



Educate. Participate. Empower.



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**

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ACKNOWLEDGEMENTS

Developed by:

Marshall Croddy, CRF, *President (Retired)*
Keri Doggett, CRF, *Vice President of Program and Operations*
Damon Huss, CRF, *Senior Editor and Curriculum Specialist*
Garen Kosoyan, *Law Student Intern, Writer*
Kalista McCauley *Law Student Intern, Writer*
Lourdes Morales, CRF, *Senior Program Director*
Laura Wesley, CRF, *Associate Director of Program*

Special Thanks to:

Hon. Raquel Márquez, Superior Court of California, County of Riverside
Justice Steven Z. Perren, California Second District Court of Appeal

Case Reviewers:

Hon. George Bird, Los Angeles
Robin Bernstein-Lev, Esq., Los Angeles
Commr. Doreen Boxer, Los Angeles
David A. Carrillo, Esq., San Francisco
Linda Dunn, Esq., San Luis Obispo
Carla Garrett, Esq., Contra Costa
Jon Garzoli, Esq., San Joaquin
Sharon Matsumoto, Los Angeles
Nathalie Miller, Esq., San Diego
Hon. Ron Rose, Los Angeles
Judge Randall Sherman, Orange County
Michael Tiktinsky, PhD., San Francisco

CRF Staff and Board Contributors:

Sarah Badawi, *Senior Program Director*
Andrew Costly, *Senior Publications Manager*
Kimberly Dunne, *Chair, Board of Directors*
Jasmin Espinoza, *Program Assistant*
Gregorio Medina, *Senior Program Director*
Sean-Michael Ramirez, *Program Coordinator*

Amanda Susskind, *President*

Cover Drawing: Anna Shaposhnik, 2017 California Mock Trial Courtroom
Art Contest Finalist

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Constitutional Rights Foundation, 601 South Kingsley Dr., Los Angeles, CA 90005.
213.487.5590 - www.crf-usa.org - crf@crf-usa.org

This case is dedicated to former Constitutional Rights Foundation President, Marshall Croddy.

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 Jenning) *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

1
2
3
4 Lee Croddy is a self-titled political journalist who runs a
5 popular YouTube channel called “The Right Choice of
6 News” (RCN) on which Lee regularly posts videos. On
7 RCN, Lee reveals stories, which Lee often claims are being
8 hidden from the public by the government in an effort to
9 control public perception.

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

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

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

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

38 Lee posted the full video publicly on YouTube on February
39 13. In the video, Drew’s name and information were
40 blurred out. The documents were marked “confidential”
41 and “government property.” After describing and providing
42 commentary on the documents, Lee asked viewers to “like
43 and comment” on the video. Remi saw the video, liked and
44 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 Beaart are qualified expert
43 witnesses and can testify to each other’s statements.
44 6. Remi Montoya, Lee Croddy and Zuri O’Neill may testify
45 without objection to the content of the group chat to the
46 extent that it is included in evidence or in their

- 1 testimony or what they would reasonably know from
2 the fact situation. The other members of the group chat
3 are unavailable to testify and their unavailability may
4 not be questioned.
- 5 7. Remi Montoya pleaded guilty to first degree burglary
6 (PC § 459, 460(a)) and assault on a peace officer (PC §
7 217.1) and agreed to give truthful testimony at Lee
8 Croddy’s trial. Remi will be sentenced after Lee’s trial
9 on a date to be set after the conclusion of this trial.
10 Remi Montoya could receive a sentence of up to five
11 years. “Truthful testimony” shall be, for the purposes of
12 this stipulation, testimony given based solely on the
13 witness’s memory of events and circumstances to the
14 best of his or her ability without reference or influence
15 of any third party.
- 16 8. Exhibit A is a photograph of Drew Marshak’s briefcase.
17 Exhibit B is a faithful and accurate transcript of the
18 February 12 conversation on Twitter between Lee
19 Croddy, Remi Montoya, Zuri O’Neill, Christopher
20 D’Morio, Buzz Darkmin, Taylor Gold and Michael Wolf.
21 Exhibit C is a faithful and accurate transcript of the
22 February 14 conversation on WhatsApp between Lee
23 Croddy and Remi Montoya.
- 24 9. The arrest warrant of Lee Croddy was based on
25 sufficient probable cause and properly issued.
- 26

27 SOURCES FOR THE TRIAL

28

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

32

33 RELEVANT STATUTES

34

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

36 Every person who enters any house, room . . . with intent
37 to commit grand or petit larceny or any felony is guilty of
38 burglary. As used in this chapter, “inhabited” means
39 currently being used for dwelling purposes, whether
40 occupied or not. Every burglary of an inhabited dwelling
41 house . . . which is inhabited and designed for habitation . .
42 . is burglary of the first degree.

