
23 the innocence of the defendant). The prosecution can rebut  
24 the evidence (See Usage Comments below).

### 25 **3. Witness’s character**

26 Evidence of a witness’s character for dishonesty (in the form  
27 of opinion, evidence of reputation, or specific instances of  
28 conduct) is admissible to attack the witness’s credibility. If a  
29 witness’s character for honesty has been attacked by the  
30 admission of bad character evidence, then the opposing  
31 party may rebut by presenting good character evidence (in  
32 the form of opinion, evidence of reputation, or specific  
33 instances of conduct) of the witness’s truthfulness.

34

35 Admission of Prior Acts for Limited Non-Character  
36 Evidence Purposes

37 Habit or Custom to Prove Specific Behavior

38 Evidence of the habit or routine practice of a person or an  
39 organization is admissible to prove conduct on a specific  
40 occasion in conformity with the habit or routine practice.  
41 Habit or custom evidence is not character evidence.

42 Prior Act to Prove Motive, Intent, Knowledge, Identity, or  
43 Absence of Mistake

44 Nothing in this section prohibits the admission of evidence  
45 that the defendant committed a crime, civil wrong, or other

1 act when relevant to prove some fact (such as motive, intent,  
2 knowledge, identity, or absence of mistake or accident) other  
3 than his or her disposition to commit such an act.

4 Usage Comments—If any prosecution witness testifies to the  
5 defendant or victim’s character, the defense may object. But  
6 the prosecution may then request to make an offer of proof, or  
7 an explanation to the judge, that the prosecution (a)  
8 anticipates the defense will introduce evidence of defendant’s  
9 or victim’s character, and (b) Mock Trial rules do not allow  
10 for rebuttal witnesses or recalling witnesses. If the judge  
11 allows, the prosecution may present evidence in the form of  
12 opinion, evidence of reputation, or specific instances of  
13 conduct to rebut the defense’s anticipated use of character  
14 evidence. If this evidence does not come in during the  
15 defense, the defense attorney can move to strike the previous  
16 character evidence.

17 Examples:

18 Admissible character evidence

19 The defendant is charged with embezzlement (a theft  
20 offense). The defendant’s pastor testifies that the defendant  
21 attends church every week and has a reputation in the  
22 community as an honest and trustworthy person. This would  
23 be admissible character evidence.

24 Inadmissible character evidence

25 The defendant is charged with assault. The prosecutor calls  
26 the owner of the defendant’s apartment to testify in the  
27 prosecution’s case-in-chief. She testifies that the defendant  
28 often paid his rent late and was very unreliable. This would  
29 likely not be admissible character evidence for two reasons:  
30 (1) This character evidence violates the general rule that  
31 character evidence is inadmissible (and it does not  
32 qualify under one of the three recognized exceptions  
33 above), and (2) the character trait of “reliability” is not  
34 relevant to an assault charge (by contrast, propensity for  
35 violence or non-violence would be relevant character  
36 traits in an assault case).

37 Form of Objection: “Objection, your honor. Inadmissible  
38 character evidence,” or, “Objection, your honor. The  
39 question calls for inadmissible character evidence.”

## 40 9. Hearsay

41 Hearsay evidence is evidence of a statement that was made  
42 other than by a witness while testifying at trial and that is  
43 offered to prove the truth of the matter stated. (This means  
44 the person who is testifying to another person’s statement is

1 offering the statement to prove it is true.) Hearsay is  
2 considered untrustworthy because the declarant (aka the  
3 speaker) of the out-of-court statement did not make the  
4 statement under oath and is not present in court to be cross-  
5 examined. Because these statements are unreliable, they  
6 ordinarily are not admissible.

7 Usage Comments—Testimony not offered to prove the truth  
8 of the matter stated is, by definition, *not* hearsay. For  
9 example, testimony to show that a statement was said and  
10 heard, or to show that a declarant could speak a certain  
11 language, or to show the subsequent actions of a listener, is  
12 admissible.

13 Examples:

- 14 1. Joe is being tried for murdering Henry. The witness  
15 testifies, “Ellen told me that Joe killed Henry.” If offered  
16 to prove that Joe killed Henry, this statement is hearsay  
17 and would likely not be admitted over an objection.
- 18 2. A witness testifies, “I went looking for Eric because Sally  
19 told me that Eric did not come home last night.” Sally’s  
20 comment is an out-of-court statement. However, the  
21 statement could be admissible if it is not offered for the  
22 truth of its contents (that Eric did not come home), but  
23 instead is offered to show why the witness went looking  
24 for Eric.

25 Form of Objection: “Objection, your honor. Counsel’s  
26 question calls for hearsay.” Or, “Objection, your honor.  
27 This testimony is hearsay. I move that it be stricken from  
28 the record.”