43

44 **Who are principals (Cal. Pen. Code § 31)**

45 All persons concerned in the commission of a crime,
46 whether it be felony or misdemeanor, and whether they
47 directly commit the act constituting the offense, or aid and
48 abet in its commission, or, not being present, have advised

1 and encouraged its commission . . . or who, by threats,
2 menaces, command, or coercion, compel another to commit
3 any crime, are principals in any crime so committed.
4

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

6 Every person who, after a felony has been committed,
7 harbors, conceals or aids a principal in such felony, with
8 the intent that said principal may avoid or escape from
9 arrest, trial, conviction or punishment, having knowledge
10 that said principal has committed such felony or has been
11 charged with such felony or convicted thereof, is an
12 accessory to such felony.
13

14 **JURY INSTRUCTIONS**

15
16 **CalCrim 400 (Aiding and Abetting: General Principles)**

17 A person may be guilty of a crime in two ways. One, he or
18 she may have directly committed the crime. The court will
19 call that person the perpetrator. Two, he or she may have
20 aided and abetted a perpetrator, who directly committed
21 the crime.

22 A person is guilty of a crime whether he or she committed
23 it personally or aided and abetted the perpetrator.
24

25 **CalCrim 401 (Aiding and Abetting: Intended Crimes)**

26 To prove that the defendant is guilty of a crime based on
27 aiding and abetting that crime, the People must prove that:

- 28 1. The perpetrator committed the crime;
- 29 2. The defendant knew that the perpetrator intended to
30 commit the crime;
- 31 3. Before or during the commission of the crime, the
32 defendant intended to aid and abet the perpetrator in
33 committing the crime;

34 AND

- 35 4. The defendant's words or conduct did in fact aid and
36 abet the perpetrator's commission of the crime.
37 Someone *aids and abets* a crime if he or she knows of
38 the perpetrator's unlawful purpose and he or she
39 specifically intends to, and does in fact, aid, facilitate,
40 promote, encourage, or instigate the perpetrator's
41 commission of that crime.

42 If all of these requirements are proved, the defendant
43 does not need to actually have been present when the
44 crime was committed to be guilty as an aider and
45 abettor.

1 **CalCrim 1700 (Burglary)**

2 To prove that the defendant is guilty of this crime, the
3 People must prove that:

- 4 1. The defendant entered a residential home;
- 5 2. When (he/she) entered a residential home, (he/she)
6 intended to commit *theft*.

7
8 To decide whether the defendant intended to commit theft,
9 please refer to the separate instructions that have been
10 given to you on that crime.

11
12 **CalCrim 1701 (Burglary: Degrees)**

13 First degree burglary is the burglary of an inhabited house.
14 A house is *inhabited* if someone uses it as a dwelling,
15 whether or not someone is inside at the time of the alleged
16 entry.

17
18 The People have the burden of proving beyond a
19 reasonable doubt that the burglary was first degree
20 burglary. If the People have not met this burden, you must
21 find the defendant not guilty of first-degree burglary.

22
23 **CalCrim 1702 (Burglary: Intent of Aider and Abettor)**

24 To be guilty of burglary as an aider and abettor, the
25 defendant must have known of the perpetrator's unlawful
26 purpose and must have formed the intent to aid, facilitate,
27 promote, instigate, or encourage commission of the
28 burglary before the perpetrator finally left the structure.

29
30 **CalCrim 1800 (Theft)**

31 To prove that the defendant is guilty of this crime, the
32 People must prove that:

- 33 1. The defendant took possession of property owned by
34 someone else;
- 35 2. The defendant took the property without the owner's
36 consent;
- 37 3. The defendant took the property (he/she) intended to
38 deprive the owner of it permanently or to remove it
39 from the owner's possession for so extended a period of
40 time that the owner would be deprived of a major
41 portion of the value or enjoyment of the property;
42 AND
- 43 4. When the defendant moved the property, even a small
44 distance, and kept it for any period of time, however
45 brief.

46
47 **CalCrim 440 (Accessories)**

48 To prove that the defendant is guilty of this crime, the
49 People must prove that:

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

14 PRETRIAL MOTION AND 15 CONSTITUTIONAL ISSUE

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

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

33 The Fifth Amendment provides that “no persons shall be
34 compelled to be a witness against themselves.” In *Miranda*
35 *v. Arizona*, the court held that before police may question a
36 suspect in custody, they must inform them of their privilege
37 against self-incrimination. From this basic principle has
38 emerged the rule requiring that *Miranda* warnings must
39 precede any **custodial interrogation**. If the suspect
40 provides information during a custodial interrogation
41 without being given his or her *Miranda* warnings, and
42 providing a knowing and intelligent waiver, it may be a
43 violation of the suspect’s Fifth Amendment rights. As a
44 consequence, such evidence may not be used against the
45 accused in a criminal trial.
46

47 There are two components to a custodial interrogation:
48 First, the circumstances of the interrogation must
49 objectively amount to custody. Second, a reasonable person

1 under those circumstances would believe that they are not
2 free to leave. Both of these standards are objective and
3 based on a reasonable person’s perspective; the subjective
4 beliefs of the person being interrogated or the officer
5 interrogating are not controlling.
6

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

21 The pretrial motion challenges the admissibility of the
22 conversation between Officer Max Bird and Lee Croddy on
23 February 16 in Officer Bird’s unmarked vehicle.
24

25 Since no *Miranda* warnings were given, if the conversation
26 is found to be the result of a custodial interrogation
27 designed to elicit incriminating evidence from Lee, then it is
28 inadmissible and a violation of Lee Croddy’s Fifth
29 Amendment rights. If the conversation is not determined to
30 be incident to custodial interrogation, it is not a violation of
31 Lee Croddy’s Fifth Amendment rights and the testimony
32 can be used as evidence during the trial (subject to other
33 evidentiary objections).
34

35 The outcome of the pretrial motion will have a direct
36 bearing on the admissibility of this conversation. If the
37 judge excludes the statement, then attorneys and witnesses
38 may not refer to or discuss it during the trial.
39

40 **The text affected by this motion can be found in the**
41 **witness statements of Officer Bird and Lee Croddy, as**
42 **well as in the Pretrial Facts, within brackets, e.g., [text].**
43

44 **Important: The only facts from the Pretrial Facts section**
45 **below that are potentially admissible at trial following**
46 **the pretrial hearing are those within brackets. All other**
47 **facts from the Pretrial Facts section are inadmissible at**
48 **trial and are provided solely for use in the pretrial**
49 **hearing.**
50

1 **Pretrial Facts**

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

17
18 Lee responded defensively, “Just because I criticize the
19 government without all that partisan nonsense doesn’t
20 mean that I’m an anarchist. I just think the government
21 should be held accountable for the lies that they tell, even
22 lies by omission.” The conversation was interrupted by a
23 call that came through on the radio. The call was unrelated
24 to this case, but Officer Bird saw Lee eyeing the radio. “But
25 you have to admit,” Officer Bird resumed the conversation,
26 “whether you are an anarchist or not, your stuff can
27 definitely be taken that way, at least from what I’ve seen.”

28
29 “So what? You think what Remi did was my fault then?”
30 Lee asked, still defensive. “Do I need to call my lawyer?”

31
32 “No, that’s not what I meant,” Officer Bird responded. “I
33 was speaking generally that your content can be taken out
34 of context,” Officer Bird continued. Lee stated, “Look, the
35 kid and I are not close, okay? I mean, from what I know
36 about Remi, the kid could be aggressive and is passionate
37 about the cause.” Lee paused, looking up at Officer Bird,
38 and added, “Sure, I told the kid to go down there and get
39 those documents, but I’m not responsible for Remi doing
40 anything illegal. That kid took things way too far!”