29 Hearsay Exceptions

30 Out of practical necessity, the law recognizes certain types of  
31 hearsay that may be admissible. Exceptions have been  
32 allowed for out-of-court statements made under  
33 circumstances that promote greater reliability, provided that  
34 a proper foundation has been laid for the statements. The  
35 Simplified Rules of Evidence recognize only the following  
36 exceptions to the hearsay rule:

- 37 a. Declaration against interest: a statement which, when  
38 made, was contrary to the declarant’s own economic  
39 interest, or subjected the declarant to the risk of civil or  
40 criminal liability, or created a risk of making the  
41 declarant an object of hatred, ridicule, or social disgrace  
42 in the community. A reasonable person in the  
43 declarant’s position would not have made the statement  
44 unless the person believed it to be true.
- 45 b. Excited Utterance: a statement that describes or explains  
46 an event perceived by the declarant, made during or shortly



- 1 after a startling event, while the declarant is still under the  
2 stress of excitement caused by the event.
- 3 c. State of mind: a statement that shows the declarant’s then-  
4 existing state of mind, emotion, or physical condition  
5 (including a statement of intent, plan, motive, mental state,  
6 pain, or bodily health).
- 7 d. Records made in the regular course of business  
8 (including medical records): writings made as a record  
9 of an act or event by a business or governmental agency  
10 (Mock Trial does not require the custodian of the records  
11 to testify). To qualify as a business record, the following  
12 conditions must be established:
- 13 1) The writing was made in the regular course of  
14 business;
- 15 2) The writing was made at or near the time of the act  
16 or event; and
- 17 3) The sources of information and method of  
18 preparation are trustworthy.
- 19 e. Official records by public employees: writing made by  
20 a public employee as a record of an act or event. The  
21 writing must be made within the scope of duty of a  
22 public employee.
- 23 f. Prior inconsistent statement: a prior statement made by  
24 the witness that is inconsistent with the witness’s trial  
25 testimony.
- 26 g. Prior consistent statement: a prior statement made by a  
27 witness that is consistent with the witness’s trial  
28 testimony. Evidence of a prior consistent statement can  
29 only be offered after evidence of a prior inconsistent  
30 statement has been admitted for the purpose of attacking  
31 the witness’s credibility. To be admissible, the consistent  
32 statement must have been made before the alleged  
33 inconsistent statement.
- 34 h. Statements for the purpose of medical diagnosis or  
35 treatment: *statements* made for purposes of medical  
36 diagnosis or treatment, describing medical history, past  
37 or present symptoms, pain, or sensations.
- 38 i. Reputation of a person’s character in the community:  
39 evidence of a person’s general reputation with reference  
40 to his or her character or a trait of his or her character at  
41 a relevant time in the community in which the person  
42 then resided or in a group with which the person  
43 habitually associated.
- 44 j. Dying Declaration: a statement made by a dying person  
45 about the cause and circumstances of his or her death, if  
46 the statement was made on that person’s personal  
47 knowledge and under a sense of immediately impending  
48 death.

- 1 k. Co-Conspirator’s statements: statements made by the  
2 declarant while participating in a conspiracy to commit a  
3 crime or civil wrong. To be admissible, the following  
4 must be established:
- 5 ● The statement was made in furtherance of the  
6 objective of that conspiracy;
  - 7 ● The statement was made prior to or during the time  
8 that the declarant was participating in that  
9 conspiracy; and
  - 10 ● The evidence is offered either after admission of  
11 evidence sufficient to sustain a finding of the facts  
12 specified in (1) or (2) or, in the court’s discretion as  
13 to the order of proof, subject to the admission of  
14 this evidence.
- 15 l. Adoptive admission: a statement offered against a  
16 party, that the party, with knowledge of the content of  
17 that statement, has by words or other conduct adopted  
18 as true.
- 19 m. Admission by a party opponent: any statement by a  
20 party in an action when it is offered against that party  
21 by an opposing party. The statement does not have to  
22 be against the declarant’s interest at the time the  
23 statement was made.

## 24 **Objections for inappropriately phrased** 25 **questions**

### 26 **10. Leading Questions**

27 Attorneys may not ask witnesses leading questions during  
28 direct examination or re-direct examination. A leading  
29 question is one that suggests the answer desired. Leading  
30 questions are permitted on cross- examination.

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

36 Form of Objection: “Objection, your honor. Counsel is  
37 leading the witness.”

### 38 **11. Compound Question**

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

43 Example: “Did you determine the point of impact from  
44 conversations with witnesses and from physical remarks,

1 such as debris in the road?” If an objection to the compound  
2 question is sustained, the attorney may state “Your honor, I  
3 will rephrase the question,” and then break down the  
4 question into two separate questions:

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

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

9 Remember that there may be another way to make your  
10 point.

11 Form of Objection: “Objection, your honor, on the ground  
12 that this is a compound question.”

## 13 **12. Narrative**

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

19 Usage Comments—Example: The attorney asks A, “Please  
20 describe all the conversations you had with X before X  
21 started the job.” This question calls for the witness to give a  
22 long narrative answer. It is, therefore, objectionable.