41 “Nobody was accusing you of anything, Lee,” Officer Bird
42 said.] As they pulled into the police station, Lee responded,
43 “I think I’d like to speak to my attorney.” Lee was
44 interviewed later that day with counsel present.

45
46 **Arguments**

47 Prosecution will argue that the statement made by Lee
48 Croddy is admissible primarily because the conversation
49 between Lee and Officer Max Bird was not a custodial

1 interrogation thus not a violation of Lee’s Fifth Amendment
2 rights. It was just a conversation. Lee came down to the
3 station willingly and accepted the invitation to ride with
4 Officer Bird. Lee volunteered the information and was not
5 questioned in such a manner that Officer Bird should
6 reasonably expect to elicit an incriminating response from
7 Lee. There was no express questioning of Lee regarding the
8 case. Lee had no reason to feel like a suspect at the time
9 because none of Officer Bird’s statements were accusatory
10 nor did they indicate a necessity for Lee to reply. Further,
11 Officer Bird was in plain clothes and in an unmarked
12 vehicle thus a reasonable person would not objectively feel
13 like they were under interrogation.
14

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

29 **Sources**

30 The sources for the pretrial motion arguments are a “closed
31 library,” which means that Mock Trial participants may
32 only use the materials provided in this case packet. These
33 materials include: excerpts from the U.S. Constitution,
34 edited court opinions, and Pretrial Facts. Witness
35 statements found in Pretrial Facts are admissible in the
36 pretrial hearing without corroborative testimony for the
37 purposes of the pretrial motion only.
38

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

LEGAL AUTHORITIES

Constitutional

Amendment V

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

Federal Cases

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

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

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

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

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

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

2

3 Facts: Defendant was arrested for the robbery and murder
4 of a taxi driver. The driver was killed by a shotgun, but the
5 shotgun was not found by the time Defendant was arrested.
6 Defendant was arrested with *Miranda* warnings and then
7 put into the backseat of the police car. Defendant invoked
8 his right to speak with a lawyer. The police officers
9 discussed amongst themselves that the shotgun used to kill
10 the taxi driver might be found by a child. Defendant was
11 moved by the discussion enough to tell the officers the
12 location of the shotgun.

13

14 Issue: Did the conversation between the police officers in
15 front of Defendant constitute an interrogation under
16 *Miranda*?

17

18 Holding: No. The conversation was not considered an
19 interrogation and therefore did not violate Defendant's Fifth
20 Amendment rights.

21

22 Reasoning: For the purpose of *Miranda*, an interrogation is
23 "any words or actions on the part of the police, other than
24 those normally attendant on arrest and custody, that the
25 police should know are reasonably likely to elicit an
26 incriminating response from the suspect." The words or
27 actions may be in the form of explicit questioning or the
28 functional equivalent of such questioning if the "officers
29 should have known that their brief conversation in
30 [Defendant's] presence was reasonably likely to elicit an
31 incriminating response." The court reasoned that the
32 officers would have had no reason to believe that the
33 Defendant "would be susceptible to an appeal to his
34 conscience concerning the safety of children and would
35 respond by offering to show the officers where a shotgun
36 was buried."

37

38 ***State Cases***

39

40 *People v. Boyer*, 768 P.2d 610 (1989)

41

42 Facts: Defendant in a murder case was transported to a
43 police station and interrogated. The police characterized his
44 participation as "voluntary", but the defense argued that
45 the police had no legal ground for the restraint. Under these
46 conditions, the defendant admitted to the killings of two
47 individuals and was subsequently sentenced to death
48 during his trial.

1 Issue: Did the defendant’s questioning constitute a
2 custodial interrogation triggering the *Miranda* rule?
3 Holding: Yes. A coercive environment that diminishes the
4 defendant’s ability to exercise his *Miranda* rights deems the
5 resulting statements inadmissible.

6
7 Reasoning: The Supreme Court of California held that the
8 defendant was indeed under custodial interrogation.
9 Detectives consistently ignored the defendant’s attempts to
10 assert his *Miranda* rights to silence and counsel. After
11 initial questioning was over, one of the detectives once
12 again failed to honor the defendant’s request for an
13 attorney and instead began a new conversation about the
14 case which, considering the coercive environment, was a
15 reasonably calculated attempt to elicit an incriminating
16 response. This ploy was eventually successful as the
17 defendant admitted to the crime. For these reasons, the
18 Court held that the defendant’s statement was indeed the
19 fruit of an illegal arrest, and therefore reversed the
20 convictions.

21
22 *People v. Andreasen*, 153 Cal. Rptr. 3d 641 (2013)

23
24 Facts: During taped sessions, officers engaged in
25 conversation with the defendant. The topics discussed were
26 neutral and related to the defendant’s interests and life. In
27 pursuance of an insanity defense, the defendant argued that
28 this conversation should be inadmissible, given that the
29 defendant had yet to be read his *Miranda* rights.
30 Prosecution argues that it is permissible given that it is a
31 “casual conversation” that is normally attendant to a
32 custody situation.

33
34 Issue: Do casual conversations that produce incriminating
35 evidence constitute a custodial interrogation requiring the
36 defendant be read his *Miranda* rights?

37
38 Holding: No. Casual conversations are permissible and do
39 not require the prerequisite of a defendant being read his
40 *Miranda* rights, even if the resulting conversation produces
41 incriminating evidence.

42
43 Reasoning: Aware of the defendant’s angry and delusional
44 demeanor, the officers would take preventative measures to
45 prevent any aggression. A casual conversation during the
46 waiting period is a measure consistent with that goal. Upon
47 a review of the video, there is nothing to suggest that the
48 casual conversation was actually an interrogation designed
49 to elicit incriminating responses, which would in turn

1 trigger the need for the *Miranda* rule. The fact that these
2 conversations resulted in evidence of rationality relevant to
3 defendant's sanity does not transform the conversations
4 into a *Miranda* violation.

5
6 *People v. Lewis*, 786 P.2d 892 (1990)

7
8 Facts: Defendant convicted of first-degree murder and
9 robbery and sentenced to death contended that the trial
10 court erred in denying his motion to suppress statements he
11 made to a Sergeant while sitting in the backseat of a police
12 car after his arrest. Defendant asserts that the statements
13 made during that conversation with the Sergeant were the
14 product of a custodial interrogation without *Miranda* rights.
15 Sergeant Woodward, who was not involved in the arrest of
16 the defendant, arrived at the scene. Wanting to see if he
17 recognized the defendant, the Sergeant walked towards the
18 police car. The defendant called out to the Sergeant, "Is that
19 you, Big Mike?" The Sergeant answered in the affirmative
20 and a conversation between the two followed.

21
22 Issue: Is a conversation with a detained suspect in the back
23 of a police car inadmissible when the suspect is not advised
24 of his *Miranda* rights?

25
26 Holding: No, a casual conversation, even in a custodial
27 setting, does not equate to an impermissible interrogation
28 under *Miranda*, especially if the conversation is voluntary.

29
30 Reasoning: The Court held that the record portrays a casual
31 conversation between two acquaintances. The conversation
32 was also initiated by the defendant, thereby affirming it
33 was voluntary in nature. Although the setting was
34 custodial, these factors reveal that the statements were not
35 made in response to an interrogation. Given that these
36 statements were not given during a custodial interrogation,
37 *Miranda* did not apply and the statements were held
38 admissible.

39
40 *People v. Torres*, 262 Cal. Rptr. 323 (1989)

41
42 Facts: Defendant was transported to the Stockton Police
43 Department after his arrest. When a Sergeant approached,
44 the defendant, in broken English, offered a spontaneous
45 admission voluntarily. In response, the Sergeant showed
46 the defendant the picture of a suspect in the case and began
47 asking questions, without administering *Miranda* warnings.
48 The trial court excluded the defendant's response,
49 determining the interrogation to be in violation of *Miranda*.

1 Questioning then ceased, as the Sergeant waited for another
2 officer to arrive and administer *Miranda* warnings in
3 Spanish. During this time, the defendant volunteered
4 another statement, which the trial court deemed admissible
5 since it was voluntary and not during an interrogation. The
6 defendant argued that the second statement should be
7 inadmissible as well, since there was no “break in the
8 causative chain” between the two statements.