23 Form of Objection: “Objection, your honor. Counsel’s  
24 question calls for a narrative.” Or, “Objection, your honor.  
25 The witness is providing a narrative answer.”

## 26 **13. Argumentative Question**

27 An argumentative question challenges the witness about an  
28 inference from the facts in the case. The cross-examiner may  
29 not harass a witness, become accusatory toward a witness,  
30 unnecessarily interrupt the witness’s answer, or make  
31 unnecessary comments on the witness’s responses. These  
32 behaviors are also known as “badgering the witness.” (If a  
33 witness is non-responsive to a question, see the non-  
34 responsive objection, #16 below).

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

41 Form of Objection: “Objection, your honor. Counsel is  
42 being argumentative.” Or, “Objection, your honor.  
43 Counsel is badgering the witness.”

## 1 **14. Asked and Answered**

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

5 Usage Comments—Examples: On direct examination, the  
6 prosecution attorney asks, “Did the defendant stop at the  
7 stop sign?” Witness answers, “No, he did not.” Then,  
8 because it is a helpful fact, the direct examining attorney  
9 asks again, “So the defendant didn’t stop at the stop sign?”  
10 Defense counsel could object on asked-and-answered  
11 grounds.

12 On cross-examination, the defense attorney asks, “Didn’t  
13 you tell a police officer after the accident that you weren’t  
14 sure whether X failed to stop for the stop sign?” Witness  
15 answers, “I don’t remember.” Defense attorney then asks,  
16 “Do you deny telling the officer that?” If the prosecution  
17 attorney makes an asked-and-answered objection, it should  
18 be overruled. Why? In this example, defense counsel  
19 rephrased the question based upon the witness’s answer.

20 Form of Objection: “Objection, your honor. This question  
21 has been asked and answered.”

## 22 **15. Vague and Ambiguous Questions**

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

27 Usage Comments—Example: “Does it happen at once?”

28 Form of Objection: “Objection, your honor. This question is  
29 vague and ambiguous as to\_.”

## 30 **16. Non-responsive Witness**

31 A witness has a responsibility to answer the attorney’s  
32 questions. Sometimes a witness’s reply is vague or the  
33 witness purposely does not answer the attorney’s question.  
34 Counsel may object to the witness’s non- responsive answer.

35 Usage Comments—Example: The attorney asks, “Did you  
36 see the defendant’s car in the driveway last night?” The  
37 witness answers, “Well, when I got home from work I  
38 hurried inside to make dinner. Then I decided to watch TV,  
39 and then I went to bed.” This answer is non- responsive, as  
40 the question is specifically asking if the witness saw the  
41 defendant’s car on the night in question.

42 Form of Objection: “Objection, your honor. The witness is  
43 being non- responsive.”

1 **17. Outside the Scope of Cross-**  
2 **Examination**

3 Redirect examination is limited to issues raised by the  
4 opposing attorney on cross-examination. If an attorney asks  
5 questions beyond the issues raised on cross-examination,  
6 opposing counsel may object to them.

7 Form of Objection: “Objection, your honor. Counsel is  
8 asking the witness about matters beyond the scope of  
9 cross-examination.”

# SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE CALIFORNIA MOCK TRIAL

1. 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.”
2. Relevance: “Objection, your honor. This testimony is not relevant,” or, “Objection, your honor. Counsel’s question calls for irrelevant testimony.”
3. 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).”
4. Foundation: “Objection, your honor. There is a lack of foundation.”
5. Personal Knowledge/Speculation: “Objection, your honor. The witness has no personal knowledge to answer that question.” Or, “Objection, your honor, speculation.”
6. 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.”
7. Expert Opinion: “Objection, your honor. There is a lack of foundation for this opinion testimony,” or, “Objection, your honor. Improper opinion.”
8. Character Evidence: “Objection, your honor. Inadmissible character evidence,” or, “Objection, your honor. The question calls for inadmissible character evidence.”
9. 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.”

10. Leading Question: “Objection, your honor. Counsel is leading the witness.”
11. Compound Question: “Objection, your honor, on the ground that this is a compound question.”
12. Narrative: “Objection, your honor. Counsel’s question calls for a narrative.” Or, “Objection, your honor. The witness is providing a narrative answer.”
13. Argumentative Question: “Objection, your honor. Counsel is being argumentative.” Or, “Objection, your honor. Counsel is badgering the witness.”
14. Asked and Answered: “Objection, your honor. This question has been asked and answered.”
15. Vague and Ambiguous: “Objection, your honor. This question is vague and ambiguous as to .”
16. Non-Responsive: “Objection, your honor. The witness is being non-responsive.”
17. Outside the Scope of Cross-Examination: “Objection, your honor. Counsel is asking the witness about matters beyond the scope of cross-examination.”

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- NOTES -

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