9
10 Issue: Does the lack of a *Miranda* warning constitute police
11 coercion and thereby make any statement, even a voluntary
12 one, inadmissible?

13
14 Holding: No. A statement volunteered by a defendant that
15 is not being interrogated does not require *Miranda*
16 warnings and is thereby admissible.

17
18 Reasoning: The Supreme Court in *Elstad* set forth a two-
19 step analysis for admissibility: (1) whether the statements
20 obtained in violation of *Miranda* were otherwise voluntary;
21 and (2) whether, under the totality of the circumstances,
22 defendant’s subsequent statements also were voluntarily
23 made. Here, the defendant’s initial statement, although in
24 violation of *Miranda*, was voluntary and so was the
25 subsequent statement. Hence, the statement offered by the
26 defendant following the termination of his non-*Miranda*
27 interrogation is admissible.

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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. Even with my position at BOI, I never take any
19 work home with me nor do I usually keep anything confidential
20 in the house. I have a basic security camera located at the front
21 of my house. I didn't immediately worry too much because I
22 occasionally leave my side gate unlocked for my gardener to
23 come in when I'm not home. At the time, I couldn't recall if I
24 had left it open that morning or not.

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

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

48

1 Before running out of the room, I distinctly remember Remi
2 looked at me and quickly said, “I’m so sorry, I didn’t mean to. I
3 had to do it. I had to do it. This is for the people.” After Remi
4 was gone, I called 911.

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

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

1 **Prosecution Witness: Officer Max Bird (Police Officer)**

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

7
8 On February 15, at 3:12 p.m., the Station received a call from
9 Drew Marshak saying Marshak had been robbed. Upon arriving
10 at the scene, I saw Marshak, clearly wounded and in a daze
11 from a wound to the face and a large gash on the forehead. The
12 front door was wide open and the screen of one of the windows
13 had popped out. Marshak gave me a description of the
14 perpetrator and informed me that the perpetrator had taken a
15 briefcase, but Marshak wasn't sure if anything else was taken.
16 Marshak was taken to the hospital and when asked for a
17 description, informed the officers that there was a security
18 camera at the front door that would have caught the suspect
19 leaving. After gaining access to that security footage, an All-
20 Points Bulletin (APB) was sent out in the area for someone
21 matching that description and the photograph by that evening.
22 The APB asked anybody who saw someone with that description
23 to call the Sheriff's Department. That evening the sketch and
24 footage from the camera at the front door was aired on local
25 news stations asking anyone with information to please call the
26 tip line.

27
28 On February 16, at 9:34 a.m., dispatch received a tip from
29 someone claiming to have recognized a suspect, later identified
30 as Remi Montoya, from the news segment the night before.
31 Being in close proximity to the location and on duty for
32 community policing, I immediately went to the address from the
33 tip. I assumed the suspect would be armed and dangerous.

34
35 When I arrived at the scene, an individual who matched the
36 suspect's description was pacing in the front yard. I approached
37 the suspect carefully, announcing myself and showing my badge
38 because I was conducting community policing and not in
39 uniform, and asked for the suspect's name. The suspect was
40 identified as Remi Montoya. I told Montoya to "put your hands
41 up" as I drew closer, and based on the photograph match, I
42 placed Montoya under arrest. A fellow officer arrived on the
43 scene, and Montoya became frantic, yelling out apologies and
44 saying something about "government lies." As I was placing
45 Montoya in the back of the officer's car, I remember Montoya
46 turning to me and saying, "Officer, we are starting a revolution
47 here, my friend. Join us, we're the only ones that know the
48 truth." I guessed the "us" meant Montoya and whomever else

1 might be in that house because Montoya nodded toward the
2 home while saying that statement.

3
4 The commotion must have alerted the resident in the house,
5 whom I later confirmed to be Lee Croddy, the homeowner.
6 Croddy rushed outside in pajamas and slippers. Croddy seemed
7 quite distressed about the whole situation. Croddy’s immediate
8 response was, “Oh God, what did Remi do? What did Remi
9 take?” After presenting Croddy with my badge and identifying
10 myself, I told Croddy that Montoya had been arrested for
11 burglary and assault. I immediately began asking Croddy who
12 Croddy was. Croddy seemed nervous and repeatedly asked what
13 was going to happen to Montoya.

14
15 I asked Croddy a few standard questions, including how Croddy
16 knew Montoya, and how Montoya had ended up at Croddy’s
17 residence. Croddy stated that Montoya was a huge fan that
18 Croddy had housed for the night. According to Croddy, Montoya
19 was invited to the residence because Croddy was concerned
20 about Montoya’s panicked state during an event the night
21 before. At my request, Croddy showed me the room where
22 Montoya slept the night before. I asked Croddy to accompany
23 me in my unmarked vehicle down to the station for further
24 questioning as a witness.

25
26 [On the way to the station, I attempted to begin a casual
27 conversation with Croddy after realizing that I had seen clips
28 from Croddy’s YouTube page on Twitter and Instagram. Croddy
29 seemed on edge the whole time, constantly glancing around the
30 car and frequently glancing between the rearview mirror
31 presumably to look at me and the radio sitting in the front of the
32 car. Croddy grew defensive immediately at the mention of the
33 clips being used by anarchists or that Croddy represented
34 anarchist views. Croddy asked me, “You think what Remi did
35 was my fault then?” and questioned whether an attorney should
36 be involved. At the time, I did not suspect Croddy of anything
37 beyond knowing Montoya so I tried to explain that but was
38 interrupted by Croddy, who said, “Look, the kid and I are not
39 close, okay? I mean, from what I know about Remi, the kid
40 could be aggressive and is passionate about the cause.” Croddy
41 stopped speaking here and glared directly at me through the
42 rearview mirror before continuing, “Sure, I told the kid to go
43 down there and get those documents, but I’m not responsible
44 for Remi doing anything illegal. That kid took things way too
45 far!”] After arriving at the station, Croddy refused any
46 questioning without legal counsel and waited outside the station
47 until Croddy’s lawyer arrived before beginning the interview.

48

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

10

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

23

24 On February 23, nearly a week after arresting Montoya, I
25 returned to Croddy’s residence with a warrant for Croddy’s
26 arrest. I knocked on the door, announced myself, and waited by
27 the door. Within the next minute, Croddy opened the door and
28 calmly complied with my instructions. I placed Croddy under
29 arrest for aiding and abetting first degree robbery and accessory
30 after the fact, informed Croddy of Croddy’s *Miranda* rights, and
31 proceeded to drive Croddy down to the station. Croddy did not
32 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. Despite displaying
42 hesitation, Zuri proceeds to support the overarching ideas of the
43 group chat because that was the perceived desire of the group’s
44 founder, Lee.
45

46 Groupthink can also embolden individualized ideas. For
47 example, in summer 2017, far-right activists in Charlottesville,
48 Virginia, felt bolstered by being part of a very large group of

1 like-minded peers and took to the streets to publicly voice their
2 platform as a group. The members of that group would almost
3 certainly never have taken such actions as individuals.

4
5 Groupthink can also be used positively. This concept is clearly
6 portrayed by the MeToo movement, which began online in
7 2017. Women, who may not have felt the power or willingness
8 to share their experiences of being victims of sexual harassment
9 and violence individually were able to share their stories online
10 because they did so as a large group, united online by a hashtag
11 in solidarity with each other.

12
13 In an online setting, groupthink can often be associated with the
14 idolizing of an online personality. The way the established fan-
15 group acts quickly becomes a reflection of the online
16 environment created by the idolized celebrity. This is evident
17 when a well-known online personality specifically calls out
18 someone on their platform for some perceived wrongdoing,
19 which can create a toxic environment of cyberbullying or
20 doxxing (revealing someone’s personal, identifying information
21 online). What follows after this initial targeting is a slew of
22 individual fans targeting that person as well — what is
23 commonly known as a “Twitter mob.” Although the fans are
24 technically acting individually, it is undeniable that groupthink
25 is the driver of the situation, and that the toxic environment
26 established by the celebrity encouraged the individual toxic
27 actions of the celebrity’s fans.

28
29 Groupthink is not a new phenomenon, as my examples have
30 clearly shown. These patterns in behavior are as relevant to our
31 understanding of pre-Internet culture as they are to our
32 understanding of online culture.

33
34 Based on my examination of the evidence, the environment that
35 the defendant, Lee, created in Lee’s online sphere is consistent
36 with the characteristics of a “toxic” environment. A consistent
37 flow of content with long, angry rants that specifically target the
38 government and even named officials could create a hostile
39 environment in an online community. Direct calls for actions,
40 although not by themselves toxic, also can be traits of such an
41 environment when the actions themselves promote toxic
42 behavior. Hence, given how groupthink can limit individual
43 creativity and decision-making, the actions of those operating in
44 such an environment become an expression of the toxic
45 ecosystem created by the leading figure, a role that would be
46 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 June 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 as a witness. I obliged.
46 [On the way to the station, Officer Bird started talking to me
47 about my YouTube channel and accused me of inciting anarchist
48 movements through my videos. I tried to defend myself by

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

15
16 On February 23, I heard several loud knocks on my front door
17 followed by a loud voice I recognized as belonging to the officer
18 that had arrested Remi and questioned me. The officer told me
19 to open the door, and I complied. Then, I was arrested for aiding
20 and abetting Remi in a burglary and accessory after the fact. I
21 was confused and did not speak at all after that. I barely know
22 Remi. I'm just trying to make a living, be good to my fans, and
23 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
4 I learned on Twitter that Remi and Lee had been arrested.
5 Clearly the government is just trying to silence those who want
6 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 magazines 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 2017
30 and into early 2018, Lee's follower growth had plateaued at less
31 than one 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 The following day, I was in attendance at the meet-and-greet
5 event. When someone (who I later learned was Remi Montoya),
6 approached Lee. I could see Lee’s interactions were not the
7 same as they were with any other fans. I assumed Lee knew this
8 person quite well. I remember Lee sort of embracing Remi
9 before showing Remi to a table nearby. Remi soon left that table
10 to stand in a corner and 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 (@buzzzbro): 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 guy who wrote these reports was stupid enough to leave his name on it! I'll march right up to him 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

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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.

1 PROCEDURES FOR PRESENTING A 2 MOCK TRIAL CASE

3 Introduction of Physical Evidence

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

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

23 Moving the Item into Evidence

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

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

36 The Opening Statement

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

- 42 • Explain what you plan to prove and how you will prove
43 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**

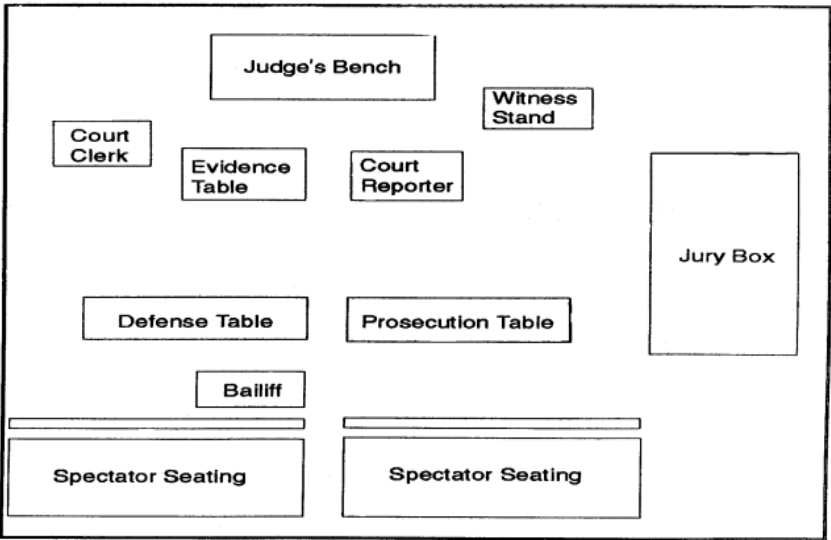
23 A good closing argument summarizes the case in the light
24 most favorable to your position. The prosecution delivers the
25 first closing argument. The closing argument of the defense
26 attorney concludes the presentations. A good closing
27 argument should:

- 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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- *Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.*
- *Be respectful in my conduct towards my adversaries.*
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- NOTES -

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